

By the Committee on Elder Affairs & Long-Term Care and Representative Prieguez

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

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

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

22           400.408 Unlicensed facilities; referral of person for  
23 residency to unlicensed facility; penalties; verification of  
24 licensure status.--

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

28           (b) Except as provided under paragraph (d), any person  
29 who owns, operates, or maintains an unlicensed assisted living  
30 facility commits a felony of the third degree, punishable as  
31 provided in s. 775.082, s. 775.083, or s. 775.084. Each day of

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

1 ~~continued operation is a separate offense. Application for~~  
2 ~~licensure within 10 working days after notification shall be~~  
3 ~~an affirmative defense to this felony violation.~~

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

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

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

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

29 (g) If the agency determines that an owner is  
30 operating or maintaining an assisted living facility without  
31 obtaining a license and determines that a condition exists in

1 the facility that poses a threat to the health, safety, or  
2 welfare of a resident of the facility, the owner is subject to  
3 the same actions and fines imposed against a licensed facility  
4 as specified in ss. 400.414 and 400.419.

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

12 Section 2. Subsections (7) and (8) of section 400.419,  
13 Florida Statutes, 1998 Supplement, are amended to read:

14 400.419 Violations; administrative fines.--

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

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

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

3           400.621 Rules and standards relating to adult  
4 family-care homes.--

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

14           Section 4. Paragraph (b) of subsection (1) of section  
15 633.022, Florida Statutes, is amended to read:

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

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

28           (b) All new, existing, and proposed hospitals, nursing  
29 homes, assisted living facilities, adult family-care homes,  
30 correctional facilities, public schools, transient public  
31 lodging establishments, public food service establishments,

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

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

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

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

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

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