

## **BILL ANALYSIS**

C.S.H.B. 4095  
By: Klick  
Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Interested parties have expressed a need for a process by which conflicts between local and state safety requirements for assisted living facilities may be resolved. C.S.H.B. 4095 seeks to create a more uniform regulatory environment across Texas by requiring the Health and Human Services Commission to issue technical memorandums providing interpretive guidance on certain minimum safety standards for such facilities.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 of this bill.

### **ANALYSIS**

C.S.H.B. 4095 amends the Health and Safety Code to require 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 the Assisted Living Facility Licensing Act and by HHSC rule. The bill requires any new requirement that relates to an existing standard to first appear in a technical memorandum. The bill requires HHSC to solicit comments from interested parties and experts to assist in determining which standards need to be addressed in such a memorandum and to post the memorandum on the HHSC website. The bill establishes that such a memorandum is binding and must be followed by a person conducting a life safety code survey under the Assisted Living Facility Licensing Act. These provisions expressly do not affect the HHSC rulemaking process.

C.S.H.B. 4095 establishes that the Texas Department of Licensing and Regulation (TDLR) governs the interpretation and enforcement of accessibility standards in assisted living facilities as provided by Government Code provisions relating to the elimination of architectural barriers. The bill prohibits an assisted living facility that during initial licensing passed an on-site inspection by TDLR relating to the facility's compliance with the accessibility standards from being cited by HHSC for a violation relating to those standards. The bill requires HHSC to rescind a citation relating to compliance with accessibility standards issued to a facility that has not been inspected by TDLR for such compliance on the facility's passage of the on-site inspection by TDLR.

C.S.H.B. 4095 adds a temporary provision set to expire September 1, 2021, to require the executive commissioner of HHSC 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 assisted living facility licensed under the Assisted Living Facility Licensing Act and to require

those rules to specify an edition of the Life Safety Code of the National Fire Protection Association issued on or after August 1, 2011.

C.S.H.B. 4095 establishes that a governmental unit that has the authority to adopt a building code or fire code and that adopts such a code governs the interpretation and enforcement of that building code or fire code. The bill prohibits HHSC from issuing a citation for a violation of a building code or fire code adopted by a governmental unit to an assisted living facility that presents evidence of the governmental unit's determination that the assisted living facility is compliant with the code. The bill requires HHSC, if HHSC cites an assisted living facility for a building code or fire code violation and the assisted living facility subsequently provides evidence of that determination of compliance, to rescind the citation. These provisions expressly do not restrict the authority of HHSC to issue a citation to an assisted living facility for a violation of any National Fire Protection Association codes or standards adopted under the Assisted Living Facility Licensing Act. The bill requires the executive commissioner to adopt the rules necessary to implement the bill's provisions.

### **EFFECTIVE DATE**

September 1, 2017.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 4095 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

#### INTRODUCED

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

Sec. 247.0263. LIFE SAFETY CODE TECHNICAL MEMORANDUM. (a) At least twice each year, the commission shall issue a technical memorandum providing guidance on the interpretation of minimum life safety code standards prescribed under this chapter and by commission rule. The technical memorandum must include guidance regarding any new standard proposed or adopted by the executive commissioner under Section 247.026 that is essential to the safety of the residents of an assisted living facility and not otherwise required by this chapter.

(b) The commission shall solicit comments from interested parties and experts to determine any additional minimum standards that need to be addressed in a technical memorandum issued under this section.

(c) The commission shall post the technical memorandum on the commission's Internet website.

(d) A technical memorandum issued under

#### HOUSE COMMITTEE SUBSTITUTE

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

Sec. 247.0263. LIFE SAFETY CODE TECHNICAL MEMORANDUM. (a) At least twice each year, the commission shall issue a technical memorandum providing guidance on the interpretation of minimum life safety code standards prescribed under this chapter and by commission rule. Any new requirement that relates to an existing standard must first appear in a technical memorandum.

(b) The commission shall 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) The commission shall post the technical memorandum on the commission's Internet website.

(d) A technical memorandum issued under

this section is legally binding and must be followed by a person conducting a life safety code survey under this chapter.

Sec. 247.0264. ACCESSIBILITY STANDARDS. Accessibility standards of assisted living facilities are governed by the Texas Commission of Licensing and Regulation in accordance with Chapter 469, Government Code. The executive commissioner may not adopt rules governing the accessibility standards of assisted living facilities.

SECTION 2. The heading to Section 247.027, Health and Safety Code, is amended to read as follows:  
Sec. 247.027. INSPECTIONS; WAIVER.

SECTION 3. Section 247.027, Health and Safety Code, is amended by adding Subsection (c) to read as follows:  
(c) A municipal fire marshal may grant a waiver for a violation of a life safety requirement or fire safety standard cited in the commission's final official statement of violations after an inspection conducted under this section provided the waiver will not have any adverse effect on the safety of the residents of the assisted living facilities.

SECTION 4. Subchapter B, Chapter 247, Health and Safety Code, is amended by adding Section 247.0273 to read as follows:  
Sec. 247.0273. LIFE SAFETY CODE. (a) The executive commissioner by rule shall specify an edition of the Life Safety Code of the National Fire Protection Association to

this section is binding and must be followed by a person conducting a life safety code survey under this chapter.

(e) This section does not affect the commission's rulemaking process.

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

(b) An assisted living facility that during initial licensing passed an on-site inspection by the Texas Department of Licensing and Regulation relating to the facility's compliance with the accessibility standards may not be cited by the commission for a violation relating to the accessibility standards. If the commission issues a citation relating to compliance with accessibility standards to a facility that has not been inspected by the Texas Department of Licensing and Regulation for compliance with the accessibility standards, the commission shall rescind the citation on the facility's passage of the on-site inspection by the Texas Department of Licensing and Regulation.

No equivalent provision.

No equivalent provision.

SECTION 2. Subchapter B, Chapter 247, Health and Safety Code, is amended by adding Section 247.0273 to read as follows:  
Sec. 247.0273. LIFE SAFETY CODE. (a) The executive commissioner by rule shall 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 assisted living facility licensed under this chapter.

(b) The rules adopted under Subsection (a) must specify an edition of the Life Safety Code of the National Fire Protection Association issued on or after January 1, 2012.

(c) This section expires September 1, 2021.

SECTION 5. Subchapter D, Chapter 247, Health and Safety Code, is amended by adding Section 247.071 to read as follows:

Sec. 247.071. LOCAL CERTIFICATE OF OCCUPANCY. The commission shall recognize a certificate of occupancy or other approval issued by a municipality or county indicating that a structure complies with all building, fire, and health requirements of the municipality or county, as applicable.

SECTION 6. As soon as practicable after the effective date of this Act, the executive commissioner of the Health and Human Services Commission shall adopt the rules necessary to implement the changes in law made by this Act.

SECTION 7. This Act takes effect September 1, 2017.

be used in establishing the life safety requirements for an assisted living facility licensed under this chapter.

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

(c) This section expires September 1, 2021.

SECTION 3. Subchapter D, Chapter 247, Health and Safety Code, is amended by adding Section 247.071 to read as follows:

Sec. 247.071. LOCAL APPROVAL OF ASSISTED LIVING FACILITY. (a) In this section, "governmental unit" means a municipality, county, or other political subdivision of the state that has the authority to adopt a building code or fire code.

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

(c) The commission may not issue a citation for a violation of a building code or fire code adopted by a governmental unit to an assisted living facility that presents evidence of the governmental unit's determination that the assisted living facility is compliant with the code. If the commission cites an assisted living facility for a building code or fire code violation and the assisted living facility subsequently provides the evidence described by this subsection, the commission shall rescind the citation.

(d) Subsection (c) does not restrict the authority of the commission to issue a citation to an assisted living facility for a violation of any National Fire Protection Association codes or standards adopted under this chapter.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.