

**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.)

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Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

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BILL: SB 364

INTRODUCER: Senator Latvala

SUBJECT: Child Care Facilities

DATE: March 8, 2011

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Walsh	CF	<b>Pre-meeting</b>
2.			CM	
3.			JU	
4.			BC	
5.				
6.				

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**I. Summary:**

This bill creates a definition for “household children” in ch. 402, F.S., providing that the supervision of household children belonging to a family day care or large family child care home operator is to be left to the discretion of the operator, unless the children receive subsidized child care to be in the home. The bill also amends the definitions of “family day care home” and “large family child care home” to require that household children be included in the capacity calculation of those homes when the child is on the premises of the home or on a field trip with children enrolled in child care.

The bill also prohibits a person from advertising (or publishing an advertisement) for a child care facility, family day care home, or large family child care home without including the license or registration number of the facility or home. Additionally, the bill creates a cause of action against an unlicensed or unregistered individual who advertises without including the individual’s license or registration number. The bill provides that the prevailing party shall receive attorney’s fees and costs.

This bill amends the following sections of the Florida Statutes: 402.302, 402.318, and 411.01.

**II. Present Situation:**

**Child Care Facilities**

*Licensing of Child Care Facilities*

Child care facilities in the state must meet licensing standards that are established by the

Department of Children and Family Services (DCF or department).<sup>1</sup> Current law permits a county that meets or exceeds the state's minimum licensing requirements to designate a local agency to license child care facilities. If the county does not wish to administer its own child care licensing program, it can contract with DCF to delegate administration of the standards to the department.<sup>2</sup> Currently, DCF is responsible for administering child care licensing in 61 of Florida's 67 counties.<sup>3</sup> The remaining six counties (Brevard, Broward, Hillsborough, Palm Beach, Pinellas, and Sarasota) administer their own inspections and licensure of child care facilities.<sup>4</sup>

### *Family Day Care Homes*

Florida law defines a family day care home 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."<sup>5</sup> A family day care home is allowed to provide care for one of the following groups of children:

- A maximum of four children from birth to 12 months of age.
- A maximum of three children from birth to 12 months of age, and other children, for a total of six children.
- A maximum of six preschool children if all of them are older than 12 months of age.
- A maximum of 10 children if no more than five are preschool age and, of those five, no more than two are under 12 months of age.<sup>6</sup>

The above groups include children under 13 years of age who are related to the caregiver.

Current law requires a family day care home to have either a license or be registered. A family day care home is required to be licensed if they are presently licensed under a county license ordinance or if the board of county commissioners passes a resolution that family day care homes are to be licensed.

If a family day care home is not subject to licensure, then it must register annually with DCF. In order to register, the home must submit the following information:

- The name and address of the home.
- The name of the operator.
- The number of children served.
- Proof of a written plan to provide at least one other competent adult to be available in place of the operator in an emergency.
- Proof of screening and background checks.

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<sup>1</sup> Section 402.305(1), F.S.

<sup>2</sup> Section 402.306(1), F.S.

<sup>3</sup> Fla. Dep't of Children and Families, *Child Care Regulation, Licensing Information*, <http://www.dcf.state.fl.us/programs/childcare/licensing.shtml> (last visited Feb. 8, 2011).

<sup>4</sup> *Id.*

<sup>5</sup> Section 402.302(8), F.S.

<sup>6</sup> *Id.*

- Proof of successful completion of the 30-hour training course.
- Proof that immunization records are kept current.
- Proof of completion of the required continuing education units or clock hours.<sup>7</sup>

### *Large Family Child Care Homes*

A large family child care home is similar in definition to a family day care home, except that a large family child care home has at least two full-time child care personnel on the premises during the hours of operation.<sup>8</sup> One of these persons must be the owner or occupant of the residence. In order to become a large family child care home, the home must have first operated as a licensed family day care home for two years and the operator must have a child development associate credential, or its equivalent, for one year.<sup>9</sup> A large family child care home may provide care for one of the following groups of children, which includes children under the age of 13 who are related to the caregiver:

- A maximum of eight children from birth to 24 months of age.
- A maximum of 12 children, with no more than four children under 24 months of age.<sup>10</sup>

The department establishes by rule minimum standards for large family child care homes, which include requirements for staffing, maintenance of immunization records, minimum health standards, minimum safety standards, minimum square footage, and enforcement of these standards.<sup>11</sup>

### *Supervision*

The department has promulgated administrative rules related to the supervision of children and staffing requirements for family day cares and large family child care homes. These rules apply to all children in the home, including children related to the operator. Specifically, operators are responsible for the supervision of children at all times, including when the children are napping or sleeping. If the child is sleeping in a bedroom, the bedroom's door must remain open. During hours of operation, all children must have adult supervision, consisting of watching and directing their activities both indoors and outdoors. If a child is sick and placed in isolation, the child must remain within eyesight and hearing of the operator. Finally, children must be attended when being diapered or when changing clothes.<sup>12</sup>

### *Advertising*

Florida law requires that any advertisement for a child care facility include within the advertisement the state or local agency license number of the facility. Failure to do so is a

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<sup>7</sup> Section 402.313(1)(a), F.S.

<sup>8</sup> Section 402.302(9), F.S.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> Section 402.3131(7), F.S.

<sup>12</sup> Rule 65C-20.009(5), F.A.C.

misdemeanor of the first degree.<sup>13</sup>

### III. Effect of Proposed Changes:

This bill creates the definition “household children” in ch. 402, F.S., to mean “children who are related by blood, marriage, or legal adoption to, or who are the legal wards of, the family day care home operator, the large family child care home operator, or an adult household member who permanently or temporarily resides in the home.” The bill provides that the supervision of household children belonging to a family day care or large family child care home operator is to be left to the discretion of the operator, unless the children receive subsidized child care to be in the home.

Current law requires that children under the age of 13 who are related to the caregiver be included in determining the number of children that can be cared for in a family day care home or large family child care home. This bill amends the definitions of “family day care home” and “large family child care home” to provide that “household children” under the age of 13 are included in the calculations to determine the maximum number of children that an operator can supervise at one time when that child is on the premises of the home or on a field trip with children enrolled in child care at the home. This change may in some instances lower the number of children a child care home operator can care for because the definition of “household children” includes children related to an adult household member of the home. For example, under the current law, if the operator of the home has a 12 year old child and the operator’s sister and niece also live in the home, the operator would only have to count his or her own child in determining the number of children that the operator can supervise. However, under the proposed changes in the bill, the operator would have to also include his or her niece in the calculation.

Additionally, according to the Department of Children and Family Services (DCF or department), creating the definition of “household children” may create confusion and leave an enforcement loophole. Specifically, “the bill’s intent appears to be that any child in the family day care home who is the provider’s responsibility must count against the home’s licensed child care capacity, but the definition of household children appears to exclude foster children, children unrelated to the owner/operator who may be in the home on a non-paying basis, children left in the care of the provider without legal documentation of guardianship, etc.”<sup>14</sup>

This bill also amends s. 402.318, F.S., by requiring family day care homes and large family child care homes to include their license or registration number in their advertisements. Additionally, the bill provides that a person may not publish an advertisement for a child care facility, family day care home, or large family child care home without including the license or registration number.

The bill creates a cause of action against an *unlicensed* or *unregistered* person who violates the proposed advertising requirements. The bill provides that the court shall award reasonable

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<sup>13</sup> Section 402.318, F.S. A first-degree misdemeanor is punishable by a term of imprisonment not to exceed one year, a \$1,000 fine, or both. See ss. 775.082 and 775.083, F.S.

<sup>14</sup> Dep’t of Children and Family Services, *Staff Analysis and Economic Impact, SB 364* (Jan. 7, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

attorney's fees and costs to the prevailing party in connection with such a claim. A cause of action is only created against individuals who are unlicensed or unregistered. There is no cause of action against a licensed individual who forgets to include his or her license number in the advertisement. Additionally, no cause of action is created against individuals or companies who publish an advertisement for a child care facility, family day care home, or large family child care home without the license or registration number.

The bill makes technical and conforming changes.

The bill provides an effective date of July 1, 2011.

#### **IV. Constitutional Issues:**

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

#### **V. Fiscal Impact Statement:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Current law requires a "child care facility" to include its license number in any advertisement. This bill amends current law to extend advertising requirements on family day care homes and large family child care homes as well. To the extent that these homes are not considered child care facilities, and therefore are not currently required to place a license number in advertisements, the bill's advertising requirements will be a new requirement on these homes.

Additionally, the bill creates a cause of action against an unlicensed or unregistered individual who violates the advertising requirements added by the bill. The bill provides that the court shall award attorney's fees and costs to the prevailing party in such an action. To the extent that an individual avails himself or herself to this new cause of action, the bill will have a fiscal impact on the nonprevailing party.

**C. Government Sector Impact:**

According to the Department of Children and Family Services (DCF or department), it is unclear whether department staff will be required to monitor advertising venues to identify individuals who violate the advertising requirements created by the bill. If this is the case, the bill may create additional workload to the department in terms of verifying and reporting to the state attorney instances of advertisements without a license or regulation number.<sup>15</sup>

Additionally, because the bill is creating a cause of action, it may create additional workload on the judiciary to the extent individuals avail themselves of the right to go to court.

**VI. Technical Deficiencies:**

The bill creates a cause of action against an unlicensed or unregistered person who violates the proposed advertising requirements; however, the bill does not prescribe the nature of the damages underlying the cause of action or the relief available to the claimant.

**VII. Related Issues:**

The Department of Children and Family Services (DCF or department) is responsible for administering child care regulations throughout Florida, unless a county has chosen to assume this regulatory function pursuant to s. 402.306, F.S., which requires that a county meet or exceed prescribed state standards regarding state child care. Pinellas County is one of seven counties which have chosen to designate a local licensing agency to license child care facilities in that county. The Pinellas County Labor Board for Children's Centers and Family Day Care Homes is the licensing body in Pinellas County.<sup>16</sup> According to DCF, "[f]amily day care home providers have raised questions to the Department regarding supervision restrictions that may be placed on the children of owners and operators of child care programs operating from their homes as there have been some restrictions, specifically in Pinellas County, which has local licensing authority. Pinellas County family day care home providers have challenged their local ordinance on this issue."<sup>17</sup> In order for this bill to have effect in Pinellas County, the county's law that regulates children's centers and family day care homes will need to be amended.<sup>18</sup>

**VIII. Additional Information:****A. Committee Substitute – Statement of Substantial Changes:**

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

None.

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<sup>15</sup> *Id.*

<sup>16</sup> Gov't Efficiency and Accountability Council, The Florida House of Representatives, *House of Representatives Local Bill Staff Analysis, CS/HB 781* (March 14, 2007), available at <http://www.myfloridahouse.gov/Sections/Bills/bills.aspx> (last visited Feb. 11, 2011).

<sup>17</sup> Dep't of Children and Family Services, *supra* note 14.

<sup>18</sup> Special law 61-2681, Laws of Fla., as amended by section 1 of chapter 70-893, Laws of Fla.

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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