

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Appropriations Subcommittee on Health and Human Services

BILL: CS/SB 394

INTRODUCER: Appropriations Subcommittee on Health and Human Services and Senator Gibson

SUBJECT: Licensing of Facilities that offer Health and Human Services

DATE: March 18, 2014 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Favorable
2.	Brown	Pigott	AHS	Fav/CS
3.			AP	

I. Summary:

CS/SB 394 redefines the term “child care” to remove from statute the stipulation that child care is delivered only when payment is made for services rendered. The bill also removes the payment stipulation from the definition of “family day care home.” The bill redefines “child care facility” to provide that a child care center or child care arrangement meets the definition by providing child care for five or more children unrelated to the operator rather than for six or more.

The bill requires a family day care home to conspicuously display its license or registration in the common area of the home. The bill requires a large family child care home to permanently post its license in a conspicuous location visible to parents, guardians, and the Department of Children and Families (DCF).

The bill provides that family day care homes not subject to licensing must provide the DCF with the identity of the competent adult who has met the DCF’s screening and training requirements to serve as a designated substitute for the operator in an emergency. The bill provides that family day care homes not subject to licensing must provide proof of screening and background checks for the operator, child care personnel, and the designated substitute.

The bill repeals the \$100 cap on the licensure fee for child care facilities. Finally, the bill amends statutory provisions related to restrictions on the advertising of certain facilities and homes.

The bill is estimated to result in small increases in revenue for the state and certain local governments due to increased licensure fees and result in an insignificant increase in the DCF’s workload that can be absorbed within existing resources.

II. Present Situation:

Child care can be provided in many different settings in exchange for payment. There are also settings that allow for the provision of child care services without payment, such as public and nonpublic schools, summer camps with children as full-time residents, summer day camps, Bible schools, and care offered at a public lodging establishment solely for guests of the public lodging establishment. Statutory provisions governing child care and child care facilities are found in ss. 402.301-402.319, F.S.

According to the U.S. Department of Health & Human Services, in 2011, licenses were issued to approximately 6,750 child care facilities, 3,327 family child care homes, and 412 group child care homes in Florida.¹ The definition of “child care” is the care, protection, and supervision of a child for a period of less than 24 hours a day on a regular basis that supplements parental care, enrichment, and health supervision for the child, in accordance with the child’s needs, in exchange for a payment, fee, or grant.²

Types of Facilities

“Child care facility” is defined as a child care center or child care arrangement for providing child care for more than five children unrelated to the operator in exchange for a payment, fee, or grant for any of the children receiving care, regardless of where the facility is operated and whether or not it is operated for profit.³ The terms “child care center” and “child care arrangement” are not defined, and the statutory definition of “child care facility” does not specify whether a home or residence may qualify as a child care facility. Child care facilities are required to be licensed, subject to annual renewal.⁴

The bill deals with child care facilities and the following types of “homes:”

- Family day care homes: A family day care home is an occupied residence in which child care is regularly provided for children from at least two unrelated families and which receives a payment, fee, or grant for any of the children receiving care, regardless of whether or not it is operated for profit. A family day care home is restricted to providing care for a specified capacity of children depending on their ages.⁵ A family day care home is required to obtain a license from the Department of Children and Families (DCF) only if the home is required to be licensed by the county in which the home is situated. Homes that are not required to be licensed are required to register annually with the DCF and provide certain information, including proof of screening and background checks.⁶ However, the statute does not identify who is subject to the screenings or background checks.
- Large family child care homes: A large family child care home is an occupied residence in which child care is regularly provided for children from at least two unrelated families,

¹ U.S. Department of Health & Human Services, *Administration for Children*, available at <https://childcare.gov/resource/number-licensed-child-care-facilities-2011> (follow attachment Number of Child Care Facilities in 2011) (last visited Jan. 24, 2014).

² Section 402.302(1), F.S.

³ Section 402.302(2), F.S.

⁴ Section 402.308(1), F.S.

⁵ Section 402.302(8), F.S.

⁶ Section 402.313(1), F.S.

which receives a payment, fee, or grant for any of the children receiving care, regardless of whether or not it is operated for profit, and which has at least two full-time child care personnel on the premises during the hours of operation, one of whom must be the owner or an occupant of the residence. In order to become a large family child care home, a home must first have operated as a licensed family day care home for two years, with an operator who has had a child development associate credential or its equivalent for one year. A large family child care home is restricted to providing care for a specified capacity of children depending on their ages,⁷ and is required to obtain licensure from the DCF.⁸

Licensure and Registration Fees

The DCF must collect a fee for any license it issues for a child care facility, family day care home, or large family child care home.⁹ The fee for a child care facility licensed under s. 402.305, F.S., is \$1 per child based on the licensed capacity of the facility, with a minimum fee of \$25 per facility and a maximum fee of \$100 per facility.¹⁰ The fee is \$25 for a family day care home subject to registration,¹¹ and the fee is \$50 for a family day care home subject to licensure.¹² The fee is \$60 for a licensed large family child care home.¹³

Restrictions on Advertising

Section 402.318, F.S., provides that a person¹⁴ may not advertise a child care facility, a family day care home, or a large family child care home without including within the advertisement the state or local agency license number or registration number of the facility or home. A violation of this prohibition is a misdemeanor of the first degree.¹⁵

Exemptions

Section 402.316, F.S., provides that certain child care facilities are exempt from ss. 402.301-402.319, F.S., except for the requirements regarding screening of child care personnel.¹⁶ An exempt facility is a child care facility that is an integral part of a church school or parochial school conducting regularly scheduled classes, courses of study, or educational programs accredited by, or by a member of, an organization that publishes and requires compliance with its standards for health, safety, and sanitation.

⁷ Section 402.302(11), F.S.

⁸ Section 402.3131(1), F.S.

⁹ Section 402.315(3), F.S.

¹⁰ Section 402.315(3)(a), F.S.

¹¹ Section 402.315(3)(b), F.S.

¹² Section 402.315(3)(c), F.S.

¹³ Section 402.315(3)(d), F.S.

¹⁴ Section 402.318, F.S., specifies that “person” is defined in s. 1.01(3), F.S., which provides that “person” includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

¹⁵ Section 402.318, F.S.

¹⁶ Section 402.305(2)(a), F.S., provides minimum standards regarding child care personnel for licensed child care facilities, including good moral character based upon screening. The required screening must be conducted using level 2 standards as provided in ch. 435, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 402.302, F.S., to remove from statute the stipulation that “child care” is delivered only when payment is made for services rendered. The bill also amends the definition of “child care facility” to provide that a child care center or child care arrangement qualifies as a child care facility by providing child care to five or more children, instead of six or more, among other stipulations in current law.

The bill also removes from the definition of “family day care home” the stipulation that a payment, fee, or grant must be provided in exchange for child care services. The Department of Children and Families reports that this statutory amendment will address the problem of a small number of providers and parents in family day care home settings who accept payment for child care services but fail to report the payment, thereby circumventing the statutory requirements to be regulated either by licensure or registration.¹⁷

Section 2 amends s. 402.313(1), F.S., to require that each licensed or registered family day care home must conspicuously display its license or registration in the common area of the home. Under the bill, a family day care home required to register must provide – in addition to the currently required information – proof of a written plan to identify a competent adult who has met DCF’s screening and training requirements to serve as a designated substitute for the operator of the home in an emergency. The bill also specifies that the proof of screening and background checks required of homes in the registration process must pertain to the operator, child care personnel as defined in s. 402.313(3), F.S.,¹⁸ and the designated substitute.

Section 3 amends s. 402.3131, F.S., to require a large family child care home to permanently post its license in a conspicuous location that is visible by all parents and guardians and the DCF.

Section 4 amends s. 402.315(3), F.S. to remove the \$100 cap on licensure fees for child care facilities, which will result in the fee being limited only by a facility’s licensed capacity, at a fee of \$1 per child.

Section 5 amends s. 402.318, F.S., to provide that a person advertising a child care facility that is exempt from licensing requirements under s. 402.316, F.S., is subject to the advertising restrictions contained in s. 402.318, F.S. The bill also specifies that the term “advertisement” includes, but is not limited to, the marketing of child care services to the public on vehicles, printed materials, and electronic media such as Internet sites, radio, and television.

Section 6 of the bill provides an effective date of July 1, 2014.

¹⁷ The Department of Children and Families, *2014 Agency Legislative Bill Analysis of SB 394*, January 2, 2014, on file with the Senate Appropriations Subcommittee on Health and Human Services.

¹⁸ Section 402.313(3), F.S., provides that child care personnel in family day care homes are subject to specified screening provisions. For those screening purposes, “child care personnel” includes any member over the age of 12 years of a family day care home operator’s family, or persons over the age of 12 years residing with the operator in the family day care home. Members of the operator’s family, or persons residing with the operator, who are between the ages of 12 years and 18 years are not required to be fingerprinted but must be screened for delinquency records.

IV. Fiscal Impact Statement:**A. Tax/Fee Issues:**

CS/SB 394 will require some family day care homes that are currently unregulated to pursue licensure or registration and pay fees identical to those currently paid by homes already required to register or be licensed.

The elimination of the \$100 cap on licensure fees paid by child care facilities will impact facilities with a capacity of more than 100 children when seeking or renewing licensure. The DCF reports that it regulates 1,674 facilities with a capacity greater than 100.

B. Private Sector Impact:

New costs will be imposed on some currently unregulated family day care homes as those homes will be required to meet applicable state child care standards.

C. Government Sector Impact:***State Government***

The DCF estimates that additional state revenue collected due to the elimination of the \$100 cap on child care facility licensure fees will be \$115,603 annually.¹⁹

The DCF estimates that the number of child care arrangements that are providing child care services in a family day care home setting but are avoiding licensure or registration by failing to report compensation, is small.²⁰ Therefore, the administrative functions required of the DCF under CS/SB 394 are expected to be absorbed within existing resources.

Local Government

The DCF reports that five counties function as local licensing agencies for child care facilities, and the DCF estimates that the additional local revenue collected due to the elimination of the \$100 cap on child care facility licensure fees will be \$72,725 annually.²¹

V. Technical Deficiencies:

None.

VI. Related Issues:

Section 5 of the bill provides that a person may not advertise a child care facility that is exempt from licensing requirements under s. 402.316, F.S., without including within the advertisement the facility's "exemption number." However, there is no provision in statute or the bill for an

¹⁹ Supra, note 17.

²⁰ Supra, note 17.

²¹ Supra, note 17.

exempt facility to be issued an “exemption number.” Section 402.316(3), F.S., provides that an exempt facility wishing to be included under ss. 402.301-402.319, F.S., may do so by submitting notification to the DCF, but there is no statutory requirement for an exempt facility to notify the DCF for any reason, including notification that the facility is operating under the exemption. The DCF reports that exempt facilities routinely provide notification on a voluntary basis that they are operating under the exemption. Under those conditions, the DCF will provide an exemption number, but exempt facilities are not statutorily required to provide notification. The provisions in Section 5 of the bill could be interpreted to require that before an exempt facility may legally advertise, it must notify the DCF that it is operating under the exemption and be granted an exemption number, which the facility is not required to obtain under current law.

VII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 402.302, 402.313, 402.3131, 402.315, and 402.318.

VIII. Additional Information:

A. Committee Substitute – Statement of Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

Recommended CS by Appropriations Subcommittee on Health and Human Services on March 17, 2014:

- The CS removes from the bill a change to the definition of “child care facility” that would eliminate the stipulation that payment must be exchanged for the provision of child care services in order for a child care center or child care arrangement to qualify as a child care facility.
- The CS redefines “family day care home” to eliminate the stipulation that payment must be exchanged for the provision of child care services in order for an occupied residence to qualify as a family day care home.
- The CS removes “each household member” from the list of persons for whom a registered family day care home must provide proof of screening and background checks. The CS replaces “each household member” with certain “child care personnel” in the list.

B. Amendments:

None.