

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 139 Child Care Facilities

SPONSOR(S): Ahern

TIED BILLS: **IDEN./SIM. BILLS:** SB 364

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Access Subcommittee		Batchelor	Schoolfield
2) Civil Justice Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

The bill amends Ch. 402, F.S., to create a definition for household children and requires 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, the family day care home operator, the large family child care home operator, or an adult household member who permanently or temporarily resides in the home. The definition also leaves 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 when 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 in the advertisement the state or local agency license number or registration number of such facility or home. The bill provides for the right to take legal action against an unlicensed or unregistered individual who falsely advertises their facility. Finally, the bill provides that the court shall award the prevailing party reasonable attorney's fees and costs incurred in connection with any claim filed.

Provides an effective date of July 1, 2011.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Current Situation

Background

Licensing

The Department of Children and Family Services (DCF) licenses child care facilities based on licensing standards established in statute and rule.¹ However, current law permits any county with local licensing standards that meet or exceed the state minimum standards to either designate a local licensing agency to license child care facilities or contract with DCF to administer the state minimum standards in the county.² 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.³ These counties license family day care homes as a function of county government.

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 operated for profit."⁴ Care can be provided for one of the following groups of children, including children under the age of 13 who are related to the caregiver:

- A maximum of four children from birth to 12 months;
- A maximum of three children from birth to 12 months, and other children over the age of 12 months, up to a total of six children;
- A maximum of six preschool children if all are older than 12 months;
- A maximum of 10 children if no more than five are preschool age and, of those five, no more than two are under 12 months.⁵

Current law requires family day care homes have either 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 requiring licensure.⁶ If not subject to license, then the family day care home shall register annually with DCF and receive a registration number.⁷

¹ s. 402.305(1), F.S.

² s. 402.306(1), F.S.

³ Staff Analysis HB 411(2010), Florida House of Representatives

⁴ s. 402.302(8), F.S.

⁵ *Id*

⁶ s. 402.313(1), F.S.

⁷ s. 402.313(1)(a), F.S.

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 a 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.⁸ Before seeking licensure, 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.⁹ 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;
- A maximum of 12 children, with no more than 4 children under 24 months.¹⁰

Large family day care homes are required to be licensed and are subject to minimum standards established by rule.¹¹ DCF is permitted to provide technical assistance to counties and family day care home providers to enable the counties and providers to achieve compliance with minimum standards for large family child care homes.¹²

Supervision

DCF has promulgated administrative rules related to supervision of children and staffing requirements.¹³ 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.¹⁴ When children are napping or sleeping in bedrooms, the rules require that the room's doors must remain open.¹⁵ All children, during the daytime, must have adult supervision consisting of watching and directing their activities, both indoors and outdoors.¹⁶ If a child is sick and placed in isolation, he or she must remain within sight and hearing of the operator.¹⁷ Additionally, children being diapered or when changing clothes must be attended to at all times.¹⁸

Advertisement

Any advertisement for a child care facility must include within such advertisement the state or local agency license number of the facility.¹⁹ Failure to do so is a misdemeanor of the first degree.²⁰ 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.

Financial Assistance for Childcare through School Readiness Program

The School Readiness program administered by the Agency for Workforce Innovation (AWI) provides at risk or low income families with financial assistance for child care through a variety of services.²¹ This program is sometimes referred to as subsidized child care.

⁸ s. 402.302(9), F.S.

⁹ s. 402.302(9), F.S., 65C-20.013(1)(a), F.A.C.

¹⁰ s. 402.302(9), F.S.

¹¹ ss. 402.3131(1),(7), F.S.

¹² s. 402.3131(1)(b), F.S.

¹³ 65C-20.009, F.A.C

¹⁴ 65C-20.009(5)(a), F.A.C

¹⁵ *Id*

¹⁶ *Id*

¹⁷ 65C-20.009(5)(b), F.A.C.

¹⁸ 65C-20.009(5)(c), F.A.C.

¹⁹ s. 402.318, F.S.

²⁰ *Id*

²¹ Chapter 411.0101, F.S.

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, the family day care home operator, large family child care home operator, or an adult household member who permanently or temporarily resides in the home. The effect of this definition will increase the number of children considered to be part of the child care home. Current law only includes children under 13 years of age who are related to the caregiver. This definition counts children who may be related to the care-giving operator as well as to an adult household resident who is not the caregiver, such as a temporary or permanent resident.

The definition also conditions supervision of the operator’s household children to the discretion of the operator unless those children receive subsidized care to be in the home. In effect, the law will require DCF inspectors to distinguish between an operator’s household children, and other children in the home when applying rules for supervision related to the child care program.²²

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 number 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. The meaning of the term is expanded to include children related by blood, marriage, or legal adoption to, or who are the legal wards of, the operator or a permanent or temporary adult household member. Thus, 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 would also be included in the calculation. Additionally, the bill provides that the household children be included in the overall capacity of the licensed home when 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 adjusted if household children are not either 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. It also requires registered family day care homes or large family child care homes to include their registration numbers in advertisements. Violation of these advertising requirements is a misdemeanor of the first degree.

The bill also provides that an individual or local licensing agency has cause of action against an unlicensed or unregistered individual who violates advertising requirements, and provides that the court shall award the prevailing party reasonable attorney fees.

B. SECTION DIRECTORY:

Section 1: Amends s. 402.302, F.S., relating to definitions.

Section 2: Amends s. 402.318, F.S., relating to advertisement.

Section 3: Amends s. 411.01, F.S., relating to School readiness programs; early learning coalitions

Section 4: Provides an effective date of July 1, 2011.

²² 65C-20.009(5), F.A.C.

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:

The 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:

The bill creates a cause of action against an unlicensed or unregistered person who violates the proposed advertising requirements; however, the bill does not prescribe the nature of the damages underlying the cause of action. Current law as amended by this bill will already provide that advertising an unlicensed or unregistered facility is a misdemeanor of the first degree.

The bill provides that a local licensing agency or individual can have a cause of action against an individual who is unlicensed or unregistered. The bill does not specify the local licensing agency. It is unclear whether this is intended to reference a local child care licensing agency or some other agency.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES