

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 538

INTRODUCER: Committee on Children, Families, and Elder Affairs and Senator Trumbull

SUBJECT: Provisional Child Care Licensing

DATE: March 7, 2023 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Tuszynski	Cox	CF	Fav/CS
2.	_____	_____	MS	_____
3.	_____	_____	RC	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 538 requires the Department of Children and Families (DCF) or local licensing agency to issue a provisional license or registration to operate a family day care home when the applicant provides evidence, with his or her application, of completion of training and background screening within the previous 6 months that meets the requirements of the Department of Defense (DoD) for a family child care home.

This change will increase access to child care for military families by decreasing the time to operation for Family Child Care home operators who complete DoD-required training and background screening to begin serving military families immediately. The provisional license allows a Family Child Care home operator to provide child care services while simultaneously completing the DCF licensure requirements for a family day care home, to include a Level 2 background screen through the Care Provider Background Screening Clearinghouse.

The bill will likely have an indeterminate positive fiscal impact on the private sector. See Section V. Fiscal Impact Statement.

The bill takes effect upon becoming law.

II. Present Situation:

Child Care Licensure

The Department of Children and Families (DCF) is charged with regulating child care facilities, family day care homes, and large family child care homes.¹

Child care facilities are child care centers or child care arrangements that provide child care for more than five children unrelated to the operator, and receive payment, fee, or grant funds for the children receiving care, whether or not operated for profit.²

Family day care homes are occupied residences which regularly provide children from at least two unrelated families child care, and receive payments, fees, or grants for the children receiving care, whether or not operated for profit.³

Large family child care homes are occupied residences that regularly provide children from at least two unrelated families child care; receive payments, fees, or grants for the children receiving care, whether or not operated for profit; and have at least two full-time child care personnel on the premises during the hours of operation.⁴

The DCF licenses and regulates child care facilities and large family child care homes in 62 of the 67⁵ counties in Florida, establishing licensing standards that each licensed child care facility in the state must meet.⁶ The remaining five counties have local licensing authority and must meet or exceed the DCF standards: Broward, Hillsborough, Palm Beach, Pinellas and Sarasota Counties.⁷

As of February 27, 2023, the DCF licenses 4,687 child care facilities, 725 family day care homes, and 235 large family child care homes.⁸

Current law requires all providers' personnel meet specific licensure standards, training, credentials, and good moral character based upon background screening.⁹ Child care facilities with religious affiliation and certain family day care homes are exempt from licensure, but must register with the DCF. Although exempt from licensure, these specific operators and staff are still subject to the Level 2 background screening standards required under s. 435.04, F.S.¹⁰

¹ See generally ss. 402.301 through 402.319, F.S.

² Section 402.302(2), F.S.

³ Section 402.302(8), F.S.

⁴ Section 402.302(11), F.S.

⁵ Office of Program Policy Analysis and Government Accountability, Department of Children and Families, Child Care Regulation, *What are the program's responsibilities?*, available at <https://oppaga.fl.gov/ProgramSummary/ProgramDetail?programNumber=5011> (last viewed March 1, 2023).

⁶ Section 402.305, F.S.

⁷ Section 402.306, F.S.

⁸ Email from Chad Corcoran, Deputy Director of Legislative Affairs, the Florida Department of Children and Families, *RE: Child care licensure numbers*, February 27, 2023 (on file with the Committee on Children, Families, and Elder Affairs).

⁹ Section 402.305, F.S.

¹⁰ Section 402.316, F.S.

Provisional Licensure

The DCF may issue a provisional license or registration for child care facilities, family day care homes, or large family homes.¹¹ The conditions and procedures under which a provisional license or registration may be issued is detailed in administrative rule.¹² A provisional license cannot exceed 6 months and can be renewed one time for unusual circumstances beyond the control of the applicant.¹³ A provisional license is barred if the background screening for child care personnel is not complete.¹⁴

Background Screening

Florida law details two levels of background screening for the purposes criminal history record checks. These levels convey both the method of the record check and the extent of data searched:

- **Level 1** — a state-only name-based check through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,¹⁵ and
- **Level 2** — a state and national fingerprint-based check through FDLE and the Federal Bureau of Investigation's (FBI) National Crime Information Center (NCIC).¹⁶

Both Level 1 and Level 2 checks may also include local criminal history record checks through local law enforcement agencies.¹⁷

Level 1 and 2 are terms that pertain only to Florida and are not used by the FBI, the NCIC, or other states. They are defined in Chapter 435, F.S., and require any person required by law to be screened to not have an arrest awaiting final disposition; been found guilty of, regardless of adjudication; entered a plea of nolo contendere to; or been adjudicated delinquent and the record has not be sealed or expunged for any offense prohibited under s. 435.04(2), F.S.¹⁸ Levels 1 and 2 are used throughout statute without definition and with additional disqualifying offenses¹⁹ as well as a process for a screened person to obtain an exemption from disqualification.²⁰

Care Provider Background Screening Clearinghouse

All child care licensees and registrants are required to have a Level 2 background screen through Florida's Care Provider Background Screening Clearinghouse (Clearinghouse). The Clearinghouse is a single data source, administered by the Agency for Health Care

¹¹ Section 402.309, F.S.

¹² Section 402.309(5), F.S., and Rule 65C-22.001, F.A.C., that incorporates by reference the Department of Children and Families, *Child Care Facility Handbook*, October 2021.

¹³ Section 402.309(3), F.S.

¹⁴ Section 402.309(2), F.S.

¹⁵ Section 435.03(1), F.S.

¹⁶ Section 435.04(1), F.S.

¹⁷ See ss. 435.03(1) and 435.04(1)(a), F.S.

¹⁸ Section 435.04(2), F.S., details 52 distinct criminal offenses including broad categories of offenses related to violence, deception, and neglect of vulnerable persons.

¹⁹ See generally s. 413.208, F.S., related to employment by the Agency for Persons with Disabilities; s. 397.4073, F.S., related to employment as a substance abuse services provider; s. 381.986(9), F.S., related to individuals working with medical marijuana; and s. 744.3135(1), F.S., relating to employment as a professional guardian.

²⁰ Section 435.07, F.S.

Administration, for persons that are statutorily required to obtain a Level 2 screen for candidacy as an employee, independent contractor, or volunteer that provides care to children, elderly, disabled, and other vulnerable individuals.²¹ The Clearinghouse allows the sharing of fingerprints and results of Level 2 criminal history checks among participating agencies to reduce duplication and costs. The Clearinghouse provides other benefits, one of which is the retention of fingerprint data and participation in the FBI's Next Generation Identification continuous evaluation or "Rap Back" Service.

Next Generation Identification (NGI) — Rap Back Service

An agency may submit fingerprints of applicants, licensees, and other individuals in positions of public trust *on a periodic basis* for national NCIC checks to determine if the individual has engaged in criminal conduct that would prohibit the holding of a position or license.²² With the implementation of the FBI's NGI, an authorized agency may submit fingerprints for retention and subscription into the Rap Back service, an ongoing review or continuous evaluation of the criminal history status of each individual as long as the individual remains in a position of trust.²³

The Rap Back Service retains the fingerprint record and continuously evaluates it, rather than an agency periodically resubmitting fingerprints.²⁴ This Rap Back Service results in close to real-time notification of any criminal activity subsequent to the initial criminal history records search, removing any gaps in review caused by the periodic submission and screening of fingerprints.

Department of Defense Child Care Certification

The Department of Defense (DoD) certifies four distinct child care programs:²⁵

- **Child Development Centers** — are centers located on military installations that provide child care services for infants, pretoddlers, toddlers, and preschoolers. They operate Monday through Friday during standard work hours, and depending on the location offer full-day, part-day, and hourly care.
- **Family Child Care (FCC)** — provided by qualified child care professionals in their homes. Designed for infants through school agers, each FCC provider determines what care they offer, which may include full-day, part-day, school year, summer camp, 24/7, and extended care. Some FCC providers offer flexible operating hours, and are able to adjust their hours to accommodate requests from parents.
- **24/7 Centers** — child care for infants through school age children in a home-like setting during both traditional and non-traditional hours on a regular basis. The program is designed to support watch standers or shift workers who work rotating or non-traditional schedules

²¹ The Agency for Health Care Administration, *Care Provider Background Screening Clearinghouse*, available at https://ahca.myflorida.com/MCHQ/Central_Services/Background_Screening/BGS_results.shtml (last viewed February 28, 2023).

²² See Federal Bureau of Investigation, Privacy Impact Assessment, *Next Generation Identification Rap Back Service*, December 15, 2016, available at <https://www.fbi.gov/file-repository/pia-ngi-rap-back-service.pdf> (last viewed February 28, 2023).

²³ *Id.*

²⁴ *Id.*

²⁵ The Department of Defense, Military Childcare, *Military-Operated Child Care Programs*, available at <https://public.militarychildcare.csd.disa.mil/mcc-central/mcchome/military-operated-child-care-programs> (last viewed February 27, 2023). (hereinafter referred to as DoD MC)

(i.e., evenings, overnights, and weekends). While other families may use a 24/7 Center if space is available, priority is given to sponsors who require 24/7 care.

- **School Age Care (SAC)** — facility-based care for children from the start of kindergarten through the end of the summer after seventh grade. This program type operates Monday through Friday during standard work hours. SAC programs provide both School Year Care and Summer Camp.

The DoD FCC homes are most analogous to Florida’s Family Day Care homes. These FCC home operators must be certified family child care providers who are licensed, have obtained favorable background checks, and maintain a DoD-issued certificate to operate.²⁶ Each installation’s FCC program ensures all providers complete a comprehensive training program that promotes developmentally appropriate intellectual, social, emotional, and physical learning.²⁷

Required screenings, inspections, and checks for an FCC home include:

- Criminal history background checks for the applicant and all residents over 18 years old;
- Health screening and proof of immunizations for the provider and residents;
- Home inspections for fire, safety, sanitation, and preventative medicine;
- Monthly visits by an FCC staff member to observe, mentor and provide support;
- Pet certificate if the provider has a pet to show that it has the appropriate vaccinations and is safe to be around children; and
- Proof of liability insurance.²⁸

FCC home providers that are located off military installations are required to meet any requirements to be licensed, registered, or certified by the state.²⁹

Florida and DoD Comparison

The requirements of the DoD to certify an FCC home and the DCF to license or register a Family Day Care home are substantially similar. Both require 40 hours of introductory training focusing on health and safety, child development, behavioral health, and abuse and neglect.³⁰ Both also require training in first aid, CPR, fire prevention, safe sleep / SIDS, and ongoing annual in-service training updates.³¹

²⁶ DoD MC, *About Military Child Care*, available at <https://public.militarychildcare.csd.disa.mil/mcc-central/mcchome/about#program-quality-standards-93> (last viewed February 27, 2023).

²⁷ *Id.*

²⁸ *Id.*

²⁹ *Id.*

³⁰ See generally Rule 65C-22.001, F.A.C. and the Department of Defense Instruction 6060.02, available at <https://www.militaryonesource.mil/leaders-service-providers/children-youth-and-teens/departments-of-defense-policies-children-youth-teens/> (last viewed February 25, 2023).

³¹ *Id.*

However, Florida requires that all Family Day Care Home providers receive a Florida Level 2 background screen pursuant to s. 435.04, F.S., using the Clearinghouse. The general comparison of the state Level 2 requirements and a federal Tier One Child Care are as follows:

Florida’s Level 2 for Child Care	Federal Tier One Child Care ³²
Federal fingerprint-based NCIC criminal history check.	Same.
Federal fingerprint-based NCIC Sex Offender Registry check.	Same.
A search of each state’s criminal records for all states in which the person has resided in the previous five years.	Same.*
State sex-offender registry or repository for all states in which the person has resided in the previous five years.	Same.*
State child abuse and neglect registry and database for all states in which the person has resided in the previous five years.	Same.*
Background screens processed through the Florida Care Provider Background Screening Clearinghouse.	Processing through the Clearinghouse is not required.
No DoD installation record checks.	DoD installation records check of all prior affiliations.
* The Department of Air Force reports they check the repository of all states in which the person has <i>ever</i> resided, not just the previous 5 years.	

As detailed above, the background screening requirements are almost identical between federal and state law. However, the main relevant difference is Florida’s requirement to use the Clearinghouse. The use of the Clearinghouse provides the Rap Back Service that gives close to real time notification of any criminal activity of an employee or licensee with retained fingerprint records.

III. Effect of Proposed Changes:

The bill requires the DCF or local licensing agency to issue a provisional license or registration to operate a family day care home when the applicant provides evidence, with his or her application, of completion of training and background screening that meets the requirements of the DoD for a family child care home. This training and background screen must have occurred within the previous 6 months for the DCF to issue a provisional license.

This change will decrease the time to operation for FCC home operators who complete the DoD-required training and background screening and allow those operators to begin serving military families immediately upon applying to the DCF or local licensing agency for licensure or registration. The provisional license allows a FCC home operator to provide child care services while simultaneously completing the DCF licensure requirements for a Family Day Care home, including a Level 2 background screen through the Clearinghouse.

³² See 34 U.S.C. s. 20351 and 32 C.F.R. part 86.

As with other Family Day Care Home providers who are licensed or registered, the bill ensures that these DoD FCC home operators will be included in the Clearinghouse upon completion of the state application process and therefore subject to the Rap Back Service.

The bill takes effect upon becoming law.

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:

The bill will likely have an indeterminate positive fiscal impact on the private sector by allowing private operators of child care homes to begin doing business much sooner than currently able.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 402.309 of the Florida Statutes.

IX. Additional Information:

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

CS by Children, Families, and Elder Affairs on March 6, 2023:

The committee substitute:

- Clarifies a provisional license can be issued with evidence of compliance with the Department of Defense (DoD) requirements rather than only after the Florida background screening requirement is met; and
- Requires evidence that the DoD background screen and training submitted with an application have occurred within the previous 6 months for the provisional license to be issued.

- B. **Amendments:**

None.