

By: Madden

H.B. No. 2392

A BILL TO BE ENTITLED

AN ACT

relating to escrow fees required for the construction and leasing of certain health facilities.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 246.002, Health and Safety Code, is amended by amending Subdivision (6) and adding Subdivision (8-a) to read as follows:

(6) "Facility" means each separate, administratively independent [a] place in which a person provides continuing care to an individual.

(8-a) "Marketing activities" means activities undertaken by a provider to secure continuing care contracts for occupancy of a facility by residents.

SECTION 2. Section 246.073(a), Health and Safety Code, is amended to read as follows:

(a) Except as provided by Subsection (b), an escrow agent shall release an entrance fee to the provider if:

(1) a minimum of 50 percent of the number of living units in the facility have been reserved for residents, as evidenced by:

(A) uncanceled executed continuing care contracts with those residents; and

(B) for each continuing care contract:

(i) the receipt by the agent of an entrance

1 fee deposit [~~deposits~~] of at least 10 percent of the entrance fee  
2 designated in the [~~each continuing care~~] contract; or

3 (ii) a specific living unit assigned to a  
4 resident and available for occupancy;

5 (2) the total amount of aggregate entrance fees  
6 received or receivable by the provider under binding continuing  
7 care contracts, the anticipated proceeds of any first mortgage loan  
8 or other long-term financing commitment described under  
9 Subdivision (3), and funds from other sources in the actual  
10 possession of the provider are equal to or more than the total  
11 amount of:

12 (A) 90 percent of the aggregate cost of  
13 constructing or purchasing, equipping, and furnishing the  
14 facility, or in the case of a leased facility, 90 percent of the  
15 total first year lease;

16 (B) 90 percent of the funds estimated, in the  
17 statement of anticipated source and application of funds included  
18 in the disclosure statement, to be necessary to cover initial  
19 losses of the facility; and

20 (C) 90 percent of the amount of any loan reserve  
21 fund escrow required to be maintained by the provider under Section  
22 246.077; and

23 (3) a commitment has been received by the provider for  
24 any permanent mortgage loan or other long-term financing described  
25 in the statement of anticipated source and application of funds  
26 included in the current disclosure statement and any conditions of  
27 the commitment before disbursement of funds have been substantially

1 satisfied, other than completion of the construction or closing on  
2 the purchase of the facility, [✓] and:

3 (A) if construction of the facility has not been  
4 substantially completed:

5 (i) all necessary government permits or  
6 approvals have been obtained;

7 (ii) the provider and the general  
8 contractor responsible for construction of the facility have  
9 entered into a maximum price contract;

10 (iii) a recognized surety authorized to do  
11 business in this state has executed in favor of the provider a bond  
12 covering faithful performance of the construction contract by the  
13 general contractor and the payment of all obligations under the  
14 contract;

15 (iv) the provider has entered a loan  
16 agreement for an interim construction loan in an amount that, when  
17 combined with the amount of entrance fees in escrow plus the amount  
18 of funds from other sources in the actual possession of the  
19 provider, equals or exceeds the estimated cost of constructing,  
20 equipping, and furnishing the facility;

21 (v) the lender has disbursed not less than  
22 10 percent of the amount of the construction loan for physical  
23 construction or completed site preparation work; and

24 (vi) the provider has placed orders at firm  
25 prices for not less than 50 percent of the value of items necessary  
26 for equipping and furnishing the facility in accordance with the  
27 description in the disclosure statement, including any

1 installation charges; or

2 (B) if construction or purchase of the facility  
3 has been substantially completed:

4 (i) an occupancy permit covering the living  
5 unit has been issued by the local government that has authority to  
6 issue the permit; and

7 (ii) if the entrance fee applies to a living  
8 unit that has been previously occupied, the living unit is  
9 available for occupancy by the new resident.

10 SECTION 3. Subchapter D, Chapter 246, Health and Safety  
11 Code, is amended by adding Section 246.0735 to read as follows:

12 Sec. 246.0735. CONTINUING RELEASE OF ESCROW. (a) After the  
13 initial release of an entrance fee by an escrow agent for a specific  
14 facility, the board shall authorize an escrow agent to continue to  
15 release escrowed entrance fees for that facility to the provider  
16 without further proof of satisfying the requirements of Section  
17 246.073 if:

18 (1) the provider provides a monthly report to the  
19 department on marketing activities for living units of the  
20 facility; and

21 (2) the provider immediately informs the department of  
22 any problems, issues, or irregularities encountered in its  
23 marketing activities for the facility.

24 (b) If the provider fails to meet the requirements of  
25 Subsection (a), the board may require the provider to satisfy the  
26 requirements of Section 246.073 before the board authorizes the  
27 escrow agent to continue releasing escrowed entrance fees to the

1 provider.

2 (c) The board shall adopt rules to implement this section.

3 SECTION 4. This Act takes effect immediately if it receives  
4 a vote of two-thirds of all the members elected to each house, as  
5 provided by Section 39, Article III, Texas Constitution. If this  
6 Act does not receive the vote necessary for immediate effect, this  
7 Act takes effect September 1, 2007.