

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 2354

SPONSOR: Committee on Children and Families and Senator Forman

SUBJECT: Assisted Living Facilities

DATE: April 15, 1999 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------------|----------------|-----------|---------------------|
| 1. | <u>Crosby</u> | <u>Whiddon</u> | <u>CF</u> | <u>Favorable/CS</u> |
| 2. | _____ | _____ | <u>FP</u> | _____ |
| 3. | _____ | _____ | _____ | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |

I. Summary:

The Committee Substitute for Senate Bill 2354 revises penalty provisions applicable to the operation of an unlicensed assisted living facility, provides for the establishment, by the State Fire Marshal, of uniform fire safety standards in adult family-care homes, and authorizes the organization of a work group to identify and report on additional steps that may be taken to discourage the operation of unlicensed assisted living facilities.

This bill substantially amends the following sections 400.408, 400.419 and 400.621, Florida Statutes, 1998 Supplement, and section 633.022, Florida Statutes.

II. Present Situation:

Unlicensed Facilities

Section 400.408, F.S., 1998 Supp., regarding unlicensed facilities, provides in pertinent part that it is unlawful to own, operate, or maintain an assisted living facility (facility) without obtaining a license under this part.

Unless otherwise provided, any person who owns, operates, or maintains an unlicensed facility commits a felony of the third degree. Application for licensure within 10 working days after notification is an affirmative defense to this felony violation.

Any person found guilty of unlawfully operating an unlicensed facility a second or subsequent time commits a felony of the second degree.

Any person who owns, operates, or maintains an unlicensed facility due to a change in this law or a modification in department rule within 6 months after the effective date of such change and who, within 10 working days after receiving notification from the agency, fails to cease operation or apply for a license commits a felony of the third degree.

Any facility that fails to apply for a license or cease operation after agency notification may be fined for each day of noncompliance pursuant to s. 400.419, F.S., 1998 Supp. (violations and fines).

When a licensee has an interest in more than one facility and fails to license any one of these facilities, the agency may revoke the license or impose a moratorium on any or all of the licensed facilities until such time as the licensee applies for licensure for the unlicensed facility or ceases operation.

If the agency determines that an owner is operating or maintaining a 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 s. 400.414, F.S., 1998 Supp. (denial, revocation, or suspension of license) and s. 400.419, F.S., 1998 Supp. (violations and fines).

Any person aware of the operation of an unlicensed facility must report that facility to the agency. The agency shall provide to the department and to elder information and referral providers a list, by county, of licensed facilities to assist persons in locating such a facility.

Violations and Administrative Fines

Section 400.419, F.S., 1998 Supp., regarding violations and administrative fines, provides in pertinent part, that, unless otherwise provided, any facility continuing to operate without having applied for a license 10 days after agency notification is subject to a \$1,000 fine. Each day beyond 20 days after agency notification constitutes a separate violation and the facility is subject to a fine of \$500 per day.

Unlicensed facilities whose owner or administrator also 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 a facility continues to operate without having applied for a license within 10 working 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.

Fire safety Standards

Section 400.621, F.S., relating to rules and standards for adult family-care homes, provides that the department shall, by rule provide minimum standards and procedures for emergencies. Minimum fire safety standards shall be established and enforced by the State Fire Marshal in cooperation with the department and the agency. Such standards must be included in the rules adopted by the department after consultation with the State Fire Marshal and the agency.

Section 633.022, F.S., regarding uniform fire safety standards, provides in pertinent part that the Department of Insurance shall establish uniform fire safety standards to apply to all new, existing, and proposed hospitals, nursing homes, assisted living facilities, correctional facilities, public schools, transient public lodging establishments, public food service 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, of which standards the State Fire Marshal is the final administrative interpreting authority.

III. Effect of Proposed Changes:

Section 1 amends s. 400.408, F.S., 1998 Supp., relating to unlicensed facilities, to provide that each day of continued operation of an unlicensed assisted living facility, whether a first or subsequent offense, constitutes a separate felony offense. Application for licensure within 10 working days is no longer an affirmative defense to a first offense.

Each day of continued operation of an unlicensed assisted living facility due to a change in the law or a modification in department rule (within 6 months after the effective date of such change) who, within 10 days after receipt of notification from the agency, fails to cease operation or apply for a license constitutes a separate felony offense per day of violation.

When a licensee has an interest in more than one facility and fails to license any one of those facilities, imposition of a fine on any or all of the licensed facilities (under s. 400.419, F.S., 1998 Supp.) is now an available remedy.

The agency shall now provide to the department's elder information and referral providers a list, by county, of licensed facilities to assist persons in locating a licensed facility (rather than both the department and the elder information and referral providers).

Section 2 amends s. 400.419, F.S., 1998 Supp., regarding violations and administrative fines, to provide that any unlicensed facility continuing to operate after agency notification is subject to a \$1,000 fine. Each day beyond 5 working days (reduced from 20 days) after agency notification constitutes a separate violation and the facility is subject to a fine of \$500 per day. The language which allowed continuing operation if one had applied for a license within 10 days after agency notification is deleted.

This section is also amended to provide that any licensed facility owner or administrator who concurrently operates an unlicensed facility is subject to an administrative fine of \$5,000. Each day that the unlicensed facility continues to operate beyond 5 working days after agency notification constitutes a separate violation; such facility is subject to a fine of \$500 per day retroactive to the date of agency notification. Language extending this provision to persons who have previously operated a licensed facility or who have been employed in a licensed facility is deleted. The language which allowed continuing operation if one had applied for a license within 10 days after agency notification is likewise deleted.

Section 3 amends s. 400.621, F.S., and provides that the State Fire Marshal, in consultation with the Department of Elderly Affairs and the Agency for Health Care Administration, shall adopt uniform fire safety standards for adult family care homes. This language replaces the requirement that the department provide, in rule, minimum standards and procedures for emergencies and that minimum fire safety standards be established and enforced by the State Fire Marshal in cooperation with the department and the agency. Language which provided that the standards be included in the rules adopted by the department after consultation with the State Fire Marshal and the agency is deleted.

Section 4 amends s. 633.022, F.S., to include adult family-care homes among those for whom the Department of Insurance will establish uniform fire safety standards.

Section 5 establishes a work group to identify additional steps necessary to discourage the operation of unlicensed assisted living facilities. The work group is directed to develop a report which will include recommendations on various aspects of unlicensed assisted living facilities and their residents. The work group will consist of representatives of the Department of Elderly Affairs, the Agency for Health Care Administration, the Department of Children and Family Services, the Department of Business and Professional Regulation, the Department of Community Affairs, and the State Fire Marshal's Office. Additionally, the work group will include members of local law enforcement, the health care industry, the long-term care industry, and consumers. The work group's report is due to the Legislature with legal and administrative recommendations by February 1, 2000. Appointing entities or individual members will be responsible for travel and per diem; state agencies may reimburse the consumer representatives.

Section 6 provides that this act shall take effect July 1, 1999.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill amends the statute to remove grace periods which allow the continued operation of unlicensed assisted living facilities and to impose administrative sanctions against licensees which operate other, unlicensed facilities. These changes should make it easier to bring criminal charges against unlicensed operators.

C. Government Sector Impact:

The Agency for Health Care Administration reports no fiscal impact associated with this bill.

The Department of Elderly Affairs reports there will be an undetermined cost to state and local agencies to obtain emergency placement for residents dislocated from unlicensed facilities. According to the Agency for Health Care Administration, there are sufficient licensed comparable facilities (adult family care homes and assisted living facilities) to accommodate any overflow of such residents.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
