

BILL ANALYSIS

Senate Research Center
76R8316 JRD-F

H.B. 3450
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Human Services
5/13/1999
Engrossed

DIGEST

Section 242.252 (Election of Arbitration), Health and Safety Code, authorizes the Texas Department of Human Services to elect arbitration in a dispute with a licensed nursing or convalescent home or related institution that relates to renewal of a license, suspension or revocation of a license, assessment of a civil penalty, assessment of a monetary penalty under, or assessment of a penalty. An arbitration order is binding and final on all parties, except for a right to appeal under Section 242.267(Court Vacating Order). If the court finds that the order was procured by corruption, fraud, or misrepresentation, the decision of the arbitrator was arbitrary or capricious and against the weight of the evidence or the order exceeded the jurisdiction of the arbitrator, then the court is required to vacate the order. Although the statute provides a mechanism for vacating an order, it fails to provide a legal mechanism to enforce an order. Consequently, a party that has an order rendered against it may choose not to abide the order. H.B. 3450 requires the district court in which a suit to vacate an arbitrator's order has been filed, upon application of a party, to enter a judgment in conformity with the arbitration award, unless, within the time limits prescribed by Section 242.267(d)(1) (Court Vacating Order) a motion is made to the court to vacate the order under Section 242.267. For this requirement to be applicable, the suit must be for the assessment of a civil penalty under Section 242.065 (Civil Penalty) in which binding arbitration has been elected under Subchapter J (Arbitration of Certain Disputes) as an alternative to the judicial proceeding. However, the court's requirement to enter a judgment in conformity with the arbitration order does not affect the right of a party to make a motion to the court or initiate a proceeding in court as provided by law to vacate the arbitrator's order or to vacate a judgment of the court entered in accordance with the arbitrator's order. Under this bill, the court's judgment is enforceable in the same manner as any other judgment of the court, and the court is authorized to award costs for an application to vacate and for any proceedings held after the application is made.

PURPOSE

As proposed, H.B. 3450 sets forth provisions regarding the collection of civil penalties assessed against a convalescent or nursing home or related institution.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter J, Chapter 242, Health and Safety Code, by adding Section 242.269, as follows:

Sec. 242.269. ENFORCEMENT OF CERTAIN ARBITRATION ORDERS. Provides that this section applies only to a suit for the assessment of a civil penalty under Section 242.065 (Civil Penalty) in which binding arbitration has been elected under Subchapter J (Arbitration of Certain Disputes) as an alternative to the judicial proceeding. Requires the district court in which a suit to vacate an arbitrator's order has been filed, upon application of a party, to enter a judgment in conformity with the arbitration award, unless, within the time limits prescribed by Section 242.267(d)(1) (Court Vacating Order) a motion is made to the court to vacate the order under Section 242.267. Provides that this judgment is enforceable in the same manner as any other judgment of the court. Authorizes the court to award costs for an application made under Subsection (b) and for any proceedings held after the application is made. Provides that Subsection (b) does not affect the right of a party, in accordance with Section 242.267 and within the time limit prescribed by Section 242.267(d)(2), if applicable, to make a motion to the court or initiate

a proceeding in court as provided by law to vacate the arbitrator's order or to vacate a judgment of the court entered in accordance with the arbitrator's order.

SECTION 2. Effective date: September 1, 1999.
Makes application of this Act prospective.

SECTION 3. Emergency clause.