

STORAGE NAME: h0897.ca

DATE: February 29, 2000

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
COMMUNITY AFFAIRS
ANALYSIS**

BILL #: HB 897

RELATING TO: Fair Housing Act

SPONSOR(S): Representative Greenstein

TIED BILL(S): None

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

- (1) COMMUNITY AFFAIRS (PRC)
 - (2) JUDICIARY (CJC)
 - (3) FINANCE & TAXATION (FRC)
 - (4) GENERAL GOVERNMENT APPROPRIATIONS (FRC)
 - (5)
-

I. SUMMARY:

This bill provides that to qualify for the exemption from the Fair Housing Act with respect to familial status for housing for older persons, a facility or community must register with the Florida Commission on Human Relations (Commission) and submit a sworn affidavit affirming compliance with specified requirements under penalty of perjury. The required registration and documentation must be renewed biennially. The information in the registry must be made available to the public, and the Commission must include this information on a website on the Internet. The bill provides for a registration fee and authorizes the Commission to impose a fine for filing false information.

The new responsibilities the bill assigns to the Commission have an indeterminate impact on the Commission's expenditures and workload. The Commission is authorized to recoup these expenses through a registration fee. The bill has no fiscal impact on local government.

II. SUBSTANTIVE ANALYSIS:

A. DOES THE BILL SUPPORT THE FOLLOWING PRINCIPLES:

- | | | | |
|-----------------------------------|---|--|---|
| 1. <u>Less Government</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 2. <u>Lower Taxes</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 3. <u>Individual Freedom</u> | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/> |
| 4. <u>Personal Responsibility</u> | Yes <input type="checkbox"/> | No <input type="checkbox"/> | N/A <input checked="" type="checkbox"/> |
| 5. <u>Family Empowerment</u> | Yes <input checked="" type="checkbox"/> | No <input type="checkbox"/> | N/A <input type="checkbox"/> |

For any principle that received a "no" above, please explain:

As discussed in the "Effects of Proposed Changes" section, this bill places additional requirements on facilities and communities requesting an exemption from the Fair Housing Act with respect to familial status for housing for older persons. The bill also places additional responsibilities on the Florida Commission on Human Relations and provides for a registration fee and authorizes the Commission to impose a fine for filing false information.

B. PRESENT SITUATION:

Fair Housing Act

Chapter 760, Florida Statutes, relates to discrimination in the treatment of persons, and with minority representation. Part II of chapter 760, F.S., contains the provisions of the Florida Fair Housing Act (Act). The Act establishes the state's policy on fair housing; defines various terms; and prohibits discrimination based on race, color, national origin, sex, handicap, familial status, or religion in the sale or rental of housing, the provision of brokerage services, and the financing of housing or residential real estate transactions.

There are several exemptions to the act, including a "housing for older persons" exemption. Section 760.29(4)(a), F.S., exempts "housing for older persons" from the Act's anti-discrimination provisions relating to familial status. Section 760.21(5), F.S., provides "familial status" is established when an individual who has not attained the age of 18 years is domiciled with:

- (a) A parent or other person having legal custody of such individual; or
- (b) A designee of a parent or other person having legal custody, with the written permission of such parent or other person.

Communities, owners, or operators of "housing for older persons" may lawfully exclude from residency families with children under 18 years of age. Section 760.29(4)(b), F.S., defines "housing for older persons" as:

- (1) Housing provided under any state or federal program that the Florida Commission on Human Relations determines is specifically designed and operated to assist elderly persons;

- (2) Housing intended for, and solely occupied by, persons 62 years of age or older; and
- (3) Housing intended and operated for occupancy by persons 55 years of age or older that meet the following requirements:
 - a. At least 80 percent of the occupied units are occupied by at least one person 55 years of age or older.
 - b. The housing facility or community publishes and adheres to policies and procedures that demonstrate the housing is intended and operated for occupancy by persons 55 years of age or older.
 - c. The housing facility or community complies with certain federal rules.

To correct a situation where certain housing facilities or communities originally intended for housing for older persons could not qualify for consideration as housing for older persons, chapter 99-348, L.O.F., amended the Act to provide that housing facilities and communities must be deemed housing for older persons intended and operated for occupancy by persons 55 years of age and older if the housing facilities or communities:

- (1) Meet the 80 percent occupancy requirement and the federal verification requirements of ss. 760.29(4)(b)3. a. and c., Florida Statutes;
- (2) Provide for an adult, senior, or retirement housing facility or community in their recorded governing document; **and**
- (3) Maintain governing documents that either (a) lack an amendatory procedure, (b) prohibit amendments, or (c) restrict amendments until a specified future date.

This act further provides that if such governing documents prohibit residents 16 years of age or younger, that provision must be construed to apply to residents 18 years of age or younger. Such construction is necessary to conform with federal requirements and for purposes of the Fair Housing Act. The act requires housing facilities and communities to amend governing documents, which can be amended at a future date, within one year of such future date, and properly record such amendment. Also, the amendment must reflect the existing requirements for consideration as housing for older persons, if that housing facility or community intends to continue as housing for older persons.

Section 760.29(4)(d), F.S., provides that a person shall not be personally liable for monetary damages for a violation of this subsection if such person reasonably relied in good faith on the application of the exemption under this subsection relating to housing for older persons. For purposes of this paragraph, a person may show good faith reliance on the application of the exemption only by showing that:

1. The person has no actual knowledge that the facility or the community is ineligible, or will become ineligible, for such exemption; and
2. The facility or community has stated formally, in writing, that the facility or community complies with the requirements for such exemption.

Perjury When not in an Official Proceeding

Section 837.012, F.S., provides that a person who makes a false statement, which he or she does not believe to be true, under oath, not in an official proceeding, in regard to any material matter shall be guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082, F.S., or 775.083, F.S. A first degree misdemeanor is punishable by imprisonment not to exceed 1 year or a \$1,000 fine. Section 837.011(2), F.S., defines "oath" to include affirmation or any other form of attestation required or authorized by law which a person acknowledges that he or she is bound in conscience or law to testify truthfully in an official proceeding or other official matter.

False Official Statements

Section 837.06, F.S., provides that any person who knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his or her official duty shall be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082, F.S., or 775.083, F.S. A second degree misdemeanor is punishable by imprisonment not to exceed 60 days or a \$500 fine.

Perjury by False Written Declaration

Section 92.525(1), F.S., provides that when it is authorized or required by law, by rule of an administrative agency, or by rule or order of court that a document be verified by a person, the verification may be accomplished in the following manner:

- (a) Under oath or affirmation taken or administered before an officer authorized under s. 92.50 to administer oaths; or
- (b) By the signing of the written declaration prescribed in subsection (2).

Section 92.525(2), F.S., provides that a written declaration means the following statement: "Under penalties of perjury, I declare that I have read the foregoing [document] and that the facts stated in it are true," followed by the signature of the person making the declaration, except when a verification on information or belief is permitted by law, in which case the words "to the best of my knowledge and belief" may be added. The written declaration must be printed or typed at the end of or immediately below the document being verified and above the signature of the person making the declaration. The requirement that a document be verified means that the document must be signed or executed by a person and that the person must state under oath or affirm that the facts or matters stated or recited in the document are true, or words of that import or effect.

Section 92.525(3), F.S., provides that a person who knowingly makes a false declaration as provided for in subsection (2) is guilty of the crime of perjury by false written declaration, a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. A third degree felony is punishable by imprisonment not to exceed 5 years or \$5,000 fine; for habitual offenders, imprisonment not to exceed 15 years.

C. EFFECT OF PROPOSED CHANGES:

This bill provides that to qualify for the exemption from the Fair Housing Act with respect to familial status for housing for older persons, a facility or community must register with the Florida Commission on Human Relations and submit a sworn affidavit affirming compliance with specified requirements under penalty of perjury. The required registration and documentation must be renewed biennially.

The Commission must make the information in the registry available to the public and include the information on an Internet website. The bill authorizes the Commission to establish a reasonable registration fee to defray the administrative costs associated with maintaining the registry. The Commission also is authorized to impose a fine, not to exceed \$500, for filing false information. The bill requires Commission rules to specify the forms and procedures to be used for the registration required by this bill.

D. SECTION-BY-SECTION ANALYSIS:

Section 1. Paragraph (e) is added to subsection (4) of s. 760.29, F.S., to provide that in order to qualify for the "housing for older persons" exemption, a facility or community must register with the Commission and submit a sworn affidavit, or other document approved by the Commission, stating under penalty of perjury, that the facility or community complies with the requirements of paragraph (b)2. or 3.a and b. The paragraph requires the affidavit be submitted on the letterhead of the facility or community or in some other form approved by the Commission and must be signed by the president of the facility or community, under penalty of perjury. The required registration and documentation must be renewed biennially from the date of original filing. The information in the registry must be made available to the public, and the Commission must include this information on an Internet website. The paragraph authorizes the Commission to establish a reasonable registration fee that must be deposited into the Commission's trust fund to defray the administrative costs associated with maintaining the registry. The paragraph also authorizes the Commission to impose an administrative fine not to exceed \$500 on a facility or community that knowingly submits false information in connection with this registration.

Section 2. Subsection (5) of section 760.31, F.S., relating to powers and duties of the Commission, is amended to require Commission rules to specify the forms and procedures to be used for the registration required in s. 760.29(4)(e), F.S.

Section 3. An effective date of October 1, 2000, is provided.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The bill authorizes the Commission to establish a reasonable registration fee that must be deposited into the Commission's trust fund to defray the administrative costs associated with maintaining the registry.

2. Expenditures:

This bill places additional responsibilities on the Florida Commission on Human Relations.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

This bill has no direct impact on local government revenues.

2. Expenditures:

This bill has no direct impact on local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill requires Communities and facilities to register and submit a sworn affidavit to the Commission on a biennial basis in order to qualify for the housing for older persons exemption to the familial status provision of the Fair Housing Act. The bill also authorizes the Commission to impose a fine for filing false information.

D. FISCAL COMMENTS:

The bill authorizes the Commission to establish a reasonable registration fee that must be deposited into the Commission's trust fund to defray the administrative costs associated with maintaining the registry. The only limit on the amount of the fee is that it be reasonable and be used to defray the administrative costs associated with maintaining the registry.

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 expend funds or to take action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

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

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

V. COMMENTS:

A. CONSTITUTIONAL ISSUES:

N/A

B. RULE-MAKING AUTHORITY:

The bill requires Commission rules to specify the forms and procedures to be used for the registration required in s. 760.29(4)(e), F.S.

C. OTHER COMMENTS:

Florida Commission on Human Relations

The Florida Commission on Human Relations submitted an analysis of HB 897. The analysis states the Commission does not object to the bill, and provides additional comments and suggestions.

The analysis notes that as currently drafted the bill may be misinterpreted to mean compliance with the required registration means that a community is qualified for exemption under the Fair Housing Act. To clarify intent, the following language is suggested:

“The registration of a sworn affidavit, or other document approved by the commission, does not substitute for proof of compliance with the requirements of this subsection.”

To ensure understanding that the law requires compliance with rules made by the Secretary of the United States Department of Housing and Urban Development pursuant to 24 C.F.R. part 100 for verification of occupancy as currently required by s. 760.29(4)(b)3.c., F.S., the analysis recommends amending the bill on page 3, line 30, to add c. before the period.

The analysis also states:

Because there are over 20,000 combined condominium and registered mobile home parks in the state, notwithstanding the unknown number of other homeowner association communities, of which an estimated one-fourth would desire to claim exemption, it is anticipated that the commission would be inundated with requests to register in compliance with this amendment within a very short time frame. Consideration may be given to providing for a 90 day or 180 day “grace period” from the effective date, during which communities would not be prevented from qualifying even though they had not registered with the commission, provided they demonstrate their intent to comply by meeting the requirements of paragraph (b) 2. Or 3.a.,b., and c.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The sponsor requested an amendment to incorporate suggestions made by the Florida Commission on Human Relations and to delete language authorizing the Commission to impose a fine for filing false information. The amendment:

- Provides that a facility or community that qualifies for exemption under s. 760.29(4)(b)1. shall state their compliance with this subparagraph in their sworn affidavit. The subparagraph provides an exemption for housing provided under any state or federal program the Commission determines is specifically designed and operated to assist elderly persons.
- Deletes the language authorizing the Commission to impose an administrative fine for filing false information.
- Inserts language clarifying that the registration of a sworn affidavit, or other document approved by the commission, does not substitute for proof of compliance with the requirements of this subsection.

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- Inserts language requiring the sworn affidavit to state compliance with s. 760.29(4)(b)3.c. relating to federal rules governing verification of occupancy.
- Provides a grace period from the effective date until February 1, 2001, to facilities or communities that otherwise qualify for an exemption.

VII. SIGNATURES:

COMMITTEE ON COMMUNITY AFFAIRS:

Prepared by:

Staff Director:

Thomas L. Hamby

Joan Highsmith-Smith