
SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

Date: April 22, 1998 Revised: _____

Subject: Day Care Facilities

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Crosby</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/2 amendments</u>
2.	<u>Gomez</u>	<u>Miller</u>	<u>CJ</u>	<u>Favorable/CS</u>
3.	_____	_____	<u>WM</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

The bill creates the “Jeremy Fiedelholz Safe Day Care Act.”

The bill creates new criminal offenses and substantially modifies the existing criminal offense in s. 402.319, F.S. (the penalties provision of the child care statutes), as follows:

- ▶ Adds “family child care home” to the various current and new offenses,
- ▶ Creates a first-degree misdemeanor offense for making a misrepresentation, by act, regarding the licensure or operation of a child care facility or family day care home to a parent or guardian who places a child in the facility or a parent or guardian who is inquiring regarding placement of a child in the facility, and
- ▶ Creates a second-degree felony (15-year maximum prison sentence) occurring when: (1) a child care personnel makes a misrepresentation to a parent or guardian; (2) the parent or guardian relies on the misrepresentation; and (3) the child suffers great bodily harm, permanent disfigurement, permanent disability, or death as a result of an intentional act or by culpable negligence by the child care personnel.

The bill takes effect on October 1, 1998.

This bill substantially amends section 402.319 of the Florida Statutes.

II. Present Situation:

The Legislature has stated its intent regarding child care facilities in s. 402.301, F.S.: It is the purpose of ss. 402.301-402.319, F.S., to establish statewide minimum standards for the care and protection of children in child care facilities, to ensure maintenance of these standards, and to

approve county administration and enforcement to regulate conditions in such facilities through a program of licensing.

A. Child Care Facilities

A “child care facility” is defined in s. 402.302(2), F.S., as 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. Public and nonpublic schools, summer camps, summer day camps, and bible schools are not included in the definition.

“Child care personnel” means all owners, operators, employees, and volunteers working in a child care facility. For purposes of screening, the term includes any member over the age of 12 years, residing with a child care facility operator if the child care facility is located in or adjacent to the home of the operator or if the family member of the child care facility operator has any direct contact with the children in the facility during its hours of operation. A volunteer who assists on an intermittent basis for less than 40 hours per month is not included in the term “personnel” for the purposes of screening and training, provided that the volunteer is under direct and constant supervision by a person who meets the personnel requirements.

Chapter 402.305, F.S., sets forth the licensing standards for child care facilities. The state is required to establish licensing standards that each licensed child care facility must meet regardless of the origin or source of the fees used to operate the facility or the type of children served by the facility.

Counties whose licensing standards meet or exceed state minimum standards may designate a local licensing agency to license child care facilities in the county or contract with the Department of Children and Family Services (DCFS or department) to delegate the administration of state minimum standards in the county to the department. Child care facilities in any county whose standards do not meet or exceed state minimum standards shall be subject to licensing by the department under state minimum standards. s. 402.306, F.S. Every child care facility in the state is required to have a license which shall be renewed annually. Pursuant to s. 402.309, F.S., provisional licenses may be granted to applicants who are unable to conform to all the standards.

B. Family Day Care Homes

A “family day care home” is defined in s. 402.302(7), F.S., as 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. A family day care home is allowed to provide care for specified groups of children, designated by age.

Family day care homes are required to be licensed if they are presently being licensed under an existing county licensing ordinance, if they are participating in the subsidized child care program,

or if the board of county commissioners passes a resolution that family day care homes be licensed. If no county authority exists for the licensing of a family day care home, the department shall have the authority to license family day care homes under contract. If not subject to license, family day care homes shall register annually with the department. s. 402.313, F.S.

The DCFS, as well as local licensing agencies, are currently responsible for the licensure and regulation of 6,027 child care facilities and 4,652 family day care homes. Another 3,431 family day care homes are registered.

C. Penalties

Section 402.319, F.S., sets forth the penalties for violation of the licensure or operation of child care facilities. It is currently a first degree misdemeanor (maximum 1-year jail sentence) for any person to willfully, knowingly, or intentionally:

- ▶ Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, to disclose in any application for voluntary or paid employment or licensure, as regulated under ss. 402.301-402.318, F.S., a material fact used in making a determination as to the person's qualifications to be an owner, operator, employee, or volunteer in a child care facility or other child care program.
- ▶ Operate or attempt to operate a child care facility without having procured a license as required.
- ▶ Operate or attempt to operate a child care facility under a license that is suspended, revoked, or terminated.
- ▶ Represent, by act or omission, a child care facility to be duly licensed when the facility is not so licensed.
- ▶ Operate or attempt to operate a family-day-care home without a license or without registering with the department.

Furthermore, disciplinary actions, as provided in s. 402.310, F.S., are authorized for the violation of provisions in ss. 402.301-402.319, F.S., and of the department's rules. The disciplinary actions may include denial, suspension, or revocation of licenses, or the imposition of administrative fines.

Under current law, abuse or neglect of a child is classified as a third degree felony. See s. 827.03, F.S. Section 827.03(3)(b), F.S., provides that “[a] person who willfully or by culpable negligence neglects a child and in so doing causes great bodily harm, permanent disability, or permanent disfigurement to the child commits a felony of the second degree. . . .”

III. Effect of Proposed Changes:

The bill creates the “Jeremy Fiedelholz Safe Day Care Act.”

The bill creates new criminal offenses and substantially modifies the existing criminal offense in s. 402.319, F.S., as follows:

- ▶ The bill amends the state of mind required for all offenses committed under s. 402.319(1), F.S., from “willfully, knowingly, or intentionally” to “knowingly.” This change may not have an effect since these terms are synonymous. For example, the term “willfully” denotes an act that is “intentional, or knowing, or voluntary, as distinguished from accidental.” *BARRON’S LAW DICTIONARY* 530 (3d Ed. 1991). The term “intent” is defined as “a state of mind wherein the person knows and desires the consequences of his act....” *BARRON’S LAW DICTIONARY* 245 (3d Ed. 1991).
- ▶ The bill adds “family child care home” to the following offenses: failing to disclose required information in an application used in determining a person’s qualifications; operating under a license that is suspended, revoked, or terminated; and misrepresenting the licensure status.
- ▶ Provides that failure to disclose in any application for voluntary or paid employment or licensure, regulated under ss. 402.301-402.318, F.S., “*all information required under those sections*” used in making a determination as to the person’s qualifications to be child care personnel is a first-degree misdemeanor. Currently it is a first-degree misdemeanor to fail to disclose “a material fact” used in making this determination.
- ▶ Creates a first-degree misdemeanor offense for making a misrepresentation, by act, regarding the licensure or operation of a child care facility or family day care home to a parent or guardian who places a child in the facility or a parent or guardian who is inquiring regarding placement of a child in the facility. Misrepresentations include, but are not limited to, the number of children in the facility; the part of the facility designated for child care, the credentials of the child care personnel; whether a facility complies with the screening requirements of s. 402.305, F.S., or; whether child care personnel have the training as required by s. 402.305, F.S.
- ▶ Creates a second-degree felony (15-year maximum prison sentence) occurring when: (1) a child care personnel makes a misrepresentation to a parent or guardian; (2) the parent or guardian relies on the misrepresentation; (3) the child suffers great bodily harm, permanent disfigurement, permanent disability, or death as a result of an intentional act or by culpable negligence by the child care personnel.

This bill takes effect October 1, 1998.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Economic Impact and Fiscal Note:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Child care providers who violate the provisions of this bill may be financially affected. The fine for a felony of the third degree shall not exceed \$5,000; the fine for a felony of the second degree shall not exceed \$10,000. s. 775.083, F.S.

C. Government Sector Impact:

On April 3, 1998, the Criminal Justice Estimating Conference determined that the prison bed impact of SB 1122 would be insignificant. The same would hold true for the CS.

VI. Technical Deficiencies:

None.

VII. Related Issues:

Currently, disciplinary actions, as provided in s. 402.310, F.S., allow for the denial, suspension, revocation, or the imposition of administrative fines for the violation of provisions in ss. 402.301-402.319, F.S., and of the department's rules. Although the law does require certain staff-to-child ratios be observed and disciplinary action be taken for the violation thereof, there is some concern in the child care community that the third degree felony penalty for a violation of these ratios may go beyond that which is necessary.

Performance measures for fiscal year 1998-1999 in the area of child care include:

- ▶ 97 percent of child care facilities and family day care homes with no Class I violations (the most serious of violations).

Performance measures for fiscal year 1998-1999 reflect the following changes over current year:

- ▶ A 25 percent reduction in the number of child care provisional licenses issued as a result of non-compliance (500 to 375).
- ▶ A 25 percent reduction on the number of verified incidents of abuse and/or neglect in licensed child care (83 to 62).

VIII. Amendments:

None.