

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 Committee on Children, Families, and Elder Affairs

BILL: CS/SB 1096

INTRODUCER: Children, Families, and Elder Affairs and Senator Book

SUBJECT: Screening of Summer Camp Personnel

DATE: March 11, 2021

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Preston	Cox	CF	Fav/CS
2.			AHS	
3.			AP	

I. Summary:

CS/SB 1096 relocates the definitions of the terms “summer day camp” and “summer 24-hour camp” and provides that requirements for child care facilities so not apply to a summer day camps and summer 24-hour camps and requires camps, with the exception of background screening requirements. However, the camps must meet the minimum requirements of the local governing body for health, sanitation, and safety and the child care facility personnel screening requirements. A camp’s failure to comply with requirements will result in the loss of its ability to operate.

The bill provides that the Department of Children and Families (DCF) may not license summer day camps, provides the DCF access to personnel records of such camps to ensure screening requirements are being met, and authorizes the DCF to adopt rules relating to the screening requirements.

The bill clarifies that the failure of a camp to refuse to terminate the employment of an employee who has not satisfied the screening requirements would be considered a violation of employee screening requirements.

The bill authorizes the DCF or local licensing agency to perform certain specified enforcement actions and requires camps to register with the DCF for inclusion in the summer camp listing posted on the DCF’s website.

The bill is estimated to have a fiscal impact of \$315,658.68, related to technology updates and the need for additional eight total positions for six months. See Section V. Fiscal Impact Statement.

The bill has an effective date of July 1, 2021.

II. Present Situation:

Definitions

Provisions and requirements relating to summer camps and summer 24-hour camps have historically been included in both chs. 402 and 409, F.S., which has led to some inconsistencies in terminology. For example:

- Chapter 409, F.S., defines the term “summer day camp” to mean “recreational, educational, and other enrichment programs operated during summer vacations for children who are 5 years of age on or before September 1 and older.¹
- Chapter 409, F.S., defines the term “summer 24-hour camp” to mean “recreational, educational, and other enrichment programs operated on a 24-hour basis during summer vacation for children who are 5 years of age on or before September 1 and older, that are not exclusively educational.²
- “Summer day camps” and “summer camps having children in full-time residence” are specifically excluded from the definition of the term “child care facility” in ch. 402, F.S.³
- “Summer or recreation camps” are specifically excluded from the definition of the term “residential child-caring agency in ch. 409, F.S.⁴
- The term “summer recreation camps” while used in both chs. 402 and 409, F.S., is not defined in either chapter.⁵
- Camps that are operated at times of the year other than summer, such as during the December holidays and spring break are not defined or addressed in statute.

Background Screening Process

Current law establishes standard procedures for criminal history background screening of prospective employees and ch. 435, F.S., outlines the screening requirements. There are two levels of background screening: level 1 and level 2. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,⁶ and may include criminal records checks through local law enforcement agencies.⁷ A level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through the FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.⁸

Every person required by law to be screened pursuant to ch. 435, F.S., must submit a complete set of information necessary to conduct a screening to his or her employer.⁹ Such information for

¹ Section 409.175(2)(o), F.S.

² Section 409.175(2)(p), F.S.

³ Section 402.302, (2)(b) and (c), F.S.

⁴ Section 409.175(2)(l), F.S.

⁵ The term “recreational camp” is defined in s. 513.01(9), F.S. These camps are regulated by the Department of Health.

⁶ The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site, available at <https://www.nsopw.gov/> (last visited March 6, 2021).

⁷ Section 435.03, F.S.

⁸ Section 435.04, F.S.

⁹ Section 435.05(1)(a), F.S.

a level 2 screening includes fingerprints, which are taken by a vendor that submits them electronically to the FDLE.¹⁰

For both level 1 and 2 screenings, the employer must submit the information necessary for screening to the FDLE within five working days after receiving it.¹¹ Additionally, for both levels of screening, the FDLE must perform a criminal history record check of its records.¹² For a level 1 screening, this is the only information searched, and once complete, the FDLE responds to the employer or agency, who must then inform the employee whether screening has revealed any disqualifying information.¹³ For level 2 screening, the FDLE also requests the FBI to conduct a national criminal history record check of its records for each employee for whom the request is made.¹⁴ The person undergoing screening must supply any missing criminal or other necessary information upon request to the requesting employer or agency within 30 days after receiving the request for the information.¹⁵

Disqualifying Offenses

Regardless of whether the screening is level 1 or level 2, the screening employer or agency must make sure that the applicant has good moral character by ensuring that the employee has not been arrested for and is awaiting final disposition of, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, any of the 52 offenses enumerated in s. 435.04(2), F.S., or similar law of another jurisdiction.¹⁶

Exemption from Disqualification

If an individual is disqualified due to a pending arrest, conviction, plea of nolo contendere, or adjudication of delinquency to one or more of the disqualifying offenses, s. 435.07, F.S., allows the head of the appropriate agency (in the case of substance abuse treatment, the Secretary of the DCF) to exempt applicants from disqualification under certain circumstances.¹⁷

Receiving an exemption allows that individual to work despite the disqualifying crime in that person's past. However, an individual who is considered a sexual predator,¹⁸ career offender,¹⁹ or sexual offender (unless not required to register)²⁰ cannot ever be exempted from disqualification.²¹

In 1987, the Legislature provided an exemption, any provision of law to the contrary notwithstanding, for "human resource personnel", of summer recreation camps, summer day

¹⁰ Section 435.04(1)(a), F.S.

¹¹ Section 435.05(1)(b)-(c), F.S.

¹² *Id.*

¹³ Section 435.05(1)(b), F.S.

¹⁴ Section 435.05(1)(c), F.S.

¹⁵ Section 435.05(1)(d), F.S.

¹⁶ *See* s. 435.04(2), F.S., for full list.

¹⁷ *See* s. 435.07(1), F.S.

¹⁸ Pursuant to s. 775.261, F.S.

¹⁹ Pursuant to s. 775.261, F.S.

²⁰ Pursuant to s. 943.0435, F.S.

²¹ Section 435.07(4)(b), F.S.

camps and summer 24-hour camps, other than owners and operators, from the requirement to be fingerprinted for employee screening under either ch. 402, F.S.,²² or ch. 409, F.S.²³ However, these personnel were required to comply with all other screening requirements.²⁴

The term “human resource personnel” was not defined in either ch. 402, F.S., or ch. 409, F.S.

- The definition of the term “child care personnel” found in ch. 402, F.S., included the following: “For purposes of screening, the term shall also include persons who work in child care programs which provide care for children 15 hours or more each week in public or nonpublic schools, summer day camps, family day care homes, or those programs otherwise exempted under s. 402.316, F.S.”²⁵ This definition and the specific language of s. 402.316, F.S., require the screening of the personnel of these facilities despite their being otherwise exempt from licensure requirements.²⁶ This definition did not include personnel working in summer 24-hour camps. In 2010, the legislature removed the reference to “summer day camps” from the definition.²⁷
- The definition of the term “personnel” in ch. 409, F.S., included the following: “For the purposes of screening, the term “personnel” shall include owners, operators, employees, and volunteers working in summer day camps, or summer 24-hour camps providing care for children. A volunteer who assists on an intermittent basis for less than 40 hours per month shall not be included in the term “personnel” for the purposes of screening, provided that the volunteer is under direct and constant supervision by persons who meet the personnel requirements of this section.”²⁸

In 2010, the legislature repealed s. 409.1758, F.S., relating to screening for summer camp personnel, which means that all summer camp and summer 24-hour camp owners, operators, employees and volunteers that assist more than 10 hours per month must currently comply with Level 2 background screening.²⁹

Concurrent with the repeal of s. 409.1758, F.S., the DCF began a campaign to notify summer day camps and summer 24-hour camps of the new screening requirements through the use of news releases for media outlets throughout Florida, and flyers that were mailed to explain the new screening requirements to numerous summer camps.³⁰ The DCF worked with community partners, such as Florida’s Office of Early Learning’s Resource and Referral unit and local Early Learning Coalitions, to obtain a listing of summer camps and conducted an internet search to identify summer camps. Identifying the summer camps operating in Florida is difficult because

²² Chapter 402, F.S., governs child care facilities.

²³ Chapter 409, F.S., governs employees and owner/operators of child-placing agencies, family foster homes, and residential child-caring agencies.

²⁴ Chapter 87-141, L.O.F., which created s. 409.1758, F.S.

²⁵ Section 402.316, F.S., relates to child care facilities which are exempt from licensing requirements due to their affiliation with church or parochial schools.

²⁶ Section 402.302(3), F.S. (2009).

²⁷ Chapter 2010-114, L.O.F.

²⁸ Section 409.175(2)(i), F.S. (2009). In 2010, the Legislature revised the criteria for volunteers to read: “A volunteer who assists on an intermittent basis for less than 10 hours per month shall not be included in the term “personnel” for the purposes of the screening requirement of this section is always present and has the volunteer in his or her line of sight.”

²⁹ Chapter 2010-114, L.O.F.

³⁰ The DCF, Staff Analysis and Economic Impact, SB 630 (2013), Feb. 11, 2013, p. 2 (on file with the Senate Committee on Children, Families and Elder Affairs).

they are exempt from regulatory oversight, and there is no registration or other self-identification requirement.³¹

The DCF also established a protocol for public reporting and receipt of complaints alleging background screening violations by summer camps. The DCF logs such complaints and investigates within 48 hours. If the allegations are substantiated, the DCF works with the summer camp to expedite the screening of the owners, operators, employees and volunteers.³²

The DCF makes available the “Summer Camp Voluntary Registration Portal.” The portal provides summer camps with the opportunity for free advertising to parents and the general public through the DCF’s website. To register a summer camp in the portal, the summer camp operator must provide the camp’s assigned identification numbers, which are mandatory for the completion of background screening and can be obtained only when the summer camp establishes an account with the DCF’s Background Screening Unit.³³

The Office of Child Care Regulation has made available a Summer Camp Listing on the public website. To be featured on the Listing, a summer camp must create a Summer Camp Listing request through the portal made available on the website. This portal will require the camp to provide the name of the program, full address of camp location, contact information including phone, email and contact person, beginning and end dates of the camp, hours of operation, age limits, capacity, staff size, and a background screening OCA number. The OCA number is used to verify background screening compliance in the Agency for Health Care Administration (AHCA) Clearinghouse.³⁴

The number of Summer Camp Listing requests vary from year to year.³⁵ Below is a breakdown of the number of requests received over the last three years.³⁶

Year	Number of Requests
2018	108
2019	81
2020	69

These numbers represent summer camp providers who voluntarily requested to be listed on the Summer Camp web page. It is not indicative of how many summer camps are operating in the state each summer. In July of 2020, the DCF’s Office of Background Screening reported that there were over 2,000 “Summer Camp” providers that had an “active” status in the AHCA Clearinghouse. The DCF currently does not track the number of summer day camps or summer 24-hour camps that operate in the state each year.³⁷

³¹ Section 409.175(4)(d), F.S.

³² See The DCF, *Background Screening, Frequently Asked Questions Specific to Summer Camps*, available at https://www.myflfamilies.com/service-programs/background-screening/faqs_camps.shtml (last visited March 6, 2021).

³³ The DCF, *2021 Agency Legislative Bill Analysis SB 1096*, p. 2 (on file with the Senate Committee on Children, Families, and Elder Affairs) (hereinafter cited as “The DCF Analysis”).

³⁴ *Id.*

³⁵ *Id.* p 3.

³⁶ *Id.*

³⁷ *Id.*

DCF Licensure Authority

Summer camps are not inspected or regulated by the DCF, but all personnel are required to have completed a Level 2 background screening and not been disqualified prior to caring for children.³⁸ However, the DCF shall have access to the personnel records of such facilities to ensure compliance with the screening requirements. The DCF may adopt rules relating to the screening requirements for summer day camps and summer 24-hour camps.³⁹

Section 409.175(6)(e), F.S., outlines the DCF's ability to pursue remedies in addition to a denial or revocation of a license for failure to comply with the screening requirements. The disciplinary actions determination to be made by the DCF and the procedure for hearing for applicants and licensees is required to be in accordance with ch. 120, F.S., and written notice must be given to the applicant if reasonable grounds for denial or termination of employments exist. When this occurs, licensee summer or recreation camp and the personnel are affected. The procedures for a ch. 120, F.S., hearing must be made be available to the applicant, licensee, summer day camp or summer 24-hour camp, and affected personnel, in order to present evidence relating accuracy of the basis for exclusion or to the denial of an exemption from disqualification.

Section 409.175(6)(l), F.S., specifies that the DCF does not license summer day camps or summer 24-hour camps, but may access personnel records to ensure compliance for screening requirements. Additionally, the DCF is authorized to adopt rules relating to the screening requirements for summer day camps and summer 24-hour camps.

The DCF is authorized to institute injunctive proceedings in a court to enforce provisions of any license requirement, rule, or order, and terminate the operation of an agency in which a licensee has failed to take preventive or corrective measures to maintain licensing requirements. The DCF is also authorized to terminate the operation of a summer day camp or summer 24-hour camp if the camp has willfully and knowingly refused to comply with the screening requirements for personnel or has refused to terminate the employment of personnel found to be in noncompliance with the requirements for good moral character. The DCF must notify the state attorney if the summer day camp or summer 24-hour camp continues to provide care for the children without complying with the screening of personnel or hiring and continued employment of personnel after 30 days of written notification by registered mail.⁴⁰

Section 409.173(12), F.S., requires an agency, family foster home, summer day camp, or summer 24-hour camp providing care for the children to comply with the screenings for employment purposes and prohibits the use of information obtained from the criminal records and or from the juvenile records for any purpose other than the purpose of employment. Additionally, it prohibits the releasing of records to any other person for any purpose other than screening for employment.

In March 2012, the Palm Beach Post published a series of articles related to the harm that has

³⁸ Section 409.175 (4)(d), F.S.; *See also* the DCF, *Child Care, Summer Camp Requirements*, available at <https://www.myflfamilies.com/service-programs/child-care/summer-camp-requirements.shtml> (last visited March 5, 2021)

³⁹ Section 409.175(6)(l), F.S.

⁴⁰ Section 409.175(10)(a) and (b), F.S.

occurred to children as a result of attending unlicensed summer camps where employees were either not screened or improperly screened. One article in the series reported the following:

- Florida camps are completely unregulated and it is not known how many are in operation or who is checking on the people who run them.
- Florida is one of six states that don't license camps in some form.
- Florida's system of safeguarding kids in child-care centers relies on licensing where regulators inspect day cares and other licensed businesses to ensure employees are thoroughly screened; however, no such requirements exist for camps.
- Children are harmed regularly in Florida summer camps.⁴¹
- All 50 states consider child molesters and other sex offenders so dangerous that the government tracks their movements, but nothing stops them from working in Florida camps.
- In scores of other cases, rapists, murderers and other violent criminals have led organizations that often run camps. Roughly 170 church or neighborhood youth programs have been operated by felons statewide, including more than two dozen businesses led by child molesters or other sex offenders.
- The groups are disproportionately clustered around the state's poorest neighborhoods.⁴²

III. Effect of Proposed Changes:

The bill relocates the definitions of the terms "summer day camp" and "summer 24-hour camp" discussed above from ch. 409, F.S., to ch. 402, F.S., and removes all references to the terms from ch. 409, F.S.⁴³

The bill creates s. 402.3132, F.S., providing provisions specific to summer day camps and summer 24-hour camps that authorize the DCF or local licensing agency to commence and maintain all proper and necessary actions and proceedings for protecting the health, sanitation, safety and well-being of all children under care. Further, the bill requires summer day camps and summer 24-hour camps to meet the child care personnel screening requirements in ss. 402.305 and 402.3055, F.S., and provides that failure by a summer day camp or a summer 24-hour camp to comply with such screening requirements shall result in the loss of the camp's ability to operate.

The bill clarifies that the DCF may not license summer day camps, provides the DCF access to personnel records of such camps to ensure screening requirements are being met, and authorizes the DCF to adopt rules relating to the screening requirements.

The bill clarifies that the failure of a camp to refuse to terminate the employment of an employee who has not satisfied the screening requirements would be considered a violation of employee screening requirements.

⁴¹ The article further stated that since 2000, at least 50 children had been victimized in summer programs, or abused by workers the kids first encountered at camp organizations. The article further stated that, due to the nature of low reporting rate of child sexual abuse, that figure likely under-represents the number of victims statewide.

⁴² Michael LaForgia, the Palm Beach Post, *Weak laws pave way for child sexual abuse*, (Mar. 4, 2012), available at <https://www.palmbeachpost.com/article/20120304/NEWS/812018945> (last visited March 4, 2021).

⁴³ Section 409.175, F.S.

The bill authorizes the DCF or local licensing agency to commence and maintain all proper and necessary actions and proceedings for any of the above mentioned purposes. The DCF or local licensing agency to apply for injunction to the proper circuit court. The court has jurisdiction upon hearing and for cause shown to grant a temporary or permanent injunction restraining any person or entity from violating or continuing to violate any of the child care personnel screening requirements in ss. 402.305 and 402.3055, F.S.

The DCF and local licensing agency also are authorized to impose an administrative fine, not to exceed \$100 per violation per day, for each violation of the child care personnel screening requirements in ss. 402.305 and 402.3055, F.S.

The bill also requires, rather than permits, all summer camps or 24-hour summer camps to register with the DCF for inclusion in the DCF's summer camp listing.

The bill amends s. 409.175, F.S., removing similar provisions mentioned above related to summer day camps and summer 24-hour camps since such provisions are relocated to ch. 402., F.S.

The bill is effective July 1, 2021.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None identified.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Five counties have elected to regulate licensing of child care facilities and homes through local licensing agencies, as provided in s. 402.306, F.S. Those counties are: Broward, Hillsborough, Palm Beach, Pinellas, and Sarasota. The potential impact to expenditures to the counties is unknown.⁴⁴

The DCF reports that the Office of Child Care will need 2 additional staff positions for 6 months and the Office of Background Screening will need 6 additional staff positions for 6 months for a total expenditure of \$185,658.68. Required technology updates will cost \$130,000. The total fiscal impact will be \$315,658.68.⁴⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially sections 402.302 and 409.175 of the Florida Statutes.

This bill creates section 402.3132 of the Florida Statutes.

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

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

CS by Children, Families, and Elder Affairs on March 9, 2021:

The Committee Substitute:

- Clarifies that the DCF may not license summer day camps, provides the DCF access to personnel records of such camps to ensure screening requirements are being met, and authorizes the DCF to adopt rules relating to the screening requirements.
- Clarifies that the failure of a camp to refuse to terminate the employment of an employee who has not satisfied the screening requirements would be considered a violation of employee screening requirements.

⁴⁴ The DCF Analysis, p. 7.

⁴⁵ *Id.*

B. Amendments:

None.

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