

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 250

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

SUBJECT: Child Care Facilities

DATE: April 15, 2015

REVISED: _____

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

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 250 amends the law related to child care facilities. It revises legislative intent related to child care facilities to clarify that membership organizations affiliated with national organizations which do not provide child care as defined in s. 402.302, F.S. and which meet other specified criteria, are not considered to be child care facilities and therefore are not subject to licensing requirements or minimum standards for child care facilities. The bill requires the child care personnel, including volunteers, of these organizations to undergo a level two background screening through the Department of Children and Families (DCF or the department).

The bill also adds these membership organizations to the list of entities not included in the definition of "child care facilities" and grants them an exemption from licensure requirements under s. 402.316, F.S. The bill establishes a study group to make recommendations relating to reasonable and affordable minimum standards for after school programs.

The bill is not expected to have a significant fiscal impact on state government.

The bill has an effective date of July 1, 2015.

II. Present Situation:

Legislative Intent Related to Child Care and Child Care Facilities

Florida law provides that for parents who choose child care, it is the intent of the legislature to protect the health and welfare of children in care. To accomplish this, the law provides a regulatory framework that promotes the growth and stability of the child care industry and facilitates the safe physical, intellectual, motor, and social development of the child.¹

Florida law also provides that it is the intent of the Legislature to protect the health, safety, and well-being of the children of the state and to promote their emotional and intellectual development and care.² To further that intent, laws were enacted to:

- Establish statewide minimum standards for the care and protection of children in child care facilities, to ensure maintenance of these standards, and to provide for enforcement to regulate conditions in such facilities through a program of licensing; and³
- Require that all owners, operators, and child care personnel shall be of good moral character.⁴

Child Care

Child care is defined as the 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, and for which a payment, fee, or grant is made for care.⁵

Child care is typically thought of as care and supervision for children under school age. Legislative intent related to child care finds that many parents with children under age 6 are employed outside the home.⁶ The definition of child care does not specify a maximum or minimum age.

Florida law and administrative rules related to child care recognize that families may also have a need for care and supervision for children of school age:

- The term indoor recreational facility means an indoor commercial facility which is established for the primary purpose of entertaining children in a planned fitness environment through equipment, games, and activities in conjunction with food service and which provides **child care** for a particular child no more than 4 hours on any one day. An indoor recreational facility must be licensed as a child care facility.⁷

¹ Section 402.26, F.S.

² Section 402.301, F.S.

³ Sections 402.301 - 402.319, F.S.

⁴ Good moral character is based upon screening that shall be conducted as provided in chapter 435, using the level 2 standards for screening set forth in that chapter. *See* s. 402.305, F.S.

⁵ Section 402.302, F.S.

⁶ *Id.*

⁷ *Id.*

- A school-age child care program is defined as any licensed child care facility serving school-aged children⁸ or any before and after school programs that are licensed as a child care facility and serve only school-aged children.⁹
- Any of the after school programs accepting children under the age of the school-age child must be licensed.¹⁰
- An after school program serving school-age children is not required to be licensed if the program provides after school care exclusively for children in grades six and above and complies with the minimum background screening requirements.¹¹

Child Care Facilities

The term “child care facility” is defined to include any child care center or child care arrangement that cares for more than five children unrelated to the operator and receives a payment, fee, or grant for the children receiving care, wherever the facility is operated and whether it is operated for profit or not for profit.¹² The definition excludes the following:

- Public schools and nonpublic schools and their integral programs, except as provided in s. 402.3025, F.S.;
- Summer camps having children in full-time residence;
- Summer day camps;
- Bible schools normally conducted during vacation periods; and
- Operators of transient establishments, as defined in chapter 509,¹³ which provide child care services solely for the guests of their establishment or resort, provided that all child care personnel are screened according to the level 2 screening requirements of chapter 435.¹⁴

Every child care facility in the state is required to have a license that is renewed annually. The Department of Children and Families (DCF or department) or the local licensing agencies¹⁵ approved by the department are the entities responsible for the licensure of such child care facilities.¹⁶

Additional Exemptions

In 1974 and in 1987, the Legislature created additional exceptions to the stated intent to protect the health, safety, and well-being of the children by allowing specified entities to care for children without meeting state licensure standards.

⁸ Chapter 65C-22.008, F.A.C. “School-age child” means a child who is at least 5 years of age by September 1, of the beginning of the school year and who attends kindergarten through grade five.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Section 402.302, F.S.

¹³ “Transient public lodging establishing” means any unit, group of units, dwelling, building, or group of buildings within a single complex of buildings which is rented to guests more than three times in a calendar year for periods of less than 30 days or 1 calendar month, whichever is less, or which is advertised or held out to the public as a place regularly rented to guests.

¹⁴ Section 402.302, F.S.

¹⁵ Currently, there are five counties that regulate child care programs: Broward, Hillsborough, Palm Beach, Pinellas and Sarasota. Department of Children and Families, *House Bill 11 Analysis* (Dec. 8, 2014).

¹⁶ Section 402.308, F.S.

The exemption created for child care facilities that are an integral part of church or parochial schools that meet specified criteria are exempt from licensing standards but must conduct background screening of their personnel. Failure by a facility to comply with such screening requirements shall result in the loss of the facility's exemption from licensure.¹⁷

The exemption for membership organizations¹⁸ was broader and allowed personnel to have contact with children without being background screened.¹⁹

Background Screening

Currently, Florida has one of the largest vulnerable populations in the country with 21 percent of residents under the age of 17 and 18 percent of the state residents over the age of 65, as well as children and older adults with disabilities.²⁰ These vulnerable populations require special care as they are at an increased risk of abuse.

In 1995, the Legislature created standard procedures for the criminal history background screening of prospective employees in order to protect vulnerable persons. Over time, implementation and coordination issues arose as technology changed and agencies were reorganized.

In September 2009, the Fort Lauderdale Sun Sentinel published a series of articles detailing their 6 month investigation into Florida's background screening system for caregivers of children, the elderly and disabled.²¹ To address these issues, the Legislature enacted legislation in 2010 that substantially rewrote the requirements and procedures for background screening of persons and businesses that deal primarily with vulnerable populations.²²

Major changes to the state's background screening laws included:

- Requiring that no person required to be screened may be employed until the screening has been completed and it is determined that the person is qualified;
- Increasing all level 1 screening which is name-based state criminal history search, to level 2 screening which is a fingerprint based national criminal history search;²³

¹⁷ Section 402.316, F.S.

¹⁸ Membership organizations would include such groups as Big Brothers Big Sisters, Boys and Girls Clubs, YMCA's, and Boy Scouts or Girl Scouts.

¹⁹ Chapters 74-113 and 87-238, Laws of Florida.

²⁰ University of Florida. Bureau of Economic and Business Research, College of Liberal Arts and Sciences. *Florida Estimates of Population 2014* (April 1, 2014), available at <http://edr.state.fl.us/Content/population-demographics/data/PopulationEstimates2014.pdf>. (last visited Feb. 15, 2015).

²¹ Sun Sentinel. *Criminals and Convicted Felons Working in South Florida Day-care Centers and Nursing Homes*.

²² Chapter 2010-114, Laws of Florida.

²³ Level 1 screenings are name-based demographic screenings that must include, but are not limited to, employment history checks and statewide criminal correspondence checks through FDLE. Level 1 screenings may also include local criminal records checks through local law enforcement agencies. Anyone undergoing a level 1 screening must not have been found guilty of any of the specified offenses. Section 435.03, F.S. A level 2 screening consists of a fingerprint-based search of FDLE and the FBI databases for state and national criminal arrest records. Any person undergoing a level 2 screening must not have been found guilty of any of the offenses for level 1 or additional specified offenses. Section 435.04, F.S.

- Requiring all fingerprint submissions to be done electronically no later than August 1, 2012, or earlier. However, for those applying under the Agency for Health Care Administration (AHCA), electronic prints were required as of August 1, 2010;
- Requiring certain personnel who dealt substantially with vulnerable persons and who were not presently being screened, including persons who volunteered for more than 10 hours a month, to begin level 2 screening;
- Adding additional serious crimes to the list of disqualifying offenses for level 1 and level 2 screening;
- Authorizing agencies to request the retention of fingerprints by FDLE;
- Providing that an exemption for a disqualifying felony may not be granted until after at least 3 years from the completion of all sentencing sanctions for that felony;
- Requiring that all exemptions from disqualification be granted only by the agency head; and
- Rewriting all screening provisions for clarity and consistency.²⁴

Care Provider Background Screening Clearinghouse

Many different agencies, programs, employers, and professionals serve vulnerable populations in Florida. Personnel working with those entities, including paid employees and volunteers are subject to background screening requirements.²⁵ However, due to restrictions placed on the sharing of criminal history information, persons who work for more than one agency or employer or change jobs, or wish to volunteer for such an entity, often must undergo a new and duplicative background screening and fingerprinting. This is time consuming to those involved and increases the cost to the employer or employee.

Policies imposed by the Federal Bureau of Investigation (FBI) prevent the sharing of criminal history information except within a given “program.” Since each regulatory area is covered by a different controlling statute and screenings are done for separate purposes, the screenings have been viewed as separate “program” areas and sharing of results has not been allowed. In addition, screenings are only as good as the date they are run. Arrests or convictions occurring after the screening are not known until the person is rescreened or self-reports.

As a result, the legislature created the Care Provider Background Screening Clearinghouse (clearinghouse) in 2012.²⁶ The purpose of the clearinghouse is to create a single “program” to screen individuals who have direct contact with vulnerable persons. The clearinghouse is created within the Agency for Health Care Administration (AHCA) and is to be implemented in consultation with the Florida Department of Law Enforcement (FDLE). The Clearinghouse is a secure internet web-based system and was implemented by September 30, 2013, and allows for the results of criminal history checks of persons acting as covered care providers to be shared among the specified agencies.²⁷

²⁴ *Id.*

²⁵ One exception to those screening requirements are the membership organizations addressed in SB 250 (2015).

²⁶ Section 435.12, F.S.

²⁷ “Specified agency” means the Department of Health, the Department of Children and Families, the Agency for Health Care Administration, the Department of Elder Affairs, the Department of Juvenile Justice, and the Agency for Persons with Disabilities, when these agencies are conducting state and national criminal history background screening on persons who work with children, elderly or disabled persons.

Fingerprints of individuals having contact with vulnerable persons providers are retained by FDLE, meaning the electronically scanned image of the print will be stored digitally. The FDLE searches the retained prints against incoming Florida arrests and is required to report the results to AHCA for inclusion in the clearinghouse, thus avoiding the need for future screens and related fees.²⁸

A digital photograph of the person screened will be taken at the time the fingerprints are taken and retained by FDLE in electronic format, as well. This enables accurate identification of the person when they change jobs or are otherwise presented with a situation requiring screening and enables the new employer to access the clearinghouse to verify that the person has been screened, is in the clearinghouse, and is who they say they are. Once a person's fingerprints are in the clearinghouse, they will not have to be reprinted in order to send their fingerprints to the FBI which will save on further fees.²⁹

Attorney General Advisory Legal Opinion

In 2000, the Florida Office of the Attorney General issued an opinion relating to the issue of child care, child care facilities and licensure. At issue was whether or not the child care programs operated by the YMCA or other membership organizations were exempt from licensure by the department as child care facilities. The opinion issued stated that programs operated by YMCAs and other membership organizations that fall within the definition of a "child care program", are not exempt from licensure by the Department of Children and Families.³⁰

III. Effect of Proposed Changes:

Section 1 amends s. 402.301, F.S., related to legislative intent and policy to further narrow the description of membership organizations that are not subject to licensing requirements and minimum standards for child care facilities. It also adds a requirement that membership organizations background screen "child care personnel" at level 2 standards through the department. Some of these membership organizations are not currently required to background screen employees.

Section 2 amends s. 402.302, F.S., related to child care facilities, to add membership organizations that meet specified criteria to the list of entities that are not to be considered child care facilities.

Section 3 amends s. 402.316, F.S., relating to exemptions, to add specified membership organizations to the list of entities that are exempt from licensure requirements for child care facilities. These membership organizations are required to background screen their personnel. Currently, the only other type of organization that has a similar exemption is a child care facility that is an integral part of a church or parochial school that conducts regularly scheduled classes, courses of study, or educational programs accredited by, or by a member of, an organization which publishes and requires compliance with its standards for health, safety, and sanitation.

²⁸ Section 435.12, F.S.

²⁹ *Id.*

³⁰ Op. Att'y Gen. Fla. 2000-67 (2000).

The DCF reports that exemptions from licensing standards provided by the bill are inconsistent with the legislative intent to protect the well-being of the children of Florida by establishing minimum licensing standards to ensure health and safety in child care facilities.³¹

Section 4 creates s. 402.3201, F.S., to establish the Not-for-Profit Standards Study Group. The study group is to consist of 4 members to be appointed by the Governor and is to make recommendations relating to reasonable and affordable minimum standards for after school programs. The work group is required to submit a report to the Legislature by November 1, 2015.

Section 5 provides for 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:

The fiscal impact of CS/SB 250 is unknown; however, membership organizations or their employees will have to bear the cost of screening. The FDLE reports that the cost for a state and national criminal history record check is \$38.75. \$24 goes into the FDLE Operating Trust Fund and \$14.75 from each request is forwarded to the Federal Bureau of Investigation. There is also a \$13 lifetime federal fingerprint retention fee and a \$6 annual fee for state retention, with the first year included with record check.³²

One of those membership organizations, the Boys and Girls Clubs, is currently exempt from background screening requirements in Florida.³³The Florida Alliance of Boys and

³¹ Department of Children and Families, *Agency Legislative Bill Analysis*, SB 250 (December 8, 2014).

³² Florida Department of Law Enforcement, *Senate Bill 250 Analysis* (Feb. 13, 2015).

³³ Section 402.301, F.S.

Girls Clubs reports that in 2009 there were 2,900 adult staff and 7,300 program volunteers in Florida.³⁴

C. Government Sector Impact:

The bill does not necessitate additional FTEs or other resources. The number of additional background screenings is needed to determine the impact on the agency's technology systems.³⁵

VI. Technical Deficiencies:

None.

VII. Related Issues:

The bill states that, 'organizations must be certified by their national association's as being in compliance with the association's minimum standards and procedures' and as such, 'are not subject to the licensing requirements or the minimum standards for child care facilities.' Currently, it is unclear whether or not the national association has any standards and procedures, whether any kind of certification process exists, and how member organizations are monitored for compliance.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 402.301, 402.302, and 402.316.

This bill creates s. 402.3201, F.S.

IX. Additional Information:

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

CS by Children, Families, and Elder Affairs on April 15, 2015:

- Requires all personnel, including volunteers, of certain specified membership organizations to meet level 2 background screening requirements through the department.
- Adds these membership organizations to the list of entities that are exempt from the licensure requirements relating to child care facilities.
- Creates the Not-for-Profit Standards Study Group that is to make recommendations relating to reasonable and affordable minimum standards for after school programs. The work group is required to submit a report to the Legislature by November 1, 2015.

³⁴ The Florida Alliance of Boys and Girls Clubs, *2009 Florida Fact Book*, available at <http://www.floridaalliance.org/index.html>. (last visited Feb. 14, 2015).

³⁵ *Id.*

B. Amendments:

None.

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