

Tab 1 SB 1102 by Brandes; (Similar to CS/CS/H 0259) Temporary Care of a Child							
202660	D	S	FAV	CF, Altman	Delete everything after	02/04	01:52 PM

Tab 2 CS/SB 1164 by BI, Legg; (Similar to H 0965) Firesafety							
314910	A	S		CF, Altman	btw L.228 - 229:	02/03	08:58 AM
753472	SA	S	L FAV	CF, Altman	btw L.228 - 229:	02/04	10:16 AM

Tab 3 CS/SB 1174 by CA, Diaz de la Portilla; (Similar to CS/H 0885) Residential Facilities							
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Tab 4 SB 1420 by Bean; (Similar to CS/CS/H 1125) Eligibility for Employment as Child Care Personnel							
952268	A	S	L FAV	CF, Altman	Delete L.9 - 20:	02/04	01:52 PM

The Florida Senate
COMMITTEE MEETING EXPANDED AGENDA

CHILDREN, FAMILIES, AND ELDER AFFAIRS

Senator Sobel, Chair
Senator Altman, Vice Chair

MEETING DATE: Thursday, February 4, 2016

TIME: 9:00—11:00 a.m.

PLACE: 301 Senate Office Building

MEMBERS: Senator Sobel, Chair; Senator Altman, Vice Chair; Senators Dean, Detert, Garcia, Hutson, and Ring

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
1	SB 1102 Brandes (Similar CS/CS/H 259)	Temporary Care of a Child; Authorizing the Department of Children and Families to provide parents or guardians with certain information following a protective investigation not resulting in an out-of-home placement of the child; authorizing a parent, legal guardian, or legal custodian of a child to establish a power of attorney for temporary delegation of care of a child as an alternative to guardianship under certain circumstances, etc. CF 02/04/2016 Fav/CS JU AP	Fav/CS Yeas 4 Nays 0
2	CS/SB 1164 Banking and Insurance / Legg (Similar H 965)	Firesafety; Requiring the State Fire Marshal to establish uniform firesafety standards for assisted living facilities; revising provisions relating to the minimum standards that must be adopted by the Department of Elderly Affairs for firesafety in assisted living facilities; clarifying the fees a utility may charge for the installation and maintenance of an automatic fire sprinkler system, etc. BI 01/26/2016 Fav/CS CF 02/04/2016 Fav/CS FP	Fav/CS Yeas 5 Nays 0
3	CS/SB 1174 Community Affairs / Diaz de la Portilla (Similar CS/H 885)	Residential Facilities; Specifying applicability of siting requirements for community residential homes; providing applicability with respect to local land use and zoning, etc. CA 01/26/2016 Fav/CS CF 02/04/2016 Favorable FP	Favorable Yeas 4 Nays 0
4	SB 1420 Bean (Similar CS/H 1125)	Eligibility for Employment as Child Care Personnel; Prohibiting certain job applicants from employment with a child care facility, etc. CF 01/27/2016 Temporarily Postponed CF 02/04/2016 Fav/CS CJ RC	Fav/CS Yeas 5 Nays 0

COMMITTEE MEETING EXPANDED AGENDA

Children, Families, and Elder Affairs

Thursday, February 4, 2016, 9:00—11:00 a.m.

TAB	BILL NO. and INTRODUCER	BILL DESCRIPTION and SENATE COMMITTEE ACTIONS	COMMITTEE ACTION
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5	Improving the Ability of Elders to Stay in Their Community AARP FLORIDA		Presented
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Other Related Meeting Documents

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 Committee Children, Families, and Elder Affairs

BILL: CS/ SB 1102

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

SUBJECT: Temporary Care of a Child

DATE: February 8, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	Fav/CS
2.			JU	
3.	_____	_____	AP	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1102 authorizes qualified nonprofit organizations to establish programs to assist parents and legal guardians in providing respite care for a child in times of family hardship. Only children who are not part of the child welfare system are eligible for care under this program.

The bill defines the terms “qualified association,” “qualified nonprofit organization,” and “volunteer respite family,” provides a process for registering these qualified organizations in lieu of licensure, and requires level 2 background screening for employees of the organizations and family members who are providing care.

The bill requires a contract for care of the child to be entered into between the parent or legal guardian and the family providing care for the child and specifies requirements to be included in the contract.

The bill has no fiscal impact on state or local government.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Safe Families Model

Sometimes, parents encounter a hardship and are unable to adequately deal with both that situation and parenting at the same time due to the lack of family or other support system.¹ This type of social isolation combined with the stress of a crisis can increase the likelihood of child abuse, often through child neglect. Furthermore, homelessness, unemployment, domestic violence, illness, mental health issues, and substance addiction can all lead to situations in which a parent must choose between addressing the immediate situation and adequate care of his or her child.²

In 2002, the Safe Families for Children (SFFC) program created a model in which parents in crisis without family or other support had a place to go for help without entering the child welfare system.³ The model includes placing a child with an unpaid volunteer host family, allowing a parent the time and space to deal with whatever issues brought them to SFFC. By temporarily placing the child with a host family, SFFC hopes to reduce the risk of child abuse and neglect, as well as provide a safe place for a child.⁴

SFFC states that it has three main objectives: child welfare deflection, child abuse prevention, and family support and stabilization.⁵ SFFC reports that the hallmarks of the program are that parents retain full legal custody of children, volunteer families are extensively screened and supported, the average length of stay is 6 weeks (ranging from 2 days to 1 year), there is a close working relationship between the Safe Families organization, local churches, and the referring organization, and that the model is committed to reuniting the family as soon as possible.⁶

Programs based on the SFFC model are active throughout the country (54 active programs in 25 states),⁷ with Oregon, Wisconsin, and Oklahoma codifying similar models in statute.⁸ Florida currently has 4 areas where SFFC models operate⁹ and these organizations currently perform background screening through the Volunteer and Employee Criminal History System (VECHS) program, offered by the Florida Department of Law Enforcement.

¹ Safe Families for Children, *How Safe Families Works*, available at <http://safe-families.org/about/how-safe-families-works/> (last visited January 30, 2016).

² Safe Families for Children, *Frequently Asked Questions*, available at <http://safe-families.org/about/faq/> (last visited January 30, 2016). Also see Safe Families for Children Movement Manual (on file with the Senate Committee on Children, Families and Elder Affairs).

³ *Id.*

⁴ *Id.*

⁵ Safe Families for Children, *Who we help*, available at: http://www.safe-families.org/whatis_whoehelp.aspx (last visited January 31, 2016).

⁶ *Id.*

⁷ *Id.*

⁸ The Foundation for Government Accountability, *Safe Families in the States – 2016*, available at: <http://thefga.org/solutions/fostercare-reform/safe-families/> (last visited December 21, 2015).

⁹ These areas are SFFC Southwest Florida in Naples, Bethany Christian Services of the Gulf Coast in Pensacola, Bethany Christian Services of Orlando, and Bethany Christian Services of Tampa Bay.

Background Screening

Volunteer and Employee Criminal History System

The Volunteer and Employee Criminal History System (VECHS) program was implemented in 1999 and is authorized by the National Child Protection Act (NCPA) and s. 943.0542, F.S. The VECHS program provides a means to background screen the employees and volunteers of organizations who work with vulnerable individuals but who are not required by law to be background screened. Examples of organizations that may use VECHS are churches and volunteer organizations that serve children, the elderly or persons with disabilities but are not licensed or contracted by the state.

Through the VECHS program, FDLE and the FBI provide state and national criminal history record information on applicants, employees, and volunteers to qualified organizations (not individuals or state agencies) in Florida. With this criminal history information, the organizations can more effectively screen out those current and prospective volunteers and employees who are not suitable for contact with children, the elderly, or persons with disabilities.¹⁰

Unlike screenings under the Care Provider Background Screening Clearinghouse in chapter 435, F.S., screenings through the VECHS program are not actively monitored. The screenings provide a snapshot in time of that particular employee or volunteer's criminal record at the time the screen is completed. Any arrest or judicial action after that screening is completed is unknown. Additionally, the organization receiving the screening results makes its own determination of whether to employ the individual or use the volunteer based on its own standards.

Level 2 Background Screening

A level 2 background screening includes but is not limited to fingerprinting for statewide criminal history records checks through the Florida Department of Law Enforcement (FDLE) and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.¹¹ The applicant has fingerprints taken by a vendor that submits the electronic fingerprints to FDLE for DCF. FDLE then runs statewide checks and submits the electronic file to the FBI for national checks.

Once the background screening is completed, and FDLE receives the information from the FBI, the criminal history information is transmitted to DCF. DCF then determines if the screening contains any disqualifying information for employment. DCF must ensure that no applicant has been arrested for, is awaiting final disposition of, has been found guilty of, or entered a plea of nolo contendere or guilty to any prohibited offense including, but not limited to, such crimes as sexual misconduct, murder, assault, kidnapping, arson, exploitation, lewd and lascivious behavior, drugs, and domestic violence.¹² If the department finds that an individual has a history containing any of these offenses, they must disqualify that individual from employment under chapter 435, F.S.

¹⁰ Florida Department of Law Enforcement, *Volunteer and Employee Background checks*, available at: <http://www.fdle.state.fl.us/Content/Background-Checks/Menu/VECHS.aspx> (last visited January 30, 2016).

¹¹ See s. 435.04, F.S.

¹² *Id.*

III. Effect of Proposed Changes:

Section 1 creates s. 409.1761, F. S., to authorize qualified nonprofit organizations to establish programs to assist parents and legal guardians in providing respite care for a child in times of family hardship. Only children who are not part of the child welfare system are eligible for care under this program.

The bill defines the terms “qualified association,” “qualified nonprofit organization,” and “volunteer respite family,” provides a process for registering these qualified organizations in lieu of licensure, and requires level 2 background screening for employees of the organizations and family members who are providing care.

The bill requires a contract for care of the child to be entered into between the parent or legal guardian and the family providing care for the child and specifies requirements to be included in the contract.

Section 2 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The cost for a state and national criminal history record check is \$46.75. \$8 goes into the FDLE Operating Trust Fund and \$14.75 from each request is forwarded to the Federal Bureau of Investigation. There is also a \$24 fingerprint retention fee.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill creates s. 409.1761 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 4, 2016:

- Authorizes qualified nonprofit organizations to establish programs to assist parents and legal guardians in providing respite care for a child in times of family hardship.
- Only children who are not part of the child welfare system are eligible for care under this program.
- Defines the terms “qualified association,” “qualified nonprofit organization,” and “volunteer respite family.”
- Provides a process for registering these organizations in lieu of licensure.
- Requires level II background screening for employees of the organizations and family members who are providing care.
- Requires a contract for care of the child to be entered into between the parent or legal guardian and the family providing care for the child and specifies requirements to be included in the contract.
- Removes the provisions relating to chapter 709, F.S.

- B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/04/2016	.	
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	.	
	.	

The Committee on Children, Families, and Elder Affairs (Altman) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 409.1761, Florida Statutes, is created
to read:

409.1761 Organizations providing respite care for children
not in the child welfare system.— A qualified nonprofit
organization may establish a program which assists parents and
legal guardians in providing temporary respite care for a child



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11 by a volunteer respite family. Only a child who has not been
12 removed from the child's parent or legal guardian due to abuse
13 or neglect and placed in the custody of the department is
14 eligible to be cared for under this section. Placement of a
15 child under this section, without any additional evidence, does
16 not constitute abuse, neglect or abandonment as defined in s.
17 39.01, F.S., and is not considered to placement of the child in
18 foster care. However, the department may refer children to a
19 program under this section if the department determines that the
20 services are appropriate for addressing the needs of a family in
21 crisis, preventing children from being placed in the custody of
22 the department or achieving reunification of a child with his or
23 her biological family.

24 (1) DEFINITIONS.- As used in this section, the term:

25 (a) "Qualified association" means an organization that
26 establishes, publishes, and requires compliance with best
27 practice standards for operating a program that assists parents
28 and legal guardian in providing temporary respite care for a
29 child by a volunteer respite family.

30 (b) "Qualified nonprofit organization" or "organization" -
31 means a Florida private nonprofit organization that assists
32 parents and legal guardians in providing temporary respite care
33 for a child by a volunteer respite family under an agreement
34 with a qualified association.

35 (c) "Volunteer respite family" means an individual or
36 family who voluntarily agrees to provide temporary care for a
37 child under a contract for care with the child's parent or legal
38 guardian with the assistance of a qualified nonprofit
39 organization.



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40 (2) REGISTRATION.-

41 (a) Registration shall consist of annually filing with the
42 qualified association the name and address of the organization;
43 the capacity of, and the number of children being cared for; the
44 names and addresses of the officers and the board of directors
45 or other governing body of the organization, if applicable; the
46 name of person in charge of the organization; and proof that the
47 organization is in compliance with the minimum health, sanitary,
48 and safety standards required by applicable state law or local
49 ordinance, and the uniform fire safety standards required by
50 chapter 633, and is in compliance with the requirements for
51 screening of personnel in s. 409.175 and chapter 435.

52 (b) As part of the registration, each organization shall
53 annually provide to the qualified association relevant data on
54 the services provided by the organization including, the number
55 of approved volunteer respite families, the number and ages of
56 children being cared for through the organization; the number of
57 children who have left the care of the organization during the
58 past year, the lengths of their stays, and the reason for their
59 care; the names of all personnel. The organization shall
60 maintain files on all children served that include, at minimum,
61 (1) the name and age of the child; (2) the name, address and
62 contact information for the child's parent or legal guardian;
63 (3) the name, address and contact information for the child's
64 volunteer respite family; (4) a copy of the contract for care of
65 the child executed pursuant to paragraph 5 of this section; and
66 (5) proof of the volunteer respite family's compliance with the
67 screening requirements of s. 409.175 and chapter 435. The
68 organization shall maintain on site and provide, upon request,



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69 proof that the organization is in compliance with published
70 minimum standards that are filed with the department under the
71 provisions of paragraph subsection (2). The department shall
72 also attest to the good moral character of the personnel of the
73 organization and members of the volunteer family home by
74 maintaining and providing, upon request, proof of compliance
75 with the screening requirements of s. 409.175 and chapter 435.
76 The qualified association shall have the right to access and
77 review the organization's files at any time to ensure compliance
78 with this section and standards established by the qualified
79 association.

80 (c) Upon verification that all requirements for
81 registration have been met, the qualified association shall
82 issue without charge a certificate of registration valid for 1
83 year.

84 (3) EXEMPTION FROM LICENSURE.—The licensing provisions of
85 s. 409.175 shall not apply to a private organization that is
86 certified with a qualified association which assists parents and
87 legal guardians in providing temporary respite care for a child
88 by a volunteer caregiver pursuant to a properly executed
89 contract under this section. However, such organizations shall
90 meet the screening requirements pursuant to s.409.175 and
91 chapter 435.

92 (a) Any organization registered under the provisions of
93 this section shall notify the department immediately if it has
94 in its care a child with serious developmental disabilities or a
95 physical, emotional, or mental handicap for which the
96 organization is not qualified or able to provide care.

97 (b) The provisions of chapters 39 and 827 regarding the



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98 reporting of child abuse, abandonment, and neglect apply to any
99 organization registered under this section.

100 (4) SCREENING REQUIREMENTS FOR PERSONNEL.- Individuals
101 required to be screened under this section include:

102 a. All employees of the organization assisting parents in
103 providing respite care;

104 b. Members of the family, or persons residing with the
105 family that is providing respite care for a child who are over
106 the age of 12 years;

107 c. Members of a family providing respite care under this
108 section, or persons residing with the family, who are between
109 the ages of 12 years and 18 years are not required to be
110 fingerprinted, but must be screened for delinquency records;

111 d. A volunteer who assists on an intermittent basis for
112 less than 10 hours per month is not required to be screened if a
113 person who meets the screening requirement of this section is
114 always present and has the volunteer in his or her line of
115 sight.

116 (5) CONTRACT FOR CARE.- A parent of legal guardian of a
117 child may provide for the temporary respite care of a child
118 under this section by entering into a written contract for care,
119 executed at the time of admission or prior thereto, with a
120 volunteer respite family and organization. Under a contract for
121 care, the parent or legal guardian may delegate to the volunteer
122 family any of the powers regarding the care and custody of the
123 child, except the power to consent to the marriage or adoption
124 of the child, the performance of or inducement of an abortion on
125 or for the child, or the termination of parental rights to the
126 child. The parent or legal guardian may revoke or withdraw the



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127 contract for care at any time, and the child shall be returned
128 to the custody of the parent or legal guardian as soon as
129 reasonably possible. A contract for care executed under this
130 section shall automatically expire after one year, and shall not
131 operate to deprive any parent or legal guardian of any parental
132 or legal authority regarding the care and custody of the child
133 nor supersede any court order regarding the care and custody of
134 the child. Each contract shall:

135 (a) Enumerate the basic services and accommodations
136 provided by the volunteer respite family and organization.

137 (b) Identify the child, parent or legal guardian, and
138 volunteer respite family, including necessary contact
139 information for all parties

140 (c) Identify the organization, including the address,
141 telephone number and primary point of contact

142 (d) Contain a clear statement regarding disciplinary
143 procedures.

144 (e) State that the goal of the organization is to return
145 the child receiving respite care to the parent or legal guardian
146 as soon as the situation requiring care has been resolved.

147 (f) Authorize the volunteer respite family to consent to
148 routine and emergency medical care on behalf of the parent or
149 legal guardian, provided the volunteer family shall immediately
150 notify the parent or legal guardian of medical care being
151 provided on his or her behalf. Authorization of this power shall
152 be granted only upon the separate consent in the contract of the
153 parent or legal guardian.

154
155 ===== T I T L E A M E N D M E N T =====



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156 And the title is amended as follows:

157 Delete everything before the enacting clause
158 and insert:

159 A bill to be entitled

160 An act relating to the temporary care of a child;
161 creating s. 409.1761, F.S.: authorizing certain
162 organizations to establish programs for the purpose of
163 assisting parents and legal guardians in providing
164 temporary respite care for a child; restricting care
165 under this section to specified children; providing
166 that receiving services under this section does not
167 constitute abuse, neglect or abandonment; defining
168 terms; providing requirements for an organization to
169 register with the Department of Children and Families;
170 providing an exemption from licensure if certain
171 specified conditions are met; prescribing background
172 screening requirements for personnel and volunteers;
173 requiring a contract to be entered into between a
174 volunteer family and a parent or legal guardian;
175 specifying the requirements to be included in a
176 contract; providing; providing an effective date.

By Senator Brandes

22-00509B-16

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A bill to be entitled

An act relating to the temporary care of a child; amending s. 39.302, F.S.; authorizing the Department of Children and Families to provide parents or guardians with certain information following a protective investigation not resulting in an out-of-home placement of the child; amending s. 409.175, F.S.; revising a term; revising applicability to include a certain agent caring for children; creating s. 709.2209, F.S.; providing legislative findings; defining terms; authorizing a parent, legal guardian, or legal custodian of a child to establish a power of attorney for temporary delegation of care of a child as an alternative to guardianship under certain circumstances; prohibiting the delegation of certain powers to an agent; providing that the temporary care period may not exceed a specified timeframe; providing that a new power of attorney must be executed for each additional year that delegation of care is extended; providing that the delegation of powers does not change or modify certain parental or legal rights, obligations, or authority established by court order or deprive parents, guardians, or custodians of such rights; providing that the power of attorney is revocable subject to certain requirements; requiring the agent to exercise parental or legal authority on a continuous basis without compensation; providing that a delegation of powers is not considered to be placement of a child in foster care, and the parties are not subject to certain licensing laws or agency rules; providing that the execution of a power of attorney does not constitute abandonment, abuse, or

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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neglect, subject to certain requirements; authorizing a qualified nonprofit organization to assist a parent, legal guardian, or legal custodian in delegating parental or legal authority; providing that a qualified nonprofit organization is not considered a child-placing agency and is not required to be licensed as such unless it pursues certain child-placing activities; prescribing duties to the qualified nonprofit organization; providing requirements for a power of attorney; requiring a notary public to acknowledge a power of attorney for it to be valid and to verify any required background checks; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Present subsection (7) of section 39.302, Florida Statutes, is redesignated as subsection (8), and a new subsection (7) is added to that section, to read:

39.302 Protective investigations of institutional child abuse, abandonment, or neglect.—

(7) When an investigation of institutional abuse, neglect, or abandonment does not result in an out-of-home placement, the department may provide information to the parent, legal guardian, or legal custodian about community service programs that provide respite care, voluntary guardianship, or other support services for families in crisis.

Section 2. Paragraph (e) of subsection (2) and paragraph (d) of subsection (4) of section 409.175, Florida Statutes, are

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62 amended to read:

63 409.175 Licensure of family foster homes, residential
64 child-caring agencies, and child-placing agencies; public
65 records exemption.-

66 (2) As used in this section, the term:

67 (e) "Family foster home" means a private residence in which
68 children who are unattended by a parent or legal guardian are
69 provided 24-hour care. Such homes include emergency shelter
70 family homes and specialized foster homes for children with
71 special needs. A person who cares for a child of a friend for a
72 period not to exceed 90 days, a relative who cares for a child
73 and does not receive reimbursement for such care from the state
74 or federal government, ~~or~~ an adoptive home that which has been
75 approved by the department or by a licensed child-placing agency
76 for children placed for adoption, or an agent caring for
77 children under s. 709.2209 is not considered a family foster
78 home.

79 (4)

80 (d) This license requirement does not apply to boarding
81 schools, recreation and summer camps, nursing homes, hospitals,
82 ~~or to~~ persons who care for children of friends or neighbors in
83 their homes for periods not to exceed 90 days, ~~or to~~ persons who
84 have received a child for adoption from a licensed child-placing
85 agency, or agents caring for children under s. 709.2209.

86 Section 3. Section 709.2209, Florida Statutes, is created
87 to read:

88 709.2209 Power of attorney for temporary care of child.-

89 (1) The Legislature finds that in circumstances in which a
90 parent or legal guardian of a child is temporarily unable to

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91 provide care for the child, but does not need the full support
92 of the child welfare system, a less intrusive alternative to
93 supervision by the Department of Children and Families and the
94 dependency court under chapter 39 should be available. In such
95 circumstances, the parent or legal guardian should be able to
96 delegate temporary care of the child to another natural person
97 through a properly executed power of attorney.

98 (2) For the purposes of this section, the term:

99 (a) "Agent" means a natural person granted authority to act
100 for a principal under a power of attorney, whether denominated
101 an agent, an attorney in fact, or otherwise. The term includes
102 an original agent and a co-agent.

103 (b) "Department" means the Department of Children and
104 Families.

105 (c) "Qualified nonprofit organization" means a charity or
106 religious institution qualified under s. 501(c)(3) of the
107 Internal Revenue Code which assists parents, legal guardians,
108 and legal custodians in providing temporary care for a child
109 pursuant to a power of attorney executed under this section.
110 Such assistance may include identifying an appropriate and safe
111 placement for the child and providing services and resources to
112 support the child, the parents, and persons authorized to
113 provide temporary care for the child.

114 (d) "Serving parent" means a parent, legal guardian, or
115 legal custodian who is a member of the regular or reserve
116 component of the United States Armed Forces or of the
117 commissioned corps of the National Oceanic and Atmospheric
118 Administration or the United States Public Health Service when
119 detailed by proper authority for duty with the armed forces, or

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120 who is required to serve on state active duty as defined in s.
121 250.01.

122 (3) (a) A parent, legal guardian, or legal custodian of a
123 child may provide for the temporary care of the child by
124 delegating to an agent, by means of a power of attorney properly
125 executed pursuant to this section, any of the powers regarding
126 the care and custody of the child.

127 (b) A parent, legal guardian, or legal custodian may not
128 delegate the power to consent to marriage or adoption of the
129 child, the power to consent to an abortion on behalf of the
130 child, or the termination of parental rights to the child by
131 means of a power of attorney executed pursuant to this section.

132 (c) Except as provided in paragraph (d), the period of such
133 delegation may not exceed 1 year, and the parent, legal
134 guardian, or legal custodian of the child must execute a new
135 power of attorney for each additional year that he or she wishes
136 the delegation to continue.

137 (d) A serving parent may delegate powers pursuant to this
138 section for a period longer than 1 year if on active duty;
139 however, the extended term may not exceed the term of active
140 duty service plus 30 days.

141 (e) Successor agents are not permitted under this section.

142 (4) A delegation of powers under this section does not
143 limit the ability of a parent, legal guardian, or legal
144 custodian to appoint a guardian for a child pursuant to chapter
145 744. This section does not change or modify any parental or
146 legal rights, obligations, or authority established by an
147 existing court order or deprive the parent, legal guardian, or
148 legal custodian of any parental or legal rights, obligations, or

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149 authority regarding the custody, visitation, or support of the
150 child.

151 (5) The parent, legal guardian, or legal custodian of the
152 child may, at any time, revoke or withdraw a power of attorney
153 executed under this section. If the parent, legal guardian, or
154 legal custodian revokes or withdraws the power of attorney, the
155 child must be returned to the custody of such person.

156 (6) Unless the power of attorney is revoked or withdrawn by
157 the parent, legal guardian, or legal custodian, or is otherwise
158 terminated, the agent shall exercise parental or legal authority
159 on a continuous basis without compensation for the duration of
160 the power of attorney.

161 (7) A delegation of powers under this section is not
162 considered to be placement of the child in foster care, and the
163 parties are not subject to any of the requirements or licensing
164 laws, agency rules for foster care, or other regulations
165 relating to community care for children. An agent who is
166 delegated authority under this section by a parent, legal
167 guardian, or legal custodian is not required to meet foster care
168 licensing requirements under s. 409.175, and such delegation
169 does not constitute placement in a family foster home as defined
170 in s. 409.175(2)(e).

171 (8) Except as otherwise provided by law, the execution of a
172 power of attorney by a parent, legal guardian, or legal
173 custodian pursuant to this section, without any other evidence,
174 does not constitute abandonment, abuse, or neglect as those
175 terms are defined in s. 39.01, unless the parent, legal
176 guardian, or legal custodian fails to take custody of the child
177 or to annually execute a new power of attorney continuing the

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178 delegation. Nothing in this subsection shall be interpreted to
 179 prevent the department or law enforcement from investigating
 180 allegations of abandonment, abuse, neglect, or unlawful
 181 desertion of a child.

182 (9) A qualified nonprofit organization may assist a parent,
 183 legal guardian, or legal custodian in delegating parental or
 184 legal authority pursuant to a power of attorney under this
 185 section. Such an organization is not a child-placing agency as
 186 defined in s. 409.175(2) (d) and is not required to be licensed
 187 as such unless the qualified nonprofit organization pursues
 188 child-placing activities as provided in s. 409.175(2) (d). A
 189 qualified nonprofit organization assisting a parent, legal
 190 guardian, or legal custodian with a delegation of powers under
 191 this section shall:

192 (a) Complete a state and national criminal history record
 193 check, pursuant to s. 943.0542, on all employees or volunteers
 194 who may have unsupervised contact with a child placed with an
 195 agent pursuant to this section, including the agent and all
 196 members of the agent's household who are 12 years of age or
 197 older.

198 (b) Require a parent or legal guardian seeking its services
 199 to disclose if the department is conducting an ongoing
 200 investigation of abuse or neglect involving the child or the
 201 child's parent or legal guardian, or is otherwise providing
 202 services to the parent or legal guardian.

203 1. The qualified nonprofit organization shall notify the
 204 parent or legal guardian that providing false information
 205 regarding the status of an investigation or services by the
 206 department may be grounds for termination of the qualified

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207 nonprofit organization's services or reporting to the
 208 department.

209 2. If the qualified nonprofit organization finds that the
 210 department has an open investigation of abuse or neglect
 211 involving the child or the child's parent or legal guardian and
 212 the parent or legal guardian failed to disclose this
 213 information, the qualified nonprofit organization shall
 214 immediately notify the department.

215 (c) Train all agents, host families, and volunteers.

216 (10) To be legally sufficient, a power of attorney executed
 217 under this section must include:

218 (a) Identification of the child.

219 (b) Identification of the parent, legal guardian, or legal
 220 custodian delegating his or her authority.

221 (c) Identification of the agent to whom powers are
 222 delegated.

223 (d) A statement of powers delegated to the agent for the
 224 care and custody of the child.

225 (e) A statement that the delegation does not include powers
 226 excluded under subsection (3).

227 (f) The effective date and end date of the power of
 228 attorney.

229 (g) A statement that the duration of the power of attorney
 230 is 1 year and that it automatically expires 1 year after the
 231 effective date, except as authorized under paragraph (3) (d).

232 (h) The signature of the parent, legal guardian, or legal
 233 custodian delegating powers.

234 (i) The signature of the agent accepting delegation.

235 (j) Space for authorization by a notary public.

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236 (11) At execution of the power of attorney, the parties
237 shall provide the notary public with proof that the required
238 criminal history checks have been completed. If a qualified
239 nonprofit organization assisted with the delegation of powers
240 pursuant to this section, such evidence shall be a notarized
241 letter signed by a representative of the qualified nonprofit
242 organization attesting to the existence of a favorable
243 background screening of the agent and the appropriate members of
244 the agent's household.

245 (a) The notary public may not execute the power of attorney
246 in the absence of such proof.

247 (b) Proof of compliance must be attached to each copy of
248 the power of attorney provided to the parties by the notary.

249 Section 4. This act shall take effect July 1, 2016.



202660

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/04/2016	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Altman) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Section 409.1761, Florida Statutes, is created
to read:

409.1761 Organizations providing respite care for children
not in the child welfare system.— A qualified nonprofit
organization may establish a program which assists parents and
legal guardians in providing temporary respite care for a child



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11 by a volunteer respite family. Only a child who has not been
12 removed from the child's parent or legal guardian due to abuse
13 or neglect and placed in the custody of the department is
14 eligible to be cared for under this section. Placement of a
15 child under this section, without any additional evidence, does
16 not constitute abuse, neglect or abandonment as defined in s.
17 39.01, F.S., and is not considered to placement of the child in
18 foster care. However, the department may refer children to a
19 program under this section if the department determines that the
20 services are appropriate for addressing the needs of a family in
21 crisis, preventing children from being placed in the custody of
22 the department or achieving reunification of a child with his or
23 her biological family.

24 (1) DEFINITIONS.- As used in this section, the term:

25 (a) "Qualified association" means an organization that
26 establishes, publishes, and requires compliance with best
27 practice standards for operating a program that assists parents
28 and legal guardian in providing temporary respite care for a
29 child by a volunteer respite family.

30 (b) "Qualified nonprofit organization" or "organization" -
31 means a Florida private nonprofit organization that assists
32 parents and legal guardians in providing temporary respite care
33 for a child by a volunteer respite family under an agreement
34 with a qualified association.

35 (c) "Volunteer respite family" means an individual or
36 family who voluntarily agrees to provide temporary care for a
37 child under a contract for care with the child's parent or legal
38 guardian with the assistance of a qualified nonprofit
39 organization.



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40 (2) REGISTRATION.-

41 (a) Registration shall consist of annually filing with the
42 qualified association the name and address of the organization;
43 the capacity of, and the number of children being cared for; the
44 names and addresses of the officers and the board of directors
45 or other governing body of the organization, if applicable; the
46 name of person in charge of the organization; and proof that the
47 organization is in compliance with the minimum health, sanitary,
48 and safety standards required by applicable state law or local
49 ordinance, and the uniform fire safety standards required by
50 chapter 633, and is in compliance with the requirements for
51 screening of personnel in s. 409.175 and chapter 435.

52 (b) As part of the registration, each organization shall
53 annually provide to the qualified association relevant data on
54 the services provided by the organization including, the number
55 of approved volunteer respite families, the number and ages of
56 children being cared for through the organization; the number of
57 children who have left the care of the organization during the
58 past year, the lengths of their stays, and the reason for their
59 care; the names of all personnel. The organization shall
60 maintain files on all children served that include, at minimum,
61 (1) the name and age of the child; (2) the name, address and
62 contact information for the child's parent or legal guardian;
63 (3) the name, address and contact information for the child's
64 volunteer respite family; (4) a copy of the contract for care of
65 the child executed pursuant to paragraph 5 of this section; and
66 (5) proof of the volunteer respite family's compliance with the
67 screening requirements of s. 409.175 and chapter 435. The
68 organization shall maintain on site and provide, upon request,



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69 proof that the organization is in compliance with published
70 minimum standards that are filed with the department under the
71 provisions of paragraph subsection (2). The department shall
72 also attest to the good moral character of the personnel of the
73 organization and members of the volunteer family home by
74 maintaining and providing, upon request, proof of compliance
75 with the screening requirements of s. 409.175 and chapter 435.
76 The qualified association shall have the right to access and
77 review the organization's files at any time to ensure compliance
78 with this section and standards established by the qualified
79 association.

80 (c) Upon verification that all requirements for
81 registration have been met, the qualified association shall
82 issue without charge a certificate of registration valid for 1
83 year.

84 (3) EXEMPTION FROM LICENSURE.—The licensing provisions of
85 s. 409.175 shall not apply to a private organization that is
86 certified with a qualified association which assists parents and
87 legal guardians in providing temporary respite care for a child
88 by a volunteer caregiver pursuant to a properly executed
89 contract under this section. However, such organizations shall
90 meet the screening requirements pursuant to s.409.175 and
91 chapter 435.

92 (a) Any organization registered under the provisions of
93 this section shall notify the department immediately if it has
94 in its care a child with serious developmental disabilities or a
95 physical, emotional, or mental handicap for which the
96 organization is not qualified or able to provide care.

97 (b) The provisions of chapters 39 and 827 regarding the



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98 reporting of child abuse, abandonment, and neglect apply to any
99 organization registered under this section.

100 (4) SCREENING REQUIREMENTS FOR PERSONNEL.- Individuals
101 required to be screened under this section include:

102 a. All employees of the organization assisting parents in
103 providing respite care;

104 b. Members of the family, or persons residing with the
105 family that is providing respite care for a child who are over
106 the age of 12 years;

107 c. Members of a family providing respite care under this
108 section, or persons residing with the family, who are between
109 the ages of 12 years and 18 years are not required to be
110 fingerprinted, but must be screened for delinquency records;

111 d. A volunteer who assists on an intermittent basis for
112 less than 10 hours per month is not required to be screened if a
113 person who meets the screening requirement of this section is
114 always present and has the volunteer in his or her line of
115 sight.

116 (5) CONTRACT FOR CARE.- A parent of legal guardian of a
117 child may provide for the temporary respite care of a child
118 under this section by entering into a written contract for care,
119 executed at the time of admission or prior thereto, with a
120 volunteer respite family and organization. Under a contract for
121 care, the parent or legal guardian may delegate to the volunteer
122 family any of the powers regarding the care and custody of the
123 child, except the power to consent to the marriage or adoption
124 of the child, the performance of or inducement of an abortion on
125 or for the child, or the termination of parental rights to the
126 child. The parent or legal guardian may revoke or withdraw the



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127 contract for care at any time, and the child shall be returned
128 to the custody of the parent or legal guardian as soon as
129 reasonably possible. A contract for care executed under this
130 section shall automatically expire after one year, and shall not
131 operate to deprive any parent or legal guardian of any parental
132 or legal authority regarding the care and custody of the child
133 nor supersede any court order regarding the care and custody of
134 the child. Each contract shall:

135 (a) Enumerate the basic services and accommodations
136 provided by the volunteer respite family and organization.

137 (b) Identify the child, parent or legal guardian, and
138 volunteer respite family, including necessary contact
139 information for all parties

140 (c) Identify the organization, including the address,
141 telephone number and primary point of contact

142 (d) Contain a clear statement regarding disciplinary
143 procedures.

144 (e) State that the goal of the organization is to return
145 the child receiving respite care to the parent or legal guardian
146 as soon as the situation requiring care has been resolved.

147 (f) Authorize the volunteer respite family to consent to
148 routine and emergency medical care on behalf of the parent or
149 legal guardian, provided the volunteer family shall immediately
150 notify the parent or legal guardian of medical care being
151 provided on his or her behalf. Authorization of this power shall
152 be granted only upon the separate consent in the contract of the
153 parent or legal guardian.

154
155 ===== T I T L E A M E N D M E N T =====



202660

156 And the title is amended as follows:

157 Delete everything before the enacting clause
158 and insert:

159 A bill to be entitled

160 An act relating to the temporary care of a child;
161 creating s. 409.1761, F.S.: authorizing certain
162 organizations to establish programs for the purpose of
163 assisting parents and legal guardians in providing
164 temporary respite care for a child; restricting care
165 under this section to specified children; providing
166 that receiving services under this section does not
167 constitute abuse, neglect or abandonment; defining
168 terms; providing requirements for an organization to
169 register with the Department of Children and Families;
170 providing an exemption from licensure if certain
171 specified conditions are met; prescribing background
172 screening requirements for personnel and volunteers;
173 requiring a contract to be entered into between a
174 volunteer family and a parent or legal guardian;
175 specifying the requirements to be included in a
176 contract; providing; providing an effective date.

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 Children, Families, and Elder Affairs

BILL: CS/CS/SB 1164

INTRODUCER: Children, Families, and Elder Affairs Committee; Banking and Insurance Committee and Senator Legg

SUBJECT: Firesafety

DATE: February 4, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Matiyow</u>	<u>Knudson</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Hendon</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
3.	<u> </u>	<u> </u>	<u>FP</u>	<u> </u>

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/CS/SB 1164 amends s. 429.41, F.S., relating to the uniform firesafety standards for assisted living facilities. The bill repeals reference to the utilization of fire code requirements that are more than 20 years old and allows for the utilization of the most current addition of the Life Safety Code adopted by the Office of the State Fire Marshal.

II. Present Situation:

Assisted Living Facilities

An assisted living facility (ALF) is a residential establishment, or part of a residential establishment, that provides housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.¹ A personal service is direct physical assistance with, or supervision of, the activities of daily living and the self-administration of medication.² Activities of daily living include ambulation, bathing, dressing, eating, grooming, toileting, and other similar tasks.³

¹ Section 429.02(5), F.S. An ALF does not include an adult family-care home or a non-transient public lodging establishment.

² Section 429.02(16), F.S.

³ Section 429.02(1), F.S.

An ALF is required to provide care and services appropriate to the needs of the residents accepted for admission to the facility.⁴ The owner or facility administrator determines whether an individual is appropriate for admission to the facility based on a number of criteria.⁵ If, as determined by the facility administrator or health care provider, a resident no longer meets the criteria for continued residency or the facility is unable to meet the resident's needs, the resident must be discharged in accordance with the Resident Bill of Rights.⁶

An ALF must have a standard license issued by the Agency for Health Care Administration under part I of ch. 429, F.S., and part II of ch. 408, F.S. Currently, there are 3,078 licensed ALF's in Florida.⁷

Firesafety

Section 429.41, F.S., requires the Office of the State Fire Marshal, in cooperation with the Department of Health, to promulgate rules and fire safety procedures to ensure the safety of residents living within an ALF community. In addition, the Office of the State Fire Marshal is likewise tasked with the responsibility of providing training and education to the employees of the Agency for Health Care Administration who are responsible for regulating ALF communities.

Currently, an ALF is required to use the National Fire Protection Association (NFPA) Life Safety Code from 1994 when establishing uniform fire safety standards, requirements, training and education curriculum that is taught. With the 1994 Life Safety Code in statute an ALF is prohibited from utilizing more recent codes that have been adopted. The 1994 code does not encompass the safety improvements that have been developed and adopted into the code over the past 20 years.

III. Effect of Proposed Changes:

The bill allows ALF communities to use the most current Life Safety Code adopted by the State Fire Marshal rather than being required to use the 1994 edition. Additionally, the current NFPA 101A (Guide on Alternative Approaches to Life Safety) is also adopted which provides the same level of protection through a different approach than what is currently required in the Life Safety Code. Such alternative approaches would still need to be approved by the local official having jurisdiction.

The bill also prohibits a utility from charging above the actual expense incurred by the utility as it relates to the installation and maintenance of automatic fire sprinkler systems installed at an ALF. The law currently restricts local government from charging above the actual expense for the same installation.⁸

⁴ For specific minimum standards see Fla. Admin. Code R 58A-5.0182.

⁵ Section 429.26, F.S., and Fla. Admin. Code R 58A-5.0181.

⁶ s. 429.28, F.S.

⁷ Agency for Health Care Administration, Florida Health Finder Search, facility/provider type: Assisted Living Facility and advanced search: Gold Seal Award Recipient, (search conducted Jan. 22, 2016), available at: <http://www.floridahealthfinder.gov/facilitylocator/FacilitySearch.aspx> (last visited Jan. 22, 2016).

⁸ s. 429.41(1)(a)2.g.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

ALF communities will be able to add improvements and other amenities that are allowed under the current Life Safety Code.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 429.41 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/CS by Children, Families, and Elder Affairs Committee on February 4, 2016:

Clarifies that ALFs must meet the new firesafety codes when an ALF undergoes building rehabilitation.

CS by Banking and Insurance on January 26, 2016:

Technical amendment restating lines 27-28 that the State Fire Marshal shall “establish” not “adopt” fire safety standards for ALF communities.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.



314910

LEGISLATIVE ACTION

Senate

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House

The Committee on Children, Families, and Elder Affairs (Altman) recommended the following:

Senate Amendment (with title amendment)

Between lines 228 and 229

insert:

d. An assisted living facility licensed before July 1, 2016, is exempt from any requirement in the current uniform firesafety code established by the State Fire Marshal for assisted living facilities which exceeds the firesafety requirements of NFPA 101, 1994 edition, Chapter 23, Existing Residential Board and Care Occupancies. However, a facility that



314910

11 undergoes building rehabilitation as described by the uniform
12 firesafety code established by the State Fire Marshal must
13 thereafter be in compliance with the uniform firesafety code in
14 effect for assisted living facilities under sub-subparagraph a.

15
16 ===== T I T L E A M E N D M E N T =====

17 And the title is amended as follows:

18 Between lines 10 and 11

19 insert:

20 providing an exemption from uniform firesafety code
21 requirements for certain assisted living facilities;



753472

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/04/2016	.	
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	.	

The Committee on Children, Families, and Elder Affairs (Altman) recommended the following:

1 **Senate Substitute for Amendment (314910) (with title**
2 **amendment)**

3
4 Between lines 228 and 229
5 insert:

6 d. An assisted living facility licensed before July 1,
7 2016, is exempt from any requirement in the uniform firesafety
8 code established and adopted pursuant to s. 633.206 by the State
9 Fire Marshal for assisted living facilities which exceeds the
10 firesafety requirements of NFPA 101, 1994 edition, Chapter 23,



753472

11 Existing Residential Board and Care Occupancies. However, a
12 facility that undergoes building rehabilitation as described by
13 the uniform firesafety code established by the State Fire
14 Marshal must thereafter be in compliance with the uniform
15 firesafety code in effect for assisted living facilities under
16 sub-subparagraph a.

17
18 ===== T I T L E A M E N D M E N T =====

19 And the title is amended as follows:

20 Between lines 10 and 11

21 insert:

22 providing an exemption from uniform firesafety code
23 requirements for certain assisted living facilities;

By the Committee on Banking and Insurance; and Senator Legg

597-02614-16

20161164c1

1 A bill to be entitled
 2 An act relating to firesafety; amending s. 429.41,
 3 F.S.; requiring the State Fire Marshal to establish
 4 uniform firesafety standards for assisted living
 5 facilities; revising provisions relating to the
 6 minimum standards that must be adopted by the
 7 Department of Elderly Affairs for firesafety in
 8 assisted living facilities; clarifying the fees a
 9 utility may charge for the installation and
 10 maintenance of an automatic fire sprinkler system;
 11 providing an effective date.

13 Be It Enacted by the Legislature of the State of Florida:

15 Section 1. Subsection (1) of section 429.41, Florida
 16 Statutes, is amended to read:

17 429.41 Rules establishing standards.—
 18 (1) It is the intent of the Legislature that rules
 19 published and enforced pursuant to this section shall include
 20 criteria by which a reasonable and consistent quality of
 21 resident care and quality of life may be ensured and the results
 22 of such resident care may be demonstrated. Such rules shall also
 23 ensure a safe and sanitary environment that is residential and
 24 noninstitutional in design or nature. It is further intended
 25 that reasonable efforts be made to accommodate the needs and
 26 preferences of residents to enhance the quality of life in a
 27 facility. Uniform firesafety standards for assisted living
 28 facilities shall be established by the State Fire Marshal
 29 pursuant to s. 633.206. The agency, in consultation with the
 30 department, may adopt rules to administer the requirements of
 31 part II of chapter 408. In order to provide safe and sanitary
 32 facilities and the highest quality of resident care

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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20161164c1

33 accommodating the needs and preferences of residents, the
 34 department, in consultation with the agency, the Department of
 35 Children and Families, and the Department of Health, shall adopt
 36 rules, policies, and procedures to administer this part, which
 37 must include reasonable and fair minimum standards in relation
 38 to:

39 (a) The requirements for and maintenance of facilities, not
 40 in conflict with chapter 553, relating to plumbing, heating,
 41 cooling, lighting, ventilation, living space, and other housing
 42 conditions, which will ensure the health, safety, and comfort of
 43 residents and protection from fire hazard, including adequate
 44 provisions for fire alarm and other fire protection suitable to
 45 the size of the structure. Uniform firesafety standards shall be
 46 established and enforced by the State Fire Marshal in
 47 cooperation with the agency, the department, and the Department
 48 of Health.

49 1. Firesafety evacuation capability determination.—
 50 a. ~~The National Fire Protection Association, NFPA 101A,~~
 51 ~~Chapter 5, 1995 edition, shall be used for determining the~~
 52 ~~ability of the residents, with or without staff assistance, to~~
 53 ~~relocate from or within a licensed facility to a point of safety~~
 54 ~~as provided in the fire codes adopted herein.~~ An evacuation
 55 capability evaluation for initial licensure shall be conducted
 56 within 6 months after the date of licensure. ~~For existing~~
 57 ~~licensed facilities that are not equipped with an automatic fire~~
 58 ~~sprinkler system, the administrator shall evaluate the~~
 59 ~~evacuation capability of residents at least annually. The~~
 60 ~~evacuation capability evaluation for each facility not equipped~~
 61 ~~with an automatic fire sprinkler system shall be validated,~~

Page 2 of 11

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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62 without liability, by the State Fire Marshal, by the local fire
 63 marshal, or by the local authority having jurisdiction over
 64 firesafety, before the license renewal date. If the State Fire
 65 Marshal, local fire marshal, or local authority having
 66 jurisdiction over firesafety has reason to believe that the
 67 evacuation capability of a facility as reported by the
 68 administrator may have changed, it may, with assistance from the
 69 facility administrator, reevaluate the evacuation capability
 70 through timed exiting drills. Translation of timed fire exiting
 71 drills to evacuation capability may be determined:

72 (I) Three minutes or less: prompt.

73 (II) More than 3 minutes, but not more than 13 minutes:
 74 slow.

75 (III) More than 13 minutes: impractical.

76 b. The Office of the State Fire Marshal shall provide or
 77 cause the provision of training and education on the proper
 78 application of Chapter 5, NFPA 101A, 1995 edition, to its
 79 employees, to staff of the Agency for Health Care Administration
 80 who are responsible for regulating facilities under this part,
 81 and to local governmental inspectors. The Office of the State
 82 Fire Marshal shall provide or cause the provision of this
 83 training within its existing budget, but may charge a fee for
 84 this training to offset its costs. The initial training must be
 85 delivered within 6 months after July 1, 1995, and as needed
 86 thereafter.

87 e. The Office of the State Fire Marshal, in cooperation
 88 with provider associations, shall provide or cause the provision
 89 of a training program designed to inform facility operators on
 90 how to properly review bid documents relating to the

597-02614-16 20161164c1

91 installation of automatic fire sprinklers. The Office of the
 92 State Fire Marshal shall provide or cause the provision of this
 93 training within its existing budget, but may charge a fee for
 94 this training to offset its costs. The initial training must be
 95 delivered within 6 months after July 1, 1995, and as needed
 96 thereafter.

97 d. The administrator of a licensed facility shall sign an
 98 affidavit verifying the number of residents occupying the
 99 facility at the time of the evacuation capability evaluation.

100 2. Firesafety requirements.-

101 a. Except for the special applications provided herein,
 102 effective January 1, 1996, The National Fire Protection
 103 Association, Life Safety Code, NFPA 101 and 101A, current
 104 editions 1994 edition, Chapter 22 for new facilities and Chapter
 105 23 for existing facilities shall be used in determining the
 106 uniform firesafety fire code adopted applied by the State Fire
 107 Marshal for assisted living facilities, pursuant to s. 633.206.

108 b. Any new facility, regardless of size, that applies for a
 109 license on or after January 1, 1996, must be equipped with an
 110 automatic fire sprinkler system. The exceptions as provided in
 111 s. 22-2.3.5.1, NFPA 101, 1994 edition, as adopted herein, apply
 112 to any new facility housing eight or fewer residents. On July 1,
 113 1995, local governmental entities responsible for the issuance
 114 of permits for construction shall inform, without liability, any
 115 facility whose permit for construction is obtained before
 116 January 1, 1996, of this automatic fire sprinkler requirement.

117 As used in this part, the term "a new facility" does not mean an
 118 existing facility that has undergone change of ownership.

119 c. Notwithstanding any provision of s. 633.206 or of the

597-02614-16 20161164c1

120 National Fire Protection Association, NFPA 101A, Chapter 5, 1995
 121 edition, to the contrary, any existing facility housing eight or
 122 fewer residents is not required to install an automatic fire
 123 sprinkler system, nor to comply with any other requirement in
 124 Chapter 23, NFPA 101, 1994 edition, that exceeds the firesafety
 125 requirements of NFPA 101, 1988 edition, that applies to this
 126 size facility, unless the facility has been classified as
 127 impractical to evacuate. Any existing facility housing eight or
 128 fewer residents that is classified as impractical to evacuate
 129 must install an automatic fire sprinkler system within the
 130 timeframes granted in this section.

131 d. Any existing facility that is required to install an
 132 automatic fire sprinkler system under this paragraph need not
 133 meet other firesafety requirements of Chapter 23, NFPA 101, 1994
 134 edition, which exceed the provisions of NFPA 101, 1988 edition.
 135 The mandate contained in this paragraph which requires certain
 136 facilities to install an automatic fire sprinkler system
 137 supersedes any other requirement.

138 e. This paragraph does not supersede the exceptions granted
 139 in NFPA 101, 1988 edition or 1994 edition.

140 f. This paragraph does not exempt facilities from other
 141 firesafety provisions adopted under s. 633.206 and local
 142 building code requirements in effect before July 1, 1995.

143 b.g. A local government or a utility may charge fees only
 144 in an amount not to exceed the actual expenses incurred by the
 145 local government or the utility relating to the installation and
 146 maintenance of an automatic fire sprinkler system in an existing
 147 and properly licensed assisted living facility structure ~~as of~~
 148 January 1, 1996.

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149 h. If a licensed facility undergoes major reconstruction ~~or~~
 150 addition to an existing building on or after January 1, 1996,
 151 the entire building must be equipped with an automatic fire
 152 sprinkler system. Major reconstruction of a building means
 153 ~~repair or restoration that costs in excess of 50 percent of the~~
 154 ~~value of the building as reported on the tax rolls, excluding~~
 155 ~~land, before reconstruction. Multiple reconstruction projects~~
 156 ~~within a 5-year period the total costs of which exceed 50~~
 157 ~~percent of the initial value of the building when the first~~
 158 ~~reconstruction project was permitted are to be considered as~~
 159 ~~major reconstruction. Application for a permit for an automatic~~
 160 ~~fire sprinkler system is required upon application for a permit~~
 161 ~~for a reconstruction project that creates costs that go over the~~
 162 ~~50-percent threshold.~~

163 i. Any facility licensed before January 1, 1996, that is
 164 required to install an automatic fire sprinkler system shall
 165 ensure that the installation is completed within the following
 166 timeframes based upon evacuation capability of the facility as
 167 determined under subparagraph 1.:

168 (I) Impractical evacuation capability, 24 months.

169 (II) Slow evacuation capability, 48 months.

170 (III) Prompt evacuation capability, 60 months.

171
 172 ~~The beginning date from which the deadline for the automatic~~
 173 ~~fire sprinkler installation requirement must be calculated is~~
 174 ~~upon receipt of written notice from the local fire official that~~
 175 ~~an automatic fire sprinkler system must be installed. The local~~
 176 ~~fire official shall send a copy of the document indicating the~~
 177 ~~requirement of a fire sprinkler system to the Agency for Health~~

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178 ~~Care Administration.~~

179 ~~j. It is recognized that the installation of an automatic~~
 180 ~~fire sprinkler system may create financial hardship for some~~
 181 ~~facilities. The appropriate local fire official shall, without~~
 182 ~~liability, grant two 1 year extensions to the timeframes for~~
 183 ~~installation established herein, if an automatic fire sprinkler~~
 184 ~~installation cost estimate and proof of denial from two~~
 185 ~~financial institutions for a construction loan to install the~~
 186 ~~automatic fire sprinkler system are submitted. However, for any~~
 187 ~~facility with a class I or class II, or a history of uncorrected~~
 188 ~~class III, firesafety deficiencies, an extension must not be~~
 189 ~~granted. The local fire official shall send a copy of the~~
 190 ~~document granting the time extension to the Agency for Health~~
 191 ~~Care Administration.~~

192 ~~k. A facility owner whose facility is required to be~~
 193 ~~equipped with an automatic fire sprinkler system under Chapter~~
 194 ~~23, NFPA 101, 1994 edition, as adopted herein, must disclose to~~
 195 ~~any potential buyer of the facility that an installation of an~~
 196 ~~automatic fire sprinkler requirement exists. The sale of the~~
 197 ~~facility does not alter the timeframe for the installation of~~
 198 ~~the automatic fire sprinkler system.~~

199 ~~l. Existing facilities required to install an automatic~~
 200 ~~fire sprinkler system as a result of construction type~~
 201 ~~restrictions in Chapter 23, NFPA 101, 1994 edition, as adopted~~
 202 ~~herein, or evacuation capability requirements shall be notified~~
 203 ~~by the local fire official in writing of the automatic fire~~
 204 ~~sprinkler requirement, as well as the appropriate date for final~~
 205 ~~compliance as provided in this subparagraph. The local fire~~
 206 ~~official shall send a copy of the document to the Agency for~~

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207 ~~Health Care Administration.~~

208 ~~m. Except in cases of life threatening fire hazards, if an~~
 209 ~~existing facility experiences a change in the evacuation~~
 210 ~~capability, or if the local authority having jurisdiction~~
 211 ~~identifies a construction type restriction, such that an~~
 212 ~~automatic fire sprinkler system is required, it shall be given~~
 213 ~~time for installation as provided in this subparagraph.~~

214 ~~Facilities that are fully sprinkled and in compliance with other~~
 215 ~~firesafety standards are not required to conduct more than one~~
 216 ~~of the required fire drills between the hours of 11 p.m. and 7~~
 217 ~~a.m., per year. In lieu of the remaining drills, staff~~
 218 ~~responsible for residents during such hours may be required to~~
 219 ~~participate in a mock drill that includes a review of evacuation~~
 220 ~~procedures. Such standards must be included or referenced in the~~
 221 ~~rules adopted by the State Fire Marshal. Pursuant to s.~~
 222 ~~633.206(1)(b), the State Fire Marshal is the final~~
 223 ~~administrative authority for firesafety standards established~~
 224 ~~and enforced pursuant to this section.~~

225 ~~c. All licensed facilities must have an annual fire~~
 226 ~~inspection conducted by the local fire marshal or authority~~
 227 ~~having jurisdiction.~~

228 ~~3. Resident elopement requirements.—Facilities are required~~
 229 ~~to conduct a minimum of two resident elopement prevention and~~
 230 ~~response drills per year. All administrators and direct care~~
 231 ~~staff must participate in the drills which shall include a~~
 232 ~~review of procedures to address resident elopement. Facilities~~
 233 ~~must document the implementation of the drills and ensure that~~
 234 ~~the drills are conducted in a manner consistent with the~~
 235

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236 facility's resident elopement policies and procedures.

237 (b) The preparation and annual update of a comprehensive
 238 emergency management plan. Such standards must be included in
 239 the rules adopted by the department after consultation with the
 240 Division of Emergency Management. At a minimum, the rules must
 241 provide for plan components that address emergency evacuation
 242 transportation; adequate sheltering arrangements; postdisaster
 243 activities, including provision of emergency power, food, and
 244 water; postdisaster transportation; supplies; staffing;
 245 emergency equipment; individual identification of residents and
 246 transfer of records; communication with families; and responses
 247 to family inquiries. The comprehensive emergency management plan
 248 is subject to review and approval by the local emergency
 249 management agency. During its review, the local emergency
 250 management agency shall ensure that the following agencies, at a
 251 minimum, are given the opportunity to review the plan: the
 252 Department of Elderly Affairs, the Department of Health, the
 253 Agency for Health Care Administration, and the Division of
 254 Emergency Management. Also, appropriate volunteer organizations
 255 must be given the opportunity to review the plan. The local
 256 emergency management agency shall complete its review within 60
 257 days and either approve the plan or advise the facility of
 258 necessary revisions.

259 (c) The number, training, and qualifications of all
 260 personnel having responsibility for the care of residents. The
 261 rules must require adequate staff to provide for the safety of
 262 all residents. Facilities licensed for 17 or more residents are
 263 required to maintain an alert staff for 24 hours per day.

264 (d) All sanitary conditions within the facility and its

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265 surroundings which will ensure the health and comfort of
 266 residents. The rules must clearly delineate the responsibilities
 267 of the agency's licensure and survey staff, the county health
 268 departments, and the local authority having jurisdiction over
 269 firesafety and ensure that inspections are not duplicative. The
 270 agency may collect fees for food service inspections conducted
 271 by the county health departments and transfer such fees to the
 272 Department of Health.

273 (e) License application and license renewal, transfer of
 274 ownership, proper management of resident funds and personal
 275 property, surety bonds, resident contracts, refund policies,
 276 financial ability to operate, and facility and staff records.

277 (f) Inspections, complaint investigations, moratoriums,
 278 classification of deficiencies, levying and enforcement of
 279 penalties, and use of income from fees and fines.

280 (g) The enforcement of the resident bill of rights
 281 specified in s. 429.28.

282 (h) The care and maintenance of residents, which must
 283 include, but is not limited to:

- 284 1. The supervision of residents;
- 285 2. The provision of personal services;
- 286 3. The provision of, or arrangement for, social and leisure
 287 activities;
- 288 4. The arrangement for appointments and transportation to
 289 appropriate medical, dental, nursing, or mental health services,
 290 as needed by residents;
- 291 5. The management of medication;
- 292 6. The nutritional needs of residents;
- 293 7. Resident records; and

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294 8. Internal risk management and quality assurance.
295 (i) Facilities holding a limited nursing, extended
296 congregate care, or limited mental health license.
297 (j) The establishment of specific criteria to define
298 appropriateness of resident admission and continued residency in
299 a facility holding a standard, limited nursing, extended
300 congregate care, and limited mental health license.
301 (k) The use of physical or chemical restraints. The use of
302 physical restraints is limited to half-bed rails as prescribed
303 and documented by the resident's physician with the consent of
304 the resident or, if applicable, the resident's representative or
305 designee or the resident's surrogate, guardian, or attorney in
306 fact. The use of chemical restraints is limited to prescribed
307 dosages of medications authorized by the resident's physician
308 and must be consistent with the resident's diagnosis. Residents
309 who are receiving medications that can serve as chemical
310 restraints must be evaluated by their physician at least
311 annually to assess:
312 1. The continued need for the medication.
313 2. The level of the medication in the resident's blood.
314 3. The need for adjustments in the prescription.
315 (l) The establishment of specific policies and procedures
316 on resident elopement. Facilities shall conduct a minimum of two
317 resident elopement drills each year. All administrators and
318 direct care staff shall participate in the drills. Facilities
319 shall document the drills.
320 Section 2. This act shall take effect July 1, 2016.



753472

LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/04/2016	.	
	.	
	.	
	.	

The Committee on Children, Families, and Elder Affairs (Altman) recommended the following:

1 **Senate Substitute for Amendment (314910) (with title**
2 **amendment)**

3
4 Between lines 228 and 229
5 insert:

6 d. An assisted living facility licensed before July 1,
7 2016, is exempt from any requirement in the uniform firesafety
8 code established and adopted pursuant to s. 633.206 by the State
9 Fire Marshal for assisted living facilities which exceeds the
10 firesafety requirements of NFPA 101, 1994 edition, Chapter 23,



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11 Existing Residential Board and Care Occupancies. However, a
12 facility that undergoes building rehabilitation as described by
13 the uniform firesafety code established by the State Fire
14 Marshal must thereafter be in compliance with the uniform
15 firesafety code in effect for assisted living facilities under
16 sub-subparagraph a.

17
18 ===== T I T L E A M E N D M E N T =====

19 And the title is amended as follows:

20 Between lines 10 and 11

21 insert:

22 providing an exemption from uniform firesafety code
23 requirements for certain assisted living facilities;

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 Children, Families, and Elder Affairs

BILL: CS/SB 1174

INTRODUCER: Community Affairs Committee and Senator Diaz de la Portilla

SUBJECT: Residential Facilities

DATE: February 3, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Cochran	Yeatman	CA	Fav/CS
2.	Hendon	Hendon	CF	Favorable
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1174 requires a radius of 1,200 feet between a community residential home licensed for 7 to 14 residents and a community residential home licensed for 6 or fewer residents. The bill would not impact such homes already licensed and in operation prior to July 1, 2016.

The bill is not expected to have a fiscal impact on the state and has an effective date of July 1, 2016.

II. Present Situation:

Community Residential Homes

Historically, community housing options for persons with disabilities, frail elderly persons, dependent or delinquent children, and persons with mental illnesses have been limited. Although the transition from providing services in large institutions to community-based programs began in the 1970s,¹ the availability of safe, appropriate, and affordable housing in Florida has been an

¹ Normalization and deinstitutionalization have long been held to provide benefits to individuals with special needs. Normalization is a social science theory based upon the proposition "that the quality of life increases as an individual's access to culturally typical activities and settings increases." Deinstitutionalization seeks to remove individuals from placement in the more restrictive environment of institutions to the less restrictive environment of mainstream society. Working in concert these two principles encourage the development of community-based living arrangements for individuals with special needs. *Normalization and Deinstitutionalization of Mentally Retarded Individuals: Controversy and Facts*, *American Psychologist*, August 1987, Vol 42, No. 8,809-816.

ongoing challenge. The primary obstacle was the opposition to establishing affordable housing or housing for persons with disabilities or special needs in residential neighborhoods. In an attempt to address this issue the Legislature enacted s. 419.001, F.S., which establishes the siting requirements applicable to local governments for community residential homes.

A community residential home is a home consisting of 7 to 14 unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents.² Residency in a community residential home is limited to individuals who qualify as:³

- “Developmentally disabled,” as defined in s. 393.063, F.S., which includes a person with a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely;
- A “frail elder” as defined in s. 429.65(9), F.S., which includes a functionally impaired elderly person who is 60 years of age or older and who has physical or mental limitations that restrict the person’s ability to perform the normal activities of daily living and that impede the person’s capacity to live independently;
- “Handicapped” pursuant to s. 760.22(7)(a), F.S., which includes a person who has a physical or mental impairment which substantially limits one or more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment;
- A nondangerous person who has a “mental illness” as defined in s. 394.455(18), F.S., which includes an impairment of the mental or emotional processes that exercise conscious control of one’s actions or of the ability to perceive or understand reality, which impairment substantially interferes with the person’s ability to meet the ordinary demands of living; or
- A child who is found to be dependent by the court pursuant to ss. 39.01(14) and 984.03 F.S., and a “child in need of services” as defined in ss. 984.03(9) and 985.03(8), F.S.

Community residential homes must be licensed by the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, the Department of Children and Families, or the Agency for Health Care Administration (collectively the “licensing entity”).⁴

Local Government Approval of Proposed Community Residential Homes

Local government is responsible for the site approval of a proposed community residential home. A sponsoring agency⁵ is required to notify the chief executive officer of the local government in writing when a site for a community residential home has been selected in an area zoned for multifamily use.⁶ The notice must include the address of the site, the residential licensing category, the number of residents, and the community support requirements of the program.⁷ The notice must also contain a statement from the licensing entity indicating the licensing status of

² Section 419.001(1)(a), F.S.

³ Section 419.001(e), F.S.

⁴ Section 419.001(1)(b), F.S.

⁵ Section 419.001(1)(f), F.S., defines “sponsoring agency” as an agency or unit of government, a profit or nonprofit agency, or any other person or organization which intends to establish or operate a community residential home.

⁶ Section 419.001(3)(a), F.S.

⁷ *Id.*

the home, and how the home meets applicable licensing criteria for the safe care and supervision of the residents.⁸ The sponsoring agency must provide the local government with the most recently published data that identifies all community residential homes in the district in which the proposed site is to be located.⁹ The local government reviews the notification from the sponsoring agency in accordance with the zoning ordinance of the jurisdiction in which the community residential home is located.¹⁰ The local government then has up to 60 days to respond, and if no response is given within 60 days, the sponsoring agency may establish the home at the site in question.¹¹

A local government may not deny the siting of a community residential home unless the site selected:¹²

- Does not otherwise conform to existing zoning regulations applicable to other multifamily uses in the area;
- Does not meet licensing criteria; or
- Would substantially alter the nature and character of the area by being located within a radius of:
 - 1,200 feet of another existing community residential home; or
 - 500 feet of an area of single-family zoning.

Section 419.001, F.S., additionally addresses siting requirements for homes with six or fewer residents which otherwise meet the definition of a community residential home. These homes are considered a single-family unit and a noncommercial, residential use for the purpose of local laws and ordinances.¹³ These homes are allowed in a single- or multi-family zoned area without approval by the local government provided:¹⁴

- The home does not exist within a radius of 1,000 feet of another such home; and
- The sponsoring agency notifies the local government at the time of occupancy that the home is licensed.

Section 419.001, F.S., is silent as to which zoning requirement (within a radius of 1,200 feet or within a radius of 1,000 feet) applies when determining the proper distance between a community residential home and a home with six or fewer residents which otherwise meets the definition of a community residential home.

III. Effect of Proposed Changes:

Section 1 amends s. 419.001(2), F.S., to require a radius of 1,200 feet between a community residential home licensed for 7 to 14 residents and a community residential home licensed for six or fewer residents. It would not impact any homes already licensed and in operation prior to July 1, 2016.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Section 419.001(3)(b)(2), F.S.

¹² Section 419.001(3)(c), F.S.

¹³ Section 419.001(2), F.S.

¹⁴ *Id.*

Section 2 provides an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Operators of community residential homes licensed for 7 to 14 residents who also operate a home licensed for six or fewer residents would have to locate the second home more than 1,200 feet from the larger home.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 419.001 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 Community Affairs on January 26, 2016:

Provides that homes of six or fewer which otherwise meet the definition of a community residential home are not to be within a 1,200 foot radius of another existing community residential home in single-family or multifamily zoning.

- B. **Amendments:**

None.

By the Committee on Community Affairs; and Senator Diaz de la Portilla

578-02620-16

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A bill to be entitled

An act relating to residential facilities; amending s. 419.001, F.S.; specifying applicability of siting requirements for community residential homes; providing applicability with respect to local land use and zoning; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (2) of section 419.001, Florida Statutes, is amended to read:

419.001 Site selection of community residential homes.—

(2) Homes of six or fewer residents which otherwise meet the definition of a community residential home shall be deemed a single-family unit and a noncommercial, residential use for the purpose of local laws and ordinances. Homes of six or fewer residents which otherwise meet the definition of a community residential home shall be allowed in single-family or multifamily zoning without approval by the local government, provided that such homes are ~~shall~~ not be located within a radius of 1,000 feet of another existing such home with six or fewer residents or within a radius of 1,200 feet of another existing community residential home. Such homes with six or fewer residents are ~~shall~~ not be required to comply with the notification provisions of this section; provided that, before ~~prior to~~ licensure, the sponsoring agency provides the local government with the most recently published data compiled from the licensing entities that identifies all community residential homes within the jurisdictional limits of the local government in which the proposed site is to be located in order to show that there is not a home of six or fewer residents which

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otherwise meets the definition of a ~~no other~~ community residential home ~~is~~ within a radius of 1,000 feet and not a community residential home within a radius of 1,200 feet of the proposed home with six or fewer residents. At the time of home occupancy, the sponsoring agency must notify the local government that the home is licensed by the licensing entity. For purposes of local land use and zoning determinations, this subsection does not affect the legal nonconforming use status of any community residential home lawfully permitted and operating as of July 1, 2016.

Section 2. This act shall take effect July 1, 2016.

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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 Children, Families, and Elder Affairs

BILL: CS/SB 1420

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

SUBJECT: Eligibility for Employment as Child Care Personnel

DATE: February 5, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Hendon	CF	Fav/CS
2.			CJ	
3.			RC	

I. Summary:

CS/SB 1420 prohibits a disqualification from employment under chapter 435, F.S., from being removed, and prohibits an exemption from being granted to, any current or prospective personnel with a child care provider if the individual is registered as a sex offender as described in 42 U.S.C. 30 s. 9858f (c)(1)(c) or has been arrested for and is awaiting final disposition of, has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent and the record has not been sealed or expunged for, any felony or misdemeanor referenced in 42 U.S.C. s. 9858f or any felony or misdemeanor covered by s.435.03 or s. 435.04, F.S. Such individuals are disqualified from employment with a child care provider notwithstanding any prior exemption from disqualification.

The bill also requires that any person employed by a child care provider on July 1, 2016, who has been granted an exemption to a disqualification from employment must be rescreened no later than August 1, 2016.

The bill is not anticipated to have a fiscal impact on state government but may have an indeterminate fiscal impact on Broward County.

The bill has an effective date of July 1, 2016.

II. Present Situation:

Child Care Licensure and Personnel

The Department of Children and Families (DCF or department) is responsible for the licensure and regulation of child care facilities, family day care homes, and large family child care homes.¹

¹ See ss. 402.301-402.319, F.S.

In addition, there are child care providers that are not licensed by the department, including those that are only required to register with the department and those that have an exemption from being licensed by virtue of being an integral part of a church or parochial school that meets certain requirements.² All child care personnel employed in a setting regulated by DCF, whether it is licensed, registered or exempt because of an affiliation with a religious entity, are required to be background screened as provided in chapter 435, using the level 2 standards for screening set forth in that chapter.³ If an applicant for employment is disqualified from working with children due to the results of the level 2 screening, the department may grant an exemption from that disqualification.⁴

Background Screening and Exemptions from Disqualification

Level 2 Background Screening

A level 2 background screening includes but is not limited to fingerprinting for statewide criminal history records checks through the Florida Department of Law Enforcement (FDLE) and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.⁵ The applicant has fingerprints taken by a vendor that submits the electronic fingerprints to FDLE for DCF. FDLE then runs statewide checks and submits the electronic file to the FBI for national checks.

Once the background screening is completed, and FDLE receives the information from the FBI, the criminal history information is transmitted to DCF. DCF then determines if the screening contains any disqualifying information for employment. DCF must ensure that no applicant has been arrested for, is awaiting final disposition of, has been found guilty of, or entered a plea of nolo contendere or guilty to any prohibited offense including, but not limited to, such crimes as sexual misconduct, murder, assault, kidnapping, arson, exploitation, lewd and lascivious behavior, drugs, and domestic violence.⁶ If the department finds that an individual has a history containing any of these offenses, they must disqualify that individual from employment in child care settings regulated by the department.

Exemptions from Disqualification

The Secretary of DCF is authorized to grant an exemption from disqualification to applicants for employment, including applicants wanting to work in child care, based on a number reasons:

- Felonies for which at least 3 years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying felony;
- Misdemeanors prohibited under any of the statutes cited in this chapter or under similar statutes of other jurisdictions for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court;

² See s. 402.316, F.S.

³ See s. 402.305, F.S.

⁴ See s. 435.07, F.S.

⁵ See s. 435.04, F.S.

⁶ *Id.*

- Offenses that were felonies when committed but that are now misdemeanors and for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court; or
- Findings of delinquency.⁷

The Secretary of the department may not grant an exemption to an individual who is found guilty of, regardless of adjudication, or who has entered a plea of nolo contendere or guilty to, any felony covered by s.435.03 or s.435.04 solely by reason of any pardon, executive clemency, or restoration of civil rights.⁸ An exemption may also not be granted to anyone who is considered a sexual predator,⁹ career offender,¹⁰ or sexual offender (unless not required to register).¹¹

Child Care Development Block Grant

The Child Care and Development Fund (CCDF), also known as the Child Care and Development Block Grant (CCDBG), is administered by the U.S. Department of Health and Human Services (HHS). CCDF provides funding for state efforts to provide child care services for low-income family members who work, train for work, attend school, or whose children receive or need to receive protective services. Block grant funding can be used for public or private, religious or non-religious, and center or home-based care. Child care programs that accept funding must comply with state health and safety requirements.¹²

The CCDBG is administered in Florida by the school readiness program in the Office of Early Learning within the Department of Education (DOE).¹³ To be eligible to deliver the school readiness program, a school readiness program provider must be:

- A child care facility licensed under s. 402.305;
- A family day care home licensed or registered under s. 402.313;
- A large family child care home licensed under s. 402.3131;
- A public school or nonpublic school exempt from licensure under s. 402.3025;
- A faith-based child care provider exempt from licensure under s. 402.316;
- A before-school or after-school program described in s. 402.305(1)(c); or
- An informal child care provider under certain circumstances.¹⁴

The DCF regulates many, but not all, child care providers that provide early learning programs.

On November 19, 2014, the Child Care and Development Block Grant (CCDBG) Act of 2014 was signed into law. The new law reauthorizes the block grant program and makes expansive changes focused on improving the health and safety of children in child care, making the program more family-friendly by streamlining eligibility policies, ensuring parents and the

⁷ See s. 435.07, F.S.

⁸ See s. 435.07, F.S.

⁹ See s. 775.21, F.S.

¹⁰ See s. 775.261, F.S.

¹¹ See ss. 943.0435 and 943.04354.

¹² U.S. Department of Education, Office of Non-Public Education, *available at* <http://www2.ed.gov/about/offices/list/oji/nonpublic/childcare.html> (last visited January 24, 2016).

¹³ See .s 1001.213, F.S.

¹⁴ See . 1002.88, F.S.

general public have transparent information about the child care choices available to them, and improving the overall quality of early learning and afterschool programs.¹⁵

Reauthorization of the block grant program requires changes to Florida law, including an increase in requirements for screening all child care personnel to include searches of the National Sex Offender Registry, state criminal records, state sex offender registries, and child abuse and neglect registries of all states in which the child care personnel resided during the preceding five years.¹⁶ It will also require that individuals who are sex offenders or convicted of certain crimes be ineligible for employment with child care providers receiving CCDBG funds.

Based on the new requirements of the CCDBG, in order to continue to receive federal funding, the state must make ineligible for employment by school readiness providers any person who is registered, or is required to be registered, on a state sex offender registry or the National Sex Offender Registry¹⁷ or has been convicted of:

- Murder;
- Child abuse or neglect;
- A crime against children, including child pornography;
- Spousal abuse;
- A crime involving rape or sexual assault;
- Kidnapping;
- Arson;
- Physical assault or battery;
- A drug-related offense committed during the preceding 5 years; or
- A violent misdemeanor committed as an adult against a child, including the following crimes: child abuse, child endangerment, sexual assault, or of a misdemeanor involving child pornography.¹⁸

However, these Federal prohibitions on employment will not apply to child care facilities that are not school readiness providers and as such do not receive any CCDBG funds.

III. Effect of Proposed Changes

Section 1 amends s. 435.07, F.S., relating to exemption from disqualification from employment, to prohibit a disqualification from employment under chapter 435, F.S., from being removed, and to prohibit an exemption from being granted to, any current or prospective personnel with a child care provider if the individual:

- Is registered as a sex offender as described in 42 U.S.C. 30 s. 9858f (c)(1)(c); or
- Has been arrested for and is awaiting final disposition of, has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent and the record has not been sealed or expunged for, any felony or misdemeanor

¹⁵ U.S. Department of Health and Human Services, Office of Child Care, *Program Instruction on CCDF Reauthorization Effective Dates*, available at <http://www.acf.hhs.gov/programs/occ/resource/pi-2015-02> (last visited January 24, 2016).

¹⁶ Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658H(b).

¹⁷ 42 U.S.C. s. 9858f(c)(1)(C)

¹⁸ 42 U.S.C. s. 9858f(c)(1)

referenced in 42 U.S.C. s. 9858f or any felony or misdemeanor covered by s.435.03 or s. 435.04, F.S.

The bill provides that individuals are disqualified from employment with a child care provider notwithstanding any prior exemption from disqualification.

The bill also requires that any person employed by a child care provider on July 1, 2016, who has been granted an exemption to a disqualification from employment must be rescreened no later than August 1, 2016.

Section 2 provides for an effective date of July 1, 2016.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Unknown.

C. Government Sector Impact:

Broward County conducts background screening for individuals applying to work for child care providers at the county level. It is unknown what impact, if any, the bill will have on the county.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 435.07 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on February 4, 2016:

- Prohibits a disqualification from employment under chapter 435, F.S., from being removed, and prohibits an exemption from being granted to, any current or prospective personnel with a child care provider if the individual:
 - Is registered as a sex offender as described in 42 U.S.C. 30 s. 9858f (c)(1)(c); or
 - Has been arrested for and is awaiting final disposition of, has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent and the record has not been sealed or expunged for, any felony or misdemeanor referenced in 42 U.S.C. s. 9858f or any felony or misdemeanor covered by s.435.03 or s. 435.04, F.S.
- Provides that individuals are disqualified from employment with a child care provider notwithstanding any prior exemption from disqualification.
- Requires that any person employed by a child care provider on July 1, 2016, who has been granted an exemption to a disqualification from employment must be rescreened no later than August 1, 2016.

B. Amendments:

None.



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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/04/2016	.	
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The Committee on Children, Families, and Elder Affairs (Altman) recommended the following:

Senate Amendment (with title amendment)

Delete lines 9 - 20

and insert:

Section 1. Subsection (4) of section 435.07, Florida Statutes, is amended to read:

435.07 Exemption from disqualification.— Unless otherwise provided by law, the provisions of this section apply to exemptions from disqualification for disqualifying offenses revealed pursuant to background screenings required under this



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11 chapter, regardless of whether those disqualifying offenses are
12 listed in this chapter or other laws.

13 (4) (a) Disqualification from employment under this chapter may
14 not be removed from, nor may an exemption be granted to, any
15 personnel who is found guilty of, regardless of adjudication, or
16 who has entered a plea of nolo contendere or guilty to, any
17 felony covered by s. 435.03 or s. 435.04 solely by reason of any
18 pardon, executive clemency, or restoration of civil rights.

19 (b) Disqualification from employment under this chapter may not
20 be removed from, nor may an exemption be granted to, any person
21 who is a:

- 22 1. Sexual predator as designated pursuant to s. 775.21;
- 23 2. Career offender pursuant to s. 775.261; or
- 24 3. Sexual offender pursuant to s. 943.0435, unless the
25 requirement to register as a sexual offender has been removed
26 pursuant to s. 943.04354.

27 (c) Disqualification from employment under this chapter may not
28 be removed from, nor may an exemption be granted to, any current
29 or perspective personnel with a child care provider if such
30 person is registered as a sex offender as described in 42 U.S.C.
31 s. 9858f (c) (1) (c) or has been arrested for and is awaiting
32 final disposition of, has been found guilty of, regardless of
33 adjudication, or entered a plea of nolo contendere or guilty to,
34 or has been adjudicated delinquent and the record has not been
35 sealed or expunged for, any felony or misdemeanor referenced in
36 42 U.S.C. s. 9858f or any felony or misdemeanor covered by s.
37 435.03 or s. 435.04. Such persons are disqualified from
38 employment with a child care provider notwithstanding any prior
39 exemption from disqualification. Any person employed by a child



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40 care provider on July 1, 2016, who has been granted an exemption
41 to a disqualification from employment must be rescreened no
42 later than August 1, 2016.

43

44

45 ===== T I T L E A M E N D M E N T =====

46 And the title is amended as follows:

47 Delete lines 3 - 5

48 and insert:

49 care personnel; amending s. 435.07, F.S.; preventing the removal
50 of a disqualification from employment for certain child care
51 personnel; preventing the granting of an exemption from
52 disqualification from employment for certain child care
53 personnel; referencing disqualifying offenses; providing an
54 effective date.

55

By Senator Bean

4-01590A-16

20161420__

1 A bill to be entitled
2 An act relating to eligibility for employment as child
3 care personnel; amending s. 402.305, F.S.; prohibiting
4 certain job applicants from employment with a child
5 care facility; providing an effective date.

6
7 Be It Enacted by the Legislature of the State of Florida:

8
9 Section 1. Paragraph (b) of subsection (2) of section
10 402.305, Florida Statutes, is amended to read:
11 402.305 Licensing standards; child care facilities.—
12 (2) PERSONNEL.—Minimum standards for child care personnel
13 shall include minimum requirements as to:
14 (b) The department may grant exemptions from
15 disqualification from working with children or the
16 developmentally disabled as provided in s. 435.07. However, an
17 applicant for a child care position who has been identified as a
18 sex offender or convicted of felonies or violent misdemeanors
19 referenced in 42 U.S.C. s. 9858f may not be employed by any
20 child care facility.

21 Section 2. This act shall take effect July 1, 2016.



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LEGISLATIVE ACTION

Senate	.	House
Comm: FAV	.	
02/04/2016	.	
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and insert:

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435.07 Exemption from disqualification.— Unless otherwise provided by law, the provisions of this section apply to exemptions from disqualification for disqualifying offenses revealed pursuant to background screenings required under this



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11 chapter, regardless of whether those disqualifying offenses are
12 listed in this chapter or other laws.

13 (4) (a) Disqualification from employment under this chapter may
14 not be removed from, nor may an exemption be granted to, any
15 personnel who is found guilty of, regardless of adjudication, or
16 who has entered a plea of nolo contendere or guilty to, any
17 felony covered by s. 435.03 or s. 435.04 solely by reason of any
18 pardon, executive clemency, or restoration of civil rights.

19 (b) Disqualification from employment under this chapter may not
20 be removed from, nor may an exemption be granted to, any person
21 who is a:

- 22 1. Sexual predator as designated pursuant to s. 775.21;
- 23 2. Career offender pursuant to s. 775.261; or
- 24 3. Sexual offender pursuant to s. 943.0435, unless the
25 requirement to register as a sexual offender has been removed
26 pursuant to s. 943.04354.

27 (c) Disqualification from employment under this chapter may not
28 be removed from, nor may an exemption be granted to, any current
29 or perspective personnel with a child care provider if such
30 person is registered as a sex offender as described in 42 U.S.C.
31 s. 9858f (c) (1) (c) or has been arrested for and is awaiting
32 final disposition of, has been found guilty of, regardless of
33 adjudication, or entered a plea of nolo contendere or guilty to,
34 or has been adjudicated delinquent and the record has not been
35 sealed or expunged for, any felony or misdemeanor referenced in
36 42 U.S.C. s. 9858f or any felony or misdemeanor covered by s.
37 435.03 or s. 435.04. Such persons are disqualified from
38 employment with a child care provider notwithstanding any prior
39 exemption from disqualification. Any person employed by a child



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40 care provider on July 1, 2016, who has been granted an exemption
41 to a disqualification from employment must be rescreened no
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53 personnel; referencing disqualifying offenses; providing an
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