

House Bill 1466

By: Representatives Walker of the 71st, Post 1, Harrell of the 54th, Brown of the 89th, and Stephens of the 123rd

A BILL TO BE ENTITLED

AN ACT

1 To define and provide for a new category of facilities to be designated as "assisted living
2 facilities" and to include "assisted living facilities - Level I" and "assisted living facilities -
3 Level II" within such category; to amend Code Section 10-1-393 of the Official Code of
4 Georgia Annotated, relating to unfair or deceptive practices, so as to change certain
5 provisions relating to providing personal care services; to amend Code Section 25-2-13 of
6 the Official Code of Georgia Annotated, relating to buildings presenting special hazards, so
7 as to change the listing of buildings and the applicability of certain provisions thereto; to
8 amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to change
9 certain terms and definitions; to change certain provisions relating to licensing of personal
10 care homes to include assisted living facilities; to provide for licensing of different levels of
11 assisted living facilities; to change certain provisions relating to unlicensed facilities; to
12 provide for personal care homes or facilities licensed prior to January 1, 2005; to retain
13 certain liability for personal care homes; to amend Code Section 37-4-21 of the Official Code
14 of Georgia Annotated, relating to respite care for mentally retarded persons, so as to revise
15 certain terms; to amend Code Section 48-13-9 of the Official Code of Georgia Annotated,
16 relating to general provisions governing business and occupation taxes, so as to change a
17 reference; to change various statutory references to "personal care homes" so that they refer
18 to "assisted living facilities"; to provide for related matters; to provide effective dates; to
19 repeal conflicting laws; and for other purposes.

20 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

21 **SECTION 1.**

22 Code Section 10-1-393 of the Official Code of Georgia Annotated, relating to unfair or
23 deceptive practices, is amended by striking paragraph (26) of subsection (b) thereof and
24 inserting in its place the following:

25 "(26) With respect to any ~~individual~~ or facility providing ~~personal care~~ services that
26 requires a license in order to be an assisted living facility:

1 (A) Any person or entity not duly licensed or registered as a ~~personal care home~~ an
 2 assisted living facility formally or informally offering, advertising to, or soliciting the
 3 public for residents or referrals; or

4 (B) Any ~~personal care home~~, as defined in subsection (a) of Code Section 31-7-12,
 5 assisted living facility offering, advertising, or soliciting the public to provide services:

6 (i) Which are outside the scope of ~~personal care services~~ that facility's licensed level
 7 as an assisted living facility; provided, however, that assisted living facilities licensed
 8 at Level II may provide services for residents suitable for Level I; and

9 (ii) For which it has not been specifically authorized.

10 Nothing in this subparagraph prohibits advertising by a ~~personal care home~~ an assisted
 11 living facility for services authorized by the Department of Human Resources under a
 12 waiver or variance pursuant to subsection (b) of Code Section 31-2-4;

13 ~~(C) For purposes of this paragraph, 'personal care' means protective care and watchful~~
 14 ~~oversight of a resident who needs a watchful environment but who does not have an~~
 15 ~~illness, injury, or disability which requires chronic or convalescent care including~~
 16 ~~medical and nursing services.~~

17 For purposes of this paragraph, the term 'assisted living facility' shall have the same
 18 meaning as provided for that term in Code Section 31-7-12. The provisions of this
 19 paragraph shall be enforced following consultation with the Department of Human
 20 Resources which shall retain primary responsibility for issues relating to licensure of any
 21 ~~individual or facility providing personal care services~~ that is an assisted living facility;".

22 SECTION 2.

23 Code Section 25-2-13 of the Official Code of Georgia Annotated, relating to buildings
 24 presenting special hazards to persons or property, is amended by striking subparagraph
 25 (b)(1)(J) thereof and inserting in its place the following:

26 "(J) ~~Personal care homes~~ Assisted living facilities required to be licensed as such by
 27 the Department of Human Resources and having at least seven beds for nonfamily
 28 adults, and the Commissioner shall, pursuant to Code Section 25-2-4, by rule adopt
 29 state minimum fire safety standards for ~~those homes~~ assisted living facilities, and any
 30 structure constructed as or converted to a personal care home on or after April 15, 1986,
 31 but before January 1, 2005, and any structure constructed as or converted to an assisted
 32 living facility as defined in Code Section 31-7-12 on or after January 1, 2005, shall be
 33 deemed to be a proposed building pursuant to subsection (d) of Code Section 25-2-14
 34 and that structure may be required to be furnished with a sprinkler system meeting the
 35 standards established by the Commissioner if ~~he~~ the Commissioner deems this
 36 necessary for proper fire safety."

1 or more adults who are not related by blood or marriage to the owner or administrator of
 2 the facility.

3 (4) 'Limited nursing services' means those acts that may be performed by licensed
 4 practical nurses under Article 2 of Chapter 26 of Title 43, relating to practical nurses, and
 5 which may be administered on an intermittent basis, as needed, to residents for whom
 6 ongoing medical supervision and continuous skilled nursing care are not required.

7 (5) 'Personal services' includes, but is not limited to, individual assistance with or
 8 supervision of self-administered medication and essential activities of daily living such
 9 as eating, bathing, grooming, dressing, and toileting.

10 (b) All ~~personal care homes~~ assisted living facilities shall be licensed as provided for in
 11 Code Section 31-7-3, ~~except that, in lieu of licensure, the department may require persons~~
 12 ~~who operate personal care homes with two or three beds for nonfamily adults to comply~~
 13 ~~with registration requirements delineated by the department. Such registration requirements~~
 14 ~~within this category shall authorize the department to promulgate pursuant to Chapter 13~~
 15 ~~of Title 50, the 'Georgia Administrative Procedure Act,' reasonable standards to protect the~~
 16 ~~health, safety, and welfare of the occupants of such personal care homes; provided,~~
 17 however, that the following dwellings are exempt from licensure as an assisted living
 18 facility: community living arrangements as defined by Code Section 37-1-20 and respite
 19 care facilities as defined by Code Section 37-4-21.

20 (c) ~~Upon the designation by the department and with the consent of county boards of~~
 21 ~~health, such boards may act as agents to the department in performing inspections and other~~
 22 ~~authorized functions regarding personal care homes licensed under this chapter. With~~
 23 ~~approval of the department, county boards of health may establish inspection fees to defray~~
 24 ~~part of the costs of inspections performed for the department.~~

25 ~~(d)~~ The state ombudsman or community ombudsman, on that ombudsman's initiative or
 26 in response to complaints made by or on behalf of residents of a ~~registered or licensed~~
 27 ~~personal care home~~ assisted living facility, may conduct investigations in matters within
 28 the ombudsman's powers and duties.

29 ~~(e)~~(d) The department shall promulgate procedures to govern the waiver, variance, and
 30 exemption process related to ~~personal care homes~~ assisted living facilities pursuant to
 31 Chapter 2 of this title. Such procedures shall include published, measurable criteria for the
 32 decision process, shall take into account the need for protection of public and individual
 33 health, care, and safety, and shall afford an opportunity for public input into the process."

34 SECTION 8.

35 Said chapter is further amended by striking Code Section 31-7-12.1, relating to unlicensed
 36 personal care homes, and inserting in its place the following:

1 "31-7-12.1.

2 (a) A facility shall be deemed to be an 'unlicensed ~~personal care home~~ assisted living
3 facility' if it is unlicensed and not exempt from licensure and:

4 (1) The facility is providing personal services and is operating as a ~~personal care home~~
5 an assisted living facility as those terms are defined in Code Section 31-7-12;

6 (2) The facility is held out as or represented as providing personal services and operating
7 as a ~~personal care home~~ an assisted living facility as those terms are defined in Code
8 Section 31-7-12; or

9 (3) The facility represents itself as a licensed ~~personal care home~~ assisted living facility.

10 (b) ~~Personal care homes in existence on July 1, 1994, which obtain licenses from the~~
11 ~~department no later than October 1, 1994, shall not be subject to the penalties set out in this~~
12 ~~Code section.~~

13 ~~(c) Except as provided in subsection (b) of this Code section, any Any unlicensed personal~~
14 ~~care home assisted living facility shall be assessed by the department, after opportunity for~~
15 ~~hearing in accordance with the provisions of Chapter 13 of Title 50, the 'Georgia~~
16 ~~Administrative Procedure Act,' a civil penalty in the amount of \$100.00 per bed per day for~~
17 ~~each day of violation of subsection (b) of Code Section 31-7-12. The department shall~~
18 ~~send a notice by certified mail or statutory overnight delivery stating that licensure is~~
19 ~~required and including a period for obtaining licensure with an expiration date. Such notice~~
20 ~~shall be deemed to be constructively received on the date of the first attempt to deliver such~~
21 ~~notice by the United States Postal Service. For unlicensed personal care homes which were~~
22 ~~not in existence on July 1, 1994, the civil penalty provided by this subsection shall be~~
23 ~~calculated as beginning on the expiration date of the notice. For unlicensed personal care~~
24 ~~homes which were in existence on July 1, 1994, the civil penalty provided by this~~
25 ~~subsection shall be calculated as beginning on the expiration date of the notice or on~~
26 ~~October 1, 1994, whichever is later. The department shall take no action to collect such~~
27 ~~civil penalty until after opportunity for a hearing.~~

28 ~~(d)~~(c) The civil penalty authorized by subsection ~~(c)~~ (b) of this Code section shall be
29 doubled if:

30 (1) The operator of an unlicensed ~~personal care home~~ assisted living facility refuses to
31 seek licensure; or

32 (2) The operator seeks licensure, the licensure application is denied, and the operator
33 continues to operate the unlicensed ~~personal care home~~ assisted living facility.

34 ~~(e)~~(d) The operator of a ~~personal care home~~ an assisted living facility who is assessed a
35 civil penalty in accordance with this Code section may have review of such civil penalty
36 by appeal to the superior court in the county in which the action arose or to the Superior
37 Court of Fulton County in accordance with the provisions of Code Section 31-5-3."

SECTION 14.

Said chapter is further amended by striking Code Section 31-8-132, relating to definitions regarding remedies for personal care home residents, and inserting in its place the following: "31-8-132.

As used in this article, the term:

(1) 'Administrator' means the manager designated by the governing body of a ~~personal care home~~ an assisted living facility as responsible for the day-to-day management, administration, and supervision of the ~~personal care home~~ assisted living facility, who may also serve as on-site manager and responsible staff person except during periods of his or her own absence.

(1.1) 'Assisted living facility' means a facility required to be licensed under Code Section 31-7-12.

(2) 'Community ombudsman' means a person certified as a community ombudsman pursuant to Code Section 31-8-52.

(3) 'Governing body' means the board of trustees, the partnership, the corporation, the association, or the person or group of persons who maintain and control a ~~personal care home~~ an assisted living facility and who are legally responsible for the operation of the ~~home~~ facility.

(4) 'Legal surrogate' means a duly appointed person who is authorized to act, within the scope of the authority granted under the legal surrogate's appointment, on behalf of a resident who is adjudicated or certified incapacitated. No member of the governing body, administration, or staff of a ~~personal care home~~ an assisted living facility or any affiliated ~~personal care home~~ assisted living facility or their family members may serve as the legal surrogate for a resident unless that resident is a family member.

(5) '~~Personal care home~~' or '~~home~~' means a facility as defined in Code Section 31-7-12 Reserved.

(6) 'Representative' means a person who voluntarily, with the resident's written authorization, may act upon the resident's direction with regard to matters concerning the health and welfare of the resident, including being able to access personal records contained in the resident's file and receive information and notices pertaining to the resident's overall care and condition. No member of the governing body, administration, or staff of a ~~personal care home~~ an assisted living facility or any affiliated ~~personal care home~~ assisted living facility or their family members may serve as the representative for a resident.

(7) 'Resident' means a person who resides in a ~~personal care home~~ an assisted living facility.

1 (8) 'State ombudsman' means the state ombudsman established under Code Section
2 31-8-52."

3 **SECTION 15.**

4 Code Section 37-4-21 of the Official Code of Georgia Annotated, relating to respite care for
5 mentally retarded persons, is amended by striking subsection (c) thereof and inserting in its
6 place the following:

7 "(c) An admission for respite care shall be for no longer than two weeks, provided that a
8 person may be admitted for additional periods of respite care; provided, further, that there
9 shall be no more than two admissions for respite care within any six-month period, counted
10 from the first day of such an admission. Any such admission which exceeds limits provided
11 in this Code section must be in accordance with the procedure in Code Section 37-4-20 or
12 37-4-40. This Code section shall not apply when the person sought to be admitted is living
13 in a nursing home or ~~personal care home~~ assisted living facility, as defined in ~~paragraph~~
14 ~~(2)~~ of Code Section Sections 43-27-1 and 31-7-12, respectively."

15 **SECTION 16.**

16 Article 1 of Chapter 13 of Title 48 of the Official Code of Georgia Annotated, relating to
17 general provisions governing business and occupation taxes, is amended by striking
18 paragraph (14) of subsection (b) of Code Section 48-13-9, relating to businesses which are
19 and which are not subject to regulatory fees, and inserting in its place the following:

20 "(14) Nursing homes and ~~personal care homes~~ assisted living facilities;"

21 **SECTION 17.**

22 The following Code sections of the Official Code of Georgia Annotated are amended by
23 striking the terms "a personal care home", "Personal care home", "personal care home",
24 "Personal care homes", "Personal Care Homes", and "personal care homes", wherever they
25 occur and inserting in their respective places the terms "an assisted living facility", "Assisted
26 living facility", "assisted living facility", "Assisted living facilities", "Assisted Living
27 Facilities" and "assisted living facilities":

- 28 (1) Code Section 16-5-23, relating to simple battery;
29 (2) Code Section 16-5-23.1, relating to battery;
30 (3) Code Section 16-6-5.1, relating to sexual assault of persons in custody;
31 (4) Code Section 26-4-5, relating to pharmacy definitions;
32 (5) Code Section 31-7-3, relating to the requirement for permits to operate institutions;
33 (6) Code Section 31-7-112, relating to definitions regarding authorities for facilities for
34 the elderly;

- 1 (7) Code Section 31-7-258, relating to changes in personal care home directors;
- 2 (8) Code Section 31-7-259, relating to employment at personal care homes with
- 3 temporary licenses;
- 4 (9) Code Section 31-7-300, relating to definitions governing private home care provider
- 5 laws;
- 6 (10) Code Section 31-7-305, relating to exempt services;
- 7 (11) Code Section 31-7-307, relating to certificates of need;
- 8 (12) Code Section 31-8-52, relating to the establishment of the long-term care
- 9 ombudsman;
- 10 (13) Code Section 31-8-130, relating to the creation of the "Remedies for Residents of
- 11 Personal Care Homes Act";
- 12 (14) Code Section 31-8-131, relating to legislative findings and intent;
- 13 (15) Code Section 31-8-134, relating to grievance procedures;
- 14 (16) Code Section 31-8-135, relating to hearings and transfer of residents;
- 15 (17) Code Section 31-8-136, relating to actions for damages;
- 16 (18) Code Section 31-8-137, relating to temporary restraining orders;
- 17 (19) Code Section 31-8-138, relating to failure to validly license as a defense;
- 18 (20) Code Section 31-8-139, relating to mandamus;
- 19 (21) Code Section 31-8-181, relating to exempt individuals and hospitals;
- 20 (22) Code Section 31-36A-5, relating to certification by a physician;
- 21 (23) Code Section 31-36A-7, relating to petition for order by a health care facility;
- 22 (24) Code Section 35-3-34.1, relating to circumstances when exonerated first offender's
- 23 criminal record may be disclosed;
- 24 (25) Code Section 38-4-2, relating to powers of veterans' home administrators;
- 25 (26) Code Section 42-8-63.1, relating to discharges disqualifying individuals from
- 26 employment; and
- 27 (27) Code Section 49-2-14, relating to record searches for conviction data on prospective
- 28 employees.

29 **SECTION 18.**

30 This Act shall become effective only for the purposes of promulgating rules and regulations
31 thereunder upon its approval by the Governor or upon its becoming law without such
32 approval. This Act shall become effective for all purposes on January 1, 2004.

33 **SECTION 19.**

34 All laws and parts of laws in conflict with this Act are repealed.