

CONFERENCE COMMITTEE REPORT FORM

Austin, Texas

5/30/09
Date

Honorable David Dewhurst
President of the Senate

Honorable Joe Straus
Speaker of the House of Representatives

Sirs:

We, Your Conference Committee, appointed to adjust the differences between the Senate and the House of Representatives on HB 2328 have had the same under consideration, and beg to report it back with the recommendation that it do pass in the form and text hereto attached.

J. Carona
CARONA

A. Averitt
AVERITT

J. Patrick
PATRICK

Leticia Van de Potte
Van de Potte

On the part of the Senate Whitmire

R. Guillen
GUILLEN

Debbie Riddle
RIDDLE

David Leibowitz
LEIBOWITZ

Brandon Creighton
CREIGHTON

Robert Raymond
RAYMOND

On the part of the House

Note to Conference Committee Clerk:

Please type the names of the members of the Conference Committee under the lines provided for signature. Those members desiring to sign the report should sign each of the six copies. Attach a copy of the Conference Committee Report and a Section by Section side by side comparison to each of the six reporting forms. The original and two copies are filed in house of origin of the bill, and three copies in the other house.

CONFERENCE COMMITTEE REPORT

3rd Printing

H.B. No. 2328

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the punishment for certain fraud offenses committed
3 against elderly individuals.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Section 32.21, Penal Code, is amended by
6 amending Subsection (c) and adding Subsection (e-1) to read as
7 follows:

8 (c) Except as provided by by [~~in~~] Subsections (d), and (e),
9 and (e-1), an offense under this section is a Class A misdemeanor.

10 (e-1) An offense under this section is increased to the next
11 higher category of offense if it is shown on the trial of the
12 offense that the offense was committed against an elderly
13 individual as defined by Section 22.04.

14 SECTION 2. Section 32.31(d), Penal Code, is amended to read
15 as follows:

16 (d) An offense under this section is a state jail felony,
17 except that the offense is a felony of the third degree if it is
18 shown on the trial of the offense that the offense was committed
19 against an elderly individual as defined by Section 22.04.

20 SECTION 3. Section 32.51, Penal Code, is amended by adding
21 Subsection (c-1) to read as follows:

22 (c-1) An offense described for purposes of punishment by
23 Subsections (c)(1)-(3) is increased to the next higher category of
24 offense if it is shown on the trial of the offense that the offense

1 was committed against an elderly individual as defined by Section
2 22.04.

3 SECTION 4. The change in law made by this Act applies only
4 to an offense committed on or after the effective date of this Act.
5 An offense committed before the effective date of this Act is
6 governed by the law in effect when the offense was committed, and
7 the former law is continued in effect for that purpose. For the
8 purposes of this section, an offense was committed before the
9 effective date of this Act if any element of the offense occurred
10 before that date.

11 SECTION 5. This Act takes effect September 1, 2009.

House Bill 2328
Conference Committee Report
Section-by-Section Analysis

HOUSE VERSION

~~No equivalent provision.~~

SENATE VERSION

SECTION 1. Section 250.006(a), Health and Safety Code, is amended to read as follows:

(a) A person for whom the facility is entitled to obtain criminal history record information may not be employed in a facility if the person has been convicted of an offense listed in this subsection:

- (1) an offense under Chapter 19, Penal Code (criminal homicide);
- (2) an offense under Chapter 20, Penal Code (kidnapping and unlawful restraint);
- (3) an offense under Section 21.02, Penal Code (continuous sexual abuse of young child or children), or Section 21.11, Penal Code (indecenty with a child);
- (4) an offense under Section 22.011, Penal Code (sexual assault);
- (5) an offense under Section 22.02, Penal Code (aggravated assault);
- (6) an offense under Section 22.04, Penal Code (injury to a child, elderly individual, or disabled individual);
- (7) an offense under Section 22.041, Penal Code (abandoning or endangering child);
- (8) an offense under Section 22.08, Penal Code (aiding suicide);
- (9) an offense under Section 25.031, Penal Code (agreement to abduct from custody);
- (10) an offense under Section 25.08, Penal Code (sale or purchase of a child);
- (11) an offense under Section 28.02, Penal Code (arson);
- (12) an offense under Section 29.02, Penal Code (robbery);

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Same as House version.

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- (13) an offense under Section 29.03, Penal Code (aggravated robbery);
- (14) an offense under Section 21.08, Penal Code (indecent exposure);
- (15) an offense under Section 21.12, Penal Code (improper relationship between educator and student);
- (16) an offense under Section 21.15, Penal Code (improper photography or visual recording);
- (17) an offense under Section 22.05, Penal Code (deadly conduct);
- (18) an offense under Section 22.021, Penal Code (aggravated sexual assault);
- (19) an offense under Section 22.07, Penal Code (terroristic threat);
- (20) an offense under Section 33.021, Penal Code (online solicitation of a minor);
- (21) an offense under Section 34.02, Penal Code (money laundering);
- (22) an offense under Section 35A.02, Penal Code (Medicaid fraud);
- (23) an offense under Section 36.06, Penal Code (obstruction or retaliation);
- (24) an offense under Section 42.09, Penal Code (cruelty to animals); or
- (25) [~~(24)~~] a conviction under the laws of another state, federal law, or the Uniform Code of Military Justice for an offense containing elements that are substantially similar to the elements of an offense listed by this subsection.

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Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION

CONFERENCE

~~No equivalent provision.~~

SECTION 2. The heading to Chapter 253, Health and Safety Code, is amended to read as follows:

Same as House version.

CHAPTER 253. CERTAIN EMPLOYEE MISCONDUCT; REGISTRY

~~No equivalent provision.~~

SECTION 3. Section 253.001(5), Health and Safety Code, is amended to read as follows:

Same as House version.

(5) "Reportable conduct" includes:

- (A) abuse or neglect that causes or may cause death or harm to a resident or consumer of a facility;
- (B) sexual abuse of a resident or consumer of a facility;
- (C) financial exploitation of a resident or consumer of a facility in an amount of \$25 or more; ~~and~~
- (D) emotional, verbal, or psychological abuse that causes harm to a resident or consumer of a facility; and
- (E) solicitation of a gift from a resident or consumer of a facility.

SECTION 1. Section 32.21, Penal Code, is amended by amending Subsection (c) and adding Subsection (e-1) to read as follows:

SECTION 4. Same as House version.

SECTION 1. Same as House version.

(c) Except as provided by ~~in~~ Subsections (d), ~~and~~ (e), and (e-1), an offense under this section is a Class A misdemeanor.

(e-1) An offense under this section is increased to the next higher category of offense if it is shown on the trial of the offense that the offense was committed against an elderly individual as defined by Section 22.04.

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SECTION 2. Section 32.31(d), Penal Code, is amended to read as follows:

(d) An offense under this section is a state jail felony, except that the offense is a felony of the third degree if it is shown on the trial of the offense that the offense was committed against an elderly individual as defined by Section 22.04.

SECTION 5. Same as House version.

SECTION 2. Same as House version.

SECTION 3. Section 32.51, Penal Code, is amended by adding Subsection (c-1) to read as follows:

(c-1) An offense described for purposes of punishment by Subsections (c)(1)-(3) is increased to the next higher category of offense if it is shown on the trial of the offense that the offense was committed against an elderly individual as defined by Section 22.04.

SECTION 6. Same as House version.

SECTION 3. Same as House version.

SECTION 4. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For the purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 7. The change in law made by this Act in amending Sections 32.21, 32.31, and 32.51, Penal Code, applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is governed by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For the purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 4. Same as House version.

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SECTION 5. This Act takes effect September 1, 2009.

SECTION 8. Same as House version.

SECTION 5. Same as House version.

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 30, 2009

**TO: Honorable David Dewhurst , Lieutenant Governor, Senate
Honorable Joe Straus, Speaker of the House, House of Representatives**

FROM: John S. O'Brien, Director, Legislative Budget Board

IN RE: HB2328 by Guillen (Relating to the punishment for certain fraud offenses committed against elderly individuals.), Conference Committee Report

No significant fiscal implication to the State is anticipated.

The bill would amend the Penal Code to allow the penalty for certain fraud offenses to be increased to that of the next higher category if it is shown at trial the offense was committed against an elderly individual as defined by Section 22.04, Penal Code (age 65 or older).

The bill would take effect on September 1, 2009 and apply to offenses committed on or after that date.

For this analysis it is assumed that the number of offenders convicted under this statute would not result in a significant impact on the programs and workload of state corrections agencies or on the demand for resources and services of those agencies. It is expected individuals who would be affected under the provisions of the bill are currently being sentenced for other, possibly lesser felony, offenses.

Local Government Impact

No significant fiscal implication to units of local government is anticipated.

Source Agencies: 696 Department of Criminal Justice

LBB Staff: JOB, ESi, GG, LM

Certification of Compliance with Rule 13, Section 6(b), House Rules of Procedure

Rule 13, Section 6(b), House Rules of Procedure, requires that a copy of a conference committee report signed by a majority of each committee of the conference must be furnished to each member of the committee in person or if unable to deliver in person by placing a copy in the member's newspaper mailbox at least one hour before the report is furnished to each member of the house under Section 10(a) of this rule. The paper copies of the report submitted to the chief clerk under Section 10(b) of this rule must contain a certificate that the requirement of this subsection has been satisfied, and that certificate must be attached to the printed copy of the report furnished to each member under Section 10(d) of this rule. Failure to comply with this subsection is not a sustainable point of order under this rule.

I certify that a copy of the conference committee report on H. B. 2328 was furnished to each member of the conference committee in compliance with Rule 13, Section 6(b), House Rules of Procedure, before submission of the paper copies of the report to the chief clerk under Section 10(b), Rule 13, House Rules of Procedure.


(name)

5/30/09
(date)