

House Bill 1110

By: Representatives Cooper of the 41st, Benton of the 31st, Yates of the 73rd, Howard of the 121st, Lindsey of the 54th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 31 of the Official Code of Georgia Annotated, relating to health, so as to
2 revise provisions relating to penalties relative to the owning or operating of unlicensed
3 personal care homes; to authorize the Department of Community Health to provide for
4 additional criminal offenses for background checks for owners and employees of personal
5 care homes; to provide for related matters; to repeal conflicting laws; and for other purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Title 31 of the Official Code of Georgia Annotated, relating to health, is amended in Code
9 Section 31-2-9, relating to records check requirement for certain facilities, definitions, use
10 of information gathered in investigation, penalties for unauthorized release or disclosure, and
11 rules and regulations, by striking "or" at the end of subparagraph (M), by replacing the period
12 at the end of subparagraph (N) with "; or", and by adding a new subparagraph to paragraph
13 (2) of subsection (a) to read as follows:

14 "(O) Any other criminal offense as determined by the department and established by
15 rule adopted pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure
16 Act,' that would indicate the unfitness of an individual to provide care to or be in
17 contact with persons residing in a facility."

18 **SECTION 2.**

19 Said title is further amended by revising Code Section 31-7-12.1, relating to unlicensed
20 personal care homes, as follows:

21 "31-7-12.1.

22 (a) A facility shall be deemed to be an 'unlicensed personal care home' if it is unlicensed
23 and not exempt from licensure and:

24 (1) The facility is providing personal services and is operating as a personal care home
25 as those terms are defined in Code Section 31-7-12;

26 (2) The facility is held out as or represented as providing personal services and operating
 27 as a personal care home as those terms are defined in Code Section 31-7-12; or

28 (3) The facility represents itself as a licensed personal care home.

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

32 ~~(c) Except as provided in subsection (b) of this Code section, any~~ Any unlicensed personal
 33 care home shall be assessed by the department, after opportunity for hearing in accordance
 34 with the provisions of Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,'
 35 a civil penalty in the amount of \$100.00 per bed per day for each day of violation of
 36 subsection (b) of Code Section 31-7-12. The department shall send a notice by certified
 37 mail or statutory overnight delivery stating that licensure is required and ~~including a period~~
 38 ~~for obtaining licensure with an expiration date~~ the department's intent to impose a civil
 39 penalty. Such notice shall be deemed to be constructively received on the date of the first
 40 attempt to deliver such notice by the United States Postal Service. ~~For unlicensed personal~~
 41 ~~care homes which were not in existence on July 1, 1994, the civil penalty provided by this~~
 42 ~~subsection shall be calculated as beginning on the expiration date of the notice. For~~
 43 ~~unlicensed personal care homes which were in existence on July 1, 1994, the civil penalty~~
 44 ~~provided by this subsection shall be calculated as beginning on the expiration date of the~~
 45 ~~notice or on October 1, 1994, whichever is later.~~ The department shall take no action to
 46 collect such civil penalty until after opportunity for a hearing.

47 ~~(d)~~(c) In addition to other remedies available to the department, the ~~The~~ civil penalty
 48 authorized by subsection ~~(c)~~(b) of this Code section shall be doubled if:

49 (1) ~~The operator of an unlicensed personal care home refuses to seek licensure; or~~

50 (2) ~~The operator seeks licensure, the licensure application is denied, and the~~ the owner
 51 or operator continues to operate the unlicensed personal care home, after receipt of notice
 52 pursuant to subsection (b) of this Code section.

53 ~~(e)~~(d) The owner or operator of a personal care home who is assessed a civil penalty in
 54 accordance with this Code section may have review of such civil penalty by appeal to the
 55 superior court in the county in which the action arose or to the Superior Court of Fulton
 56 County in accordance with the provisions of Code Section 31-5-3.

57 ~~(f)~~(e) In addition to the sanctions authorized herein, an unlicensed personal care home
 58 shall be deemed to be negligent per se in the event of any claim for personal injury or
 59 wrongful death of a resident.

60 (f) It is declared that the owning or operating of an unlicensed personal care home in this
 61 state constitutes a nuisance dangerous to the public health, safety, and welfare. Any person

62 who owns or operates a personal care home in violation of subsection (b) of Code Section
63 31-7-12 shall be guilty of a misdemeanor."

64 **SECTION 3.**

65 Said title is further amended in Code Section 31-7-250, relating to definitions relative to
66 facility licensing and employee records checks for personal care homes, by striking "or" at
67 the end of subparagraph (O), by replacing the period at the end of subparagraph (P) with
68 "; or", and by adding a new subparagraph to paragraph (2) to read as follows:

69 "(Q) Any other criminal offense as determined by the department and established by
70 rule adopted pursuant to Chapter 13 of Title 50, the 'Georgia Administrative Procedure
71 Act,' that would indicate the unfitness of an individual to provide care to or be in
72 contact with persons residing in a facility."

73 **SECTION 4.**

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