

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 Criminal Justice

BILL: CS/SB 1420

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

SUBJECT: Eligibility for Employment as Child Care Personnel

DATE: February 19, 2016

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Preston</u>	<u>Hendon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Sumner</u>	<u>Cannon</u>	<u>CJ</u>	<u>Favorable</u>
3.	_____	_____	<u>RC</u>	_____

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1420 restricts persons who can be employed by a child care provider. Specifically, it prohibits any current or prospective employee from employment with a child care provider if the individual is registered as a sex offender under federal law.

Additionally, it restricts those persons who:

- Have been arrested
- Are awaiting final disposition, or
- Have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent and the record has not been sealed or expunged for any felony or misdemeanor referenced in the federal child care criminal background check law or any felony or misdemeanor enumerated in Florida's Level 1 and Level 2 employment screening statutes. Such individuals are disqualified from employment with a child care provider notwithstanding any prior exemption from disqualification.

The bill also requires that any person employed by a child care provider on July 1, 2016, who has been granted an exemption to a disqualification from employment must be rescreened no later than August 1, 2016.

The bill is not anticipated to have a fiscal impact on state government but may have an indeterminate fiscal impact on Broward County.

II. Present Situation:

Child Care Licensure and Personnel

The Department of Children and Families (DCF or department) is responsible for the licensure and regulation of child care facilities, family day care homes, and large family child care homes.¹ In addition, there are child care providers that are not licensed by the department, including those that are only required to register with the department and those that have an exemption from being licensed by virtue of being an integral part of a church or parochial school that meets certain requirements.² All child care personnel employed in a setting regulated by DCF, whether it is licensed, registered, or exempt because of an affiliation with a religious entity, are required to be background screened as provided in ch. 435, F.S., using the level 2 standards for screening set forth in that chapter.³ If an applicant for employment is disqualified from working with children due to the results of the level 2 screening, the department may grant an exemption from that disqualification.⁴

Background Screening and Exemptions from Disqualification

Level 2 Background Screening

A level 2 background screening includes but is not limited to fingerprinting for statewide criminal history records checks through the Florida Department of Law Enforcement (FDLE) and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.⁵ The applicant has fingerprints taken by a vendor that submits the electronic fingerprints to FDLE for DCF. FDLE then runs statewide checks and submits the electronic file to the FBI for national checks.

Once the background screening is completed, and FDLE receives the information from the FBI, the criminal history information is transmitted to DCF. DCF then determines if the screening contains any disqualifying information for employment. DCF must ensure that no applicant has been arrested for, is awaiting final disposition of, has been found guilty of, or entered a plea of nolo contendere or guilty to any prohibited offense including, but not limited to, such crimes as sexual misconduct, murder, assault, kidnapping, arson, exploitation, lewd and lascivious behavior, drugs, and domestic violence.⁶ If the department finds that an individual has a history containing any of these offenses, they must disqualify that individual from employment in child care settings regulated by the department.

Exemptions from Disqualification

The Secretary of DCF is authorized to grant an exemption from disqualification to applicants for employment, including applicants wanting to work in child care, based on a number reasons:

¹ See ss. 402.301-402.319, F.S.

² See s. 402.316, F.S.

³ See s. 402.305, F.S.

⁴ See s. 435.07, F.S.

⁵ See s. 435.04, F.S.

⁶ *Id.*

- Felonies for which at least 3 years have elapsed since the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court for the disqualifying felony;
- Misdemeanors prohibited under any of the statutes cited in this chapter or under similar statutes of other jurisdictions for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court;
- Offenses that were felonies when committed but that are now misdemeanors and for which the applicant for the exemption has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by the court; or
- Findings of delinquency.⁷

The Secretary of the department may not grant an exemption to an individual who is found guilty of, regardless of adjudication, or who has entered a plea of nolo contendere or guilty to, any felony covered by s. 435.03 or s.435.04, F.S., solely by reason of any pardon, executive clemency, or restoration of civil rights.⁸ An exemption may also not be granted to anyone who is considered a sexual predator,⁹ career offender,¹⁰ or sexual offender (unless not required to register).¹¹

Child Care Development Block Grant

The Child Care and Development Fund (CCDF), also known as the Child Care and Development Block Grant (CCDBG), is administered by the U.S. Department of Health and Human Services (HHS). CCDF provides funding for state efforts to provide child care services for low-income family members who work, train for work, attend school, or whose children receive or need to receive protective services. Block grant funding can be used for public or private, religious or non-religious, and center or home-based care. Child care programs that accept funding must comply with state health and safety requirements.¹²

The CCDBG is administered in Florida by the school readiness program in the Office of Early Learning within the Department of Education (DOE).¹³ To be eligible to deliver the school readiness program, a school readiness program provider must be:

- A child care facility licensed under s. 402.305, F.S.;
- A family day care home licensed or registered under s. 402.313, F.S.;
- A large family child care home licensed under s. 402.3131, F.S.;
- A public school or nonpublic school exempt from licensure under s. 402.3025, F.S.;
- A faith-based child care provider exempt from licensure under s. 402.316, F.S.;
- A before-school or after-school program described in s. 402.305(1)(c), F.S.; or

⁷ See s. 435.07, F.S.

⁸ See s. 435.07, F.S.

⁹ See s. 775.21, F.S.

¹⁰ See s. 775.261, F.S.

¹¹ See ss. 943.0435 and 943.04354.

¹² U.S. Department of Education, Office of Non-Public Education, *available at* <http://www2.ed.gov/about/offices/list/oji/nonpublic/childcare.html> (last visited January 24, 2016).

¹³ See s. 1001.213, F.S.

- An informal child care provider under certain circumstances.¹⁴

The DCF regulates many, but not all, child care providers that provide early learning programs.

On November 19, 2014, the Child Care and Development Block Grant (CCDBG) Act of 2014 was signed into law. The new law reauthorizes the block grant program and makes expansive changes focused on improving the health and safety of children in child care, making the program more family-friendly by streamlining eligibility policies, ensuring parents and the general public have transparent information about the child care choices available to them, and improving the overall quality of early learning and afterschool programs.¹⁵

Reauthorization of the block grant program requires changes to Florida law, including an increase in requirements for screening all child care personnel to include searches of the National Sex Offender Registry, state criminal records, state sex offender registries, and child abuse and neglect registries of all states in which the child care personnel resided during the preceding five years.¹⁶ It will also require that individuals who are sex offenders or convicted of certain crimes be ineligible for employment with child care providers receiving CCDBG funds.

Based on the new requirements of the CCDBG, in order to continue to receive federal funding, the state must make ineligible for employment by school readiness providers any person who is registered, or is required to be registered, on a state sex offender registry or the National Sex Offender Registry¹⁷ or has been convicted of:

- Murder;
- Child abuse or neglect;
- A crime against children, including child pornography;
- Spousal abuse;
- A crime involving rape or sexual assault;
- Kidnapping;
- Arson;
- Physical assault or battery;
- A drug-related offense committed during the preceding 5 years; or
- A violent misdemeanor committed as an adult against a child, including the following crimes: child abuse, child endangerment, sexual assault, or of a misdemeanor involving child pornography.¹⁸

However, these Federal prohibitions on employment will not apply to child care facilities that are not school readiness providers and as such do not receive any CCDBG funds.

¹⁴ See s. 1002.88, F.S.

¹⁵ U.S. Department of Health and Human Services, Office of Child Care, *Program Instruction on CCDF Reauthorization Effective Dates*, available at <http://www.acf.hhs.gov/programs/occ/resource/pi-2015-02> (last visited January 24, 2016).

¹⁶ Pub. L. No. 113-186, 128 Stat. 1971, Sec. 658H(b).

¹⁷ 42 U.S.C. s. 9858f(c)(1)(C)

¹⁸ 42 U.S.C. s. 9858f(c)(1)

III. Effect of Proposed Changes:

Section 1 amends s. 435.07, F.S., by restricting persons who can be employed by a child care provider. Specifically, it prohibits any current or prospective employee from employment with a child care provider if the individual is registered as a sex offender under federal law.¹⁹

Additionally, it restricts those persons who:

- Have been arrested
- Are awaiting final disposition, or
- Have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent and the record has not been sealed or expunged for any felony or misdemeanor referenced in the federal child care criminal background check law²⁰ or any felony or misdemeanor enumerated in Florida's Level 1 and Level 2 employment screening statutes.²¹ Such individuals are disqualified from employment with a child care provider notwithstanding any prior exemption from disqualification.

The bill provides that individuals are disqualified from employment with a child care provider notwithstanding any prior exemption from disqualification.

The bill also requires that any person employed by a child care provider on July 1, 2016, who has been granted an exemption to a disqualification from employment must be rescreened no later than August 1, 2016.

Section 2 provides for an effective date of July 1, 2016.

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.

¹⁹ 42 U.S.C. 30 s. 9858f(c)(1)(c)

²⁰ 42 U.S.C. s. 9858f

²¹ Sections 435.03 and 435.04, F.S.

B. Private Sector Impact:

None.

C. Government Sector Impact:

Broward County conducts background screening for individuals applying to work for child care providers at the county level. It is unknown what impact, if any, the bill will have on the county.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends section 435.07 of the Florida Statutes.

IX. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on February 4, 2016:

- Prohibits a disqualification from employment under ch. 435, F.S., from being removed, and prohibits an exemption from being granted to, any current or prospective personnel with a child care provider if the individual:
 - Is registered as a sex offender as described in 42 U.S.C. 30 s. 9858f (c)(1)(c); or
 - Has been arrested for and is awaiting final disposition of, has been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or has been adjudicated delinquent and the record has not been sealed or expunged for, any felony or misdemeanor referenced in 42 U.S.C. s. 9858f or any felony or misdemeanor covered by s. 435.03 or s. 435.04, F.S.
- Provides that individuals are disqualified from employment with a child care provider notwithstanding any prior exemption from disqualification.
- Requires that any person employed by a child care provider on July 1, 2016, who has been granted an exemption to a disqualification from employment must be rescreened no later than August 1, 2016.

B. Amendments:

None.