

Committee Substitute for House Bill No. 645

An act relating to assisted living facilities; amending s. 400.408, F.S.; revising penalties relating to unlicensed ownership, operation, or maintenance of such a facility; amending s. 400.419, F.S.; revising timeframes for application of penalties for operation of an unlicensed facility; amending ss. 400.621 and 633.022, F.S.; providing for uniform firesafety standards for adult family-care homes; directing the Agency for Health Care Administration and the Department of Elderly Affairs to establish a work group on the problem of unlicensed assisted living facilities; requiring reports; providing an effective date.

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

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

400.408 Unlicensed facilities; referral of person for residency to unlicensed facility; penalties; verification of licensure status.—

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

(b) Except as provided under paragraph (d), any person who owns, operates, or maintains an unlicensed assisted living facility commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each day of continued operation is a separate offense. ~~Application for licensure within 10 working days after notification shall be an affirmative defense to this felony violation.~~

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

(d) Any person who owns, operates, or maintains an unlicensed assisted living facility due to a change in this part 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 under this part commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. Each day of continued operation is a separate offense.

(e) ~~Pursuant to this subsection,~~ 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) When a licensee has an interest in more than one assisted living facility, and fails to license any one of these facilities, the agency may revoke

the license, or impose a moratorium, or impose a fine pursuant to s. 400.419, on any or all of the licensed facilities until such time as the unlicensed facility is licensed applies for licensure or ceases operation.

(g) If the agency 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.

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

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

400.419 Violations; administrative fines.—

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

(8) ~~Any licensed facility~~ Unlicensed facilities whose owner or administrator concurrently operates an unlicensed 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 the unlicensed a facility continues to operate ~~beyond 5~~ without having applied for a license within 10 working days after agency notification constitutes a separate violation, and ~~the licensed~~ such facility shall be subject to a fine of \$500 per day retroactive to the date of agency notification.

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

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

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

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

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

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

(b) All new, existing, and proposed hospitals, nursing homes, assisted living facilities, adult family-care homes, 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 non-residential 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. With respect to public schools, the department shall utilize firesafety standards that have been adopted by the State Board of Education.

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

Section 5. The Agency for Health Care Administration and the Department of Elderly Affairs shall establish a work group to identify additional legal and administrative steps needed to discourage the operation of unlicensed facilities in this state and to enhance the probability that all such facilities will be subject to effective enforcement. The report of the work group shall include recommendations regarding the transfer and discharge from health care and long-term care settings to unlicensed assisted living facilities; unlicensed assisted living facility resident characteristics and their care needs; and other existing barriers to closing unlicensed assisted living facilities. The work group shall consist of representatives of the agency, the Department of Elderly Affairs, 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. In addition, the agency and the Department of Elderly Affairs shall appoint representatives from local law enforcement authorities, the health care industry, the long-term care industry, and consumers. In its representation and activities, the work group shall give priority to the problem of unlicensed facilities in Dade County. The work group shall be appointed and have its first meeting by August 1, 1999, and shall submit a report to the Legislature with recommendations for legal administrative action by February 1, 2000. Where administrative remedies requiring state agency action

are identified, the work group shall submit a report to the applicable agency by February 1, 2000, which shall submit a response to the Legislature by February 15, 2000. Appointing entities or individual members shall be responsible for travel and per diem, except that state agencies may reimburse consumer representatives.

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

Approved by the Governor May 14, 1999.

Filed in Office Secretary of State May 14, 1999.