

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 Appropriations Subcommittee on Health and Human Services

BILL: CS/SB 210

INTRODUCER: Children, Families, and Elder Affairs Committee and Senator Gibson

SUBJECT: Licensing of Facilities that Offer Health and Human Services

DATE: April 1, 2015 **REVISED:** _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	Fav/CS
2.	Brown	Pigott	AHS	Favorable
3.			AP	

Please see Section IX. for Additional Information:
COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 210 revises regulation of child care services and the settings for those services. The bill creates a definition of “advertise” relating to child care services and revises the definition of “family day care home.”

The bill requires a family day care home to conspicuously display its license or registration in the common area of the home. A large family child care home is required to permanently post its license in a conspicuous location visible to parents, guardians, and the Department of Children and Families (DCF).

Family day care homes subject to registration with the DCF must provide proof of a written plan to identify a competent adult who has met statutory screening and training requirements and serves as a designated substitute for the operator of the home in an emergency. Additionally, family day care homes subject to registration must provide proof of screening and background checks for the operator, household members, and the designated substitute.

Under the bill, certain restrictions on the advertising of child care facilities which are currently applied to licensed or registered facilities, family day care homes, and large family child care homes, are also applied to facilities that are exempt from licensure under s. 402.316, F.S.

The bill’s fiscal impact is indeterminate.

The effective date of the bill is July 1, 2015.

II. Present Situation:

Child care can be provided in many different settings in exchange for payment. There are also settings that allow for the provision of child care services without payment, such as public and nonpublic schools, summer camps with children as full-time residents, summer day camps, Bible schools, and care offered at a public lodging establishment solely for guests of the public lodging establishment. Statutory provisions governing child care and child care facilities are found in ss. 402.301-402.319, F.S.

According to the U.S. Department of Health & Human Services, in 2011, licenses were issued to approximately 6,750 child care facilities, 3,327 family child care homes, and 412 group child care homes in Florida.¹ The definition of “child care” is the care, protection, and supervision of a child for a period of less than 24 hours a day on a regular basis that supplements parental care, enrichment, and health supervision for the child, in accordance with the child’s needs, in exchange for a payment, fee, or grant.²

Types of Facilities

“Child care facility” is defined as a child care center or child care arrangement for providing child care for more than five children unrelated to the operator in exchange for a payment, fee, or grant for any of the children receiving care, regardless of where the facility is operated and whether or not it is operated for profit.³ The terms “child care center” and “child care arrangement” are not defined, and the statutory definition of “child care facility” does not specify whether a home or residence may qualify as a child care facility. Child care facilities are required to be licensed or registered, subject to annual renewal,⁴ except for those exempted from licensure and registration under s. 402.316, F.S.

The bill deals with child care facilities and the following types of “homes:”

- 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, regardless of whether or not it is operated for profit. A family day care home is restricted to providing care for a specified capacity of children depending on their ages.⁵ A family day care home is required to obtain a license from the Department of Children and Families (DCF) only if the home is required to be licensed by the county in which the home is situated. Homes that are not required to be licensed are required to register annually with the DCF and provide certain information, including proof of screening and background checks.⁶ However, the statute does not identify who is subject to the screenings or background checks.

¹ U.S. Department of Health & Human Services, *Administration for Children*, available at <https://childcare.gov/resource/number-licensed-child-care-facilities-2011> (follow attachment Number of Child Care Facilities in 2011) (last visited Feb. 24, 2015).

² Section 402.302(1), F.S.

³ Section 402.302(2), F.S.

⁴ Section 402.308(1), F.S.

⁵ Section 402.302(8), F.S.

⁶ Section 402.313(1), F.S.

- **Large family child care homes:** A large family child care home is an occupied residence in which child care is regularly provided for children from at least two unrelated families, which receives a payment, fee, or grant for any of the children receiving care, regardless of whether or not it is operated for profit, and which has at least two full-time child care personnel on the premises during the hours of operation, one of whom must be the owner or an occupant of the residence. In order to become a large family child care home, a home must first have operated as a licensed family day care home for two years, with an operator who has had a child development associate credential or its equivalent for one year. A large family child care home is restricted to providing care for a specified capacity of children depending on their ages,⁷ and is required to obtain licensure from the DCF.⁸

Licensure and Registration Fees

The DCF must collect a fee for any license it issues for a child care facility, family day care home, or large family child care home.⁹ The fee for a child care facility licensed under s. 402.305, F.S., is \$1 per child based on the licensed capacity of the facility, with a minimum fee of \$25 per facility and a maximum fee of \$100 per facility. The fee is \$25 for a family day care home subject to registration, and the fee is \$50 for a family day care home subject to licensure. The fee is \$60 for a licensed large family child care home.

Restrictions on Advertising

Section 402.318, F.S., provides that a person¹⁰ is prohibited from advertising a child care facility, a family day care home, or a large family child care home unless the advertisement includes the state or local agency license number or registration number of the facility or home. A violation of this provision is a misdemeanor of the first degree, punishable as provided in ss. 775.082 or 775.083, F.S.¹¹

Exemptions

Section 402.316, F.S., provides that certain child care facilities are exempt from ss. 402.301-402.319, F.S., except for the requirements regarding screening of child care personnel.¹² An exempt facility is a child care facility that is an integral part of a church school or parochial school conducting regularly scheduled classes, courses of study, or educational programs accredited by, or by a member of, an organization that publishes and requires compliance with its standards for health, safety, and sanitation.

⁷ Section 402.302(11), F.S.

⁸ Section 402.3131(1), F.S.

⁹ Section 402.315(3), F.S.

¹⁰ Section 402.318, F.S., specifies that “person” is defined the same as in s. 1.01(3), F.S., which provides that “person” includes individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations.

¹¹ Section 775.082, F.S., provides that a person convicted of a misdemeanor of the first degree may be sentenced to a term of imprisonment not exceeding one year. Section 775.083(1)(d), F.S., provides that a person convicted of a misdemeanor of the first degree may be sentenced to pay a fine not to exceed \$1,000, in addition to any punishment described in s. 775.082, F.S.

¹² Section 402.305(2)(a), F.S., provides minimum standards regarding child care personnel for licensed child care facilities, including good moral character based upon screening. The required screening must be conducted using level 2 standards as provided in ch. 435, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 402.302, F.S., relating to definitions used in ch. 402, F.S., to add a new definition and revise an existing definition.

The definition of “advertise” in relation to child care services is created under s. 402.302(1), F.S. Under the bill, “advertise” means to market child care services through any means, including, but not limited to, online message boards, motor vehicle signs, newspaper advertisements, roadside signs, flyers and posters, and radio and television announcements.

The bill also amends the definition of “family day care home” under s. 402.302(9), F.S., by creating a multi-faceted test for meeting the definition. Under the bill, the stipulation in current law that a family day care home is a residence that provides “child care” under certain conditions is replaced with the stipulation that a family day care home is a residence that provides “care, protection, and supervision of a child, for a period of less than 24 hours a day on a regular basis, which supplements parental care, enrichment, and health supervision for the child, in accordance with his or her individual needs” under certain conditions. If a residence satisfies those conditions, it must also engage in either of the following activities in order to meet the definition:

- Receive a payment, fee, or grant for any of the children receiving care, regardless of profit; or
- Advertise the availability of its services, regardless of whether it receives a payment, fee, or grant for any of the children receiving care and regardless of profit.

Under the bill’s definition of “family day care home,” it is possible for a residence to not be considered a family day care home unless and until it begins advertising, at which point it will become a family day care home without making any other changes to its services or operations.

Section 402.302, F.S., provides four definitions of facilities and homes relating to the provision of child care services. Under the bill, only the definition of “family day care home” contains a provision under which a facility or home may meet the definition depending on whether it advertises its services.

Section 2 amends s. 402.313(1), F.S., to require that each licensed or registered family day care home must conspicuously display its license or registration in the common area of the home. Under the bill, a family day care home that is required to register must provide – in addition to the currently required information – proof of a written plan to identify a competent adult who has met the DCF’s screening and training requirements to serve as a designated substitute for the operator of the home in an emergency. The bill also specifies that the proof of screening and background checks required of family day care homes in the registration process must pertain to the operator, each household member, and the designated substitute.

Section 3 amends s. 402.3131, F.S., to require a large family child care home to permanently post its license in a conspicuous location that is visible by all parents and guardians and the DCF.

Section 4 amends s. 402.318, F.S., to provide that a person¹³ advertising a child care facility that is exempt under s. 402.316, F.S., from the licensure requirements of ss. 402.301-402.319, F.S., must include the facility's "exemption number" within the advertisement. Under the bill, this restriction is added to similar restrictions on licensed or registered child care facilities, and violation of these restrictions continues to be a misdemeanor of the first degree, punishable as provided in ss. 775.082 or 775.083, F.S.¹⁴

Section 5 amends s. 402.317, F.S., to conform cross-references.

Section 6 amends s. 1002.88, F.S., to conform cross-references.

Section 7 of the bill provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Under CS/SB 210, a family day care home not subject to licensure may incur the costs of screening and background checks for the operator, each household member, and the designated substitute, if the home is not already conducting the screenings.

C. Government Sector Impact:

State Government

The Department of Children and Families advises that some unknown number of residences may currently be operating illegally as family day care homes by receiving

¹³ *Supra*, note 10.

¹⁴ *Supra*, note 11.

payment for child care services without becoming licensed or registered.¹⁵ Under the bill, if such residences publicize their services in ways that meet the bill's definition of "advertise," those residences might be compelled to become licensed or registered. Such an increase in licenses or registrations would positively impact DCF revenue due to the receipt of formerly uncollected licensure and registration fees, and the DCF may also experience an increase in workload demands. The extent of these potential impacts is indeterminate.

Local Government

Counties that license family day care homes could see an increase in the number of homes licensed and licensure fees collected under the bill. The impact is indeterminate.

VI. Technical Deficiencies:

Section 4 of the bill contains two notable technical issues relating to the advertising of child care facilities that are exempt from certain regulatory provisions:

- Under current law, certain child care facilities are exempt from the regulatory provisions of ss. 402.301-402.319, F.S., except for requirements regarding the screening of child care personnel.¹⁶ Section 4 of the bill, however, creates a requirement in s. 402.318, F.S., pertaining to a person who advertises an exempt child care facility. In this way, because a child care facility is included in the definition of "person,"¹⁷ the bill seeks to create a regulatory requirement for exempt facilities within a portion of the Florida Statutes from which those facilities are expressly exempted. It is unclear how this conflict created under the bill would be resolved.
- Section 4 of the bill seeks to prohibit a person from advertising a child care facility that is exempt from licensing requirements unless the facility's "exemption number" is included in the advertisement. However, there is no provision for an exempt facility to be issued an "exemption number," in current law or in the bill. An exempt facility is not statutorily required to notify the DCF that it is operating under the exemption. The DCF reports that some exempt facilities have voluntarily provided notification that they are operating under the exemption, and, under those conditions, the DCF has issued exemption numbers on its own volition. However, the DCF is neither required nor authorized by law to do so. Section 4 of the bill requires that before an exempt facility may legally advertise, the facility must (1) notify the DCF that it is operating under the exemption and (2) be granted an exemption number that the DCF is neither required nor authorized by law to issue. Under the bill, these regulatory requirements on exempt facilities pertain only to those facilities that choose to advertise, and exempt facilities that choose not to advertise are not affected.

VII. Related Issues:

Under the bill's definition of "family day care home" and the definition's reliance on whether a residence advertises the availability of its services, the parameters under which a residence will

¹⁵ Department of Children and Families, *2015 Agency Legislative Bill Analysis, CS/SB 210*, March 10, 2015, on file with staff of the Senate Appropriations Subcommittee on Health and Human Services.

¹⁶ See s. 402.316, F.S.

¹⁷ *Supra*, note 10.

be considered one that “advertises” are unclear. For example, a residence might run an advertisement on the website of a local newspaper or on a billboard and therefore be considered a residence that “advertises the availability of its services.” However, if the advertisement is displayed on the website or billboard for only a certain period of time, it is unclear whether the residence will cease to be considered a residence that “advertises the availability of its services” after the advertisement is no longer displayed.

Also, under the bill’s definition of “family day care home,” a residence advertises the availability of its services only if the residence itself engages in activity that meets the definition of “advertise.” If a party other than the residence markets the residence’s child care services on an online message board, thereby advertising those services as defined in the bill, such marketing might not cause the residence itself to be considered a residence that advertises the availability of its services.

The bill requires proof of screening and background checks for the operator, each household member, and the designated substitute for family day care homes that are required to register with the DCF. However, the bill does not include a definition of “household member.” Section 402.3131(2), F.S., provides a definition of “child care personnel” required to be screened for large family day care homes which includes specified household members. Including the same or similar stipulations for household members required to be screened for registered family day care homes may reduce confusion about who is subject to the screenings.

VIII. Statutes Affected:

This bill substantially amends sections 402.302, 402.313, 402.3131, 402.317, 402.318 and 1002.88 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, & Elder Affairs on March 5, 2015:

The CS:

- Provides a definition of “advertising” relating to the provision of child care services;
- Revises the definition of “family day care home;”
- Removes the underlying bill’s provisions to revise the licensure and registration fees under s. 402.315, F.S.; and
- Conforms cross-references found in ss. 402.317 and 1002.88, F.S.

- B. **Amendments:**

None.