

BILL ANALYSIS

Senate Research Center

C.S.S.B. 116
By: Zaffirini
Health and Human Services
2-27-97
Committee Report (Substituted)

DIGEST

In 1996, the Texas Department of Mental Health and Mental Retardation experienced an increase in the number of investigations of abuse and neglect. This increase was due in part to the fact that the Family Code's definitions of abuse, neglect, and exploitation have hampered certain investigative processes among all the health and human services agencies. S.B. 116 allows the agencies to define abuse, neglect, and exploitation through rules that make these definitions as strong or stronger than those contained in the Family Code.

PURPOSE

As proposed, C.S.S.B. 116 requires a state agency that operates, licenses, certifies, or registers a facility in which individuals are located to adopt definitions of abuse, neglect, or exploitation as strong or stronger than those contained in the Family Code.

RULEMAKING AUTHORITY

Rulemaking authority is granted to a state agency that operates, licenses, certifies, or registers a facility in which children are located in SECTIONS 1 and 4 (Sections 261.401(c) and 261.404(b), Family Code) and to the Board of Protective and Regulatory Services in SECTION 4 (Section 261.404(b), Family Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 261.401, Family Code, to require a state agency that operates, licenses, certifies, or registers a facility in which children are located to investigate a report that a child has been abused, exploited, or neglected in the facility. Provides the definitions of abuse and neglect under Section 261.001 do not apply to an investigation under this section. Requires a state agency to adopt rules that define abuse and neglect and that provide a child located in a facility operated, licensed, certified, or registered by the state agency at least as great a level of protection from abuse, neglect, or exploitation as provided by Section 261.001.

SECTION 2. Amends Sections 261.402(b), (d), and (e), Family Code, to make conforming changes.

SECTION 3. Amends Section 261.403(b), Family Code, to make a conforming change.

SECTION 4. Amends Section 261.404, Family Code, to provide that the definitions of abuse and neglect under Section 261.001 do not apply to an investigation under this section or Chapter 48, Human Resource Code. Requires the Board of Protective and Regulatory Services to adopt rules that define abuse and neglect and that provide a child located in a facility operated or regulated by, or providing services under a contract with, the Texas Department of Mental Health and Mental Retardation at least as great a level of protection from abuse, neglect, or exploitation as provided by Section 261.001. Makes conforming changes.

SECTION 5. Amends Section 48.036(a), Human Resources Code, to require a person who believes that an elderly or disabled person is in the state of abuse, exploitation, or neglect to immediately report the information to the Department of Protective and Regulatory Services.

SECTION 6. Amends Section 48.082(a), Human Resources Code, to make a conforming change.

SECTION 7. (a) Effective date: September 1, 1997.

(b) Requires a state agency required to adopt rules under this Act to adopt rules not later than December 31, 1997. Provides that the definitions of abuse and neglect under Section 261.001, Family Code, apply to an investigation until the date the state agency adopts rules under this Act.

(c) Provides that the change in law made by this Act applies only to an investigation of an allegation of abuse, neglect, or exploitation that is initiated prospective to January 1, 1998. Makes application of this Act prospective.

(d) Makes application of SECTIONS 5 and 6 of this Act prospective.

(e) Makes application of this Act prospective.

SECTION 8. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

Amends SECTION 1 to delete proposed Sections 261.001(1) and (4), Family Code, and redesignates proposed SECTION 2 as new SECTION 1, Section 261.401, Family Code. Deletes text in Subsection (b) providing that adopted rules of the state agency under this section must include rules that describe conduct that constitutes abuse, exploitation, or neglect for purposes of investigation and resolution of the reports. Adds new Subsection (c) to provide that the definitions of abuse and neglect under Section 261.001 do not apply to an investigation under this section and requires a state agency to adopt rules that define abuse and neglect and that provide a child located in a certain facility with a certain level of protection as provided by Section 261.001. Redesignates SECTIONS 1 through 11 in proposed version as SECTIONS 1 through 8 in committee substitute.

Amends SECTION 4, Section 261.404, Family Code, formerly SECTION 5, to create Subsection (a) from existing text and to provide that the definitions of abuse and neglect under Section 261.001 do not apply to an investigation under this section or Chapter 48, Human Resources Code. Requires the Board of Protective and Regulatory Services to adopt rules that define abuse and neglect and provides that certain facilities should provide a child with a certain level of protection as provided by Section 261.001.

Amends SECTION 7, to include the contents of proposed SECTIONS 8, 9, and 10. Requires a state agency to adopt rules under this Act not later than December 31, 1997. Provides that the change in law made by this Act applies only to an investigation of an allegation of abuse, neglect, or exploitation that is initiated prospective to January 1, 1998. Makes application of SECTION 5 and 6, rather than proposed SECTIONS 6 and 7, prospective.

Amends SECTION 8, formerly proposed SECTION 11, to provide the emergency clause.