

By the Committee on Children and Families; and Senator Forman

300-2157-99

1 A bill to be entitled
2 An act relating to assisted living facilities;
3 amending ss. 400.408, 400.419, F.S.; revising
4 penalties applicable to operating an unlicensed
5 facility; amending ss. 400.621, 633.022, F.S.;
6 providing for uniform firesafety standards for
7 adult family-care homes; directing the Agency
8 for Health Care Administration and the
9 Department of Elderly Affairs to establish a
10 work group on the problem of unlicensed
11 assisted living facilities; requiring reports;
12 providing an effective date.

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

16 Section 1. Subsection (1) of section 400.408, Florida
17 Statutes, 1998 Supplement, is amended to read:

18 400.408 Unlicensed facilities; referral of person for
19 residency to unlicensed facility; penalties; verification of
20 licensure status.--

21 (1)(a) It is unlawful to own, operate, or maintain an
22 assisted living facility without obtaining a license under
23 this part.

24 (b) Except as provided under paragraph (d), any person
25 who owns, operates, or maintains an unlicensed assisted living
26 facility commits a felony of the third degree, punishable as
27 provided in s. 775.082, s. 775.083, or s. 775.084. Each day of
28 continued operation is a separate offense. ~~Application for~~
29 ~~licensure within 10 working days after notification shall be~~
30 ~~an affirmative defense to this felony violation.~~

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1 (c) Any person found guilty of violating paragraph (a)
2 a second or subsequent time commits a felony of the second
3 degree, punishable as provided under s. 775.082, s. 775.083,
4 or s. 775.084. Each day of continued operation is a separate
5 offense.

6 (d) Any person who owns, operates, or maintains an
7 unlicensed assisted living facility due to a change in this
8 part or a modification in department rule within 6 months
9 after the effective date of such change and who, within 10
10 working days after receiving notification from the agency,
11 fails to cease operation or apply for a license under this
12 part commits a felony of the third degree, punishable as
13 provided in s. 775.082, s. 775.083, or s. 775.084. Each day of
14 continued operation is a separate offense.

15 (e) ~~Pursuant to this subsection,~~Any facility that
16 fails to ~~apply for a license or~~ cease operation after agency
17 notification may be fined for each day of noncompliance
18 pursuant to s. 400.419.

19 (f) When a licensee has an interest in more than one
20 assisted living facility,~~and~~ fails to license any one of
21 these facilities, the agency may revoke the license,~~or~~ impose
22 a moratorium, or impose a fine under s. 400.419, on any or all
23 of the licensed facilities until such time as the unlicensed
24 facility is licensed ~~applies for licensure~~ or ceases
25 operation.

26 (g) If the agency determines that an owner is
27 operating or maintaining an assisted living facility without
28 obtaining a license and determines that a condition exists in
29 the facility that poses a threat to the health, safety, or
30 welfare of a resident of the facility, the owner is subject to
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1 the same actions and fines imposed against a licensed facility
2 as specified in ss. 400.414 and 400.419.

3 (h) Any person aware of the operation of an unlicensed
4 assisted living facility must report that facility to the
5 agency. The agency shall provide to the department's
6 ~~department and to~~ elder information and referral providers a
7 list, by county, of licensed assisted living facilities, to
8 assist persons who are considering an assisted living facility
9 placement in locating a licensed facility.

10 Section 2. Subsection (7) and (8) of section 400.419,
11 Florida Statutes, 1998 Supplement, are amended to read:

12 400.419 Violations; administrative fines.--

13 (7) ~~Except as provided in subsection (8),~~Any
14 unlicensed facility that continues to operate ~~without having~~
15 ~~applied for a license 10 days~~ after agency notification is
16 subject to a \$1,000 fine. Each day beyond 5 working ~~20~~ days
17 after agency notification constitutes a separate violation,
18 and the facility is subject to a fine of \$500 per day.

19 (8) Any licensed facility ~~Unlicensed facilities~~ whose
20 owner or administrator concurrently operates an unlicensed a
21 licensed facility is, ~~has previously operated a licensed~~
22 ~~facility, or has been employed in a licensed facility shall~~
23 ~~immediately be~~ subject to an administrative fine of \$5,000
24 ~~upon agency notification.~~ Each day that the unlicensed a
25 facility continues to operate beyond 5 ~~without having applied~~
26 ~~for a license within 10~~ working days after agency notification
27 constitutes a separate violation, and the licensed such
28 facility is ~~shall be~~ subject to a fine of \$500 per day
29 retroactive to the date of agency notification.

30 Section 3. Subsection (2) of section 400.621, Florida
31 Statutes, 1998 Supplement, is amended to read:

1 400.621 Rules and standards relating to adult
2 family-care homes.--

3 (2) The department shall by rule provide minimum
4 standards and procedures for emergencies. Pursuant to s.
5 ~~633.022, minimum firesafety standards shall be established and~~
6 ~~enforced by the State Fire Marshal, in consultation~~
7 ~~cooperation with the department and the agency, shall adopt~~
8 ~~uniform firesafety standards for adult family-care homes.~~
9 ~~Such standards must be included in the rules adopted by the~~
10 ~~department after consultation with the State Fire Marshal and~~
11 ~~the agency.~~

12 Section 4. Paragraph (b) of subsection (1) of section
13 633.022, Florida Statutes, is amended to read:

14 633.022 Uniform firesafety standards.--The Legislature
15 hereby determines that to protect the public health, safety,
16 and welfare it is necessary to provide for firesafety
17 standards governing the construction and utilization of
18 certain buildings and structures. The Legislature further
19 determines that certain buildings or structures, due to their
20 specialized use or to the special characteristics of the
21 person utilizing or occupying these buildings or structures,
22 should be subject to firesafety standards reflecting these
23 special needs as may be appropriate.

24 (1) The Department of Insurance shall establish
25 uniform firesafety standards that apply to:

26 (b) All new, existing, and proposed hospitals, nursing
27 homes, assisted living facilities, adult family-care homes,
28 correctional facilities, public schools, transient public
29 lodging establishments, public food service establishments,
30 elevators, migrant labor camps, mobile home parks, lodging
31 parks, recreational vehicle parks, recreational camps,

1 residential and nonresidential child care facilities,
2 facilities for the developmentally disabled, motion picture
3 and television special effects productions, and self-service
4 gasoline stations, of which standards the State Fire Marshal
5 is the final administrative interpreting authority. With
6 respect to public schools, the department shall utilize
7 firesafety standards that have been adopted by the State Board
8 of Education.

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10 In the event there is a dispute between the owners of the
11 buildings specified in paragraph (b) and a local authority
12 requiring a more stringent uniform firesafety standard for
13 sprinkler systems, the State Fire Marshal shall be the final
14 administrative interpreting authority and the State Fire
15 Marshal's interpretation regarding the uniform firesafety
16 standards shall be considered final agency action.

17 Section 5. The Agency for Health Care Administration
18 and the Department of Elderly Affairs shall establish a work
19 group to identify additional legal and administrative steps
20 needed to discourage the operation of unlicensed assisted
21 living facilities in this state and to enhance the probability
22 that all such facilities will be subject to effective
23 regulation. The work group is directed to develop a report
24 that includes recommendations regarding the transfer and
25 discharge from health care and long-term care settings to
26 unlicensed assisted living facilities; an assessment of
27 unlicensed assisted living facility resident characteristics
28 and their care needs; and an assessment of existing barriers
29 to closing unlicensed assisted living facilities. The work
30 group shall consist of representatives of the agency, the
31 Department of Elderly Affairs, the Department of Children and

1 Family Services, the Department of Business and Professional
2 Regulation, the Department of Community Affairs, and the State
3 Fire Marshal's Office, as designated by each appropriate
4 agency head. In addition, the agency and the Department of
5 Elderly Affairs shall appoint representatives from local law
6 enforcement authorities, the health care industry, the
7 long-term care industry, and consumers. In its representation
8 and activities, the work group shall give priority to the
9 problem of unlicensed facilities in Dade County. The work
10 group shall be appointed and have its first meeting by August
11 1, 1999, and shall submit a report to the Legislature with
12 recommendations for legal administrative action by February 1,
13 2000. Where administrative remedies requiring state agency
14 action are identified, the work group shall submit a report to
15 the applicable agency by February 1, 2000, which shall submit
16 a response to the Legislature by February 15, 2000. Appointing
17 entities or individual members shall be responsible for travel
18 and per diem, except that state agencies may reimburse
19 consumer representatives.

20 Section 6. This act shall take effect July 1, 1999.

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22 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
23 COMMITTEE SUBSTITUTE FOR
24 Senate Bill 2354

25 Provides for the establishment, by the State Fire Marshal, of
26 uniform fire safety standards in adult family-care homes.

27 Authorizes the organization of a work group to identify and
28 report on additional steps that may be taken to discourage the
29 operation of unlicensed assisted living facilities.
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