

STORAGE NAME: h0333a.cf

DATE: March 19, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
CHILDREN & FAMILIES
ANALYSIS**

BILL #: HB 333

RELATING TO: Child Care Facilities

SPONSOR(S): Representative Effman

COMPANION BILL(S): SB 750 (Identical)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) Family Law and Children YEAS 6 NAYS 0
- (2) CHILDREN & FAMILIES
- (3) Crime and Punishment
- (4) Criminal Justice Appropriations
- (5)

I. SUMMARY:

The bill creates the "Jeremy Fiedelholz Safe Day Care Act."

The bill adds to the actions that are a first degree misdemeanor, misrepresentation regarding the licensure or operation of a child care facility or family day care home including, but not limited to, misrepresentation as to the number of children in the facility or home, the part of the facility or home designated for child care, the qualifications of child care personnel, whether personnel have the statutorily required training, and whether the facility or home complies with statutory screening requirements.

The bill includes family day care homes in the types of facilities that must comply with certain provisions of the law.

The bill creates a second degree felony offense if a child suffers a serious injury or death because of negligence or an intentional act by child care personnel and misrepresentation led to the parents placing the child in the custody of child care personnel in a child care facility or a family day care home.

There is no fiscal impact from the bill.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

It is the stated intent of the Legislature to protect the health, safety, and well-being of the children of the state and to promote their emotional and intellectual development and care. Toward that end, the Legislature has reiterated its goals in that regard as they specifically relate to child care facilities in s. 402.301, Florida Statutes:

It is the purpose of ss. 402.301- 402.319 to establish statewide minimum standards for the care and protection of children in child care facilities, to ensure maintenance of these standards, and to approve county administration and enforcement to regulate conditions in such facilities through a program of licensing.

Child care facilities: A “**child care facility**” is defined in s. 402.302(2), F.S., as any child care center or child care arrangement which provides child care for more than five children unrelated to the operator and which receives a payment, fee, or grant for any of the children receiving care, wherever operated, and whether or not operated for profit. Public and nonpublic schools, summer camps, summer day camps, and bible schools are not included in the definition.

Child care personnel: “**Child care personnel**” is defined in s. 402.302(3), F.S., as all owners, operators, employees, and volunteers working in a child care facility. For purposes of screening, the term includes any member over the age of 12 years, residing with a child care facility operator if the child care facility is located in or adjacent to the home of the operator or if the family member of the child care facility operator has any direct contact with the children in the facility during its hours of operation. Members of the operator’s family or persons residing with the operator who are between the ages of 12 and 18 years shall not be required to be fingerprinted but shall be screened for delinquency records. A volunteer who assists on an intermittent basis for less than 40 hours per month is not included in the term “personnel” for the purposes of screening and training, provided that the volunteer is under direct and constant supervision by a person who meets the personnel requirements.

Family day care homes: A “**family day care home**” is defined in s. 402.302(7), F.S., as 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, whether or not operated for profit. A family day care home is allowed to provide care for specified groups of children, designated by age.

Licensing standards: Section 402.305, F.S., sets forth **the licensing standards for child care facilities**. The state is required to establish licensing standards that each licensed child care facility must meet regardless of the origin or source of the fees used to operate the facility or the type of children served by the facility. The minimum standards include requirements for:

- personnel;
- minimum staff credentials;
- staff-to-children ratios;
- physical facilities;
- square footage per child;
- sanitation and safety;
- nutritional practices;
- admissions and record keeping;
- transportation safety;
- access;
- child discipline;
- plan of activities;
- urban child care facilities;
- transition periods; and
- evening and weekend child care.

Counties whose licensing standards meet or exceed state minimum standards may designate a local licensing agency to license child care facilities in the county or contract with the Department of Children and Family Services to delegate the administration of state minimum standards in the

county to the department. Child care facilities in any county whose standards do not meet or exceed state minimum standards shall be subject to licensing by the department under state minimum standards. Every child care facility in the state is required to have a license which shall be renewed annually. Pursuant to s. 402.309, F.S. provisional licenses may be granted to applicants who are unable to conform to all the standards.

The department or local licensing agency may deny, suspend, or revoke a license or impose an administrative fine not to exceed \$100 per violation, per day for violations of ss. 402.301 - 402.319, F.S. Where the violation could or does cause death or serious harm, the administrative fine may be imposed not to exceed \$500 per violation per day. If a child care facility is operating without a license, the department or local licensing agency is authorized to seek an injunction in the circuit court where the facility is located to enjoin continued operation of such facility.

Family day care homes are required to be licensed if they are presently being licensed under an existing county licensing ordinance, if they are participating in the subsidized child care program, or if the board of county commissioners passes a resolution that family day care homes be licensed. If no county authority exists for the licensing of a family day care home, the department shall have the authority to license family day care homes under contract. If not subject to license, family day care homes shall register annually with the department. (s. 402.313, F.S.)

A family day care home may volunteer to be licensed under the provisions of this act. The department or local licensing agency may impose an administrative fine, not to exceed \$100, for failure to comply with licensure or registration requirements. Rule 65C-20.002, Florida Administrative Code, sets forth the standards for family day care homes. The rule includes requirements for background screening, training, minimum age, emergency arrangements, health of operators and household members, and handicapped children.

Penalties: Section 402.319, F.S., sets forth the **penalties** for violation of the licensure or operation of child care facilities or family day care homes. It is a **misdemeanor of the first degree** for any person willfully, knowingly, or intentionally to:

- (1) Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any application for voluntary or paid employment or licensure, a material fact used in making a determination as to such person's qualifications to be an owner, operator, employee, or volunteer in a child care facility or other child care program.
- (2) Operate or attempt to operate a child care facility without having procured a license as required by this act.
- (3) Operate or attempt to operate a child care facility under a license that is suspended, revoked, or terminated.
- (4) Represent, by act or omission, a child care facility to be duly licensed pursuant to this act without being so licensed.
- (5) Operate or attempt to operate a family day care home without a license or without registering with the department, whichever is applicable.

A first degree misdemeanor is punishable by a definite term of imprisonment not to exceed one year pursuant to s. 775.082, F.S. In addition to any punishment, a person who has been convicted of a first degree misdemeanor may be fined \$1,000.

A second degree felony is punishable by a term of imprisonment not to exceed fifteen years. In addition to any punishment, a person who has been convicted of a second degree felony may be fined \$10,000.

Current law does not require child care facilities or family day care homes to carry general liability insurance. Subsidized child care programs are provided coverage through the Division of Risk Management of the Department of Insurance pursuant to s. 402.3015(6)(f).

B. EFFECT OF PROPOSED CHANGES:

HB 333 amends s. 402.319, Florida Statutes, to eliminate the requirement that the act be done willfully or intentionally, to add to the actions constituting a first degree misdemeanor the failure to disclose all information required under ss. 402.301 - 402.318, and to include family day care homes in the types of facilities that must comply with the provisions of the law.

The bill also adds to the actions that constitute a first degree misdemeanor:

To knowingly make any other representation, either by act or omission, regarding the licensure or operation of a child care facility or family day care home to a parent or guardian who has a child placed in the facility or is inquiring as to placing a child in the facility, or to a representative of the licensing authority, or to a representative of a law enforcement agency, including, but not limited to, any misrepresentation as to:

- the number of children at the child care facility or family day care home;
- the part of the facility or home designated for child care;
- the qualifications or credentials of the child care personnel;
- whether the facility or home complies with the screening requirements of s. 402.305; or
- whether child care personnel have the training as required by s. 402.305.

The bill increases the penalty to a felony of the second degree in the event that great bodily harm, permanent disfigurement, permanent disability, or death results from a violation of this section.

HB 333 amends s. 921.0022, Florida Statutes, to add misrepresentation and negligence or an intentional act by child care personnel in child care facilities or family day care homes resulting in great bodily harm, permanent disfigurement, permanent disability, or death to a child to the offense severity ranking chart as a felony of the second degree.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

No.

5. Family Empowerment:

a. If the bill purports to provide services to families or children:

(1) Who evaluates the family's needs?

N/A

(2) Who makes the decisions?

N/A

(3) Are private alternatives permitted?

N/A

(4) Are families required to participate in a program?

N/A

(5) Are families penalized for not participating in a program?

N/A

b. Does the bill directly affect the legal rights and obligations between family members?

No.

c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 402.319 and 921.0022, Florida Statutes.

E. SECTION-BY-SECTION ANALYSIS:

Section 1: Names this act the "Jeremy Fiedelholz Safe Day Care Act."

Section 2: Amends s. 402.319, Florida Statutes, to eliminate the requirement that the act be done willfully or intentionally. It adds to the provisions that it is a first degree misdemeanor:

To knowingly make any other representation, either by act or omission, regarding the licensure or operation of a child care facility or family day care home to a parent or guardian who has a child placed in the facility or is inquiring as to placing a child in the facility, or to a representative of the licensing authority, or to a representative of a law enforcement agency, including, but not limited to, any misrepresentation as to:

- the number of children at the child care facility or family day care home;
- the part of the facility or home designated for child care;

- the qualifications or credentials of the child care personnel;
- whether the facility or home complies with the screening requirements of s. 402.305; or
- whether child care personnel have the training as required by s. 402.305.

Adds family day care homes to the types of facilities that must comply with the law.

Increases the penalty to a felony of the second degree in the event that great bodily harm, permanent disfigurement, permanent disability, or death results from a violation of this section.

Section 3: Amends s. 921.0022, Florida Statutes, to add misrepresentation and negligence or an intentional act by child care personnel in child care facilities or family day care homes resulting in great bodily harm, permanent disfigurement, permanent disability, or death to a child to the offense severity ranking chart as a felony of the second degree.

Section 4: Provides an effective date of October 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

3. Effects on Competition, Private Enterprise and Employment Markets:

N/A

D. FISCAL COMMENTS:

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

This bill does not require counties or municipalities to spend funds or to take any action requiring the expenditure of funds.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

None.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

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