

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 1326

SPONSOR: Governmental Oversight and Productivity Committee and Senator Forman

SUBJECT: The Fair Housing Act

DATE: April 12, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bowman</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/1 amendment</u>
2.	<u>Rhea</u>	<u>Wilson</u>	<u>GO</u>	<u>Favorable/CS</u>
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This committee substitute requires a facility or community, except for one meeting the definition contained in s. 760.29(4)(a), F.S., to register with the Florida Commission on Human Relations (commission) and submit a sworn affidavit affirming compliance with specified requirements under penalty of perjury. Failure to register does not, however, result in a facility or community losing its status as housing for older persons. 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 committee substitute provides for a registration fee which is to be deposited into the commission's trust fund to defray the administrative costs of maintaining the registry. The requirements of the committee substitute specifically do not apply to a community governed by ch. 723, F.S.

This committee substitute amends sections 760.29 and 760.31, Florida Statutes.

II. Present Situation:

Fair Housing Act

Chapter 760, F.S., 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 760.22(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, ch. 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., F.S.;
- (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 ss. 775.082 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 ss. 775.082 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, F.S., 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 ss. 775.082, 775.083, or 775.084, F.S. 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.

III. Effect of Proposed Changes:

This committee substitute requires a facility or community meeting the requirements of s. 760.29(4)(b)2. and 3., F.S., to 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 committee substitute exempts a facility or community under s. 760.29(4)(b)1., F.S., as well as a community that is governed by ch. 723, F.S. The registration and submission of a sworn affidavit, or other document approved by the commission, shall not substitute for proof of compliance with the subsection. Further, failure to file the affidavit will not, in and of itself, result in the facility or community losing its status as housing for older persons.

The commission must make the information in the registry available to the public and include the information on an Internet website. The committee substitute authorizes the commission to establish a reasonable registration fee to defray the administrative costs associated with maintaining the registry. The committee substitute requires commission rules to specify the forms and procedures to be used for the registration required by s. 760.29(4)(e), F.S.

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:

The committee substitute authorizes the commission to impose a reasonable registration fee that must be deposited into the commission's trust fund to defray the administrative costs of maintaining the registry.

B. Private Sector Impact:

Communities and facilities required to register under the act may incur nominal expense in complying with the requirement that they submit a sworn affidavit to the Florida Commission on Human Relations on a biennial basis.

C. Government Sector Impact:

The committee substitute imposes additional duties on the Florida Commission on Human Relations, which will cause the commission to incur additional administrative expenses. However, the committee substitute authorizes the commission to establish a reasonable registration fee to be deposited into the commission's trust fund to defray these expenses.

VI. Technical Deficiencies:

None.

VII. Related Issues:

The committee substitute does not state which statutory category of perjury that filing a false affidavit would subject the facility or community to a criminal penalty. It would appear, however, that the activity of swearing an affidavit, upon penalty of perjury, would fall under the category of perjury by false declaration, which offense is a felony of the third degree as provided by s. 92.525(3), F.S.

VIII. Amendments:

None.