

BILL ANALYSIS

Senate Research Center
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S.B. 426
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State Affairs
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Department of Aging and Disability Services (DADS) is statutorily authorized in certain circumstances to seek the placement of a court-appointed trustee to oversee the operations of a nursing facility, an assisted living facility, or an Intermediate Care Facility for the Mentally Retarded (ICF-MR). DADS is permitted to request a court-appointed trustee if the home is operating without a license, DADS has revoked or suspended the facility's license, suspension or revocation procedures are pending and DADS determines that there is imminent threat to the health and safety of the residents, DADS determines an emergency exists that presents immediate threat to the health and safety of the residents, or the facility is closing and arrangements for relocation of the residents to another facility have not been made.

DADS has experienced difficulty recruiting these court-appointed trustees. One issue often cited is that these trustees, while operating at the behest of the state, are not employees of the state and therefore do not have immunity from civil lawsuit. These individuals are asked to serve the state to perform services they would not otherwise perform, but for their appointment as a trustee.

S.B. 426 would provide immunity from civil lawsuit for DADS' requested, court-appointed trustees to nursing facilities, assisted living facilities, and ICF-MR facilities who act in good faith within the conditions of the court appointment.

Additionally, this bill provides clear statutory authority that reasonable legal fees incurred by court-appointed trustees are eligible for payment through applicable trust funds. Historically, Travis County district courts have approved requests by court-appointed trustees for payment of incurred legal fees from the facilities' trust funds; however, such authority is not specifically stated in statute.

As proposed, S.B. 426 amends current law relating to the liability of and payment of legal fees for court-appointed trustees of certain facilities.

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 Subchapter D, Chapter 242, Health and Safety Code, by adding Section 242.0947, as follows:

Sec. 242.0947. IMMUNITY FROM CIVIL LIABILITY; PAYMENT OF CERTAIN LEGAL FEES INCURRED BY TRUSTEE. (a) Provides that this section applies only to a trustee appointed under Section 242.094 (Involuntary Appointment) to operate:

- (1) a nursing or convalescent home; or
- (2) an assisted living facility as authorized under Section 247.003(b) (relating to application of Subchapter D (Trustees for Nursing or Convalescent Homes), Chapter 242, to an assisted living facility).

(b) Provides that a trustee is not liable for civil damages for an act or omission committed in good faith in the official scope of the trustee's duties.

(c) Entitles the trustee to payment for reasonable legal fees actually incurred by the trustee in fulfilling the trustee's duties.

(d) Authorizes a trustee of a home, notwithstanding Section 242.096(b) (relating to a trustee of a home using emergency assistance funds only to alleviate an immediate threat to the health or safety of the residents), to use the emergency assistance funds available under Section 242.096 (Nursing and Convalescent Home Trust Fund and Emergency Assistance Funds) to pay reasonable legal fees actually incurred by the trustee in fulfilling the trustee's duties. Authorizes a court, notwithstanding Section 242.096(c) (relating to the court ordering the Department of Aging and Disability Services (DADS) to disburse emergency assistance funds to a home if the court makes certain findings), to order DADS to disburse emergency assistance funds to the trustee to pay reasonable legal fees actually incurred by the trustee in fulfilling the trustee's duties.

(e) Authorizes a trustee of an assisted living facility, notwithstanding Section 242.0965(b) (relating to authorizing a trustee of an assisted living facility to use the emergency assistance funds only to alleviate an immediate threat to the health or safety of the residents), to use the emergency assistance funds available under Section 242.0965 (Assisted Living Facility Trust Fund and Emergency Assistance Funds) to pay reasonable legal fees actually incurred by the trustee in fulfilling the trustee's duties. Authorizes a court, notwithstanding Section 242.0965(c) (relating to authorizing a court to order DADS to disburse emergency assistance funds to an assisted living facility if the court makes certain findings), to order DADS to disburse emergency assistance funds to the trustee to pay reasonable legal fees actually incurred by the trustee in fulfilling the trustee's duties.

SECTION 2. Amends Subchapter D, Chapter 252, Health and Safety Code, by adding Section 252.0935, as follows:

Sec. 252.0935. IMMUNITY FROM CIVIL LIABILITY; PAYMENT OF CERTAIN LEGAL FEES INCURRED BY TRUSTEE. (a) Provides that this section applies only to a trustee appointed under Section 252.093 (Involuntary Appointment) to operate a facility.

(b) Provides that a trustee is not liable for civil damages for an act or omission committed in good faith in the official scope of the trustee's duties.

(c) Entitles the trustee to payment for reasonable legal fees actually incurred by the trustee in fulfilling the trustee's duties.

(d) Authorizes a trustee, notwithstanding Section 252.095(c) (relating to authorizing DADS to disburse money to a trustee for a facility licensed under this chapter to alleviate an immediate threat to the health or safety of the facility's residents), to use the emergency assistance funds available under Section 252.095 (Emergency Assistance Fee) to pay reasonable legal fees actually incurred by the trustee in fulfilling the trustee's duties. Authorizes a court, notwithstanding Section 252.095(d) (relating to a court ordering DADS to disburse emergency assistance money to a trustee), to order DADS to disburse emergency assistance funds to the trustee to pay reasonable legal fees actually incurred by the trustee in fulfilling the trustee's duties.

SECTION 3. (a) Makes Sections 242.0947(b) and 252.0935(b), Health and Safety Code, as added by this Act, applicable only to an act or omission by a trustee that occurs on or after the effective date of this Act.

(b) Makes Sections 242.0947(c), (d), and (e) and 252.0935(c) and (d), Health and Safety Code, as added by this Act, applicable only to legal fees incurred by a trustee on or after the effective date of this Act.

SECTION 4. Effective date: September 1, 2011.