

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** CS/HB 69 Child Care Facilities  
**SPONSOR(S):** Children, Families & Seniors Subcommittee, Antone  
**TIED BILLS:** IDEN./SIM. **BILLS:** SB 94

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	15 Y, 0 N, As CS	Raya	Brazzell
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

### SUMMARY ANALYSIS

Child vehicular heatstroke is a year-round threat that can occur when a child is inadvertently left in a vehicle. From 1998 – 2018, there were 89 child vehicular heatstroke deaths in Florida. Of that total, 7 deaths (8% of the total) involved vehicles used by child care providers.

HB 69 requires DCF to adopt minimum safety standards regarding procedures to avoid inadvertently leaving a child in a vehicle, including systems to ensure accountability for children transported by a facility or home. These systems may include physical and visual sweeps and transportation logs, and facilities and homes may choose to additionally equip vehicles with a reliable alarm system that prompts the driver to inspect the vehicle for children before exiting the vehicle. DCF must issue an emergency suspension of the license of a facility or home pursuant to s. 120.60(6), F.S., if a child dies due to being left in a vehicle owned, used, or operated by that facility or home.

The bill expands the application of the minimum safety standards to family day care homes in addition to child care facilities and large family child care homes, and specifies that all three child care provider types are not responsible for the safe transport of a child when that child is being transported by a parent or guardian.

The bill has an insignificant impact on state and local governments.

The bill provides an effective date of July 1, 2019.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Background

##### Child Care Licensing Standards

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, which supplements parental care, enrichment, and health supervision for the child, in accordance with his or her individual needs, and for which a payment, fee, or grant is made for care.<sup>1</sup> If a program meets the statutory definition of child care, it is subject to regulation by the Department of Children and Families (DCF) or local licensing agencies (LLAs),<sup>2</sup> unless statute specifically excludes or exempts it from regulation.

Pursuant to s. 402.301, F.S., the Legislature intends to have statewide minimum standards for the care and protection of children in child care facilities and to enforce and regulate these standards through a program of licensing. Accordingly, under ch. 402, F.S., DCF regulates child care facilities, family day care homes, large family child care homes, and drop-in and evening child care. DCF is responsible for establishing licensing standards that each licensed child care facility must meet.<sup>3</sup>

##### Emergency Licensing Procedures

The Administrative Procedure Act<sup>4</sup> (APA) sets forth a uniform set of procedures that agencies must follow when exercising delegated rulemaking authority. Section 120.60, F.S., of the APA addresses licensing procedures. An agency such as DCF cannot revoke, suspend, annul, or withdraw any license until the agency has served, by personal service or certified mail, an administration complaint on the licensee.<sup>5</sup> The licensee must be given reasonable notice of the facts or conduct which warrant the agency's intended action and an opportunity to request a proceeding pursuant to ss. 120.569 and 120.57, F.S.<sup>6</sup>

However, pursuant to s. 120.60(6), F.S., if an agency finds that immediate serious danger to the public health, safety, or welfare requires an emergency suspension, restriction, or limitation of a license, the agency may take such action by any procedure that is fair under the circumstances if:

- The procedure provides at least the same procedural protections as other statutes, the Florida Constitution, and the United States Constitution;
- The agency takes only the action necessary to protect the public interest; and
- The agency states in writing either prior to or at the time of its action the specific reasons for finding an immediate danger to the public health, safety, or welfare and its reasons for finding that the procedure used is fair under the circumstances. These findings are judicially reviewable.<sup>7</sup>

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<sup>1</sup> s. 402.302(1), F.S.

<sup>2</sup> Broward, Hillsborough, Palm Beach, Pinellas and Sarasota counties have decided – either by statute or by the adoption of a local ordinance or resolution – to designate a LLA to regulate child care providers in their areas.

<sup>3</sup> s. 402.305(1), F.S.

<sup>4</sup> ch. 120, F.S.

<sup>5</sup> s. 120.60(5), F.S.

<sup>6</sup> Id.

<sup>7</sup> s. 120.60(6), F.S.

## Child Care Facilities

Child care facilities are child care centers or child care arrangements that care for more than five children unrelated to the operator who receives a payment, fee, or grant for the children receiving care, wherever the facility is operated and whether it is operated for profit or not for profit.<sup>8</sup> However, the definition of child care facility excludes:<sup>9</sup>

- Public schools and nonpublic schools and their integral programs, except as provided in s. 402.3025, F.S.;
- Summer camps having children in full-time residence;
- Summer day camps;
- Bible schools normally conducted during vacation periods; and
- Operators of transient establishments, as defined in ch. 509, F.S.,<sup>10</sup> which provide child care services solely for the guests of their establishment or resort, provided that all child care personnel are screened according to the level 2 screening requirements of ch. 435, F.S.

Additionally, child care facilities that are an integral part of churches or parochial schools, meet specified criteria,<sup>11</sup> and conduct background screening of their personnel are exempt from licensure.<sup>12</sup>

## Large Family Child Care Homes

Large family child care homes are occupied residences where child care is regularly provided for children from at least two unrelated families and which receive a payment, fee, or grant for the children receiving care, whether it is operated for profit or not for profit.<sup>13</sup> Additionally, large family child care homes must meet other criteria such as having two full-time child care personnel on the premises during hours of operation, including the owner or occupant of the residence.<sup>14</sup> A large family child care home can provide care for either a maximum of 8 children from birth to 24 months of age or a maximum of 12 children, with no more than 4 children under 24 months of age.<sup>15</sup>

## Family Day Care Homes

Family day care homes are occupied residences where child care is regularly provided for children from at least two unrelated families and which receive a payment, fee, or grant for the children receiving care, whether it is operated for profit or not for profit.<sup>16</sup> A family day care home can provide care for one of the following groups of children:

- A maximum of 4 children from birth to 12 months of age;
- A maximum of 3 children from birth to 12 months of age, and other children, for a maximum total of 6 children;
- A maximum of six preschool children if all are older than 12 months of age; or

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<sup>8</sup> s. 402.302(2), F.S.

<sup>9</sup> Id.

<sup>10</sup> Transient public lodging establishment means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or one calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

<sup>11</sup> Such facilities must be accredited by, or by a member of, an organization that publishes and requires compliance with its standards for health, safety, and sanitation. They must also meet minimum requirements of the applicable local governing body as to health, sanitation, and safety.

<sup>12</sup> s. 402.316(1), F.S.

<sup>13</sup> s. 402.302(11), F.S.

<sup>14</sup> Id.

<sup>15</sup> Id.

<sup>16</sup> s. 402.302(8), F.S.

- A maximum of 10 children if no more than 5 are preschool age and, of those 5, no more than 2 are under 12 months of age.<sup>17</sup>

### Transportation Safety Licensing Standards

DCF must establish minimum transportation safety licensing standards for child care facilities, large family child care homes, and family day care homes. These standards must include:<sup>18</sup>

- Requirements for child restraints or seat belts in vehicles used to transport children;
- Requirements for annual vehicle inspections;
- Limitations on the number of children in the vehicle;
- Procedures to avoid leaving children in vehicles; and
- Accountability for children transported by the facility.<sup>19</sup>

Section 2.5 of the Child Care Facility Handbook and Section 2.4 of the Family Day Care/Large Family Child Care Home Handbook include DCF's licensing standards for transportation safety. The standards address driver requirements, emergency care plans, seatbelt and child restraints, and transportation logs.<sup>20</sup>

For child care facilities, large family child care homes, and family day care homes, a transportation log must be maintained for all children transported in a vehicle or on foot away from the premises. This log must be retained for a minimum of 12 months and include each child's name, the date, the time of departure, the time of arrival, and one signature (the driver) for large family child care homes and family day care homes and two signatures (the driver and an additional staff member) for child care facilities. Transportation logs must be used both prior to and after the transportation of a child. Upon arrival at the destination, the driver of the vehicle must:<sup>21</sup>

- Mark each child off the log as the child leaves the vehicle;
- Conduct a physical inspection and visual sweep of the vehicle to ensure that no child is left in the vehicle; and
- Record, sign and date the transportation log immediately to verify that all children were accounted for and that the visual sweep was conducted.

Child care facilities further must have a second staff member conduct the same procedure when arriving at the destination.<sup>22</sup>

Approximately 1,745 child care facilities and large family child care homes<sup>23</sup> offer a transportation service.<sup>24</sup>

<sup>17</sup> Id.

<sup>18</sup> s. 402.305(10), F.S.

<sup>19</sup> Pursuant to s. 402.305, F.S., child care facilities are not responsible for children when they are transported by a parent or guardian.

<sup>20</sup> Department of Children and Families, *Child Care Facility Handbook*, (Oct. 2017), available at <http://www.dcf.state.fl.us/programs/childcare/docs/handbook/Facility%20Handbook.pdf> (last visited Feb. 19, 2019); Department of Children and Families, *Family Day Care Home/Large Family Child Care Home Handbook*, (Oct. 2017). available at <http://www.dcf.state.fl.us/programs/childcare/docs/handbook/Family%20Child%20Care%20Home%20Licensing%20Handbook.pdf> (last visited Feb. 19, 2019).

<sup>21</sup> Id.

<sup>22</sup> Id.

<sup>23</sup> This number does not include providers located in Broward or Palm Beach counties.

<sup>24</sup> Department of Children and Families, Agency Analysis of 2019 House Bill 69, p. 6 (Nov. 27, 2018).

## Child Vehicular Heatstroke

Vehicular heatstroke, also referred to as hot car fatality, is a form of hyperthermia that can occur when a child is left unattended in a vehicle.<sup>25</sup> Almost 800 children have died due to vehicular heatstroke since 1998.<sup>26</sup> From 1998 – 2018, there were 89 child vehicular heatstroke deaths in Florida. Of that total, 7 deaths (8% of the total) involved vehicles used by child care providers.<sup>27</sup> Nationally, 51 children died due to vehicular heatstroke in 2018;<sup>28</sup> of that total, 5 of the deaths occurred in Florida,<sup>29</sup> though none of the 5 deaths occurred related to transportation by child care providers.<sup>30</sup>

For children, a heatstroke can occur when the internal body temperature reaches about 104 degrees Fahrenheit.<sup>31</sup> Children younger than 4 years old are particularly susceptible to death by vehicular heatstroke because the body's ability to regulate temperature is not fully developed.<sup>32</sup>

Vehicular heatstroke is a year-round threat that can occur in a variety of outdoor temperatures. The National Highway Traffic Safety Administration (NHTSA) issued a warning that an outdoor temperature of 60 degrees Fahrenheit can cause the inside of a vehicle to reach the temperature of 110 degrees Fahrenheit.<sup>33</sup> This increase can occur over the course of several hours with an initial rise of 20 degrees Fahrenheit within the first 10 minutes.<sup>34</sup>

## Preventing Child Vehicular Heatstroke

### *Technological Devices*

Various new technologies have been introduced to the market that are designed to prevent child vehicular heatstroke. The unit costs for these technologies range from \$65 to \$299.95, and have associated installation costs ranging from \$0 to \$200.<sup>35</sup> These technologies include:

- Built-in systems that alert the driver with an alarm if a child is left within the vehicle, such as General Motor's Rear Seat Reminder feature and Nissan's Rear Door Alert feature.<sup>36</sup>
- Child car seats that connect to the driver's phone through Bluetooth and send alerts to the phone as a reminder to check the vehicle for children, such as Cybex's SensorSafe Car Seats.<sup>37</sup>
- Child-check devices that require the driver to press a button positioned at the rear of the vehicle to disable an alarm, such as the Child Check-Mate systems. This is typically used in school buses.<sup>38</sup>
- Devices that attach to child car seat as either a pressure-activated sensor or a shoulder harness clip that sound alarms and send notifications through smartphone applications if a child is detected in the car seat after the vehicle's ignition is turned off.<sup>39</sup>

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<sup>25</sup> National Safety Council, *Pediatric Vehicular Heatstroke Report*, available at <https://www.noheatstroke.org/NSC-Hot-cars-report.pdf> (last visited Feb. 25, 2019).

<sup>26</sup> Jan Null, *No Heat Stroke*, <https://www.noheatstroke.org/index.htm> (last visited Feb. 19, 2019).

<sup>27</sup> Email from Jan Null, RE: Information Request – Child Vehicle Heat Stroke Deaths (Jan. 7, 2019).

<sup>28</sup> *Supra*, note 23.

<sup>29</sup> *Supra*, note 24.

<sup>30</sup> *Id.*

<sup>31</sup> Consumer Reports, *Hot Car Fatalities Are Year-Round Threat to Children and Pets*, Consumer Reports, (Oct. 2018), <https://www.consumerreports.org/car-safety/hot-car-fatalities-year-round-threat-to-children-pets-heat-stroke/> (last visited Feb. 19, 2019).

<sup>32</sup> Mayo Clinic, *Heat Exhaustion*, <https://www.mayoclinic.org/diseases-conditions/heat-exhaustion/symptoms-causes/syc-20373250> (last visited Feb. 19, 2019).

<sup>33</sup> NHTSA, *Child Safety*, <https://www.nhtsa.gov/road-safety/child-safety> (last visited Feb. 19, 2019).

<sup>34</sup> *Id.*

<sup>35</sup> *Supra*, note 21.

<sup>36</sup> Consumer Reports, *GM's Child-Reminder Feature is a Simple, Clever Way to Save Lives*, (July 31, 2017), <https://www.consumerreports.org/car-safety/gm-child-reminder-feature-simple-clever-way-to-save-lives/> (last visited Feb. 25, 2019).

<sup>37</sup> Cybex, *SensorSafe*, <https://cybex-online.com/en-us/sensorsafe> (last visited Feb. 25, 2019).

<sup>38</sup> Schoolbus Fleet, *Child-Check Devices: A Vital Reminder*, (Feb. 19, 2013), <http://www.schoolbusfleet.com/article/612170/child-check-devices-a-vital-reminder> (last visited Feb. 25, 2019).

There has not been extensive tests of the efficacy of these types of technologies. A 2012 study by the NHTSA<sup>40</sup> found that none of the devices tested at that time were completely reliable in their ability to detect children.<sup>41</sup> The study further found that the devices often required adjusting of the position of the child within the child restraint and that the devices experienced continual synching/unsynching during use.<sup>42</sup> For some of the tested devices, issues such as interference with other electronics and the inability to function properly in the presence of liquids were common. The study showed that the tested devices required considerable effort from the parent/caregiver to ensure consistent and smooth operation of the device.<sup>43</sup>

The NHTSA has concluded that technological means to prevent child vehicular heatstroke would ideally incorporate certain features.<sup>44</sup> These features include feedback to indicate functionality of the device, robust operating capabilities such as long battery life, an end-of-trip convenience reminder, and minimal additional action from the driver to operate the device.<sup>45</sup>

### *Low to Non-Technological Remedies*

Many low to non-technological remedies to prevent child vehicular heatstroke are available, including mobile applications that remind drivers to check the vehicle for children. The free directions application “Waze” includes a feature that sends notifications to the driver’s phone when the vehicle reaches the destination.<sup>46</sup> The driver must manually select within the “Waze” application to turn on these notifications.<sup>47</sup> Additionally, Kars4Kids Safety is a free application that sounds an alarm through the driver’s phone when the driver leaves the car.<sup>48</sup> This application requires the vehicle to be equipped with Bluetooth capabilities.

The NHTSA has started several public awareness campaigns including Look Before You Lock, which advises drivers to establish a routine of checking the back seat before locking the vehicle, and A Gentle Reminder, which advises drivers to place a stuffed animal or other memento in the child’s car seat when it is empty and to move it to the front seat as a visual reminder that a child is in the back seat.<sup>49</sup> Additionally, the Traffic Safety Marketing Heatstroke Prevention Campaign includes resources designed to increase child vehicular heatstroke awareness such as pamphlets, fact sheets, and content designed specifically for use on social media platforms.<sup>50</sup>

## **Effect of Proposed Changes**

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<sup>39</sup> Fatherly, *8 Life-Saving Car Seat Alarms That Reminds Parents There’s a Baby in the Back Seat*, (May 13, 2018), <https://www.fatherly.com/gear/best-car-seat-alarms/>.

<sup>40</sup> NHTSA, *Reducing the Potential for Heat Stroke to Children in Parked Motor Vehicles: Evaluation of Reminder Technology*, (July 2012), available at <https://static1.squarespace.com/static/53d25377e4b0089588796f30/t/53d46375e4b04e0696601938/1406428021362/2012+NHTSA+Study.pdf> (last visited Feb. 25, 2019).

<sup>41</sup> The three devices tested included one shoulder harness clip device and two pressure-activated sensor devices.

<sup>42</sup> *Supra*, note 36.

<sup>43</sup> *Id.*

<sup>44</sup> NHTSA, *Functional Assessment of Unattended Child Reminder Systems*, (July 2015), available at [https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/812187\\_unattendedchildremindersystems.pdf](https://www.nhtsa.gov/sites/nhtsa.dot.gov/files/812187_unattendedchildremindersystems.pdf) (last visited Feb. 25, 2019).

<sup>45</sup> *Id.*

<sup>46</sup> iPhone FAQ, *How do I use Waze’s child reminder feature?*, <https://www.iphonefaq.org/archives/976048> (last visited Feb. 25, 2019).

<sup>47</sup> *Id.*

<sup>48</sup> Kars4Kids, *One Simple App Can Save Your Child’s Life*, <https://www.kars4kids.org/safety-app/> (last visited Feb. 25, 2019).

<sup>49</sup> NHTSA, *Heatstroke Kills*, <https://www.nhtsa.gov/child-safety/heatstroke-kills> (last visited Feb. 25, 2019).

<sup>50</sup> Traffic Safety Marketing, *Heatstroke Prevention*, [https://www.trafficsafetymarketing.gov/get-materials/child-safety/heatstroke-prevention?\\_ga=2.61194476.1380883118.1546630984-890577686.1546630984](https://www.trafficsafetymarketing.gov/get-materials/child-safety/heatstroke-prevention?_ga=2.61194476.1380883118.1546630984-890577686.1546630984) (last visited Feb. 25, 2019).

HB 69 expands the application of the minimum safety standards to family day care homes in addition to child care facilities and large family child care homes.

DCF must adopt minimum safety standards regarding procedures to avoid inadvertently leaving a child in a vehicle, including systems to ensure accountability for children transported by a facility or home. These systems may include physical and visual sweeps and transportation logs as required by DCF's current licensing standards of transportation safety. Additionally, a facility or home can elect to equip vehicles with a reliable alarm system that prompts the driver to inspect the vehicle for children before exiting the vehicle.

The bill specifies that, as is the case with child care facilities, large family child care homes and family day care homes are also not responsible for the safe transport of a child when that child is being transported by a parent or guardian.

As well, the bill requires DCF to issue an emergency suspension of the license of a facility or home pursuant to s. 120.60(6), F.S., if a child dies due to being left in a vehicle owned, used, or operated by that facility or home.

The bill has an effective date of July 1, 2019.

**B. SECTION DIRECTORY:**

**Section 1:** Amends s. 402.305, F.S., relating to minimum transportation safety standards.

**Section 2:** Amends s. 402.310, F.S., relating to emergency suspension of a license.

**Section 3:** Provides an effective date.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

**A. FISCAL IMPACT ON STATE GOVERNMENT:**

1. Revenues:

None.

2. Expenditures:

None.

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

**III. COMMENTS**

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to require counties or municipalities to spend funds or take action requiring the expenditures of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill requires DCF to promulgate rules regarding minimum safety standards for the transportation of children in vehicles used by child care facilities, large family child care homes, and family day care homes. DCF has sufficient rulemaking authority to do so.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

**IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES**

On March 20, 2019, the Children, Families and Seniors Subcommittee adopted an amendment that required DCF to issue an emergency suspension of the license of a facility or home if a child dies due to being left in a vehicle owned, used, or operated by that facility or home. The amendment included family day care homes along with child care facilities and large family child care homes within the application of DCF's minimum transportation safety standards. Additionally, the amendment made the use of a reliable alarm system that prompts the driver to inspect the vehicle for children before exiting the vehicle an option, and not a requirement, for facilities and homes.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute as passed by the Children, Families and Seniors Subcommittee.