

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 Children, Families, and Elder Affairs

BILL: CS/SB 582

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

SUBJECT: Substance Abuse Services

DATE: February 11, 2014 **REVISED:** _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|---------------|
| 1. | Crosier | Hendon | CF | Fav/CS |
| 2. | | | CA | |
| 3. | | | RC | |

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,” “registrable 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. This bill has an effective date of July 1, 2014.

II. Present Situation:

Sober Houses

Sober houses function under the belief that housing addicts in an environment that fosters recovery, such as low crime, drug free, single family neighborhoods, 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 allows a recovering addict the opportunity to develop practical life skills and build self-confidence.³ Sober Homes or Sober Housing are new terms for what used to be known as Halfway Houses which were used by those leaving a residential center with nowhere else to go. Sober Homes offer vital services to those in early stages of recovery.⁴

The facilities, operators and organizational design of sober houses vary greatly. It is argued that the location of the home is critical to recovery and 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, person convicted for 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 in s. 760.23(7)(b), F.S., provides 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.12step treatment centres.com/SOBER_LIVING_HOME_TRANSITIONAL_HOUSING_95.asp (last visited Feb. 3, 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 Feb. 3, 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., adds 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 a peer-supported, managed, alcohol-free, and drug-free living environment.
- “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 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.

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 Feb. 6, 2014).

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

The application process will require the sober house to provide the name of the sober house operator, the number of individuals served at the sober house, proof of screening and background checks for certain individuals, written eviction procedures, proof of satisfactory fire, safety, and health inspections and compliance with local zoning ordinances. A registration fee not to exceed \$200 will be assessed. 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 is 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.

This section also provides the required criteria regarding the individuals subject to the level 2 background screening, disqualifying criteria and the authority of the department to grant exemptions from disqualification under certain circumstances. All advertising by a person who owns or operates a sober house must include the home's state registration number in the advertisement of the sober home.

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 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 fee.

The department has the authority to determine if an applicant of a sober house is not in compliance with the certification requirements to deny, suspend, revoke, or impose reasonable restrictions or penalties on the certificate of registration. The department may impose an administrative penalty of up to \$500 per day to a sober house operating in violation of statutory or regulatory requirements; 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 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 action in court to enjoin the operation of an uncertified sober house.

To ensure the due process rights of a sober house tenant 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 a 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)(3), F.S., to refer to s. 397.311, F.S. instead of 397.311(35), F.S., when referring to 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 referring to the definition of drug rehabilitation program and 397.311, F.S., when referring to service providers set forth in the definition of employee assistance programs.

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 prohibits a large range of practices that discriminate against individuals on the basis of race, color, religion, sex, national origin, familial status, and disability or handicap. Discriminatory practices involving recovering addicts are forbidden because the term disability has been interpreted to include individuals recovering from drug or alcohol addiction.¹² Restrictions placed on sober houses by the bill may violate the FHA. An owner or operator of a home 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

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

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.

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: 397.311, 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.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
