

## **BILL ANALYSIS**

Senate Research Center  
85R20817 AJZ-D

C.S.S.B. 1049  
By: Uresti  
Health & Human Services  
4/10/2017  
Committee Report (Substituted)

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Local and state authorities are entrusted by the public to inspect assisted living facilities for safety both during and after a new facility's construction. When the two entities' inspection requirements conflict, statute does not lay out a process for resolving the matter. This bill seeks to provide clarity so disputes do not arise and encourages the Department of Aging and Disability Services (DADS) to use a more recent building code manual in order to minimize discrepancies in the first place. It also seeks to create a more uniform regulatory environment across the state.

The legislation requires DADS to make public technical memorandums, which provide interpretive guidance to inspectors; re-affirms that the Texas Department of Licensing and Regulation (TDLR) is the primary arbiter of accessibility standards; allows local fire marshals to grant waivers for violations of life safety or fire safety standards when the violation is due to a conflict between two building codes; requires DADS to begin using a more recent edition of the Life Safety Code of the National Fire Protection Association; and requires DADS to recognize a locally-issued certificate of occupancy.

The Texas Assisted Living Association is strongly supportive of the bill, and they have worked with DADS to refine the language.

### **COMMITTEE SUBSTITUTE CHANGES**

The committee substitute clarifies that the technical memorandums are not intended as a mechanism for DADS to promulgate new rules, that DADS shall use the 2012 National Fire Protection Association code, that DADS may issue citations for an accessibility standard if the on-site inspection by TDLR has not yet occurred, and that DADS may not issue a citation for a perceived violation of the locally adopted fire standard.

C.S.S.B. 1049 amends current law relating to safety requirements of assisted living facilities.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 (Section 247.0273, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter B, Chapter 247, Health and Safety Code, by adding Sections 247.0263 and 247.0264, as follows:

Sec. 247.0263. LIFE SAFETY CODE TECHNICAL MEMORANDUM. (a) Requires the Health and Human Services Commission (HHSC), at least twice each year, to issue a technical memorandum providing guidance on the interpretation of minimum life safety code standards prescribed under this chapter and by HHSC rule. Requires any new requirement that relates to an existing standard to first appear in a technical memorandum.

(b) Requires HHSC to solicit comments from interested parties and experts to assist in determining which standards need to be addressed in a technical memorandum issued under this section.

(c) Requires HHSC to post the technical memorandum on HHSC's Internet website.

(d) Provides that a technical memorandum issued under this section is binding and requires the memorandum to be followed by a person conducting a life safety code survey under this chapter.

(e) Provides that this section does not affect HHSC's rulemaking process.

Sec. 247.0264. ACCESSIBILITY STANDARDS. (a) Provides that the Texas Department of Licensing and Regulation (TDLR) governs the interpretation and enforcement of accessibility standards in assisted living facilities as provided by Chapter 469 (Elimination of Architectural Barriers), Government Code.

(b) Prohibits an assisted living facility (ALF) that during initial licensing passed an on-site inspection by TDLR relating to the ALF's compliance with the accessibility standards from being cited by HHSC for a violation relating to the accessibility standards. Requires HHSC, if HHSC issues a citation relating to compliance with accessibility standards to an ALF that has not been inspected by TDLR for compliance with the accessibility standards, to rescind the citation on the ALF's passage of the on-site inspection by TDLR.

SECTION 2. Amends Subchapter B, Chapter 247, Health and Safety Code, by adding Section 247.0273, as follows:

Sec. 247.0273. LIFE SAFETY CODE. (a) Requires the executive commissioner of HHSC (executive commissioner), by rule, to specify an edition of the Life Safety Code of the National Fire Protection Association to be used in establishing the life safety requirements for an ALF licensed under this chapter.

(b) Requires the rules adopted under Subsection (a) to specify an edition of the Life Safety Code of the National Fire Protection Association issued on or after August 1, 2011.

(c) Provides that this section expires September 1, 2021.

SECTION 3. Amends Subchapter D, Chapter 247, Health and Safety Code, by adding Section 247.071, as follows:

Sec. 247.071. LOCAL APPROVAL OF ASSISTED LIVING FACILITY. (a) Defines "governmental unit."

(b) Provides that a governmental unit that adopts a building code or fire code governs the interpretation and enforcement of that building code or fire code.

(c) Prohibits HHSC from issuing a citation for a violation of a building code or fire code adopted by a governmental unit to an ALF that presents evidence of the governmental unit's determination that the ALF is compliant with the code. Requires HHSC, if HHSC cites an ALF for a building code or fire code violation and the ALF subsequently provides the evidence described by this subsection, to rescind the citation.

(d) Provides that Subsection (c) does not restrict HHSC's authority to issue a citation to an assisted living facility for a violation of the established life safety requirements.

SECTION 4. Requires the executive commissioner, as soon as practicable after the effective date of this Act, to adopt the rules necessary to implement the changes in law made by this Act.

SECTION 5. Effective date: September 1, 2017.