

Senate Bill 439

By: Senators Still of the 48th, Goodman of the 8th, Burns of the 23rd and Echols of the 49th

**AS PASSED SENATE**

**A BILL TO BE ENTITLED**

**AN ACT**

1 To amend Part 2 of Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia  
2 Annotated, the "Fair Business Practices Act of 1975," so as to provide for regulation of  
3 referral agencies for assisted living communities and personal care homes; to provide for  
4 disclosures to prospective residents and acknowledgments of receipt; to require verification  
5 of licensing of assisted living communities and personal care homes by referral agencies; to  
6 provide for definitions; to provide for related matters; to repeal conflicting laws; and for  
7 other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Part 2 of Article 15 of Chapter 1 of Title 10 of the Official Code of Georgia Annotated, the  
11 "Fair Business Practices Act of 1975," is amended by adding a new Code section to read as  
12 follows:

13 "10-1-393.22.

14 (a) As used in this Code section, the term:

15 (1) 'Assisted living community' means a personal care home with a minimum of 25 beds  
16 that is licensed as an assisted living community pursuant to Code Section 31-7-3.

17 (2) 'Authorized representative' means an individual who is directly involved in the search  
18 for, is responsible for a resident entering into, or may become a party to an agreement for  
19 a resident to move into an assisted living community or personal care home.

20 (3) 'Personal care home' means any dwelling, whether operated for profit or not, which  
21 undertakes through its ownership or management to provide or arrange for the provision  
22 of housing, food service, and one or more personal services for two or more adults who  
23 are not related to the owner or administrator by blood or marriage. Such term shall not  
24 include host homes, as such term is set forth in Code Section 37-1-20.

25 (4) 'Personal services' means individual assistance with or supervision of  
26 self-administered medication and essential activities of daily living, including, but not  
27 limited to, eating, bathing, grooming, dressing, and toileting. Personal services shall not  
28 include medical, nursing, or health services; provided, however, that the department shall  
29 be authorized to grant a waiver of this provision in the same manner as provided for in  
30 Code Section 31-7-12.3 for the waiver of rules and regulations and in the same manner  
31 and only to the same extent as granted on or before June 30, 2011.

32 (5) 'Referral agency' means an individual or entity that provides referrals to an assisted  
33 living community or personal care home of a prospective resident for a fee that is  
34 collected from the assisted living community or personal care home. Such term shall not  
35 include:

36 (A) An assisted living community, personal care home, or its employees; or

37 (B) A resident or an authorized representative of a resident of an assisted living  
38 community or personal care home, regardless of whether such resident or authorized  
39 representative receives a discount or other remuneration from the assisted living  
40 community or personal care home, for referring a prospective resident.

41 (6) 'Resident' means a living individual who is seeking, considering, or receiving housing  
42 in an assisted living community or personal care home

43 (b) No later than the time that a referral agency makes a referral to an assisted living  
44 community or personal care home, such referral agency shall conspicuously disclose in a  
45 written, electronic, or verbal form to a prospective resident or his or her authorized  
46 representative:

47 (1) A description of the referral agency's services;

48 (2) The existence of any relationship between the referral agency and the assisted living  
49 community or personal care home, including common ownership or control of the  
50 residence, or financial, business, management, contractual, or familial relationships  
51 between the referral agency and the assisted living community or personal care home;

52 (3) That the referral agency receives a fee from the assisted living community or  
53 personal care home for the referral;

54 (4) That the list of assisted living communities or personal care homes provided by the  
55 referral agency may not include all options that meet the prospective resident's stated  
56 preferences and needs; and

57 (5) That the prospective resident or his or her authorized representative may at any time  
58 terminate all services provided by the referral agency, including the use of a prospective  
59 resident's personal information, by providing a written or electronic notice of termination  
60 to the referral agency.

61 (c) A referral agency shall obtain from a prospective resident or his or her authorized  
62 representative a written, electronic, or verbal acknowledgment of receipt of the disclosure  
63 required in subsection (b) of this Code section in a physical or electronic form, which shall  
64 be retained by the referral agency. Such acknowledgment shall not create any contractual  
65 or exclusive relationship between the referral agency and the resident or his or her  
66 authorized representative and shall not prohibit a resident or his or her authorized  
67 representative from independently entering into a contract with or for any other assisted  
68 living community or personal care home.

69 (d) Referral agencies shall not charge or collect a fee from an assisted living community  
70 or personal care home:

71 (1) Unless the written, electronic, or verbal acknowledgment of receipt of the disclosure  
72 required by subsection (c) of this Code section is provided to the assisted living  
73 community or personal care home and the prospective resident or his or her authorized  
74 representative; or

75 (2) In the event that more than 24 months have elapsed between the date that the referral  
76 was made and the date that the resident moved into the assisted living community or  
77 personal care home; provided, however, that, if, after the initial 12 months from the date  
78 the referral was made, the assisted living community or personal care home has  
79 confirmed in writing that the prospective resident has not entered into an agreement to  
80 move into an assisted living community or personal care home that he or she was referred  
81 to, the referral agency shall resubmit a referral to the assisted living community or  
82 personal care home. Such resubmitted referral shall reactivate such referral for the  
83 remaining 12 months.

84 (e) A prospective resident or his or her authorized representative may at any time terminate  
85 all services provided by the referral agency, including the use of a prospective resident's  
86 personal information, by providing a written or electronic notice of termination to the  
87 referral agency.

88 (f) Enforcement of this Code section shall only be by public enforcement by the Attorney  
89 General pursuant to this part and shall not be enforceable through a private right of action  
90 under Code Section 10-1-399."

91 **SECTION 2.**

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