

BILL ANALYSIS

Senate Research Center
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H.B. 2683
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Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In an effort to better serve and protect residents and consumers in facilities licensed or regulated by the Department of Aging and Disability Services (DADS), the legislature created the employee misconduct registry and the nurse aide registry to ensure that personnel who commit acts of abuse, neglect, exploitation, misappropriation, or misconduct against residents and consumers are denied employment in certain facilities and agencies regulated by DADS. These facilities and agencies are required to check each registry before hiring an individual and are prohibited from hiring an individual listed on either registry.

In recent years, there has been a growing self-determination movement within the aging and disability communities, and many individuals are deciding to use the consumer directed service model option of care to have more control over the services they receive. The consumer directed services option was not available when the employment registries were developed, and as a result, there are currently gaps in the information reported to these registries.

H.B. 2683 seeks to increase the safety and well-being of individuals who receive services from DADS-regulated agencies or facilities or through the consumer directed services option by making several necessary updates to the laws governing the employee misconduct registry and nurse aide registry.

Specifically, H.B. 2683:

- adds employees who work under the consumer directed services option to the definition of those who may be reported to the employee misconduct registry;
- gives provider facilities and agencies latitude in how they store their employee misconduct registry checks;
- reinstates exploitation as a bar to employment; and
- requires DADS to provide an unlicensed employee who is accused of an act of abuse, neglect or exploitation a formal hearing within 120 days of the unlicensed employee requesting a hearing.

H.B. 2683 amends current law relating to employment in certain consumer-directed services and by certain facilities and to the nurse aide registry and the employee misconduct registry.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 250.001, Health and Safety Code, by adding Subdivisions (1-a) and (1-b) to define "consumer" and "consumer directed service option" and amending Subdivisions (2) and (3-b) to redefine "direct contact with customer" and "individual employer."

SECTION 2. Amends Sections 250.003(a), (c), and (d), Health and Safety Code, as follows:

- (a) Prohibits a facility or individual employer from employing an applicant:

(1) if the facility or individual employer determines, as a result of a criminal history check, that the applicant has been convicted of an offense listed in this chapter that bars employment or that a conviction is a contraindication to employment with the facility or to direct contact with the individual using the consumer-directed service option, rather than a contraindication to employment with the consumers the facility or employer serves;

(2) if the applicant is a nurse aide, until the facility or individual employer further verifies that the applicant is listed in the nurse aide registry; and

(3) until the facility or individual employer verifies that the applicant is not designated in the registry maintained under this chapter or in the employee misconduct registry maintained under Section 253.007 (Employee Misconduct Registry) as having a finding entered into the registry concerning abuse, neglect, or mistreatment of an individual using the consumer-directed service option or a consumer, or misappropriation of the property of an individual using the consumer-directed service option or of a consumer.

Makes nonsubstantive changes.

(c) Requires a facility or individual employer to immediately discharge any employee:

(1) who is designated in the nurse aide registry or the employee misconduct registry established under Chapter 253 (Employee Misconduct Registry) as having committed an act of abuse, neglect, or mistreatment of an individual using the consumer-directed service option or a consumer, or misappropriation of the property of an individual using the consumer-directed service option or of a consumer; or

(2) whose criminal history check reveals conviction of a crime that bars employment or that the individual employer or the facility determines is a contraindication to employment as provided by this chapter.

Makes nonsubstantive changes.

(d) Requires a facility or an individual employer or financial management services agency on behalf of an individual employer, in addition to the initial verification of employability, to:

(1) annually search the nurse aide registry maintained under this chapter and the employee misconduct registry maintained under Section 253.007 to determine whether any employee of the facility or of an individual employer is designated in either registry as having abused, neglected, or exploited a consumer or an individual using the consumer-directed service option; and

(2) maintain in the facility's or individual employer's books and records, rather than in each employee's personal file, a copy of the results of the search conducted under Subdivision (1).

Deletes existing text requiring a facility, in addition to the initial verification of employability, to annually search the nurse aide registry maintained under this chapter and the employee misconduct registry maintained under Section 253.007 to determine whether any employee of the facility is designated in either registry as having abused, neglected, or exploited a resident or consumer of a facility or an individual receiving services from a facility.

SECTION 3. Amends Section 250.006(a), Health and Safety Code, to add an offense under Section 32.53 (Exploitation of a Child, Elderly Individual, or Disabled Individual), Penal Code, to a list of offenses that, if convicted of the offense, prohibits a person for whom the facility or

the individual employer is entitled to obtain criminal history record information from being employed in a facility or by an individual employer, and to make nonsubstantive changes.

SECTION 4. Amends Section 253.001, Health and Safety Code, by adding Subdivisions (1-a), (1-b), (4-a), and (4-b) to define "consumer," "consumer-directed service option," "financial management service agency," and "individual employer" and amending Subdivisions (3) and (5) to redefine "employee" and "reportable conduct."

SECTION 5. Amends Section 253.002(b), Health and Safety Code, to require the Department of Aging and Disability Services (DADS), if DADS receives a report that an employee of a facility licensed under Chapter 252 (Intermediate Care Facilities for the Mentally Retarded) or of an individual employer committed reportable conduct, to forward that report to the Department of Family and Protective Services for investigation.

SECTION 6. Amends Section 253.004, Health and Safety Code, by adding Subsection (a-1), to require DADS to complete the hearing and the hearing record not later than the 120th day after the date DADS receives a request for a hearing.

SECTION 7. Amends Section 253.007(a), Health and Safety Code, to require DADS to establish an employee misconduct registry. Requires DADS, if DADS in accordance with this chapter finds that an employee of a facility or of an individual employer has committed reportable conduct, to make a record of the employee's name, the employee's address, the employee's social security number, the name of the facility or individual employer, the address of the facility or individual employer, the date the reportable conduct occurred, and a description of the reportable conduct.

SECTION 8. Amends Section 253.008, Health and Safety Code, as follows:

Sec. 253.008. VERIFICATION OF EMPLOYABILITY; ANNUAL SEARCH. (a) Requires the individual employer or a financial management services agency on behalf of the individual employer, the facility, or agency to search the employee misconduct registry under this chapter and the nurse aide registry maintained under Chapter 250 (Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly, Persons with Disabilities, or Persons With Terminal Illnesses) as required by the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203) to determine whether the applicant for employment is designated in either registry as having abused, neglected, or exploited an individual using the consumer-directed service option or a consumer, rather than a resident or consumer of a facility or agency or an individual receiving services from a facility or agency, before a facility or individual employer as defined in this chapter or an agency as defined in Section 48.401 (Definitions), Human Resources Code, is authorized to hire an employee.

(b) Prohibits a facility, individual employer or financial management services agency on behalf of an individual employer, or agency from employing a person who is listed in either registry as having abused, neglected, or exploited an individual using the consumer-directed service option or a consumer. Makes conforming changes.

(c) Requires a facility, agency, individual employer, or financial management services agency, in addition to the initial verification of employability, to, on behalf of an individual employer:

(1) annually search the employee misconduct registry and the nurse aide registry maintained under Chapter 250 to determine whether any employee of the individual employer, facility, or applicable agency is designated in either registry as having abused, neglected, or exploited an individual using the consumer-directed service option or a consumer; and

(2) maintain in the facility's or individual employer's books and records a copy of the results of the search conducted under Subdivision (1).

Deletes existing text requiring a facility or agency, in addition to the initial verification of employability, to annually search the employee misconduct registry and the nurse aide registry maintained under Chapter 250 to determine whether any employee of the facility or agency is designated in either registry as having abused, neglected, or exploited a resident or consumer of a facility or agency or an individual receiving services from a facility or agency, and maintain in each employee's personnel file a copy of the results of the search conducted under Subdivision (1). Makes nonsubstantive changes.

SECTION 9. Amends Section 253.009(a), Health and Safety Code, to require each facility or individual employer as defined in this chapter and each agency as defined in Section 48.401, Human Resources Code, to notify its employees in a manner prescribed by DADS about the employee misconduct registry, and that an employee is prohibited from being employed if the employee is listed in the registry.

SECTION 10. Repealer: Section 250.003(c-1) (relating to requiring an individual employer to immediately discharge any employee whose criminal history check reveals conviction of a crime that bars employment or that the individual employer determines is a contraindication to employment as provided by this chapter), Health and Safety Code.

SECTION 11. Effective date: January 1, 2014.