

STORAGE NAME: h0645s1b.cp

DATE: April 1, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CRIME AND PUNISHMENT
ANALYSIS**

BILL #: CS/HB 645

RELATING TO: Unlicensed Assisted Living Facilities

SPONSOR(S): Committee on Elder Affairs & Long Term Care and Representative Prieguez

COMPANION BILL(S): SB 2354(s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) ELDER AFFAIRS & LONG-TERM CARE YEAS 11 NAYS 0
- (2) CRIME AND PUNISHMENT YEAS 5 NAYS 0
- (3) HEALTH & HUMAN SERVICES APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

CS/HB 645 amends Section 400.408, Florida Statutes, relating to assisted living facilities (ALFs). The proposal clarifies the criminal and administrative sanctions against unlicensed assisted living facilities. Specifically, sanctions are imposed on persons who operate unlicensed facilities and those licensed ALFs affiliated with unlicensed facilities.

Currently, section 400.408(1)(b), F.S., provides that anyone who owns, operates, or maintains an unlicensed facility is committing a third degree felony. This bill provides that each day of unlicensed operation constitutes a separate offense and deletes the provision that operators who have applied for licensure within 10 days after agency notification may use this as an affirmative defense against criminal prosecution.

This bill similarly deletes provisions permitting unlicensed facilities to avoid administrative sanctions by applying for a license. Owners or administrators who have interest in more than one facility and fail to license any one of them may be subject to a fine imposed by the Agency for Health Care Administration. The grace period for imposing a \$500 per day fine is five days.

The bill adds adult family care homes to the list of facilities that require firesafety standards. The State Fire Marshal, Department of Health, and Agency for Health Care Administration, will review and approve the minimum safety procedures for emergencies.

The bill does not appear to have a significant fiscal impact upon state or local government.

The bill provides an effective date of October 1, 1999.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

Currently, Section 400.408(b), Florida Statutes, provides that persons who own, operate, or maintain an unlicensed assisted living facility are subject to a punishable third degree felony offense. In addition, s. 400.408(g), F.S., empowers the Agency for Health Care Administration (AHCA) to impose fines on unlicensed facilities and penalties against licensed facilities whose owner concurrently operates unlicensed facilities.

S. 400.408(b), F.S., further provides that an unlicensed facility applying for a licensure within a 10-day time period after notification constitutes an affirmative offense to the felony violation. According to the Department of Elder Affairs (DOEA), this permits unlicensed facilities to continue to operate pending license application and avoid criminal sanction altogether.

DOEA also recognizes that the statute does not clearly differentiate between criminal penalties against owners operating unlicensed facilities and administrative penalties imposed on facilities. Under s. 400.408(g), F.S., if AHCA determines that an owner is operating or maintaining an assisted living facility without obtaining a license and determines that a condition exists in the facility that poses a threat to the health, safety, or welfare of a resident of the facility, the owner is subject to the same actions and fines imposed against a licensed facility as specified in ss. 400.414 and 400.419, F.S.

S. 400.414, F.S., addresses denial, revocation, or suspension of license and the imposition of administrative fines to assisted living facilities. In 400.414(1)(m), F.S., AHCA may deny, revoke or suspend any license issued or impose an administrative fine provided in chapter 120, F.S., for certain actions by an assisted living facility including, knowingly operating any unlicensed facility or providing without a license any service that must be licensed under chapter 400, part II, F.S.

S. 400.419(7), F.S., outlines that any facility that continues to operate without a license without having applied for a license 10 days after agency notification is subject to a \$1000 fine. Further, each day beyond 20 days after agency notification constitutes a separate violation, and the facility is subject to a fine of \$500 per day.

S. 400.419(8), F.S., provides that unlicensed facilities whose owner or administrator concurrently operates a licensed facility, has previously operated a licensed facility, or has been employed in a licensed facility shall immediately be subject to an administrative fine of \$5,000 upon agency notification. Each day that facility continues to operate without having applied for a license within 10 days after agency notification constitutes a separate violation, and such facility shall be subject to a fine of \$500 per day retroactive to the date of agency notification.

S. 400.621(2), F.S., establishes rules and standards for adult family care homes. The statute outlines that the Department of Elder Affairs will provide by rule minimum standards and procedures for emergencies. Also, minimum firesafety standards will be established and enforced by the State Fire Marshal. These standards will be included in the rules adopted by the department.

S. 633.022(1)(b), F.S., applies uniform firesafety standards and State Fire Marshal interpreting authority to all new, existing, and proposed hospitals, nursing homes, assisted living facilities, correctional facilities, public schools, transient public lodging establishments, public lodging establishments, elevators, migrant labor camps, mobile home parks, lodging parks, recreational vehicle parks, recreational camps, residential and nonresidential child care facilities, facilities for the developmentally disabled, motion picture and television special effects productions, and self-service gasoline stations.

According to agency staff, the ALF industry is growing rapidly statewide. ALF Unit data reports show that in June 1992, there were 1,568 facilities in Florida. In June 1998, there were 2,136 facilities, representing a growth of 266 facilities per year or 11 facilities per month during this two year period. Further review of ALF Unit data illustrates that during the period of July 1998 through January 1999, there has been an increase of 85 facilities per month at an average of 500 additional beds per month.

As of January 1999, there are currently 2,221 licensed facilities and approximately 72,000 beds in the state. Further, there were 296 complaints against unlicensed facilities in 1998. Of the 296

complaints, 91 have been confirmed. The areas receiving complaints included Dade County with 65 complaints; the Tampa Bay area with 49; the Jacksonville area with 49; Ft. Lauderdale/Broward County area with 37; and St. Petersburg with 28.

B. EFFECT OF PROPOSED CHANGES:

CS/HB 645 revises 400.408, F.S., by establishing that persons who own, operate, or maintain unlicensed ALFs are committing a third degree felony each day of unlicensed operation. The bill deletes the provision that application for licensure within 10 days after agency notification constitutes a defense from prosecution. The bill similarly provides that those who have previously been found guilty of engaging in unlicensed activity are committing a second degree felony each day they continue operating the unlicensed facility.

The bill also provides that any person operating an unlicensed facility who receives notification from the agency, yet fails to apply for licensure within 10 days after the notification, is committing a third degree felony each day of continued operation.

Additionally, when a licensee has an interest in more than one facility and fails to license any of these, the agency, in a addition to revoking the license or imposing a moratorium, also may impose a fine. The unlicensed facilities are subject to a \$1000 fine. The bill provides that each day beyond 5 days after agency notification constitutes a separate violation and is subject to a fine of \$500 per day.

The bill also amends s. 400.621(2), F.S., by establishing that uniform firesafety standards for adult family care homes be adopted by the Agency for Health Care Administration. Further, the bill adds adult family care homes to the facilities and establishments in s. 633.022, F.S., granting the State Fire Marshal the final administrative interpreting authority on fire safety standards.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

None.

(2) what is the cost of such responsibility at the new level/agency?

None.

(3) how is the new agency accountable to the people governed?

None.

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

This bill does not purport to provide services to families or children.

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

This bill does not create or change a program providing services to families or children.

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Amends sections 400.408; 400.419; 400.621; and 633.022, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 400.408, Florida Statutes, establishing that any person operating an unlicensed facility commits a third degree, and each day they continue to operate is a separate offense. It deletes the provision that application for licensure within 10 days after agency notification can be considered an affirmative defense to the felony violation. It provides that any person found guilty of operating an unlicensed facility a second or subsequent time commits a second degree felony each day they continue to operate an unlicensed facility. Further, it adds that operators who have licensed facilities and concurrently have an interest in unlicensed facilities are committing a third degree felony each day they continue to operate the unlicensed facility and are subject to administrative fines on any or all of the licensed facilities.

Section 2. Amends s. 400.419, F.S., providing that unlicensed facilities that continue to operate after agency notification are subject to a \$1000 fine. Each day beyond 5 days from agency notification constitutes a separate violation and is subject to a \$500 per day fine.

Section 3. Amends s. 400.621, F.S., providing that the agency shall adopt uniform firesafety standards for adult family care homes.

Section 4. Amends s. 633.022, F.S., adding adult family care homes to uniform firesafety standard provisions.

Section 5. Establishes a work group within the Department of Elder Affairs to identify additional legal and administrative steps needed to discourage the operation of unlicensed facilities in Florida and to enhance the probability that unlicensed facilities will be subject to enforcement.

Section 6. Provides an effective date of October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

None.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not reduce the authority that municipalities or counties have to raise revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce the percentage of a state tax shared with municipalities or counties.

V. COMMENTS:

Section 3 of the committee substitute is technically flawed and will require an amendment which gives the State Fire Marshal, not the agency, authority to set firesafety standards.

DOEA maintains that unlicensed assisted living facilities are a form of exploitation and may pose a threat to the well being and safety of assisted living facility residents. DOEA further identifies that current law providing an affirmative defense for unlicensed facilities if the facilities apply for a license within 10 days of "notification" makes it very difficult to curtail this exploitation. Current law is not clear if "notification" means notificatin of the violation of law or notification of the availability of the affirmative defense.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The Committee Substitute approved by the Committee on Elder Affairs and Long-Term Care on March 23, 1999, differs from the original bill in the following ways:

- ▶ The original proposal adds a paragraph to s. 400.408, F.S., outlining that persons operating an unlicensed facility must cease operation after agency notification. If they do not comply, they are committing a third degree felony.
- ▶ CS/HB 645 conforms both the administrative and criminal sanctions imposed upon unlicensed facilities and licensed facilities associated with unlicensed ALFs.
- ▶ CS/HB 645 deletes the provision allowing unlicensed facilities 10 days to apply for a license in order to avoid criminal prosecution.
- ▶ CS/HB 645 makes each day of continued operation a separate offense.
- ▶ CS/HB 645 shortens the grace period for an unlicensed facility to continue operating before a daily \$500 fine imposed from 20 days to 5 days.
- ▶ CS/HB 645 shortens the grace period before imposing a daily \$500 fine against a licensed ALF for continuing to operate an unlicensed facility from 10 days to 5 days.

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- ▶ CS/HB 645 establishes that the Agency for Health Care Administration adopt uniform firesafety standards for adult family care homes.

On April 5, 1999, the Crime and Punishment Committee adopted an amendment which gives the State Fire Marshal, not the agency, authority to set firesafety standards.

VII. SIGNATURES:

COMMITTEE ON ELDER AFFAIRS & LONG-TERM CARE :

Prepared by:

Staff Director:

C. Marielle Harvey

Tom Batchelor, Ph.D.

AS REVISED BY THE COMMITTEE ON CRIME AND PUNISHMENT:

Prepared by:

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