

By Senator Wilson

33-25-05

1                                   A bill to be entitled  
2           An act relating to family day care homes;  
3           creating s. 402.31302, F.S.; providing that a  
4           deed restriction, covenant, or similar binding  
5           agreement running with the land may not  
6           prohibit the use of a residential dwelling as a  
7           family day care home; providing an exception  
8           and a burden of proof; specifying certain  
9           accommodations and real property that are  
10          exempt from the act; providing legislative  
11          intent; providing an effective date.

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13 Be It Enacted by the Legislature of the State of Florida:

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15           Section 1. Section 402.31302, Florida Statutes, is  
16 created to read:

17           ~~402.31302 Family day care homes; deed restrictions.--~~

18           (1) The operation of a family day care home, as  
19 defined in s. 402.302 and licensed under s. 402.313, in a  
20 residential dwelling constitutes a valid residential use for  
21 the purpose of any deed restriction, covenant, or other  
22 similar binding agreement running with the land. A deed  
23 restriction, covenant, or similar binding agreement running  
24 with the land may not be interpreted so that the operation of  
25 a family day care home is considered a business, commercial  
26 activity, or trade and does not prohibit the use of a  
27 residential dwelling as a family day care home unless  
28 prohibiting the use is necessary to preserve the health,  
29 safety, and welfare of the other residents in the  
30 neighborhood.

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1           (2) The burden of proof is on the party seeking to  
2 enforce the deed restriction to demonstrate, on a case-by-case  
3 basis, that the restriction is necessary to preserve the  
4 health, safety, and welfare of the residents of the  
5 neighborhood who were meant to benefit from the restriction.

6           (3) A condominium as defined in s. 718.103, timeshare  
7 property as defined in s. 721.05, or cooperative as defined in  
8 s. 719.103, is exempt from this section. A community as  
9 defined in s. 720.301, which includes in its declaration of  
10 covenants a prohibition against children residing in the  
11 community, is also exempt from this section.

12           (4) The Legislature intends that families have  
13 appropriate licensed family child care to protect the public  
14 health, safety, and welfare of the children in this state.

15           (a) The Legislature finds that:

16           1. Family child care meets the transportation,  
17 scheduling, financial, and emotional needs of many working  
18 families by providing child care in an atmosphere most closely  
19 resembling the parents' own homes.

20           2. Family child care increases the availability of  
21 care for mixed-age groups, including siblings in the same  
22 program, offering children enhanced communication and learning  
23 experiences.

24           (b) The legislative intent in enacting this section is  
25 to facilitate suitable care for young children by providing  
26 that working parents have the option of child care in a  
27 homelike, neighborhood setting, under ss. 166.0445, 402.26,  
28 and 402.313.

29           (c) The Legislature supports the establishment of  
30 family day care homes by licensing the homes under s. 402.313  
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1 and providing funding for day care services through subsidized  
2 child care.

3 (d) The Legislature specifically exempts family day  
4 care homes from local zoning restrictions in residential areas  
5 under ss. 125.0109 and 166.0445.

6 (e) It is in the public interest and a valid public  
7 policy for this Legislature to eliminate the use of deed  
8 restrictions, covenants, or similar binding agreements as  
9 barriers to the establishment or continued operation of  
10 licensed family day care homes.

11 Section 2. This act shall take effect upon becoming a  
12 law.

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15 SENATE SUMMARY

16 Provides that a deed restriction, covenant, or similar  
17 binding agreement running with the land may not prohibit  
18 the use of a residential dwelling as a family day care  
19 home. Provides certain exemptions. Provides legislative  
20 intent.