

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Appropriations

BILL: CS/SB 582

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Clemens

SUBJECT: Substance Abuse Services

DATE: April 21, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Fav/CS
2.	Stearns	Yeatman	CA	Favorable
3.	Brown	Kynoch	AP	Pre-meeting

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 582 requires sober house transitional living homes (sober houses) to annually register with the Department of Children & Families (DCF) in order to operate in the state and provides a criminal penalty for operating without a valid certificate of registration. The bill provides definitions of “recovery residences,” “registrable components,” and “residential dwelling units.” The registration fee is capped at \$200. The bill authorizes the DCF to conduct inspections, and issue, deny, suspend, or revoke a certificate of registration. The bill requires certain personnel of a sober house to comply with level 2 background screening as provided in s. 435.04, F.S. Requirements for advertising a sober house are included in the bill.

The fiscal impact of the bill is indeterminate but likely significant.

II. Present Situation:

Sober Houses

The operation of sober houses is motivated by the theory that housing addicts in a low-crime, drug-free community fosters rehabilitation and is essential to the success of any addict’s treatment.¹ Proponents of sober houses believe that “such environments foster sobriety and

¹ M.M. Gorman *et al.*, *Fair Housing for Sober Living: How the Fair Housing Act Addresses Recovery Homes for Drug and Alcohol Addiction*, THE URBAN LAWYER v. 42, No. 3 (Summer 2010) (on file with the Senate Committee on Children, Families, and Elder Affairs).

encourage trust and camaraderie between home residents”² and that living in a sober house affords a recovering addict the opportunity to develop practical life skills and build self-confidence.³

“Sober houses” and “sober housing” are new terms for facilities formerly known as “halfway houses.” Halfway houses were used by those leaving a residential center who had limited residential options. Sober houses offer the same vital services to addicts in the early stages of recovery.⁴

The facilities, operators and organizational design of sober houses vary greatly. Some sober house advocates argue that the location of the home is critical to promoting recovery. They argue that placing the home in a single-family neighborhood helps to avoid temptations that other environments can create.⁵ Organizationally, these homes can range from a private landlord renting his or her home to recovering addicts to corporations that operate full-time treatment centers across the country and employ professional staff.⁶

Fair Housing Act

The Federal Fair Housing Act of 1988 (FHA)⁷ prohibits discrimination on the basis of a handicap in all types of housing transactions. The FHA defines a “handicap” to mean those mental or physical impairments that substantially limit one or more major life activities. The term “mental or physical impairment” may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term “major life activity” may include seeing, hearing, walking, breathing, performing manual tasks, caring for one’s self, learning, speaking, or working. The FHA also protects persons who have a record of such impairment or are regarded as having such impairment. Current users of illegal controlled substances, persons convicted for the illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders are not considered disabled by virtue of that status under the FHA.⁸

The Florida Fair Housing Act provides in s. 760.23(7)(b), F.S., that it is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available. The statute defines “discrimination” to include a refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

² *Id.*

³ 12 Step Treatment Centers, *Sober Living Home Transitional Housing*, available at http://www.12steptreatmentcentres.com/SOBER_LIVING_HOME_TRANSITIONAL_HOUSING_95.asp (last visited March 13, 2014).

⁴ *Id.*

⁵ M.M. Gorman *et al.*, *supra* note 2.

⁶ *Id.*

⁷ 42 U.S.C. 3601 *et seq.*

⁸ See U.S. Department of Justice, *The Fair Housing Act*, available at http://www.justice.gov/crt/about/hce/housing_coverage.php (last visited March 13, 2014).

Americans with Disabilities Act

In July 1999, the U.S. Supreme Court held that the unnecessary institutionalization of persons with disabilities is a form of discrimination prohibited by the Americans with Disabilities Act (ADA).⁹ In its opinion, the court challenged federal, state, and local governments to develop more opportunities for individuals with disabilities through accessible systems of cost-effective, community-based services. This decision interpreted Title II of the ADA and its implementing regulation, as requiring states to administer their services, programs, and activities, “in the most integrated setting appropriate to meet the needs of qualified individuals with disabilities.” The ADA and the *Olmstead* decision apply to all qualified individuals with disabilities regardless of age. A former drug addict may be protected under the ADA because the addiction may be considered a substantially limiting impairment.¹⁰ In addition, in the *United States of America v. City of Boca Raton*, the court held that the city’s ordinance excluding substance abuse treatment facilities from residential areas violates the FHA because it unjustifiably prohibits these individuals from enjoying the same rights and access to housing as anyone else.¹¹

III. Effect of Proposed Changes:

Section 1 provides legislative findings, intent, and purpose.

Section 2 amends s. 397.311, F.S., to add the following definitions:

- “Recovery residence” means a democratically run, peer-managed, and peer-supported dwelling for a resident who is established in his or her recovery and who is a party to a single lease agreement to occupy a dwelling which has a single beginning date and a single termination date.
- “Registrable component” means a sober house transitional living home that is a residential dwelling unit that provides, offers, or advertises housing in an alcohol-free and drug-free living environment to persons needing room and board while receiving treatment services as provided in s. 397.311(18), F.S., at a licensed facility. The term includes the community housing component of a day or night treatment facility of a residential treatment facility that offers level 5 treatment programs, but the term does not include a recovery residence.
- “Residential dwelling unit” means a single unit used primarily for living and sleeping which provides complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.
- “Sober house operator” means a person who operates a sober house transitional living home.

Section 3 creates s. 397.487, F.S., which requires sober houses to comply with the DCF’s annual application process for a certificate of registration to operate. A sober house licensed by the DCF as a residential treatment facility that offers level 5 treatment programs or serves as a community housing component of a day or night treatment facility is not required to obtain additional licensure or registration for the housing component of the license.

The application process will require a sober house to provide:

⁹ *Olmstead v. L.C.*, 527 U.S. 581, (1999).

¹⁰ U.S. Commission on Civil Rights, *Sharing the Dream: Is the ADA Accommodating All?*, available at http://www.usccr.gov/pubs/ada/ch4.htm#_ftn12 (last visited March 13, 2014).

¹¹ *United States of America vs. City of Boca Raton*, 1008 WL 686689 (S.D. Fla. 2008).

- Name and physical address of the sober house transitional living home;
- Name of the sober house operator;
- Number of individuals served at the sober house;
- Proof of screening and background checks as required under ch. 435, F.S.;
- Written eviction procedures;
- Proof of satisfactory fire, safety, and health inspections and compliance with local zoning ordinances; and
- A registration fee not to exceed \$200.

The bill requires sober houses in existence on July 1, 2014, to apply for a certificate of registration by September 1, 2014. Sober houses in existence on July 1, 2014, that have a license as the community housing component of a day or night treatment facility or are licensed as a residential treatment facility offering level 5 treatment programs, do not have to apply for additional licensure or certification by September 1, 2014. The bill provides that operating a sober house without a valid certificate of registration is a first degree misdemeanor. The DCF is required to adopt rules pertaining to the application process for obtaining a certificate of registration.

The bill also provides that the owner, director, manager, operator, and chief financial officer of a sober house are subject to level 2 background screening as provided in s. 435.04, F.S. The bill prohibits the DCF from granting a certificate of registration:

- If a sober house fails to provide proof that background screening information has been submitted in accordance with ch. 435, F.S.; or
- If one of the above-named individuals has been arrested for and pled to an offense prohibited under the level 2 screening standards established in s. 435.04, F.S., unless an exemption from disqualification has been granted by the DCF under ch. 435, F.S.

If one of the above-named individuals is arrested or pleads guilty to an offense prohibited under s. 435.04, F.S., while acting in his or her professional capacity, the bill requires the DCF to immediately suspend the certificate of registration of a sober house until the individual resigns or is removed and replaced by another qualified individual.

Under the bill, all advertising by a person who owns or operates a sober house must include the home's state registration number in the advertisement. Violation of this requirement is a first degree misdemeanor.

The bill provides authority to the DCF's authorized agent to enter and inspect a sober house with a certificate of registration at any time to determine if it is in compliance with certification requirements. Additionally, with the permission of the person in charge of the premises or pursuant to a warrant, the DCF's authorized agent may enter and inspect a residential dwelling unit that is reasonably suspected to be operating as a sober house in violation of the Florida Statutes. The DCF's designated and authorized agent may access the records of the individuals served by a sober house solely for certification, monitoring, and investigation. Prior to granting or denying a certificate of registration, the DCF's authorized agent may enter and inspect the premises of an applicant sober house at any time. The bill requires the DCF to maintain certificates of registration and inspection reports of sober houses as public records available to

any person upon request and payment of a reasonable charge for copying as provided in s. 119.07, F.S.

Under the bill, if the DCF determines that an applicant or a sober house is not in compliance with statutory and regulatory requirements, the DCF may deny, suspend, revoke, or impose reasonable restrictions or penalties on the certificate of registration or any portion of the certificate. The DCF may:

- Impose an administrative penalty of up to \$500 per day; or
- Suspend or revoke a sober house certificate of registration that, after notice, has failed to correct a substantial or chronic violation of a statutory or regulatory requirement that impacts the safety of the individuals served in the house.

If a sober house's certificate of registration is revoked, the house is barred for one year after the revocation from submitting an application for a certificate of registration. Proceedings for the denial, suspension, or revocation of a sober house certificate of registration must be conducted pursuant to ch. 120, F.S. The DCF has the authority to maintain an action in court to enjoin the operation of an uncertified sober house.

Under the bill, to avoid increased homelessness and crime and to ensure the due process rights of sober house tenants are not violated, a sober house that is not subject to Florida's Landlord and Tenant Act, ch. 83, F.S., must provide 48 hours' advance, written notice of eviction to a tenant or must provide immediate shelter to that tenant for at least 48 hours after eviction at an alternative temporary dwelling unit.

The DCF is required to adopt rules to administer this section.

Section 4 amends s. 212.055(5)(e)2., F.S., to refer to s. 397.311, F.S., instead of 397.311(35), F.S., when incorporating the definition of "stabilization."

Section 5 amends s. 440.102(1)(d) and (g), F.S., to refer to s. 397.311, F.S., instead of 397.311(33), F.S., when incorporating the definitions of "drug rehabilitation program" and "employee assistance program."

Section 6 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Fair Housing Act (FHA) prohibits a large range of practices that are considered to discriminate against individuals on the basis of race, color, religion, sex, national origin, familial status, and disability or handicap. The term “disability” has been interpreted to include individuals recovering from drug or alcohol addiction.¹² Therefore, discriminatory practices against recovering addicts are prohibited. As such, restrictions placed on sober houses by the bill may violate the FHA. An owner or operator of a home adversely affected by the bill may bring suit to seek relief under the FHA.

V. Fiscal Impact Statement:**A. Tax/Fee Issues:**

The bill authorizes the DCF to assess registration fees against sober homes not to exceed \$200.

B. Private Sector Impact:

The bill could limit the number of sober houses due to increased qualifications for those homes not currently subject to licensure by the DCF. The sober houses would be assessed a certificate of registration fee not to exceed \$200.

C. Government Sector Impact:

The bill would have a significant negative fiscal impact on the DCF. The DCF estimates it would need one full-time equivalent position for every 100 sober houses regulated under the bill. However, the number of sober houses statewide that would apply for certificates of registration and require initial and ongoing inspections and administrative oversight is indeterminate and cannot be reliably estimated, according to the DCF.

Additionally, the DCF would need funding to modify its existing licensure database and pay for additional data storage capacity at the shared resource center. The DCF would need staff to perform inspections, process applications, review background screenings, provide legal representation in ch. 120, F.S., proceedings in the event of a denial, revocation, or suspension of a registration, and update its licensing and technology systems. In 2013, the DCF estimated it would need \$200,000 to modify its licensing and technology systems.

VI. Technical Deficiencies:

The bill makes three references to “level 5 treatment programs” (lines 66, 131, and 158) but does not define that term. The term also does not appear in the Florida Statutes in relation to substance abuse or treatment.

¹² M.M. Gorman *et al*, *supra* note 2.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 397.305, 397.311, 212.055, and 440.102.

This bill creates section 397.487 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)**CS by Children, Families, and Elder Affairs on February 11, 2014:**

The CS:

- Provides legislative intent;
- Adds a definition of a “recovery residence;” and
- Provides an exemption from certification for sober house transitional living homes licensed by the DCF as a residential treatment facility offering level 5 treatment program or one that serves and is licensed as a community housing component of a day or night treatment facility. These licensed facilities are also exempt from the September 1, 2014, application for certification deadline.

B. Amendments:

None.