

STORAGE NAME: h0645.lt

DATE: March 19, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
ELDER AFFAIRS & LONG-TERM CARE
ANALYSIS**

BILL #: HB 645

RELATING TO: Assisted Living Facilities

SPONSOR(S): Representative Prieguez

COMPANION BILL(S): SB 2354(s)

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

- (1) ELDER AFFAIRS & LONG-TERM CARE
 - (2) CRIME & PUNISHMENT
 - (3) HEALTH & HUMAN SERVICES APPROPRIATIONS
 - (4)
 - (5)
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I. SUMMARY:

HB 645 amends Section 400.408, Florida Statutes relating to assisted living facilities. The proposal identifies that anyone operating an unlicensed facility must cease operations upon notification by the Agency for Health Care Administration. If the facility continues to operate after notification by the agency, such action is a third degree felony offense.

The bill does not appear to have a 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 (ACHA) to impose fines on unlicensed facilities and penalties against licensed facilities whose owner concurrently operates unlicensed facilities.

S. 400.408(b) 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.

DOEA also identifies 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., provides 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.

B. EFFECT OF PROPOSED CHANGES:

HB 645 amends 400.408, F.S., making it a third degree felony to those who continue to operate an unlicensed assisted living facility after agency notification.

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.

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(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

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D. STATUTE(S) AFFECTED:

Amends s. 400.408, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 400.408, Florida Statutes, making it a third degree felony offense to continue to operate an unlicensed assisted living facility.

Section 2. 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:

According to DOEA, an adverse fiscal impact may fall upon those residents displaced from unlicensed facilities forced to cease activity.

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:

DOEA represents that the bill seeks to sanction persons who continue to operate an unlicensed facility and, therefore, may deter such conduct; however, it is unlikely to achieve that result because of other conflicting statutory provisions. DOEA distinguishes that the proposed language conflicts with present law within the same section of the Florida Statutes and the due process protections in the Administrative Procedure Act found in Chapter 120, F.S.

DOEA further outlines concerns regarding residents housed in unlicensed facilities receiving the sanctions provided in this bill. Additionally, DOEA identifies that the requirement to immediately cease unlicensed operations may produce the unintended consequences of potentially harming or penalizing residents from both a physical and financial perspective.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

None.

VII. SIGNATURES:

COMMITTEE ON ELDER AFFAIRS & LONG-TERM CARE :

Prepared by:

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