

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 Appropriations Subcommittee on Health and Human Services

BILL: SB 394

INTRODUCER: Senator Gibson

SUBJECT: Licensing of Facilities that offer Health and Human Services

DATE: March 14, 2014

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Crosier</u>	<u>Hendon</u>	<u>CF</u>	Favorable
2.	<u>Brown</u>	<u>Pigott</u>	<u>AHS</u>	Pre-meeting
3.	_____	_____	<u>AP</u>	_____

I. Summary:

SB 394 redefines the term “child care” to remove from statute the stipulation that child care is delivered only when payment is made for services rendered. The bill also removes the payment stipulation from the definition of “child care facility” and further redefines “child care facility” to provide that a child care center or child care arrangement meets the definition by providing child care for five or more children unrelated to the operator rather than for six or more.

The bill requires a family day care home to conspicuously display its license or registration in the common area of the home. The bill requires a large family child care home to permanently post its license in a conspicuous location visible to parents, guardians, and the Department of Children and Families (DCF).

The bill provides that family day care homes not subject to licensing must provide the DCF with the identity of the competent adult who has met the DCF’s screening and training requirements to serve as a designated substitute for the operator in an emergency. The bill provides that family day care homes not subject to licensing must provide proof of screening and background checks for the operator, household members, and the designated substitute.

The bill repeals the \$100 cap on the licensure fee for child care facilities. Finally, the bill amends statutory provisions related to restrictions on the advertising of certain facilities and homes.

The bill is estimated to result in small increases in revenue for the state and certain local governments due to increased licensure fees, but the total fiscal impact is indeterminate.

II. Present Situation:

Child care can be provided in many different settings in exchange for payment. There are also settings that allow for the provision of child care services without payment, such as public and

nonpublic schools, summer camps with children as full-time residents, summer day camps, Bible schools, and care offered at a public lodging establishment solely for guests of the public lodging establishment. Statutory provisions governing child care and child care facilities are found in ss. 402.301-402.319, F.S.

According to the U.S. Department of Health & Human Services, in 2011, licenses were issued to approximately 6,750 child care facilities, 3,327 family child care homes, and 412 group child care homes in Florida.¹ The definition of “child care” is the care, protection, and supervision of a child for a period of less than 24 hours a day on a regular basis that supplements parental care, enrichment, and health supervision for the child, in accordance with the child’s needs, in exchange for a payment, fee, or grant.²

Types of Facilities

“Child care facility” is defined as a child care center or child care arrangement for providing child care for more than five children unrelated to the operator in exchange for a payment, fee, or grant for any of the children receiving care, regardless of where the facility is operated and whether or not it is operated for profit.³ The terms “child care center” and “child care arrangement” are not defined, and the statutory definition of “child care facility” does not specify whether a home or residence may qualify as a child care facility. Child care facilities are required to be licensed, subject to annual renewal.⁴

The bill deals with child care facilities and the following types of “homes:”

- **Family day care homes:** A family day care home is 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, regardless of whether or not it is operated for profit. A family day care home is restricted to providing care for a specified capacity of children depending on their ages.⁵ A family day care home is required to obtain a license from the Department of Children and Families (DCF) only if the home is required to be licensed by the county in which the home is situated. Homes that are not required to be licensed are required to register annually with the DCF and provide certain information, including proof of screening and background checks.⁶ However, the statute does not identify who is subject to the screenings or background checks.
- **Large family child care homes:** A large family child care home is an occupied residence in which child care is regularly provided for children from at least two unrelated families, which receives a payment, fee, or grant for any of the children receiving care, regardless of whether or not it is operated for profit, and which has at least two full-time child care personnel on the premises during the hours of operation, one of whom must be the owner or an occupant of the residence. In order to become a large family child care home, a home

¹ U.S. Department of Health & Human Services, *Administration for Children*, available at <https://childcare.gov/resource/number-licensed-child-care-facilities-2011> (follow attachment Number of Child Care Facilities in 2011) (last visited Jan. 24, 2014).

² Section 402.302(1), F.S.

³ Section 402.302(2), F.S.

⁴ Section 402.308(1), F.S.

⁵ Section 402.302(8), F.S.

⁶ Section 402.313(1), F.S.

must first have operated as a licensed family day care home for two years, with an operator who has had a child development associate credential or its equivalent for one year. A large family child care home is restricted to providing care for a specified capacity of children depending on their ages,⁷ and is required to obtain licensure from the DCF.⁸

Licensure and Registration Fees

The DCF must collect a fee for any license it issues for a child care facility, family day care home, or large family child care home.⁹ The fee for a child care facility licensed under s. 402.305, F.S., is \$1 per child based on the licensed capacity of the facility, with a minimum fee of \$25 per facility and a maximum fee of \$100 per facility.¹⁰ The fee is \$25 for a family day care home subject to registration,¹¹ and the fee is \$50 for a family day care home subject to licensure.¹² The fee is \$60 for a licensed large family child care home.¹³

Restrictions on Advertising

Section 402.318, F.S., provides that a person¹⁴ may not advertise a child care facility, a family day care home, or a large family child care home without including within the advertisement the state or local agency license number or registration number of the facility or home. A violation of this prohibition is a misdemeanor of the first degree.¹⁵

Exemptions

Section 402.316, F.S., provides that certain child care facilities are exempt from ss. 402.301-402.319, F.S., except for the requirements regarding screening of child care personnel.¹⁶ An exempt facility is a child care facility that is an integral part of a church school or parochial school conducting regularly scheduled classes, courses of study, or educational programs accredited by, or by a member of, an organization that publishes and requires compliance with its standards for health, safety, and sanitation.

III. Effect of Proposed Changes:

Section 1 amends s. 402.302, F.S., to remove from statute the stipulation that “child care” is delivered only when payment is made for services rendered. The bill also removes the stipulation for a payment from the definition of “child care facility.” Under current law, there are many

⁷ Section 402.302(11), F.S.

⁸ Section 402.3131(1), F.S.

⁹ Section 402.315(3), F.S.

¹⁰ Section 402.315(3)(a), F.S.

¹¹ Section 402.315(3)(b), F.S.

¹² Section 402.315(3)(c), F.S.

¹³ Section 402.315(3)(d), F.S.

¹⁴ Section 402.318, F.S., specifies that “person” is defined in s. 1.01(3), F.S., which provides that “person” includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

¹⁵ Section 402.318, F.S.

¹⁶ Section 402.305(2)(a), F.S., provides minimum standards regarding child care personnel for licensed child care facilities, including good moral character based upon screening. The required screening must be conducted using level 2 standards as provided in ch. 435, F.S.

types of child care arrangements that do not require registration or licensure due to the fact that a payment is not directly made for the provision of child care services. Examples of such arrangements include: Mothers' Morning Out programs, Parents' Night Out programs, programs that provide after-school service at no charge beyond the cost of lessons purchased, as well as some programs offered by the Boys and Girls Club.¹⁷

Due to the repeal of the stipulation for payment, a facility providing care for five or more children unrelated to the operator (instead of six or more under current law) that otherwise meets the definition of "child care facility" will be required to be registered or licensed, regardless of whether payment is made. This change may increase the number of facilities that become registered or licensed, and will require those facilities to meet licensing standards designed to address the health, safety, and adequate physical surroundings for children under their care.

Section 2 amends s. 402.313(1), F.S., to require that each licensed or registered family day care home must conspicuously display its license or registration in the common area of the home. Under the bill, a family day care home required to register must provide – in addition to the currently required information – proof of a written plan to identify a competent adult who has met DCF's screening and training requirements to serve as a designated substitute for the operator of the home in an emergency. The bill also specifies that the proof of screening and background checks required of homes in the registration process must pertain to the operator, each household member, and the designated substitute.

Section 3 amends s. 402.3131, F.S., to require a large family child care home to permanently post its license in a conspicuous location that is visible by all parents and guardians and the DCF.

Section 4 amends s. 402.315(3), F.S. to remove the \$100 cap on licensure fees for child care facilities, which will result in the fee being limited only by a facility's licensed capacity, at a fee of \$1 per child.

Section 5 amends s. 402.318, F.S., to provide that a person advertising a child care facility that is exempt from licensing requirements under s. 402.316, F.S., is subject to the advertising restrictions contained in s. 402.318, F.S. The bill also specifies that the term "advertisement" includes, but is not limited to, the marketing of child care services to the public on vehicles, printed materials, and electronic media such as Internet sites, radio, and television.

Section 6 of the bill provides an effective date of July 1, 2014.

IV. Fiscal Impact Statement:

A. Tax/Fee Issues:

The bill will require some child care arrangements that are currently unregulated to pursue licensure or registration and pay fees identical to those currently paid by facilities and homes already required to register or be licensed.

¹⁷ The Department of Children and Families, *2014 Agency Legislative Bill Analysis of SB 394*, January 2, 2014, on file with the Senate Appropriations Subcommittee on Health and Human Services.

The elimination of the \$100 cap on licensure fees paid by child care facilities will impact facilities with a capacity of more than 100 children when seeking or renewing licensure. The DCF reports that it regulates 1,674 facilities with a capacity greater than 100.

B. Private Sector Impact:

New costs will be imposed on some currently unregulated child care arrangements as those facilities will be required to meet state child care standards, such as minimum numbers of trained staff and physical environment standards.

C. Government Sector Impact:

State Government

The DCF estimates that additional state revenue collected due to the elimination of the \$100 cap on child care facility licensure fees will be \$115,603 annually.¹⁸

The bill's impact on the DCF is indeterminate. The bill expands the number of child care arrangements that require DCF licensure or registration and thereby expands the number of inspections DCF will have to perform of child care arrangements, excluding schools, summer camps, Bible schools, and transient establishments. The DCF reports that it cannot identify the number of such arrangements or the cost to conduct the required inspections. An increase in the number of regulated child care providers also will likely produce an increase in the number of regulatory actions and an increase in the workload for DCF legal staff. The DCF reports that if the increased regulatory activity is significant or is concentrated in one part of the state, the DCF may need an indeterminate number of additional licensing staff and legal staff to support administrative activities.¹⁹

Local Government

The DCF reports that five counties function as local licensing agencies for child care facilities, and the DCF estimates that the additional local revenue collected due to the elimination of the \$100 cap on child care facility licensure fees will be \$72,725 annually.²⁰

V. Technical Deficiencies:

None.

VI. Related Issues:

Section 5 of the bill provides that a person may not advertise a child care facility that is exempt from licensing requirements under s. 402.316, F.S., without including within the advertisement the facility's "exemption number." However, there is no provision in statute or the bill for an exempt facility to be issued an "exemption number." Section 402.316(3), F.S., provides that an exempt facility wishing to be included under ss. 402.301-402.319, F.S., may do so by submitting

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

notification to the DCF, but there is no statutory requirement for an exempt facility to notify the DCF for any reason, including notification that the facility is operating under the exemption. The DCF reports that exempt facilities routinely provide notification on a voluntary basis that they are operating under the exemption. Under those conditions, the DCF will provide an exemption number, but exempt facilities are not statutorily required to provide notification under current law. The provisions in Section 5 of the bill could be interpreted to require that before an exempt facility may legally advertise, it must notify the DCF that it is operating under the exemption and be granted an exemption number, which the facility is not required to obtain under current law.

VII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 402.302, 402.313, 402.3131, 402.315, and 402.318.

VIII. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.