

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 Children, Families, and Elder Affairs Committee

BILL: SB 274

INTRODUCER: Senator Sachs

SUBJECT: Child Care Facilities

DATE: November 2, 2011 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Daniell	Farmer	CF	Pre-meeting
2.	_____	_____	BC	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

This bill creates the “Haile Brockington Act” and provides that on or after January 1, 2013, vehicles used by child care facilities and large family child care homes to transport children must be equipped with an alarm system approved by the Department of Children and Families (DCF or department) that prompts the driver to inspect the vehicle for children before exiting. The bill provides that DCF shall adopt rules to administer the new provision of law and shall maintain a list of alarm manufacturers and alarm systems that are approved to be installed in such vehicles.

This bill substantially amends section 402.305, Florida Statutes.

II. Present Situation:

Licensing Standards for Child Care Facilities

The Department of Children and Families (DCF or department) establishes licensing standards that each licensed child care facility in the state must meet.¹ A child care facility is defined in Florida law 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.”² The department currently regulates 7,791 child care arrangements, including child care facilities, large family child care homes, family day care homes, and registered homes.³ In addition, as of

¹ See s. 402.305, F.S.

² Section 402.302(2), F.S.

³ Florida Dep’t of Children and Families, *DCF Quick Facts*, 7 (Jan. 31, 2011), available at <http://www.dcf.state.fl.us/newsroom/docs/quickfacts.pdf> (last visited Oct. 19, 2011).

January 2010, six counties in the state which conduct their own licensure of homes currently license 4,292 child care arrangements.⁴

The statutory licensing standards for child care facilities are extensive and include standards for transportation and vehicles; however, current standards for licensed child care providers do not address alarm systems in vehicles. Rule 65C-22.001(6) of the Florida Administrative Code provides requirements for licensed child care facilities to follow in relation to vehicles that are owned, operated, or regularly used by the child care facility, as well as vehicles that provide transportation through a contract or agreement with an outside entity. Specifically:

- The driver of any such vehicle must have a valid driver's license and must have an annual physical exam granting the driver medical approval to drive;
- All child care facilities must comply with insurance requirements;
- All vehicles must be inspected annually;
- The maximum number of individuals transported may not exceed the manufacturer's designated seating capacity or the number of factory installed seat belts;
- Each child must be wearing a factory installed seat belt when riding in the vehicle;
- When transporting children, the staff-to-child ratios must be maintained;
- Each vehicle must have the contact information of each child being transported;
- Providers must maintain a driver's log for all children being transported. This log includes the child's name, date, time of departure, time of arrival, signature of driver, and signature of second staff member to verify the driver's log and that all children have left the vehicle;
- Upon arrival at the destination, the driver of the vehicle must mark each child off the log as the child departs the vehicle; conduct a physical inspection and visual sweep of the vehicle; and sign, date, and record the driver's log immediately to verify all children were accounted for and that the sweep was conducted;
- Upon arrival at the destination, a second staff member must also conduct a physical inspection and visual sweep of the vehicle and sign, date, and record the driver's log to verify all children were accounted for and that the driver's log is complete.

There are similar requirements for family day care homes and large family child care homes.⁵

Children and Vehicles

In August 2010, 2 1/2 year old Haile Brockington died after being left in her car seat for nearly six hours in the back of a van employed by a Palm Beach County child care facility. According to the National Weather Service in Miami, the weather that day reached a high of 91 degrees.⁶

⁴ Health Care Servs. Policy Comm., Florida House of Representatives, *Staff Analysis on HB 487, 2* (Jan. 26, 2010), available at <http://www.myfloridahouse.gov/Sections/Documents/loaddoc.aspx?FileName=h0487.HCS.doc&DocumentType=Analysis&BillNumber=0487&Session=2010> (last visited Oct. 19, 2011).

⁵ See Rules 65C-20.10(8) and 65C-20.13(8), F.A.C.

⁶ Julius Whigham II and Eliot Kleinberg, *Girl, 2 1/2, found dead in van at Delray Beach day care center*, THE PALM BEACH POST, Aug. 5, 2010 (updated Aug. 12, 2010), available at <http://www.palmbeachpost.com/news/girl-1-1-2-found-dead-in-van-843774.html> (last visited Oct. 19, 2011).

The child care facility was licensed by DCF and had no violations against it at the time of the incident.⁷

“Death by hyperthermia” (or overheating of the body) has become much more prevalent since Federal law required that children ride in the backseat due to the danger of front passenger seat airbags.⁸ Between 1998 and 2010, there have been approximately 495 child hyperthermia deaths, with 49 during the year 2010.⁹ Thirty-one percent of hyperthermia deaths involve children under the age of one.¹⁰ According to a Miami newspaper, roughly one-sixth of hyperthermia cases occur in Florida.¹¹ Approximately 60 children have died in Florida from being left in a vehicle and more than 150 have been injured.¹² Prosecutions and penalties vary widely and in total, charges were filed in 58 percent of Florida cases.¹³

III. Effect of Proposed Changes:

This bill creates the “Haile Brockington Act” and provides that on or after January 1, 2013, vehicles used by child care facilities and large family child care homes to transport children must be equipped with an alarm system approved by the Department of Children and Families (DCF or department) that prompts the driver to inspect the vehicle for children before exiting. The bill provides that DCF shall adopt rules to administer the new provision of law and shall maintain a list of alarm manufacturers and alarm systems that are approved to be installed in such vehicles.

The bill provides an effective date of July 1, 2012.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

⁷ *Id.*

⁸ See Kids and Cars.org, *Fact Sheet*, <http://www.kidsandcars.org/userfiles/dangers/heat-stroke/heat-stroke-fact-sheet.pdf> (last visited Oct. 19, 2011); see also Gene Weingarten, *Fatal Distraction: Forgetting a Child in the Backseat of a Car is a Horrifying Mistake. Is it a Crime?*, THE WASHINGTON POST, Mar. 8, 2009, at W08, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/02/27/AR2009022701549.html> (last visited Oct. 19, 2011).

⁹ Kids and Cars.org, *supra* note 8.

¹⁰ *Id.*

¹¹ Michael J. Mooney, *Babies left in hot cars: Accident or crime?*, MIAMI NEW TIMES, Oct. 14, 2010, available at <http://www.miaminewtimes.com/2010-10-14/news/babies-left-in-hot-cars-accident-or-crime/#> (last visited Oct. 19, 2011).

¹² *Id.*

¹³ *Id.*

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill requires owners and operators of child care facilities and large family day care homes to purchase and install an alarm system in all vehicles used by the facility or home to transport children that alerts the driver to inspect the vehicle for children before exiting the vehicle. At the time of the publication of this analysis, the Department of Children and Families (DCF or department) had not yet analyzed this bill; however, SB 1140 from the 2011 Regular Session is identical to this bill. Based on the department’s analysis of SB 1140, the estimated cost for owners and operators of child care facilities statewide is approximately \$942,836 for the first year and \$135,720 each additional fiscal year thereafter.¹⁴ See breakdown of cost below.

Unit Price of Device	\$289.95
Installation Cost	\$85.00
Shipping Cost	\$11.60
Manufacturer’s Annual Required Re-certification Cost*	\$65.00
Total Cost for One Facility	\$451.55
Total Cost for 2,088 Facilities	\$942.836.40

*Recurring cost

C. Government Sector Impact:

The department will be responsible for writing rules to regulate this new requirement, as well as creating and maintaining manufacturer and alarm system approval protocols and compliance enforcement methodology.¹⁵

VI. Technical Deficiencies:

The bill provides on line 26 that vehicles must be equipped with the alarm system “on or after January 1, 2013.” The way the bill is currently written, it appears that there is no actual deadline for installing the alarm systems in a vehicle used by a child care facility or large family child care home to transport children. If the intent of the bill is to provide a January 1, 2013, deadline for installing the alarm systems, the Legislature may wish to amend the bill so that it reads “on or before January 1, 2013.”

¹⁴ Dep’t of Children and Families, *Staff Analysis and Economic Impact SB 1140* (Feb. 16, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).

¹⁵ *Id.*

VII. Related Issues:

According to the Department of Children and Families (DCF or department) in its bill analysis on SB 1140 from the 2011 Regular Session, which is identical to SB 274, the implementation date of the bill may not provide the department with enough time to research the types of alarm systems available, to craft rules and compliance enforcement methodology, and to prepare licensing staff to enforce and provide technical assistance. Additionally, all requirements are contingent upon the development of DCF's approval process through public hearings and final adoption of the rule pursuant to s. 120.536, F.S.; dissemination of the requirement to providers; the availability of the device statewide; and the availability of certified system installation professionals.¹⁶

The department recommends only requiring that DCF maintain a list of available products, without providing approval for the actual product.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

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

¹⁶ *Id.*