

BILL ANALYSIS

Senate Research Center

C.S.S.B. 1159
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Health & Human Services
4-4-97
Committee Report (Substituted)

DIGEST

Currently, personal care and assisted living settings have become the accommodation of choice for consumers who live at home with security risks, but do not need continuous medical intervention. Because of the growing need and demand for this type of care, many unlicensed accommodations are springing up around the state. The Department of Human Services (DHS) identified the existence of 3,000 to 4,000 unlicensed facilities in 1995, and reports of exploitation of consumers in unlicensed accommodations have raised serious concern. In an effort to better protect the quality of care provided to persons in these homes, C.S.S.B. 1159 authorizes DHS to petition for a temporary restraining order if a facility is operating without a license; requires a personal care facility to use its license number in all advertisements and promotional materials; requires greater cooperation among agencies with personal care facility oversight; and provides civil penalties for the operation of a facility without a license.

PURPOSE

As proposed, C.S.S.B. 1159 provides for regulation of personal care facilities and establishes a civil penalty.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Department of Protective and Regulatory Services in SECTION 5 (Section 247.046, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 247.024, Health and Safety Code, as follows:

Sec. 247.024. New heading: FEES; DISPOSITION OF REVENUE. Requires the Texas Board of Human Services (board) to set license fees imposed by this chapter in certain amounts. Requires all fees or penalties collected to be deposited in the state treasury to the credit of the general revenue fund, rather than the personal care facility licensing fund, and appropriated to the Texas Department of Human Services (DHS) only to administer and enforce this chapter. Prohibits investigation or attorney's fees from being assessed against or collected from a personal care facility by or on behalf of DHS or another state agency unless DHS or another state agency assesses and collects a penalty from the facility.

SECTION 2. Amends Section 247.026(b), Health and Safety Code, to require minimum standards to require a personal care facility to use its license number in all advertisements, solicitations, and promotional materials. Makes conforming changes.

SECTION 3. Amends Section 247.044(a), Health and Safety Code, to authorize DHS to petition a district court for a temporary restraining order if DHS finds that the facility is operating without a license. Makes conforming changes.

SECTION 4. Amends Section 247.045, Health and Safety Code, to provide that a person is subject to a civil penalty if the person is in violation of Section 247.021, regarding license requirements; or has been determined to be in violation of Section 247.021 and violates any other provision of this chapter or fails to comply with a rule adopted under this chapter. Prohibits the amount of a civil

penalty under Subsection (b) from being less than \$1,000 or more than \$10,000 for each act of violation, with each day of a continuing violation constituting a separate ground of recovery. Makes a conforming change. Requires DHS to refer the case to the local district attorney, county attorney, or city attorney if the attorney general fails to take action within 30 days of referral from DHS. Requires the district attorney, county attorney, or city attorney to file suit in a district court to collect and retain the penalty.

SECTION 5. Amends Section 247.046, Health and Safety Code, as amended by Chapter 76, Acts of the 74th Legislature, Regular Session, 1995, to set forth the terms by which the board, the Department of Protective and Regulatory Services, and the attorney general are required to adopt, by rule, a memorandum of understanding regarding cooperation among agencies.

SECTION 6. Effective date: September 1, 1997.

SECTION 7. Emergency clause.

SUMMARY OF COMMITTEE CHANGES

SECTION 1.

Amends Section 247.024, Health and Safety Code, to set forth the terms by which the board must set license fees, and by which the fees or penalties shall be deposited and appropriated. Prohibits investigation or attorney's fees from being assessed or collected from a personal care facility by or on behalf of DHS or another state agency unless certain conditions are met.

SECTION 4.

Amends Section 247.045, Health and Safety Code, to require DHS, if the attorney general fails to take action within 30 days of referral from DHS, to refer the case to the local district attorney, county attorney, or city attorney. Requires the district attorney, county attorney, or city attorney to file suit in a district court to collect and retain the penalty.