

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1199 Child Care Health and Safety
SPONSOR(S): Ausley
TIED BILLS: None. **IDEN./SIM. BILLS:** SB 1600

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Future of Florida's Families Committee		Davis	Collins
2) Health Care Appropriations Committee			
3) Health & Families Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

The bill revises provisions to authorize the background screening of volunteers in child care settings regulated by the Department of Children and Families (department). The bill provides for volunteers who meet the definition of "child care personnel" to be subject to the same level of screening as other child care personnel.

The bill revises provisions relating to the department's enforcement authority in registered family day care homes to provide the same escalating enforcement options available in other child care settings.

Finally, the bill provides the department with specific rulemaking authority relating to safety standards in licensed family day care homes.

According to the department, there is no fiscal impact anticipated for the department to implement these changes. Consistent enforcement actions are potentially a cost-saving measure, preventing costly injunctive relief actions which are the only current remedy for removing the registration of a family day care home.

The bill provides an effective date of July 1, 2005.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government: The Department of Children and Families will be granted specific rulemaking authority relating to safety standards in licensed family day care homes.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

The Department of Children and Families is responsible for administering child care regulations in Florida, unless a county has chosen to assume this function pursuant to s. 402.306, F.S. The child care settings to which statutory child care regulation applies are as follows:

- Child care facilities provide child care to more than five children who are unrelated to the operator and for whom a payment is received for the care.
- Family day care homes are residences where child care is provided for a fee for up to ten children, depending on their ages, from at least two unrelated families.
- Large family child care homes are residences where child care is provided for a fee for up to 12 children from at least two unrelated families, depending on the ages of the children.

Licensing Requirements

Child care facilities are required to be licensed unless exempted. Pursuant to s. 402.313, F.S., family day care homes are required to be licensed only under the following circumstances:

- County licensing ordinances require licensure,
- The home is participating in the subsidized child care program, or
- The Board of County Commissioners has passed a resolution requiring licensure.

Family day care homes not licensed must register annually with DCF, providing certain information and complying with statutory requirements such as background screening, training, and maximum number of children in care. Large family child care homes are required to be licensed.

According to the Department of Children in Families, current law contains the following conflicting language relating to the background screening of volunteers in a child care setting:

- Pursuant to s. 402.302(3), F.S., volunteers who work more than 40 hours per month are considered "child care personnel" for purposes of background screening. Pursuant to s. 402.305(2), F.S., "child care personnel" are subject to a Level 2 background screening.
- However, s. 402.302(13), F.S., states that screening for volunteers that meet the definition of child care personnel only includes a local criminal records check and a statewide criminal records correspondence check (not an employment history check and federal criminal records check).

Although the law currently provides a series of enforcement options for non-compliance with uniform child care standards in licensed child care facilities, licensed family day care homes, and large family child care homes, the department currently has very limited enforcement authority with regard to registered family day care homes. Enforcement authority in registered family day care homes is currently limited to either a \$100 fine or injunctive action, without the additional series of escalating enforcement actions available regarding other types of providers (for example, suspension or revocation of a registration).

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 if such facility is being operated without a license or registration (s. 402.312, F.S.). Other grounds for seeking an injunction to close a child care facility, family day care home, or a large family child care home are that:

- There is any violation of the standards applied under ss. 402.301-402.319, F.S., which threatens harm to any child in a child care facility, family day care home, or a large family child care home.
- A registrant has repeatedly violated the standards provided for under ss. 402.301-402.319, F.S.
- A child care facility, family day care home, or a large family child care home continues to have children in attendance after the closing date established by the department or the local licensing agency.

The pursuit of an injunction to close is quite often deemed cost prohibitive by district legal staff. Section 402.310, F.S., relating to escalating administrative actions (fines, suspension, and revocation) applies specifically to licensed child care providers. As a result, the department's ability to timely and consistently assure the safety of children in care in registered family day care homes is more limited than in other child care settings. This has been a long-standing problem identified by district legal offices, the General Counsel of the department, the child care program office, and child care field staff.

Administrative Fines

The law currently includes the following provisions relating to fines for non-compliance with child care standards. For licensed facilities and licensed family day care homes: Denial, suspension, or revocation of a license or imposition of an administrative fine not to exceed \$100 per violation, per day, for the violation of any provision of ss. 402.301-402.319 or rules adopted thereunder. (s. 402.310(1)(a), F.S.) In addition, "where the violation could or does cause death or serious harm, the department or local licensing agency may impose an administrative fine, not to exceed \$500 per violation per day." (s. 402.310(1)(a), F.S.) Licensed or registered family day care homes according to s. 402.313(1)(b), F.S., authorizes the department or local licensing agency to "impose an administrative fine, not to exceed \$100, for failure to comply with licensure or registration requirements." According to the department, this conflicts with s. 402.310(1)(a), F.S., relating to licensed child care providers. Large family child care homes according to s. 402.3131(1)(a), F.S., authorizes the department or local licensing agency to "impose an administrative fine, not to exceed \$1,000, for failure to comply with licensure requirements."

Safety Standards in Licensed Family Day Care Homes

The department currently has the authority to adopt rules relating to minimum safety standards for licensed child care facilities, but not licensed family day care homes. The department's rule authority relating to family day care homes is limited to "minimum health standards" rather than "health and safety standards." According to the department, this inconsistency leaves children in family day care homes more vulnerable to the risk (or the potential risk) of harm than children being cared for in other licensed child care settings.

Effect:

The bill revises s. 402.302(13), F.S., relating to the background screening of volunteers. The bill provides for volunteers who meet the definition of "child care personnel" to be subject to the same level of screening as other child care personnel. According to the department, the purpose of this change is to remove conflicting language in the statute in order to clarify its application.

The bill revises s. 402.310, F.S., relating to disciplinary actions; hearings upon denial, suspension, or revocation of a license; and administrative fines to include registered family day care homes. This revision provides the department the authority necessary to enforce (through consistent fines and the ability to revoke or suspend registration) the minimal standards for registered family day care homes and ensure greater protection for children in care.

The bill revises ss. 402.313 and 402.3131, F.S., relating to the maximum amount of administrative fines to be imposed on child care centers. The purpose of this change is to provide consistent fines for all provider types. The proposed revision will provide for the imposition of a maximum of \$100 per violation, per day, regardless of the type of child care setting. This is consistent with the guidelines in place for fines currently imposed upon licensed child care centers.

The bill revises s. 402.313(13), F.S., regarding licensed family day care homes. This change provides rulemaking authority regarding minimum safety standards. Current law limits the department's authority to "minimum health standards." This change includes health and safety standards which will allow the department to correct the inconsistency in the law that allows children in family day care homes to be at risk, "to more potential risk," than children in licensed child care settings.

According to the department, these proposed changes are consistent with department and program goals, and are important for the continued protection of children in child care. The proposed changes will provide consistent enforcement measures and safety standards for all child care arrangements to protect the health and safety of all children in care, regardless of the type of setting.

C. SECTION DIRECTORY:

Section 1. Amends s. 402.302, F.S., authorizing the background screening of child care volunteers.

Section 2. Amends 402.310, F.S., providing for the registration of a family day care home to be suspended or revoked; and providing that a consistent administrative fine may be imposed for all provider types.

Section 3. Amends s. 402.313, F.S., removing conflicting language relating to an administrative fine.

Section 4. Amends s. 402.3131, F.S., removing conflicting language relating to an administrative fine.

Section 5. Provides an effective date of July 1, 2005.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

See Fiscal Comments section.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill revises the fee/fine structure relating to non-compliance with child care standards. As a result, **licensed and registered family day care homes** would be potentially subject to an increased administrative fine (\$100 per violation, per day—consistent with guidelines for fines imposed upon licensed facilities and family day care homes—rather than the \$100 limit established by current statute). **Large family child care homes** would be potentially subject to either a reduced or increased administrative fine, depending on the length of the violation (\$100 per violation, per day—consistent with guidelines for fines imposed upon licensed family day care homes—rather than the \$1000 limit established by current statute).

Volunteers will bear the cost of the background screening.

D. FISCAL COMMENTS:

According to the department, there is no fiscal impact anticipated for the department to implement these changes. Consistent enforcement actions are potentially a cost-saving measure, preventing costly injunctive relief actions which are the only current remedy for removing the registration of a family day care home.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

None.

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditures of funds. The bill does not reduce the percentage of a state tax shared with counties or municipalities. The bill does not reduce the authority that municipalities have to raise revenue.

2. Other:

None.

A. RULE-MAKING AUTHORITY:

The department currently has the authority to adopt rules relating to minimum safety standards for licensed child care facilities, but not licensed family day care homes. The department's rule authority relating to family day care homes is limited to "minimum health standards" rather than "health and safety standards."

B. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES