

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Community Affairs

BILL: CS/SB 582

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Clemens

SUBJECT: Substance Abuse Services

DATE: March 16, 2014

REVISED: _____

ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1. Crosier	Hendon	CF	Fav/CS
2. Stearns	Yeatman	CA	Favorable
3.		AP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 582 provides a legislative intent, requires annual registration with the Department of Children & Families (department) by sober house transitional living homes (sober homes or sober houses) to operate in the state and provides a criminal penalty for operating without a valid certificate of registration. It provides definitions of "recovery residences," "registerable components" and "residential dwelling units." The registration fee is capped at \$200. The proposed legislation authorizes the department to conduct inspections, issue, deny, suspend or revoke a certificate of registration for a sober house. Certain personnel of the sober house transition home will be required to comply with level 2 background screening as provided in s. 435.04, F.S. Requirements for advertising a sober house transitional living home are provided in the proposed legislation.

The fiscal impact of this bill is unknown.

II. Present Situation:

Sober Houses

The maintenance of "sober houses" is motivated by the theory that housing addicts in a low-crime, drug-free community fosters rehabilitation and is essential to the success of any

addict's treatment.¹ Proponents of sober houses believe that "such environments foster sobriety and encourage trust and camaraderie between home residents."² Living in a sober house affords a recovering addict the opportunity to develop practical life skills and build self-confidence.³

"Sober homes" and "sober housing" are new terms for facilities formerly known as "halfway houses." Halfway houses were used by those leaving a residential center with limited residential options. Sober homes offer the same vital services to those in the early stages of recovery.⁴

The facilities, operators and organizational design of sober houses vary greatly. Some sober home advocates argue that the location of the home is critical to promoting recovery. They argue that placing the home in a single-family neighborhood helps to avoid temptations that other environments can create.⁵ Organizationally, these homes can range from a private landlord renting his or her home to recovering addicts to corporations that operate full-time treatment centers across the country and employ professional staff.⁶

Fair Housing Act

The Federal Fair Housing Act of 1988 (FHA)⁷ prohibits discrimination on the basis of a handicap in all types of housing transactions. The FHA defines a "handicap" to mean those mental or physical impairments that substantially limit one or more major life activities. The term "mental or physical impairment" may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term "major life activity" may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking or working. The FHA also protects persons who have a record of such impairment, or are regarded as having such impairment. Current users of illegal controlled substances, persons convicted for the illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders are not considered disabled by virtue of that status under the FHA.⁸

The Florida Fair Housing Act provides in s. 760.23(7)(b), F.S., that it is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available. The statute defines "discrimination" to include a refusal to make reasonable accommodations in rules, policies, practices or services when such

¹ M.M. Gorman et al., *Fair Housing for Sober Living: How the Fair Housing Act Addresses Recovery Homes for Drug and Alcohol Addiction*, THE URBAN LAWYER v. 42, No. 3 (Summer 2010) (on file with the Senate Committee on Children, Families, and Elder Affairs).

² *Id.*

³ 12 Step Treatment Centers, *Sober Living Home Transitional Housing*, available at http://www.12steptreatmentcentres.com/SOBER_LIVING_HOME_TRANSITIONAL_HOUSING_95.asp (last visited March 13, 2014).

⁴ *Id.*

⁵ M.M. Gorman et al., *supra* note 2.

⁶ *Id.*

⁷ 42 U.S.C. 3601 *et seq.*

⁸ See U.S. Department of Justice, *The Fair Housing Act*, available at http://www.justice.gov/crt/about/hce/housing_coverage.php (last visited March 13, 2014).

accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

Americans with Disabilities Act

In July 1999, the United States Supreme Court held that the unnecessary institutionalization of people with disabilities is a form of discrimination prohibited by the Americans with Disabilities Act (ADA).⁹ In its opinion, the Court challenged federal, state, and local governments to develop more opportunities for individuals with disabilities through accessible systems of cost-effective, community-based services. This decision interpreted Title II of the ADA and its implementing regulation, requiring states to administer their services, programs, and activities “in the most integrated setting appropriate to meet the needs of qualified individuals with disabilities.” The ADA and the *Olmstead* decision apply to all qualified individuals with disabilities regardless of age. A former drug addict may be protected under the ADA because the addiction may be considered a substantially limiting impairment.¹⁰ In addition, in the *United States of America v. City of Boca Raton*, the court held that the city’s ordinance excluding substance abuse treatment facilities from residential areas violates the FHA because it unjustifiably prohibits these individuals from enjoying the same rights and access to housing as anyone else.¹¹

III. Effect of Proposed Changes:

Section 1 provides legislative findings, intent and purpose.

Section 2 amends s. 397.311, F.S., to add the following definitions:

- “Recovery residence” means a democratically run, peer-managed, and peer-supported dwelling for a resident who is established in his or her recovery and who is a party to a single lease agreement to occupy the dwelling which has a single beginning date and a single termination date.
- “Registrable component” to mean a sober house transitional living home that is a residential dwelling unit that provides, offers, or advertises housing in an alcohol-free and drug-free living environment to persons needing room and board while receiving treatment services as provided in s. 397.311(18), F.S., at a licensed facility. The term includes the community housing component of a day or night treatment facility of a residential treatment facility that offers level 5 treatment programs, but the term does not include a recovery residence.
- “Residential dwelling unit” to mean a single unit used primarily for living and sleeping which provides complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking, and sanitation.
- “Sober house operator” means a person who operates a sober house transitional living home.

Section 3 creates s. 397.487, F.S., which will require sober houses to comply with the department’s annual application process for a certificate of registration to operate. A sober house licensed by the department as a residential treatment facility that offers level 5 treatment programs (this level program provides only housing and meals to clients who are mandated to

⁹ *Olmstead v. L.C.*, 527 U.S. 581, (1999).

¹⁰ U.S. Commission on Civil Rights, *Sharing the Dream: Is the ADA Accommodating All?*, available at http://www.usccr.gov/pubs/ada/ch4.htm#_ftn12 (last visited March 13, 2014).

¹¹ *United States of America vs. City of Boca Raton*, 1008 WL 686689 (S.D. Fla. 2008).

receive services at alternate locations in facilities owned and operated by the same provider) or serves as a community housing component of a day or night treatment facility is not required to obtain additional licensure or registration for the housing component of the license.

The application process will require the sober house to provide:

- Name and physical address of the sober house transitional living home;
- Name of the sober house operator;
- Number of individuals served at the sober house;
- Proof of screening and background checks as required under ch. 435, F.S.;
- Written eviction procedures;
- Proof of satisfactory fire, safety, and health inspections and compliance with local zoning ordinances; and
- A registration fee, not to exceed \$200.

Sober houses in existence on July 1, 2014, shall apply for a certificate of registration by September 1, 2014. Sober houses in existence on July 1, 2014, that have a license as the community housing component of a day or night treatment facility or are licensed as a residential treatment facility offering level 5 treatment programs do not have to apply for additional licensure or certification by September 1, 2014. Operating a sober house without a valid certificate of registration is a first degree misdemeanor. The department is authorized to adopt rules pertaining to the application process for obtaining a certificate of registration.

This section also provides that the owner, director, manager, operator, and chief financial officer of a sober house are subject to level 2 background screening as provided in s. 435.04, F.S. The department may not grant a certificate of registration:

- If a sober house fails to provide proof that background screening information has been submitted in accordance with ch. 435, F.S.; or
- If one of the above named individuals has been arrested for and pled to an offense prohibited under the level 2 screening standards established in s. 435.04, F.S., unless an exemption from disqualification has been granted by the department pursuant to ch. 435, F.S.

If one of the above named individuals is arrested or pleads guilty to an offense prohibited under s. 435.04, F.S., while acting in his or her professional capacity, the department shall immediately suspend the certificate of registration of a sober home until the individual resigns or is removed and replaced by another qualified individual.

All advertising by a person who owns or operates a sober house must include the home's state registration number in the advertisement. Violation of this requirement is a first degree misdemeanor.

The bill provides authority to the department's authorized agent to enter and inspect a sober home with a certificate of registration at any time to determine if it is in compliance with certification requirements. Additionally, with the permission of the person in charge of the premises or pursuant to a warrant, the department's authorized agent may enter and inspect a residential dwelling unit that is reasonably suspected to be operating as a sober house in violation of the Florida Statutes. The department's designated and authorized agent may access the records

of the individuals served by a sober house solely for certification, monitoring and investigation. Prior to granting or denying a certificate of registration, the department's authorized agent may enter and inspect the premises of an applicant sober house at any time. The department shall maintain certificates of registration and inspection reports of sober houses as public records available to any person upon request and payment of a reasonable charge for copying as provided in s. 119.07, F.S.

If the department determines that an applicant or a sober house is not in compliance with statutory and regulatory requirements, the department may deny, suspend, revoke or impose reasonable restrictions or penalties on the certificate of registration or any portion of the certificate. The department may:

- Impose an administrative penalty of up to \$500 per day; or
- Suspend or revoke a sober house certificate of registration that, after notice, has failed to correct a substantial or chronic violation of a statutory or regulatory requirement that impacts the safety of the individuals served in the house.

If a sober house's certificate of registration is revoked, the house is barred for one year after the revocation from submitting an application for a certificate of registration. Proceedings for the denial, suspension or revocation of a sober house certificate of registration must be conducted pursuant to ch. 120, F.S. The department has the authority to maintain an action in court to enjoin the operation of an uncertified sober house.

To avoid increased homelessness and crime and to ensure the due process rights of sober house tenants are not violated, a sober house not subject to Florida's Landlord and Tenant Act, ch. 83, F.S., must provide 48 hours' advance, written notice of eviction to a tenant or immediate shelter to that tenant for at least 48 hours after eviction at an alternative temporary dwelling unit.

The department is provided authority to adopt rules to administer this section.

Section 4 amends s. 212.055(5)(e)2., F.S., to refer to s. 397.311, F.S., instead of 397.311(35), F.S., when incorporating the definition of "stabilization."

Section 5 amends s. 440.102(1)(d) and (g), F.S., to refer to s. 397.311, F.S., instead of 397.311(33), F.S., when incorporating the definitions of "drug rehabilitation program" and "employee assistance program."

Section 6 provides an effective date of July 1, 2014.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. Other Constitutional Issues:

The Fair Housing Act (FHA) prohibits a large range of practices that are considered to discriminate against individuals on the basis of race, color, religion, sex, national origin, familial status, and disability or handicap. The term “disability” has been interpreted to include individuals recovering from drug or alcohol addiction.¹² Therefore, discriminatory practices against recovering addicts are prohibited. As such, restrictions placed on sober houses by the bill may violate the FHA. An owner or operator of a home adversely affected by the bill may bring suit to seek relief under the FHA.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill authorizes DCF to regulate sober houses pursuant to ch. 397, F.S. It also authorizes the department to assess fees.

B. Private Sector Impact:

The bill could limit the number of sober houses due to increased qualifications for those homes not currently subject to licensure by the department. The sober houses would be assessed a certificate of registration fee. The fiscal impact of such fees is unknown as the department would need to adopt the amount by rule.

C. Government Sector Impact:

The bill would have a significant fiscal impact on DCF. The number of sober houses statewide that would apply for certificates of registration and require initial and ongoing inspections and administrative oversight is unknown.

Similar to proposed legislation introduced in 2013 (SB 738), the department cannot determine the exact fiscal impact of this bill. The number of sober homes that would require inspection and the number of background screenings that would require review is unknown. Additionally, the department would need funding to modify its existing licensure database and pay for additional data storage capacity at the shared resource center. The department would need staff to perform inspections, process applications, review background screenings, provide legal representation in chapter 120 proceedings in the event of a denial, revocation or suspension of a registration and update its licensing and technology systems.

¹² M.M. Gorman *et al*, *supra* note 2.

In 2013, the department estimated it would need 65 new positions to perform all the identified tasks at a cost of \$6.8 million and \$200,000 to modify its licensing and technology systems for a total impact of \$7 million.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 397.305, 397.311, 212.055, and 440.102.

This bill creates section 397.487 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on February 11, 2014:

- Provides legislative intent.
- Adds a definition of a “recovery residence.”
- Provides an exemption from certification for sober house transitional living homes licensed by the department as a residential treatment facility offering level 5 treatment program or one that serves and is licensed as a community housing component of a day or night treatment facility. These licensed facilities are also exempt from the September 1, 2014, application for certification deadline.

B. Amendments:

None.