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# **Health Care Services Policy Committee**

## **Meeting Packet**

**Tuesday, February 2, 2010  
9:00 AM -12:00 PM  
306 HOB**

**Larry Cretul  
Speaker**

**Paige Kreegel  
Chair**



# **The Florida House of Representatives**

**Health Care Services Policy Committee**

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## **Agenda**

**February 2, 2010**

**9:00 AM – 12:00 AM**

**306 HOB**

- I. Call to Order/Roll Call**
- II. HB 411 Child Care Facilities by Nehr.**
- III. HB 487 Licensing Standards for Child Care Facilities by Bovo.**
- IV. HB 479 Driver License Records by Reed.**
- V. Adjournment.**



HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 411

Child Care Facilities

SPONSOR(S): Nehr

TIED BILLS:

IDEN./SIM. BILLS: SB 834

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Services Policy Committee		Schoonover <i>aw</i>	Schoolfield <i>[Signature]</i>
2) Health Care Appropriations Committee			
3) Health & Family Services Policy Council			
4)			
5)			

SUMMARY ANALYSIS

HB 411 amends ch. 402, F.S., to create a definition for household children and also require that certain household children be included in the capacity calculation of licensed family day care homes and large family child care homes. Specifically, the bill defines household children to mean children who are related by blood, marriage, or legal adoption to, or who are the legal wards of, an adult household member who meets the level 2 screening requirement as provided in s. 435.04, F.S. The definition also conditions supervision of the operator's household children to the discretion of the operator unless those children receive subsidized child care to be in the home. The bill provides that household children, under the age of 13, be included in the overall capacity of the licensed home, whether on the premises of a family day care home, large family child care home or on a field trip with children enrolled in child care.

The bill also requires persons advertising or publishing an advertisement for a child care facility, family day care home, or large family child care home to include the state or local agency license number of such facility home. Additionally, the bill will require the Department of Children and Family Services or local licensing agencies to report violations of the advertising requirements to the state attorney's office.

The bill does not appear to have a fiscal impact on state or local governments.

The bill becomes effective on July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Background

##### *Licensing*

The Department of Children and Family Services (DCF) establishes licensing standards that each licensed child care facility in the state must meet.<sup>1</sup> However, current law permits that any county, with licensing standards that meet or exceed the state minimum standards, may designate a local licensing agency to license child care facilities in the county or contract with DCF to delegate the administration of the state minimum standards in the county to the Department.<sup>2</sup> Currently, DCF is responsible for administering child care licensing and training in 61 of Florida's 67 counties. The remaining six counties (Brevard, Broward, Hillsborough, Palm Beach, Pinellas, and Sarasota) have licensing standards that exceed the state's minimum licensing standards for family day care homes.<sup>3</sup> These counties license family day care homes as a function of the county.

##### *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, whether or not it is operated for profit.<sup>4</sup> Care can be provided for one of the following groups of children, including children under the age of 13:

- A maximum of four children from birth to 12 months old;
- A maximum of three children from birth to 12 month old, and other children for a maximum total of six children;
- A maximum of 10 children if all are older than 12 months old;

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

<sup>2</sup> s. 402.306(1), F.S.

<sup>3</sup> "Child Care Services Placement Options for Legislative Consideration," Office of Program Policy Analysis and Government Accountability, Research Memorandum. December 30, 2009. (email received by: Kerry Schoolfield, Staff Director)

<sup>4</sup> s. 402.302(7), 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>5</sup>

Current law requires family day care homes to either have a license or registration. The home must have a license if it is presently being licensed under an existing county ordinance, participating in the subsidized child care program, or if the county passes a resolution that family day care homes be licensed.<sup>6</sup> If not subject to license, then the family day care home shall register annually with DCF, and receive a registration number.<sup>7</sup>

### *Large Family Child Care Home*

A large family child care home is an occupied residence in which child care is provided for children from at least two unrelated families, for payment, fee, or grant for any of the children receiving care, whether or not operated for profit, and which has at least two full-time child care personnel. Additionally, large family child care homes must first have operated for a minimum of 2 consecutive years, with an operator who has had a child development associate credential or its equivalent for 1 year. Care can be provided to one of the following groups, which includes those children under 13 years of age who are related to the caregiver:

- A maximum of 8 children from birth to 24 months old;
- A maximum of 12 children, with no more than 4 children under 24 months old.<sup>8</sup>

Large family day care homes are required to be licensed by DCF and subject to standards established by rule.<sup>9,10</sup> DCF is permitted to provide technical assistance to counties to enable the counties and providers to achieve compliance with minimum standards for large family child care homes.<sup>11</sup>

### *Background Screening*

Personnel of both family day care homes and large family child care homes shall be subject to level 2 screening and other screening requirements established by law.<sup>12</sup> Screening includes any member over the age of 12 years of a family day care home operator's family, or persons over the age of 12 years residing with the operator in the family day care home. Family members or persons residing with the operator, who are between the ages of 12 and 18 years are not required to be fingerprinted but shall be screened for delinquency records.<sup>13</sup>

### *Supervision*

DCF has promulgated administrative rules related to supervision of children and staffing requirements. These rules apply to all children in the home including children related to the operator. Specifically, operators are responsible for the supervision of children at all times, including when the children are napping or sleeping.<sup>14</sup> Further, while children are napping or sleeping in bedrooms, the room's doors must remain open.<sup>15</sup> All children, during the daytime, must have adult supervision consisting of watching and directing their activities, both indoors and outdoors.<sup>16</sup> If a child is sick and placed in

<sup>5</sup> Id.

<sup>6</sup> s. 402.313(1), F.S.

<sup>7</sup> s. 402.313(1)(a), F.S.

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

<sup>9</sup> s. 402.3131(1), F.S.

<sup>10</sup> s. 402.3131(7), F.S.

<sup>11</sup> s. 402.3131(1)(b), F.S.

<sup>12</sup> s. 402.313(3), F.S.

<sup>13</sup> s. 402.313(3), F.S.

<sup>14</sup> 65C-20.009(5)(a), F.A.C.

<sup>15</sup> Id.

<sup>16</sup> Id.

isolation, he or she must remain within sight and hearing of the operator.<sup>17</sup> Additionally, children being diapered or when changing clothes must be attended to at all times.<sup>18</sup>

### *Advertisement*

Any advertisement for a child care facility must include within such advertisement the state or local agency license number of the facility. Failure to do so is a misdemeanor of the first degree.<sup>19</sup> This advertisement requirement does not address whether registered family day care homes have to list their DCF issued registration number in an advertisement. Therefore under current law, registered family day care homes are not required to list their registration number in advertisements.

### **Effect of Proposed Changes**

This bill creates the definition, "household children," to mean children who are related by blood, marriage, or legal adoption to, or who are the legal wards of, an adult household member who meets the level 2 screening requirements as provided in s. 435.04, F.S. The effect of this definition will broaden the extent of children that will be included as part of the child care home. Current law only includes children under 13 years of age who are related to the caregiver. This definition will include children not only related to the caregiver but also related to an adult household member who is not the caregiver. The definition also conditions supervision of the operator's household children to the discretion of the operator unless those children receive subsidized child care to be in the home. The effect of this change will not allow DCF inspectors to restrict an operator's supervision of their household children and hold the parents to the same supervision standards for the other children enrolled in child care.<sup>20</sup>

This bill also amends the definitions for both "family day care home" and "large family child care home" to clarify that "household children" are included in the calculations to determine the maximum numbers of children that can receive care. While current law includes children under 13 years of age that are related to the caregiver in determining the amount of children that can be cared for, the use of "household children" will provide more clarification and direction as to what is considered for calculation purposes. As previously mentioned the term is broader and will include children related by blood, marriage, or legal adoption, or who are the legal wards of an adult household member. Therefore, this change will ensure that calculations of household size include not just the children under 13 years of age who are related only to the operator, but also those children who are related to any adult household guest over the age of 13, such as an adult household guest on vacation with his or her children. Additionally, the bill provides that the household children be included in the overall capacity of the licensed home regardless if they are on the premises or on a field trip with children enrolled in licensed care. The effect of this change will ensure that the capacity is not adjusted if household children are not on the premises or participating in a fieldtrip.

The bill amends advertising requirements in s. 402.318, F.S. to include family day care homes and large family child care homes. Further, the bill also amends the requirements so that they also apply to publications. Additionally the bill requires DCF or local licensing agencies to report violations of the advertising and publications requirements to the state attorney's office. The effect of this change will protect the consumers from fraudulent child care advertisements and publications. The change will also likely require DCF staff to take on additional workload by having to check advertisements and publications for fraud and to forward such activity to the state attorney's office.

### **B. SECTION DIRECTORY:**

Section 1. Amends s. 402.302, relating to definitions.

Section 2. Amends s. 402.318, relating to advertisement.

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<sup>17</sup> 65C-20.009(5)(b), F.A.C.

<sup>18</sup> 65C-20.009(5)(c), F.A.C.

<sup>19</sup> s. 402.318, F.S.

<sup>20</sup> 65C-20.009(5), F.A.C.

Section 3. Provides an effective date of July 1, 2010.

## 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:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

### B. RULE-MAKING AUTHORITY:

None

### C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 114-116 refer to children who are the legal wards of an adult household member who meets level 2 screening requirements as provided in s. 435.04, F.S. The level 2 screening language in the definition provides confusion since all members of family day care homes and large family child care homes over the age of 13 must complete level 2 screening, pursuant to s. 402.313, F.S. The apparent intent of including the screening requirement in the definition is to ensure that the definition includes any children who are the legal wards of any adult member in the child care home, whether permanent or temporary.



Amending these lines to state that household children include those who are the legal wards of the family day care home or large family child care home operator, or any adult household member would clarify the definition's intent.

Line 191 needs to also require registration numbers since a family day care home may be registered instead of licensed by the Department.

Lines 191 to 194 require DCF to report violations to the State Attorney's office. This could create a workload increase for DCF in this mandate. Further, it is also unclear whether DCF will be required to monitor common advertising and publishing venues for fraudulent activity.

#### **IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES**

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1                                   A bill to be entitled  
 2           An act relating to child care facilities; amending s.  
 3           402.302, F.S.; revising and providing definitions;  
 4           providing for certain household children to be included in  
 5           calculations regarding the capacity of licensed family day  
 6           care homes and large family child care homes; providing  
 7           conditions for supervision of household children of  
 8           operators of family day care homes and large family child  
 9           care homes; amending s. 402.318, F.S.; requiring the  
 10          Department of Children and Family Services or the local  
 11          licensing agency to report violations of certain  
 12          advertising requirements applicable to child care  
 13          facilities to the state attorney's office; revising such  
 14          advertising requirements; providing penalties; providing  
 15          an effective date.

16  
 17   Be It Enacted by the Legislature of the State of Florida:

18  
 19           Section 1.   Section 402.302, Florida Statutes, is amended  
 20   to read:

21           402.302   Definitions.—As used in this chapter, the term:

22           (1)   "Child care" means the care, protection, and  
 23   supervision of a child, for a period of less than 24 hours a day  
 24   on a regular basis, which supplements parental care, enrichment,  
 25   and health supervision for the child, in accordance with his or  
 26   her individual needs, and for which a payment, fee, or grant is  
 27   made for care.

28 (2) "Child care facility" includes any child care center  
 29 or child care arrangement which provides child care for more  
 30 than five children unrelated to the operator and which receives  
 31 a payment, fee, or grant for any of the children receiving care,  
 32 wherever operated, and whether or not operated for profit. The  
 33 following are not included:

- 34 (a) Public schools and nonpublic schools and their
- 35 integral programs, except as provided in s. 402.3025;
- 36 (b) Summer camps having children in full-time residence;
- 37 (c) Summer day camps;
- 38 (d) Bible schools normally conducted during vacation
- 39 periods; and
- 40 (e) Operators of transient establishments, as defined in
- 41 chapter 509, which provide child care services solely for the
- 42 guests of their establishment or resort, provided that all child
- 43 care personnel of the establishment are screened according to
- 44 the level 2 screening requirements of chapter 435.

45 (3) "Child care personnel" means all owners, operators,  
 46 employees, and volunteers working in a child care facility. The  
 47 term does not include persons who work in a child care facility  
 48 after hours when children are not present or parents of children  
 49 in Head Start. For purposes of screening, the term includes any  
 50 member, over the age of 12 years, of a child care facility  
 51 operator's family, or person, over the age of 12 years, residing  
 52 with a child care facility operator if the child care facility  
 53 is located in or adjacent to the home of the operator or if the  
 54 family member of, or person residing with, the child care  
 55 facility operator has any direct contact with the children in

56 the facility during its hours of operation. Members of the  
 57 operator's family or persons residing with the operator who are  
 58 between the ages of 12 years and 18 years shall not be required  
 59 to be fingerprinted but shall be screened for delinquency  
 60 records. For purposes of screening, the term shall also include  
 61 persons who work in child care programs which provide care for  
 62 children 15 hours or more each week in public or nonpublic  
 63 schools, summer day camps, family day care homes, or those  
 64 programs otherwise exempted under s. 402.316. The term does not  
 65 include public or nonpublic school personnel who are providing  
 66 care during regular school hours, or after hours for activities  
 67 related to a school's program for grades kindergarten through  
 68 12. A volunteer who assists on an intermittent basis for less  
 69 than 40 hours per month is not included in the term "personnel"  
 70 for the purposes of screening and training, provided that the  
 71 volunteer is under direct and constant supervision by persons  
 72 who meet the personnel requirements of s. 402.305(2). Students  
 73 who observe and participate in a child care facility as a part  
 74 of their required coursework shall not be considered child care  
 75 personnel, provided such observation and participation are on an  
 76 intermittent basis and the students are under direct and  
 77 constant supervision of child care personnel.

78 (4) "Department" means the Department of Children and  
 79 Family Services.

80 (5) "Drop-in child care" means child care provided  
 81 occasionally in a child care facility in a shopping mall or  
 82 business establishment where a child is in care for no more than  
 83 a 4-hour period and the parent remains on the premises of the

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84 shopping mall or business establishment at all times. Drop-in  
 85 child care arrangements shall meet all requirements for a child  
 86 care facility unless specifically exempted.

87 (6) "Evening child care" means child care provided during  
 88 the evening hours and may encompass the hours of 6:00 p.m. to  
 89 7:00 a.m. to accommodate parents who work evenings and late-  
 90 night shifts.

91 (7) "Family day care home" means an occupied residence in  
 92 which child care is regularly provided for children from at  
 93 least two unrelated families and which receives a payment, fee,  
 94 or grant for any of the children receiving care, whether or not  
 95 operated for profit. A family day care home shall be allowed to  
 96 provide care for one of the following groups of children, which  
 97 shall include household ~~those~~ children under 13 years of age ~~who~~  
 98 ~~are related to the caregiver:~~

99 (a) A maximum of four children from birth to 12 months of  
 100 age.

101 (b) A maximum of three children from birth to 12 months of  
 102 age, and other children, for a maximum total of six children.

103 (c) A maximum of six preschool children if all are older  
 104 than 12 months of age.

105 (d) A maximum of 10 children if no more than 5 are  
 106 preschool age and, of those 5, no more than 2 are under 12  
 107 months of age.

108

109 Household children under 13 years of age, whether on the  
 110 premises of the family day care home or on a field trip with

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111 children enrolled in child care, shall be included in the  
 112 overall capacity of the licensed home.

113 (8) "Household children" means children who are related by  
 114 blood, marriage, or legal adoption to, or who are the legal  
 115 wards of, an adult household member who meets the level 2  
 116 screening requirements as provided in s. 435.04. Supervision of  
 117 the operator's household children shall be left to the  
 118 discretion of the operator unless those children receive  
 119 subsidized child care to be in the home.

120 (9)~~(8)~~ "Large family child care home" means an occupied  
 121 residence in which child care is regularly provided for children  
 122 from at least two unrelated families, which receives a payment,  
 123 fee, or grant for any of the children receiving care, whether or  
 124 not operated for profit, and which has at least two full-time  
 125 child care personnel on the premises during the hours of  
 126 operation. One of the two full-time child care personnel must be  
 127 the owner or occupant of the residence. A large family child  
 128 care home must first have operated as a licensed family day care  
 129 home for 2 years, with an operator who has had a child  
 130 development associate credential or its equivalent for 1 year,  
 131 before seeking licensure as a large family child care home. A  
 132 large family child care home shall be allowed to provide care  
 133 for one of the following groups of children, which shall include  
 134 household ~~those~~ children under 13 years of age ~~who are related~~  
 135 ~~to the caregiver:~~

136 (a) A maximum of 8 children from birth to 24 months of  
 137 age.

138 (b) A maximum of 12 children, with no more than 4 children  
 139 under 24 months of age.

140

141 Household children under 13 years of age, whether on the  
 142 premises of the large family child care home or on a field trip  
 143 with children enrolled in child care, shall be included in the  
 144 overall capacity of the licensed home.

145 ~~(10)~~~~(9)~~ "Indoor recreational facility" means an indoor  
 146 commercial facility which is established for the primary purpose  
 147 of entertaining children in a planned fitness environment  
 148 through equipment, games, and activities in conjunction with  
 149 food service and which provides child care for a particular  
 150 child no more than 4 hours on any one day. An indoor  
 151 recreational facility must be licensed as a child care facility  
 152 under s. 402.305, but is exempt from the minimum outdoor-square-  
 153 footage-per-child requirement specified in that section, if the  
 154 indoor recreational facility has, at a minimum, 3,000 square  
 155 feet of usable indoor floor space.

156 ~~(11)~~~~(10)~~ "Local licensing agency" means any agency or  
 157 individual designated by the county to license child care  
 158 facilities.

159 ~~(12)~~~~(11)~~ "Operator" means any onsite person ultimately  
 160 responsible for the overall operation of a child care facility,  
 161 whether or not he or she is the owner or administrator of such  
 162 facility.

163 ~~(13)~~~~(12)~~ "Owner" means the person who is licensed to  
 164 operate the child care facility.

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165        (14)~~(13)~~ "Screening" means the act of assessing the  
 166 background of child care personnel and volunteers and includes,  
 167 but is not limited to, employment history checks, local criminal  
 168 records checks through local law enforcement agencies,  
 169 fingerprinting for all purposes and checks in this subsection,  
 170 statewide criminal records checks through the Department of Law  
 171 Enforcement, and federal criminal records checks through the  
 172 Federal Bureau of Investigation.

173        (15)~~(14)~~ "Secretary" means the Secretary of Children and  
 174 Family Services.

175        (16)~~(15)~~ "Substantial compliance" means that level of  
 176 adherence which is sufficient to safeguard the health, safety,  
 177 and well-being of all children under care. Substantial  
 178 compliance is greater than minimal adherence but not to the  
 179 level of absolute adherence. Where a violation or variation is  
 180 identified as the type which impacts, or can be reasonably  
 181 expected within 90 days to impact, the health, safety, or well-  
 182 being of a child, there is no substantial compliance.

183        (17)~~(16)~~ "Weekend child care" means child care provided  
 184 between the hours of 6 p.m. on Friday and 6 a.m. on Monday.

185        Section 2. Section 402.318, Florida Statutes, is amended  
 186 to read:

187        402.318 Advertisement.—No person, as defined in s.  
 188 1.01(3), shall advertise or publish an advertisement for a child  
 189 care facility, family day care home, or large family child care  
 190 home without including within such advertisement the state or  
 191 local agency license number of such facility or home. The  
 192 department or local licensing agency shall report any person



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193 | that violates this section to the state attorney's office in the  
194 | appropriate judicial circuit. Violation of this section is a  
195 | misdemeanor of the first degree, punishable as provided in s.  
196 | 775.082 or s. 775.083.

197 |       Section 3. This act shall take effect July 1, 2010.

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

1 Council/Committee hearing bill: Health Care Services Policy  
2 Committee  
3 Representative Nehr offered the following:

4  
5 **Amendment**

6 Remove everything after the enacting clause and insert:

7 Section 1. Section 402.302, Florida Statutes, is amended to  
8 read:

9 402.302 Definitions.-As used in this chapter, the term:

10 (1) "Child care" means the care, protection, and  
11 supervision of a child, for a period of less than 24 hours a day  
12 on a regular basis, which supplements parental care, enrichment,  
13 and health supervision for the child, in accordance with his or  
14 her individual needs, and for which a payment, fee, or grant is  
15 made for care.

16 (2) "Child care facility" includes any child care center  
17 or child care arrangement which provides child care for more  
18 than five children unrelated to the operator and which receives  
19 a payment, fee, or grant for any of the children receiving care,

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20 | wherever operated, and whether or not operated for profit. The  
21 | following are not included:

22 |       (a) Public schools and nonpublic schools and their  
23 | integral programs, except as provided in s. 402.3025;

24 |       (b) Summer camps having children in full-time residence;

25 |       (c) Summer day camps;

26 |       (d) Bible schools normally conducted during vacation  
27 | periods; and

28 |       (e) Operators of transient establishments, as defined in  
29 | chapter 509, which provide child care services solely for the  
30 | guests of their establishment or resort, provided that all child  
31 | care personnel of the establishment are screened according to  
32 | the level 2 screening requirements of chapter 435.

33 |       (3) "Child care personnel" means all owners, operators,  
34 | employees, and volunteers working in a child care facility. The  
35 | term does not include persons who work in a child care facility  
36 | after hours when children are not present or parents of children  
37 | in Head Start. For purposes of screening, the term includes any  
38 | member, over the age of 12 years, of a child care facility  
39 | operator's family, or person, over the age of 12 years, residing  
40 | with a child care facility operator if the child care facility  
41 | is located in or adjacent to the home of the operator or if the  
42 | family member of, or person residing with, the child care  
43 | facility operator has any direct contact with the children in  
44 | the facility during its hours of operation. Members of the  
45 | operator's family or persons residing with the operator who are  
46 | between the ages of 12 years and 18 years shall not be required  
47 | to be fingerprinted but shall be screened for delinquency

Amendment No. 1

48 records. For purposes of screening, the term shall also include  
49 persons who work in child care programs which provide care for  
50 children 15 hours or more each week in public or nonpublic  
51 schools, summer day camps, family day care homes, or those  
52 programs otherwise exempted under s. 402.316. The term does not  
53 include public or nonpublic school personnel who are providing  
54 care during regular school hours, or after hours for activities  
55 related to a school's program for grades kindergarten through  
56 12. A volunteer who assists on an intermittent basis for less  
57 than 40 hours per month is not included in the term "personnel"  
58 for the purposes of screening and training, provided that the  
59 volunteer is under direct and constant supervision by persons  
60 who meet the personnel requirements of s. 402.305(2). Students  
61 who observe and participate in a child care facility as a part  
62 of their required coursework shall not be considered child care  
63 personnel, provided such observation and participation are on an  
64 intermittent basis and the students are under direct and  
65 constant supervision of child care personnel.

66 (4) "Department" means the Department of Children and  
67 Family Services.

68 (5) "Drop-in child care" means child care provided  
69 occasionally in a child care facility in a shopping mall or  
70 business establishment where a child is in care for no more than  
71 a 4-hour period and the parent remains on the premises of the  
72 shopping mall or business establishment at all times. Drop-in  
73 child care arrangements shall meet all requirements for a child  
74 care facility unless specifically exempted.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 411 (2010)

Amendment No. 1

75 (6) "Evening child care" means child care provided during  
76 the evening hours and may encompass the hours of 6:00 p.m. to  
77 7:00 a.m. to accommodate parents who work evenings and late-  
78 night shifts.

79 (7) "Family day care home" means an occupied residence in  
80 which child care is regularly provided for children from at  
81 least two unrelated families and which receives a payment, fee,  
82 or grant for any of the children receiving care, whether or not  
83 operated for profit. Household children under 13 years of age,  
84 when on the premises of the family day care home or on a field  
85 trip with children enrolled in child care, shall be included in  
86 the overall capacity of the licensed home. A family day care  
87 home shall be allowed to provide care for one of the following  
88 groups of children, which shall include household ~~these~~ children  
89 under 13 years of age ~~who are related to the caregiver:~~

90 (a) A maximum of four children from birth to 12 months of  
91 age.

92 (b) A maximum of three children from birth to 12 months of  
93 age, and other children, for a maximum total of six children.

94 (c) A maximum of six preschool children if all are older  
95 than 12 months of age.

96 (d) A maximum of 10 children if no more than 5 are  
97 preschool age and, of those 5, no more than 2 are under 12  
98 months of age.

99 (8) "Household children" means children who are related by  
100 blood, marriage, or legal adoption to, or who are the legal  
101 wards of the family day care home or large family child care  
102 home operator, or an adult household member who permanently or

Amendment No. 1

103 temporarily resides in the home. Supervision of the operator's  
104 household children shall be left to the discretion of the  
105 operator unless those children receive subsidized child care to  
106 be in the home.

107 (9)(8) "Large family child care home" means an occupied  
108 residence in which child care is regularly provided for children  
109 from at least two unrelated families, which receives a payment,  
110 fee, or grant for any of the children receiving care, whether or  
111 not operated for profit, and which has at least two full-time  
112 child care personnel on the premises during the hours of  
113 operation. One of the two full-time child care personnel must be  
114 the owner or occupant of the residence. A large family child  
115 care home must first have operated as a licensed family day care  
116 home for 2 years, with an operator who has had a child  
117 development associate credential or its equivalent for 1 year,  
118 before seeking licensure as a large family child care home.

119 Household children under 13 years of age, when on the premises  
120 of the large family child care home or on a field trip with  
121 children enrolled in child care, shall be included in the  
122 overall capacity of the licensed home. A large family child care  
123 home shall be allowed to provide care for one of the following  
124 groups of children, which shall include household ~~these~~ children  
125 under 13 years of age ~~who are related to the caregiver:~~

126 (a) A maximum of 8 children from birth to 24 months of  
127 age.

128 (b) A maximum of 12 children, with no more than 4 children  
129 under 24 months of age.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 411 (2010)

Amendment No. 1

130        ~~(10)(9)~~ "Indoor recreational facility" means an indoor  
131 commercial facility which is established for the primary purpose  
132 of entertaining children in a planned fitness environment  
133 through equipment, games, and activities in conjunction with  
134 food service and which provides child care for a particular  
135 child no more than 4 hours on any one day. An indoor  
136 recreational facility must be licensed as a child care facility  
137 under s. 402.305, but is exempt from the minimum outdoor-square-  
138 footage-per-child requirement specified in that section, if the  
139 indoor recreational facility has, at a minimum, 3,000 square  
140 feet of usable indoor floor space.

141        ~~(11)(10)~~ "Local licensing agency" means any agency or  
142 individual designated by the county to license child care  
143 facilities.

144        ~~(12)(11)~~ "Operator" means any onsite person ultimately  
145 responsible for the overall operation of a child care facility,  
146 whether or not he or she is the owner or administrator of such  
147 facility.

148        ~~(13)(12)~~ "Owner" means the person who is licensed to  
149 operate the child care facility.

150        ~~(14)(13)~~ "Screening" means the act of assessing the  
151 background of child care personnel and volunteers and includes,  
152 but is not limited to, employment history checks, local criminal  
153 records checks through local law enforcement agencies,  
154 fingerprinting for all purposes and checks in this subsection,  
155 statewide criminal records checks through the Department of Law  
156 Enforcement, and federal criminal records checks through the  
157 Federal Bureau of Investigation.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 411 (2010)

Amendment No. 1

158        ~~(15)~~~~(14)~~ "Secretary" means the Secretary of Children and  
159 Family Services.

160        ~~(16)~~~~(15)~~ "Substantial compliance" means that level of  
161 adherence which is sufficient to safeguard the health, safety,  
162 and well-being of all children under care. Substantial  
163 compliance is greater than minimal adherence but not to the  
164 level of absolute adherence. Where a violation or variation is  
165 identified as the type which impacts, or can be reasonably  
166 expected within 90 days to impact, the health, safety, or well-  
167 being of a child, there is no substantial compliance.

168        ~~(17)~~~~(16)~~ "Weekend child care" means child care provided  
169 between the hours of 6 p.m. on Friday and 6 a.m. on Monday.

170        Section 2. Section 402.318, Florida Statutes, is amended to  
171 read:

172        402.318 Advertisement.—No person, as defined in s.  
173 1.01(3), shall advertise or publish an advertisement for a child  
174 care facility, family day care home, or large family child care  
175 home without including within such advertisement the state or  
176 local agency license number or registration number of such  
177 facility or home. Violation of this section is a misdemeanor of  
178 the first degree, punishable as provided in s. 775.082 or s.  
179 775.083.

180        Section 3. This act shall take effect July 1, 2010.



HB 487

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 487

Licensing Standards for Child Care Facilities

SPONSOR(S): Bovo, and others

TIED BILLS:

IDEN./SIM. BILLS: SB 1234

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Services Policy Committee		Schoonover <i>CS</i>	Schoolfield <i>AS</i>
2) Health Care Appropriations Committee			
3) Health & Family Services Policy Council			
4)			
5)			

SUMMARY ANALYSIS

HB 487 amends chapter. 402, F.S., to create minimum requirements for licensure of child care facilities relating to window blinds and other window coverings. The bill prohibits use of certain types of window blinds and other window coverings that pose a risk of strangulation to young children. The bill also requires the Department of Children and Families (DCF) to review and consider recommendations of the United States Consumer Product Safety Commission (CPSC) relating to window blinds and window coverings. The bill also appears to provide a strict liability of civil damages against a child care facility for acts resulting from not properly retrofitting existing window blinds, window coverings, pull cords, or inner cords by January 1, 2011. The bill provides a definition for "properly retrofit" to mean to modify in a way that eliminates long dangling cords or the formation of inner or outer cord loops that pose a risk of strangulation. The bill also permits DCF to provide information to child care facilities on reduced-cost or no-cost options for retrofitting or replacing unsafe window blinds and window coverings.

There appears to be an indeterminate fiscal impact on child care facilities that will have to retrofit or replace unsafe window blinds and window coverings.

The bill takes effect on July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Background

##### *Licensing Standards for Child Care Facilities*

The Department of Children and Families (DCF) establishes licensing standards that each licensed child care facility in the state must meet under the authority of s. 402.305, F.S. A child care facility generally includes 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.<sup>1</sup> DCF currently licenses 6,453 child care arrangements which include child care facilities, large family child care homes and family day care homes.<sup>2,3</sup> In addition, six counties in the state which conduct their own licensure of homes currently license 4,292 child care arrangements.<sup>4</sup>

The statutory licensing standards for child care facilities are extensive and include standards for physical facilities. However, current standards for licensed child care providers do not address blinds or window coverings.

##### *Window Blinds and Coverings*

For the past 15 years, the Consumer Products Safety Commission (CPSC)<sup>5</sup> has been investigating window covering hazards and working with the Window Covering Safety Council (WCSC) to increase safety of window coverings and blinds. Additionally the WCSC provides consumers with free repair kits

<sup>1</sup> s. 402.302(2), F.S.

<sup>2</sup> DCF Quick Facts, January 1, 2009.

<sup>3</sup> s. 402.313(1)(a), F.S., provides that family day care homes may be registered and not licensed under certain conditions.

<sup>4</sup> Email from James Cheatham dated January 28, 2010, on file with committee.

<sup>5</sup> The *Consumer Products Safety Commission* (CPSC) was established in 1972 when Congress passed the Consumer Product Safety Act. In passing the act, Congress intended to protect the public against unreasonable risks of injuries associated with consumer products. (15 U.S.C. § 2051(a))

that make window coverings and blinds safer.<sup>6</sup> From 1991 to 2000, the CPSC received 160 reports of strangulations involving cords on window blinds. Of those 160 reports, 140 involved the outer pull cords, and 20 involved the inner cords that run through the blind slats. The CPSC found that the formation of loops in the pull cords and inner cords likely caused the strangulation.<sup>7</sup>

Since 2006, the CPSC received reports of five deaths and sixteen near strangulations from Roman shades and three deaths from roll-up blinds.<sup>8</sup> Roman shades have a looped pull cord and exposed inner cords on the back of the shade. Roll-up blinds have a looped cord and two lifting cord loops that pass around the bottom rail of the blind.<sup>9</sup>

On December 15, 2009, the CPSC and the WCSC announced a voluntary recall to repair millions of Roman shades and roll-up blinds to eliminate the risk of strangulation to young children. The CPSC estimates that approximately five million Roman shades and three million roll-up blinds are sold yearly.<sup>10</sup>

### **Effect of Proposed Changes**

This bill creates minimum requirements for licensure of child care facilities relating to window blinds and other window coverings. The effect of this change will create additional equipment standards for licensed child care facilities that are not addressed in current law or rule. This law will affect 10,745 licensed child care providers, requiring them to examine their blinds and window coverings and to replace or retrofit window blinds or other window coverings as needed to comply with the new licensing standard. The Window Covering Safety Council (WCSC) albeit provides free kits for retrofitting unsafe blinds, this change may place costs on child care facilities by requiring them to replace or retrofit existing equipment by a certain date.

The intent of the bill is to eliminate the risk of strangulation of children in licensed child care facilities by prohibiting child care facilities from using window blinds and coverings that contain cords with loops. The effect of this change will not have an impact on registered family child care homes since they are not required to comply with licensing standards.

The bill also requires DCF to review and consider recommendations of the Consumer Product Safety Commission (CPSC) relating to window blinds and window coverings. The effect of this change will require DCF to consider CPSC recommendations when promulgating rules to address blind and window covering requirements.

The bill appears to impose a strict civil liability against a child care facility for any act that results from not properly retrofitting existing window blinds, window coverings, pull cords, or inner cords by January 1, 2011. Strict liability imposes liability regardless of fault.<sup>11</sup> Thus, in a strict liability cause of action, a plaintiff does not have to prove that the defendant was negligent in order to recover damages.<sup>12</sup>

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<sup>6</sup> "Window Covering Safety Council Recalls to Repair All Roman and Roll-Up Blinds Due to Risk of Strangulation." U.S. Consumer Products Safety Commission, December 12, 2009. <http://www.cpsc.gov/cpsc/pub/prerel/prhtml10/10073.html> (last visited 1/27/10).

<sup>7</sup> "Children Can Strangle in Window Coverings Cords." U.S. Consumer Products Safety Commission. <http://www.cpsc.gov/cpsc/pub/pubs/cords.html> (Last visited January 27, 2010).

<sup>8</sup> "Window Covering Safety Council Recalls to Repair All Roman and Roll-Up Blinds Due to Risk of Strangulation." U.S. Consumer Products Safety Commission, December 12, 2009. <http://www.cpsc.gov/cpsc/pub/prerel/prhtml10/10073.html> (last visited 1/27/10).

<sup>9</sup> "Risk of Strangulation Prompts Recall of Window Blinds Sold at Cost Plus and World Market Stores." U.S. Consumer Product Safety Commission, January 13, 2009. <http://www.cpsc.gov/cpsc/pub/prerel/prhtml09/09090.html> (Last visited January 27, 2010).

<sup>10</sup> "Window Covering Safety Council Recalls to Repair All Roman and Roll-Up Blinds Due to Risk of Strangulation." U.S. Consumer Products Safety Commission, December 12, 2009. <http://www.cpsc.gov/cpsc/pub/prerel/prhtml10/10073.html> (last visited 1/27/10).

<sup>11</sup> *Black's Law Dictionary* 1422 (6<sup>th</sup> ed. 1990).

<sup>12</sup> See 6 Fla. Practice, *Personal Injury and Wrongful Death Actions* § 13:16 (2008-2009 ed.). This does not mean that the plaintiff may not have to prove other issues in order to prevail in a strict liability case

The bill provides a definition for "properly retrofit" to mean to modify in a way that eliminates long dangling cords or the formation of inner or outer cord loops that pose a risk of strangulation. The effect of this change will provide clear instruction to child care facility providers on the actions needed by the January 1, 2011 deadline.

The bill also permits DCF to provide information to child care facilities on reduced-cost or no-cost options for retrofitting or replacing unsafe window blinds and window coverings. The effect of this change will help ensure that both citizens and child care facilities are aware of reduced-cost or no-cost methods to retrofit or replace unsafe window blinds and coverings. Such awareness will allow child care facilities to possibly avoid unnecessary costs of replacement and retrofitting.

**B. SECTION DIRECTORY:**

Section 1. Creates a title to the act

Section 2. Amends s.420.305; relating to licensing standards; child care facilities.

Section 3. Provides an effective date of July 1, 2010.

**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:**

Indeterminate impact. Licensed child care facilities will be required to replace or retrofit blinds and window coverings as needed to comply with the standards in this act. This could affect as many as 10,745 child care providers. An estimate of this impact is not available at this time.

**D. FISCAL COMMENTS:**

The bill may create fiscal impacts on private child care facilities which have to replace and retrofit unsafe window blind and window coverings.

### III. COMMENTS

#### A. CONSTITUTIONAL ISSUES:

##### 1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

##### 2. Other:

None

#### B. RULE-MAKING AUTHORITY:

None

#### C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 55-60 appears to create strict civil liability for child care facilities from acts that result from not properly replacing or retrofitting unsafe blinds or window coverings by January 1, 2011.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

1                                   A bill to be entitled  
 2           An act relating to licensing standards for child care  
 3           facilities; providing a short title; amending s. 402.305,  
 4           F.S.; providing minimum licensing requirements for window  
 5           blinds and other window coverings; providing for facility  
 6           liability under certain circumstances; providing a  
 7           definition; authorizing the Department of Children and  
 8           Family Services to provide certain information regarding  
 9           window blinds and window coverings; providing an effective  
 10          date.

11  
 12   Be It Enacted by the Legislature of the State of Florida:

13  
 14           Section 1. This act may be cited as the "John F. Serrano,  
 15 Rachel Lou Napier, and Alexandra Ali Safety and Accountability  
 16 Act."

17           Section 2. Subsection (5) of section 402.305, Florida  
 18 Statutes, is amended to read:

19           402.305 Licensing standards; child care facilities.—

20           (5) PHYSICAL FACILITIES.—Minimum standards shall include  
 21 requirements for building conditions, indoor play space, outdoor  
 22 play space, napping space, bathroom facilities, food preparation  
 23 facilities, outdoor equipment, and indoor equipment.

24           (a) Because of the nature and duration of drop-in child  
 25 care, outdoor play space and outdoor equipment shall not be  
 26 required for licensure; however, if such play space and  
 27 equipment are provided, then the minimum standards shall apply  
 28 to drop-in child care. With respect to minimum standards for

29 physical facilities of a child care program for school-age  
 30 children which is operated in a public school facility, the  
 31 department shall adopt the State Uniform Building Code for  
 32 Public Educational Facilities Construction as the minimum  
 33 standards, regardless of the operator of the program. The  
 34 Legislature intends that if a child care program for school-age  
 35 children is operated in a public school, the program need not  
 36 conform to standards for physical facilities other than the  
 37 standards adopted by the Commissioner of Education.

38 (b) Minimum requirements for licensure of a child care  
 39 facility shall prohibit the use or installation of window blinds  
 40 or other window coverings with long dangling cords, pull cords,  
 41 or inner cords capable of forming a loop and which thereby pose  
 42 a risk of strangulation to young children. Window blinds and  
 43 other window coverings that have been manufactured or properly  
 44 retrofitted in a manner that eliminates long dangling cords,  
 45 pull cords, inner cords, or the formation of loops that pose a  
 46 risk of strangulation are not prohibited under this subsection.  
 47 Cordless window blinds are recommended and are in compliance  
 48 with this subsection.

49 1. When developing and periodically reviewing minimum  
 50 licensing requirements related to the safety and installation of  
 51 window blinds and other window coverings in child care  
 52 facilities, the department shall review and take into  
 53 consideration the recommendations of the United States Consumer  
 54 Product Safety Commission.

55 2. Child care facilities that do not properly retrofit  
 56 existing window blinds, window coverings, pull cords, or inner



57 |  cords in accordance with this paragraph by January 1, 2011,  
 58 |  shall be held liable for civil damages for any act that is a  
 59 |  result of the failure to retrofit existing window blinds, window  
 60 |  coverings, pull cords, or inner cords. For purposes of this  
 61 |  subparagraph, "properly retrofit" means to modify in a manner  
 62 |  that eliminates long dangling cords or the formation of inner or  
 63 |  outer cord loops that pose a risk of child strangulation.

64 |  3. The department may provide information regarding  
 65 |  reduced-cost or no-cost options for retrofitting or replacing  
 66 |  unsafe window blinds and window coverings.

67 | Section 3. This act shall take effect July 1, 2010.

COUNCIL/COMMITTEE AMENDMENT

Bill No. HB 487 (2010)

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED \_\_\_\_\_ (Y/N)  
ADOPTED AS AMENDED \_\_\_\_\_ (Y/N)  
ADOPTED W/O OBJECTION \_\_\_\_\_ (Y/N)  
FAILED TO ADOPT \_\_\_\_\_ (Y/N)  
WITHDRAWN \_\_\_\_\_ (Y/N)  
OTHER \_\_\_\_\_

1 Council/Committee hearing bill: Health Care Services Policy  
2 Committee  
3 Representative Bovo offered the following:  
4

5 **Amendment (with title amendment)**

6 Remove lines 55-60 and insert:

7 2. Child care facilities must properly retrofit existing window  
8 blinds, window coverings, pull cords, or inner cords in  
9 accordance with this paragraph by January 1, 2011. For purposes  
10 of this

11  
12 -----  
13 **T I T L E A M E N D M E N T**

14 Remove lines 5-6 and insert:

15 blinds and other window coverings; providing a



**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** HB 479

Driver License Records

**SPONSOR(S):** Reed

**TIED BILLS:**

**IDEN./SIM. BILLS:** SB 962

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Health Care Services Policy Committee		Schoonover	<del>Schoolfield</del>
2) Roads, Bridges & Ports Policy Committee			
3) Health & Family Services Policy Council			
4)			
5)			

**SUMMARY ANALYSIS**

HB 479 amends s. 322.142, F.S., to allow the Department of Children and Family Services (DCF) to access image and signature data of the Department of Highway Safety and Motor Vehicles (DHSMV) for use in expediting the determination of eligibility for public assistance and for use in public assistance fraud investigations.

The Department of Highway Safety and Motor Vehicles estimates that it would incur first year costs of \$464,926 that includes \$182,317 for four FTE, \$160,000 for network servers, \$19,000 for a firewall and \$14,316 for non recurring state standard expenses. The Department estimates recurring costs totaling \$271,610 that includes \$182,317 for salaries, \$22,092 in state standard expenses, \$67,200 for network expenditures, and \$1,596 in personnel services.

The bill takes effect on July 1, 2010.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### Current Situation

##### Background

##### *Public Assistance*

Public assistance includes benefits paid to individuals through temporary cash assistance, food stamps, Medicaid or optional state supplemental programs.<sup>1</sup>

##### *Driver's Licenses and Identification Cards*

Applicants for driver's licenses are required by the Department of Highway Safety and Motor Vehicles (DHSMV) to provide proof of a social security card and proof of identity by showing documents including proof of citizenship and lawful non-citizenship status.<sup>2</sup> Identical requirements exist in law for state issued identification cards.<sup>3</sup> Upon receipt of the required fee, DHSMV issues to driver's license and identification card applicants, a color photographic or digital imaged driver's license bearing a full-face photograph or digital image of the licensee.<sup>4</sup>

##### *Temporary Cash Assistance*

Under state law, temporary cash assistance applicants must be United States citizens, qualified noncitizens, legal residents of the state, and be able to provide a social security number for each member of the family or show proof of application for one.<sup>5</sup> The Department of Children and Family Services (DCF) conducts eligibility for and administers the temporary cash assistance program under Title IV-A of the Social Security Act.<sup>6,7</sup>

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<sup>1</sup> s. 414.0252(10), F.S.

<sup>2</sup> s. 322.08, F.S.

<sup>3</sup> s. 322.051, F.S.

<sup>4</sup> s. 322.142(1) and s. 322.051(8), F.S.

<sup>5</sup> s. 414.095(2)(a), F.S.

<sup>6</sup> s. 414.0252(12), F.S.

<sup>7</sup> s. 414.045, F.S.

## *Medicaid*

Both federal and state law require applicants for Medicaid services to show proof of identity and be United States citizens, or qualified non-citizens and legal residents of Florida.<sup>8,9</sup> Additionally, federal law classifies a valid state-issued driver's license as satisfactory documentary evidence of both identity and citizenship, as long as the state issuing the license requires proof of U.S. citizenship or obtains a social security number from the applicant.<sup>10</sup> Since the applications require proof of a social security card, a valid Florida driver's license or state-issued identification card is permitted to receive Medicaid benefits in Florida. Once Medicaid eligibility has been determined by DCF, then the Agency for Health Care Administration will administer and supervise the Medicaid benefits for the qualified applicant.<sup>11</sup>

## *Supplemental Nutrition Assistance Program (SNAP)*

Under state law, food stamps, or SNAP applicants must be United States citizens, qualified noncitizens, legal residents of the state, and be able to provide a social security number for each member of the family or show proof of application for one.<sup>12</sup> Federal law permits both United States citizens and lawful aliens to receive benefits of SNAP.<sup>13</sup> Specifically, the Code of Federal Regulations requires verification of an applicant's identity by any document which reasonably establishes identity. Driver's licenses or state issued identification cards are reasonable documents under the Code.<sup>14</sup> DCF is the designated department responsible for administering and operating the federally authorized SNAP program.<sup>15</sup>

## *Fraud*

Section 414.39(10), F.S., requires DCF to screen applicants for public assistance, including Medicaid, food stamps, and temporary cash assistance, against a fraud-prone case profile to identify cases for fraud. Additionally the Attorney General conducts a statewide program of Medicaid fraud control, which investigates both Medicaid provider and user fraud.<sup>16</sup>

## *Department of Highway and Safety Motor Vehicles (DHSMV) Database*

The DHSMV is permitted, pursuant to interagency agreements, to share information from its database, including digital images and signatures, in the following circumstances:<sup>17</sup>

- In response to law enforcement agency requests;
- With the Department of State to determine voter registration eligibility;
- With the Department of Revenue for use in establishing paternity and establishing, modifying, or enforcing support obligations;
- With the Department of Children and Families to conduct protective investigations, and
- With the Department of Financial Services relating to unclaimed property.

Under current law, DCF is not permitted to access the DHSMV database to verify identification and citizenship of Medicaid and SNAP applicants, resulting in a delay or lack of receipt of services.<sup>18</sup>

<sup>8</sup> s. 414.095(2), F.S.

<sup>9</sup> 42 U.S.C. § 1396b(i)(22); 42 C.F.R. § 435.406

<sup>10</sup> 42 U.S.C. § 1396b(x)(3)(b); 42 C.F.R. § 435.407(4)

<sup>11</sup> s. 409.901, F.S.

<sup>12</sup> s. 414.095, F.S.

<sup>13</sup> 7 U.S.C. §2015(f); 7 C.F.R. § 273.2(f)

<sup>14</sup> 7 C.F.R. § 273.2(f)(vii)

<sup>15</sup> s. 414.31, F.S.

<sup>16</sup> s. 409.920 and s. 409.9201, F.S.

<sup>17</sup> s. 322.142(4), F.S.

<sup>18</sup> Department of Children and Families, Staff Analysis HB 479 (2010), on file with Committee.

**Effect of Proposed Changes**

The bill will permit access to DHSMV database for use as verification of identity to expedite the determination of eligibility for public assistance and for use in public assistance fraud investigations. While the statutory language does not identify which state department or agency will have access to the database for these reasons, it is assumed that DCF will use it to verify eligibility for the various public assistance programs it oversees. The effect of the proposed changes will lessen the time it takes to determine eligibility and reduce benefit errors as a result of incorrect or fraudulent applicant identification.

**B. SECTION DIRECTORY:**

Section 1. Amends s. 322.142, relating to color photographic or digital imaged licenses.

Section 2. Provides an effective date of July 1, 2010.

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

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

1. Revenues:

None.

2. Expenditures:

	<u>2010-11</u>	<u>2011-12</u>	<u>2012-13</u>
Highway Safety Operating Trust Fund:			
1. Non-Recurring Costs			
Expenses:			
Operating Capital Outlay:	\$ 14,316	\$0.00	\$0.00
	<u>\$179,000</u>	<u>\$0.00</u>	<u>\$0.00</u>
Total	\$193,316	\$0.00	\$0.00
2. Recurring Costs			
Expenses:			
Salaries and Benefits	\$182,318	\$182,318	\$182,318
Expenses-State Standards	20,496	20,496	20,496
Expenses-Bandwidth	67,200	67,200	67,200
Human Resource Services	<u>1,596</u>	<u>1,596</u>	<u>1,596</u>
Total	\$271,610	\$271,610	\$271,610
FTE	4	4	4

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Total Costs			
Highway Safety Operating Trust Fund	\$464,926	\$271,610	\$271,610

**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:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Lines 31-32 do not identify clearly which department or agency will have access to the DHSMV database. If DCF is the intended department to gain access to determine eligibility for public assistance, then the language should be worded to indicate that intention. Further, lines 33-34 give access to the database for public assistance fraud investigations. Both the Attorney General and DCF have statutory authority to investigate fraud relating to Medicaid, which is a public assistance program. Therefore, if it is the intent of the sponsor to grant access to DCF while investigating Medicaid eligibility fraud, then the bill should be amended to indicate that intention. However, if it is the intent of the sponsor to provide access for all public assistance fraud, then the bill should be amended to give access to the database to both DCF and the Attorney General.

The Department of Highway Safety and Motor Vehicles, (DHSMV) in their staff analysis, recommends an amendment to lines 31-37, which will restrict access to a certain number of DCF region employees. DHSMV states that this amendment will provide sufficient access control over digital images and allow implementation without a fiscal impact.<sup>19</sup>

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES



1                                   A bill to be entitled  
 2           An act relating to driver license records; amending s.  
 3           322.142, F.S.; providing for license identification  
 4           information maintained by the Department of Highway Safety  
 5           and Motor Vehicles to be used for verification of identity  
 6           in determination of eligibility for public assistance and  
 7           for certain fraud investigations; providing an effective  
 8           date.

9  
 10 Be It Enacted by the Legislature of the State of Florida:

11  
 12           Section 1. Subsection (4) of section 322.142, Florida  
 13 Statutes, is amended to read:

14           322.142 Color photographic or digital imaged licenses.—

15           (4) The department may maintain a film negative or print  
 16 file. The department shall maintain a record of the digital  
 17 image and signature of the licensees, together with other data  
 18 required by the department for identification and retrieval.  
 19 Reproductions from the file or digital record are exempt from  
 20 the provisions of s. 119.07(1) and shall be made and issued only  
 21 for departmental administrative purposes; for the issuance of  
 22 duplicate licenses; in response to law enforcement agency  
 23 requests; to the Department of State pursuant to an interagency  
 24 agreement to facilitate determinations of eligibility of voter  
 25 registration applicants and registered voters in accordance with  
 26 ss. 98.045 and 98.075; to the Department of Revenue pursuant to  
 27 an interagency agreement for use in establishing paternity and  
 28 establishing, modifying, or enforcing support obligations in

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29 Title IV-D cases; to the Department of Children and Family  
 30 Services pursuant to an interagency agreement to conduct  
 31 protective investigations under part III of chapter 39; for use  
 32 as verification of identity to expedite the determination of  
 33 eligibility for public assistance and for use in public  
 34 assistance fraud investigations; or to the Department of  
 35 Financial Services pursuant to an interagency agreement to  
 36 facilitate the location of owners of unclaimed property, the  
 37 validation of unclaimed property claims, and the identification  
 38 of fraudulent or false claims.

39 Section 2. This act shall take effect July 1, 2010.

Amendment No. 1

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

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1 Council/Committee hearing bill: Health Care Services Policy  
2 Committee  
3 Representative Reed offered the following:

**Amendment (with title amendment)**

6 Remove line 31 and insert:  
7 protective investigations under part III of chapter 39; to the  
8 Department of Children and Family Services pursuant to an  
9 interagency agreement specifying the number of employees in each  
10 Department of Children and Family Services' region to be granted  
11 entry for use

14 -----  
15 **T I T L E A M E N D M E N T**

16 Remove line 5 and insert:  
17 and Motor Vehicles to the Department of Children and Families  
18 Services to be used for verification of identity