

## **BILL ANALYSIS**

Senate Research Center

C.S.S.B. 618  
By: Moncrief  
Health & Human Services  
3-20-97  
Committee Report (Substituted)

### **DIGEST**

Currently, as the aging population expands and the state attempts to control its Medicaid budget, growth industries which represent an alternative to nursing facilities are outpacing the state's ability to ensure health and safety. Facilities which provide food and shelter and either provide personal care services or supportive services represent one such industry. Problems arise because customers are often unaware of which facilities are licensed and what services are provided, and the Department of Human Services has little statutory regulatory authority. This legislation requires establishments not licensed as personal care facilities to execute contracts with their residents and disclose their licensure status in advertisements and promotional material in order to better inform consumers. In addition, S.B. 618 sets forth remedies and civil penalties for violations in an attempt to better ensure quality care in a rapidly expanding industry.

### **PURPOSE**

As proposed, C.S.S.B. 618 establishes the regulation of certain residential facilities and provides civil penalties for violations.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Texas Department of Human Services in SECTIONS 4 and 5 (Sections 247.021(b) and 247.047, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 6, Human Resources Code, by adding Chapter 105, as follows:

#### **CHAPTER 105. RESIDENTIAL FACILITIES FOR THE ELDERLY**

Sec. 105.001. DEFINITIONS. Defines "establishment," "qualifying adult resident," and "supportive services."

Sec. 105.002. EXEMPT FACILITIES. Provides that certain nursing facilities, continuing care facilities, housing with supportive services, and facilities which provide services only to persons enrolled in a program funded and monitored by a state agency are exempt from the application of this chapter.

Sec. 105.003. DISCLOSURE REQUIRED IN CONTRACT. Sets forth the terms by which an establishment that is not licensed as a personal care facility under Chapter 247, Health and Safety Code, is required to execute a contract with each of its residents that contains certain information.

Sec. 105.004. ADVERTISING DISCLOSURE. Requires any advertisement or promotional material distributed to the public for an establishment to disclose whether or not the establishment is licensed as a personal care facility under Chapter 247, Health and Safety Code.

Sec. 105.005. REMEDIES. Authorizes a resident of an establishment that has violated Section 105.003 or 105.004 to obtain or exercise one or more of the remedies available to

a tenant under Section 92.205, Property Code.

SECTION 2. Amends Section 247.002(3), Health and Safety Code, to amend the definition of "personal care facility."

SECTION 3. Amends Section 247.004, Health and Safety Code, to provide that this chapter does not apply to a facility which provides services only to persons enrolled in a program funded and monitored by a state agency in accordance with standards set by the state agency.

SECTION 4. Amends Section 247.021, Health and Safety Code, to prohibit a person from establishing or operating a personal care facility without possessing a license under this chapter for each such facility the person establishes or operates, rather than from doing so without a license issued under this chapter. Requires the department, by rule, to establish procedures to issue a six-month provisional license to existing facilities with residents. Authorizes the department to issue a provisional license if the facility is in compliance with resident care standards but needs additional time to meet Life Safety Code and physical plant standards. Prohibits the department from issuing a license to a facility if at the end of the six-month provisional license period the facility does not meet Life Safety Code and physical plant standards.

SECTION 5. Amends Section 247.044, Health and Safety Code, by adding a new Subsection (c) and redesignating Subsections (c)-(e), to authorize the Texas Department of Human Services (department) to petition a district court for a temporary restraining order to inspect a facility allegedly required to be licensed and operating without a license when admission to the facility cannot be obtained. Requires the court to order the facility to allow the department admission to the facility if it is shown that admission cannot be obtained. Authorizes the local prosecuting attorney to conduct a suit at the request of the department. Makes conforming changes.

SECTION 6. Amends Section 247.045, Health and Safety Code, to provide that a person who does not possess a license for a personal care facility as required by Section 247.021 is subject to a civil penalty of not less than \$1,000 or more than \$10,000 for each act of violation, with each day of a continuing violation constituting a separate ground for recovery. Makes conforming changes.

SECTION 7. Amends Chapter 247C, Health and Safety Code, by adding Section 247.047, as follows:

Sec. 247.047. **AUTHORITY TO DEVELOP OTHER REMEDIES.** Authorizes the department, by rule, and in addition to the enforcement provisions authorized by this chapter, to develop additional remedies as necessary to administer and ensure compliance with this chapter. Provides that this section does not authorize the department to assess monetary administrative penalties.

SECTION 8. Makes application of this Act prospective.

SECTION 9. Effective date: September 1, 1997.

SECTION 10. Emergency clause.

## **SUMMARY OF COMMITTEE CHANGES**

SECTION 1.

Amends Section 105.001, Human Resources Code, to redefine "establishment" and "supportive services."

Amends Section 105.002, Human Resources Code, to exempt facilities which provide services only to persons enrolled in a program funded and monitored by a state agency from the application of this chapter.

Amends Section 105.004, Human Resources Code, to require any advertisement distributed

to the public for an establishment to disclose whether or not, rather than whether, the establishment is licensed as a personal care facility.

#### SECTION 3.

Adds Section 247.004, Health and Safety Code, to provide that this chapter does not apply to a facility which provides services only to persons enrolled in a program funded and monitored by a state agency.

#### SECTION 4.

Amends Section 247.021, Health and Safety Code, to require the department, by rule, to establish procedures to issue a six-month provisional license to existing facilities with residents. Sets forth the conditions under which the department is authorized to issue a provisional license, and prohibited from issuing a license at the end of the six-month provisional license period.

#### SECTION 5.

Adds Section 247.044, Health and Safety Code, to authorize the department to petition a district court for a temporary restraining order to inspect a facility when admission to the facility cannot be obtained. Sets forth the terms by which the court shall order the facility to allow the department admission to the facility; and by which the local prosecuting attorney may conduct a suit.

#### SECTION 7.

Amends Section 247.047, Health and Safety Code, to change the heading to read, "AUTHORITY TO DEVELOP OTHER REMEDIES." Authorizes the department, by rule, to develop additional, rather than alternative, remedies to administer and ensure compliance with this chapter. Deletes the provision authorizing the department to develop remedies, including but not limited to the remedies authorized in Chapter 242. Provides that this section does not authorize the department to assess monetary administrative penalties.