

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/SB 194

SPONSOR: Children and Families Committee and Senator Lynn

SUBJECT: Child Care Facilities

DATE: March 26, 2003

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Dowds	Whiddon	CF	Favorable/CS
2.			CM	
3.			GO	
4.			AHS	
5.			AP	
6.				

## I. Summary:

Committee Substitute for Senate Bill 194 amends the child care licensing and enforcement statutory provisions as follows:

- Requires an applicant for licensure to attest to the accuracy of the information regarding previous violations by signing an affidavit;
- Authorizes the Department of Children and Families to establish uniform penalties for violations of the licensing requirements;
- Directs the department to establish a definition of child care that distinguishes between programs requiring licensure and after school programs that do not require licensure;
- Requires a statewide data system for violations and penalties imposed on child care facilities;
- Establishes specific requirements for religious exempt child care programs; and
- Transfers the Child Care Program from the Department of Children and Families to the Department of Health;.

This bill substantially amends the following sections of the Florida Statutes: 402.3055, 402.310, and 402.316. Section 402.3105 of the Florida Statutes is created.

## II. Present Situation:

The intent of child care regulation in Florida, as in most states, is to protect the health, safety, and well-being of the children, as well as to promote their emotional and intellectual development and care. Those child care centers required to meet Florida licensing standards are the facilities which provide child care to more than five children who are unrelated to the operator and for whom a payment is received for the care (s. 402.302, F.S.), unless the facility is exempt from licensure or not considered child care for the purposes of licensure pursuant to

Florida statute. Separate requirements for registration or licensure of family child care homes and large family child care homes are provided in ss. 402.313 and 402.3131, F.S.

Programs not considered child care for the purposes of child care licensure include the following:

- Programs for children between 3 and 5 years of age operated and staffed by public schools [s. 402.3025(1), F.S.],
- Programs for children ages 3 to 5 years when provided in non-public schools where the majority of the children enrolled are 5 years of age or older [s. 402.3025(2) F.S.],
- Summer camps [s. 402.302(2), F.S.],
- Vacation bible schools [s. 402.302(2), F.S.], and
- Child care services operated in transient establishments [s. 402.302(2), F.S.].

Not-for-profit organizations affiliated with and certified by national organizations whose primary purpose is providing activities that contribute to the development of good character or cultural development of minors are also not considered child care for the purposes of child care licensure [s. 402.301(6), F.S.]. The department reports that this section applies to such organizations as Boys and Girls Clubs and YMCAs which, when this provision was originally included in statute, offered programs for children that were not child care related. However, over the years, many of these programs have evolved into more daily child care-like functions with no distinction in statute as to the point at which the program becomes child care and, therefore, subject to licensure. The distinction between child care programs and non-child care programs becomes particularly difficult with after school programs.

Programs considered child care which are exempted from licensure are those that are an integral part of churches or parochial schools conducting some form of classes or education program (s. 402.316, F.S.). Accreditation or membership in an organization which publishes and requires compliance with its health, safety, and sanitation requirements is required, as is compliance with local governing body health, sanitation, and safety ordinances and the background screening applied to all child care caregivers. While some form of health, safety, and sanitation requirement is to be imposed by the accrediting organization, there are no minimum standards for these requirements, nor are there any mechanisms for ensuring that the accrediting organization's requirements are met. Child care facilities exempted from licensure pursuant to s. 402.316, F.S., can choose state licensure.

Currently, of the 1,450 child care facilities in Florida eligible for licensure exemption according to s. 402.316, F.S., 1,009 have chosen to be licensed and 441 child care facilities have chosen license exemption. Nationally, 39 states regulate religious based child care centers (The Children's Foundation, 2001 *Child Care Licensing Study*). Of the states that exclude religious based child care facilities from their licensing requirements, some limit the programs eligible for exemption or impose more stringent requirements on the religious affiliated child care centers than Florida. For example, Virginia requires that religious exempt child care centers meet identified staff-to-child ratios, that a person trained and certified in first aid be present, and that parents be notified that the center is exempt from licensure and be provided specific information regarding the qualifications of the staff, the physical facilities, enrollment capacity, the food service offered, and the health requirements for staff. Utah exempts parochial educational institutions only if the state agency is satisfied that the care is educational rather than primarily care in lieu of that provided by a parent and three of the four following requirements are met: all

children are over the age of 3 years, there is a written curriculum for part of the children's course of study, a majority of the time is devoted to studying the curriculum, and there is a governing board that directs and supervises the curriculum. Georgia issues a "commission" to religious based child care centers in lieu of a license; however, the requirements to obtain a commission are identical to those for obtaining a license.

Basic health and safety considerations of children in child care facilities have historically focused on such aspects as protecting children from hazards, potential injuries, and serious infectious diseases. These considerations have formed the core of child care regulation and are applied as minimum standards for child care facilities. Examples of such health and safety minimum standards are those contained in the National Health and Safety Performance Standards developed by the American Public Health Association and American Academy of Pediatrics which recommend requiring that staff are certified in first aid, including rescue breathing and first aid for choking and explains that this is to ensure that someone is available to respond to common life-threatening emergencies. Requiring that cleaning materials, detergents, pesticides, and other toxic materials be labeled and stored in locations inaccessible to the children is recommended to prevent injury and poisoning. Many communicable diseases can be prevented through appropriate hygiene, sanitation, and disinfection methods. Certain gastrointestinal diseases are spread from infected persons through fecal contamination of objects in the environment and the hands of caregivers and children. Therefore, diaper requirements which include a diaper changing area that is cleaned with a sanitized solution after each use, limiting accessibility to the soiled diapers by the children, and requiring thorough hand washing after each diapering is recommended to reduce this contamination and control the spread of these diseases. Each of the recommended standards above is included in Florida's licensing standards for child care.

Section 402.305, F.S., provides the framework for Florida's licensing standards for child care facilities. The purpose of the licensing standards, as specifically articulated in this section, are to address the health, nutrition, sanitation, safety, adequate physical surroundings, and child development needs for all children in child care. The areas for which minimum standards are to be adopted in rule are explicitly set forth in s. 402.305, F.S., and are as follows:

- Child care personnel, including background screening, age requirement, training, and staff credentialing.
- Staff-to-children ratio based on the age of the children.
- Physical facility, including requirements for building conditions, play space, bathroom facilities, and equipment.
- Square footage per child for indoor and outdoor space.
- Sanitation and safety, including first aid treatment, emergency procedures, sanitary and safety conditions, and pediatric cardiopulmonary resuscitation.
- Transportation safety, including requirements for child restraints, annual inspections of vehicles, limitations on the number of children in vehicles, and accountability for children being transported.
- Access to the child care facility by the parent while the child is in care.
- Child discipline practices which are age-appropriate and constructive.
- Plan of varied activities, including active and quiet play opportunities.

- Urban child care facilities which allow such centers to substitute indoor play space for outdoor play space.
- Evening and weekend child care.
- Specialized child care for the care of mildly ill children.
- Parental notification of transfer of ownership of the child care facility.

Enforcement is an important component in the child care regulatory process because it ensures that the child care facilities are complying with the licensing standards. The enforcement process begins with determining that the child care facility has complied with the licensing standards for the application and issuance of the child care license and continues with corrective action or sanctions to ensure any non-compliance is resolved. The Department of Children and Families, through its Child Care Program, is responsible for licensing and enforcement of child care facilities. However, counties may choose to become a local licensing agency if the local standards meet or exceed the state minimum standards. Currently, there are eight counties that have chosen to assume the responsibility of licensing their child care facilities. Florida's enforcement process includes basically the following:

- A child care facility's application for a license requires an examination of the child care facility and documentation that the licensing standards have been met, including the owner or operators' attesting to the accuracy of the information and that they have never had a license denied, revoked, or suspended or been subject to any disciplinary action (ss. 402.3055 and 402.308, F.S.).
- A license must be renewed annually and requires a reexamination of the facility and determination that the minimum standards continue to be met. Generally, three inspections are conducted per year, some of which may be abbreviated.
- A continuum of enforcement actions are used when violations to the licensing standards are identified. Sanctions are imposed using a progressive enforcement process that begins with a corrective action plan and ends with revocation of the provider's license. The department classifies violations into three categories which guides the sanctions applied. A Class I violation is considered a violation that is serious in nature and could or does result in death and serious harm to the health, safety, and well-being of a child. A Class II violation is a serious violation that does not pose an immediate threat to the safety or health of the children in care, but could reasonably be expected to cause harm within 90 days. Finally, a Class III violation is the least serious violation type and is generally related to the maintenance and operation of the child care facility. The authority for the administrative fines and specific penalties is set forth in ss. 402.3055, 402.309, 402.310, 402.312, and 402.319, F.S. However, the only statutory reference to classification of violations speaks to eliminating duplicative and unnecessary inspections, and developing a plan for abbreviated inspections for facilities without Class I or II violations (s. 402.3115, F.S.) which has not provided the necessary authority for rule development.

In the November 2000 *Child Care Program Justification Review*, OPPAGA reported that the department's enforcement policies for child care licensure were being applied inconsistently across the state. Specifically, the department's district offices varied in their interpretation of when a violation was to be classified as a Class I, Class II, and Class III. The ramifications of such discrepancies identified was inequitable treatment of facility operators who commit similar

violations, as well as failure to take appropriate actions to ensure that the violations are corrected.

The OPPAGA report also identified the lack of adequate statewide information on licensing and enforcement actions as another weakness in the department's enforcement activities. Currently, the Correspondence and Projects Tracking System (CAPTS) maintains basic demographic and statistical data on child care facilities, family child care homes, and large family child care homes, such as type of program, capacity, services, hours of operation, and license status. From this information the department can produce such reports as the number of licensed facilities, those that have subsidized slots, capacity of the facilities, and lists of the facilities. CAPTS also provides a method of alerting the counselor 90 days prior to the facilities' license renewal deadline and when relicensing was overdue. However, information on violations and enforcement actions imposed has not been maintained on CAPTS but, instead, is maintained in each district. As a result, the department does not have the ability to monitor what violations of licensing standards are occurring and what sanctions are being imposed when these problems are detected, from which to determine the enforcement practices used by the districts and to ensure that the licensing standards are truly enforced.

OPPAGA recommended that the department develop a statewide licensing data system for the child care program that included not only basic demographic information about regulated child care providers but also specific information about inspections, complaints, violations, and enforcement actions. The Department of Children and Families reports that an enhanced statewide licensing data system is currently being developed and implemented which will contain more detailed and accurate information on the programs and services. The department's district licensing staff have been entering information at the time of the inspection on the facility's compliance, non-compliance, corrective action needed, and due date for corrective action. This information is being uploaded into the department's web-site for child care programs where parents can identify not only licensed facilities in their community but the facilities' compliance with the licensing standards as determined by the inspection. District staff began identifying the classification of the violation, i.e., Class I, Class II, or Class III, in September 2002 and continue to work in establishing the system for monitoring the penalties and compliance.

### **III. Effect of Proposed Changes:**

CS/SB 194 amends the child care licensing and enforcement statutory provisions to require an applicant for licensure to attest to the accuracy of the information regarding previous violations by signing an affidavit; to authorize the Department of Children and Families to establish uniform penalties for violations of the licensing requirements; to direct the department to establish a definition of child care that distinguishes between programs requiring licensure and after school programs that do not require licensure; to require a statewide data system for violations and penalties imposed on child care facilities; to establish specific requirements for religious exempt child care programs; and to transfer the Child Care Program from the Department of Children and Families to the Department of Health.

The requirements for applicants for child care licensure in s. 402.3055, F.S., are amended to specify that the applicants' attesting to the accuracy of the information provided regarding any previous denial, revocation, or suspension of a license or disciplinary action is by signing an affidavit.

The department is authorized to establish by rule uniform penalties for violations of the child care regulations in Florida statute and to impose such penalties. This will allow the department to develop and enforce rules regarding Class I, Class II, and Class III violations. Implementation is not to be contingent upon a specific appropriation. The department is also directed to establish in rule a definition of child care that distinguishes between child care programs that require licensure and after school programs that do not require licensure. This rule will provide clear guidance for both the national organizations, such as the YMCAs and the Boys and Girls Clubs, and the department as to programs requiring and not requiring child care licensure.

CS/SB 194 requires that the Department of Children and Families establish and maintain a statewide data system for information relating to violations, citations, and penalties imposed against child care facilities. The data system is required to be designed to enable the department to monitor and evaluate the district inspections and enforcement of state child care licensing requirements, for the purpose of ensuring child care facilities are complying with the state's regulatory requirements and evaluating facilities for license renewal. Statistical information regarding patterns of violations, classes, and types of violations and sanctions imposed must also be producible with this system. The bill stipulates that the information is to be made available to the public upon request based on the public records provisions of ch. 119, F.S. In maintaining the data base, the department is required to consult and comply with the requirements of the State Technology Office pursuant to ch. 282, F.S. Further, the bill provides that the implementation of the provision is not contingent upon a specific appropriation.

The bill amends s. 402.316, F.S., to set forth the requirements that an organization must meet in order to be recognized as an accrediting agency for the purpose of offering membership or accreditation which exempts religious child care programs from the state's child care licensing standards. State, regional, or national accrediting agencies for religious exemptions may qualify child care programs as religious exempt if they are recognized by the department. Criteria are set forth that the department is to verify an accrediting agency has met in order for that agency to be recognized as an accrediting agency for religious exemptions. These criteria require that accrediting agencies:

- Adopt minimum standards for child care programs and weekday preschool programs that meet the state's minimum child care licensing standards as delineated in s. 402.305, F.S., with the exception of the standards pertaining to child discipline, urban child care facilities, specialized child care for mildly ill children, and transfer of ownership;
- Publish the adopted standards and require that the child care programs they accredit or offer membership or participation to meet these standards;
- Require that these child care programs meet the local government minimum requirements for health, sanitation, and safety;
- Require these child care programs to inform parents of the programs' exemption from state licensing standards but that the programs meet the accrediting agencies' standards which meet or exceed the state's standards;

- Conduct an initial on-site review of these child care programs and require each year afterwards that a notarized statement be submitted to the accrediting agency verifying compliance with the standards and applicable Florida Statutes; and
- Require that personnel at the child care programs meet the state's minimum training and staff credentialing requirements. Staff must be required to begin training by October 1, 2003, or within 90 days after employment and complete the training within 1 year. Credentialing must be completed by July 1, 2007. Equivalency programs developed by the accrediting agency can be used in lieu of the staff child development associate credential. The bill directs the department to expedite approval of such equivalency programs.

An accrediting agency must submit its published standards to the department as part of the recognition process. The department is required to review the standards within 30 days and maintain a list of all recognized accrediting agencies for religious exemption. The department is prohibited from regulating or controlling either the accrediting agency for religious exemption or the governance, religious curriculum, discipline, or hiring practices of religious exempt child care programs. Within 30 days of any revisions, the department is required to notify the accrediting agencies, and the accrediting agencies have 30 days to inform the department that the child care programs have been notified of the revised standards which are then to be incorporated into the next revision of the agency's standards.

The accrediting agency must submit an annual report to the department, as well as notice of the new memberships and terminations within 30 days of the accrediting agency's action. Accrediting agencies are prohibited from owning, operating, or administering a child care program under its accreditation. The bill provides that the child care programs are solely responsible for compliance with the standards. The department is required to meet annually with the accrediting agencies and other interested child advocates.

Finally, CS/SB 194 transfers the Child Care Program from the Department of Children and Families to the Department of Health. This transfers the responsibility for licensing, enforcement, and training for child care settings to the Department Health, as well as the corresponding personnel, records, property, and funds. The program is being transferred by a Type II transfer, pursuant to s. 20.06(2), F.S.

The bill takes effect July 1, 2003.

#### **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:**

Some portion of the 451 child care facilities historically exempt from licensure would be subject to more stringent standards. It is anticipated that costs will be incurred by the facilities in meeting these standards. However, parents of children in the child care facilities will have assurances that certain minimum health and safety standards are being met. Some of these historically religious exempt programs may not be considered child care pursuant to the non-public school exclusion, and not subject to licensure and, potentially, the more stringent standards proposed.

**C. Government Sector Impact:**

The Department reports that the costs for implementing the statewide child care data system as described in the bill includes \$290,000 for system software configuration and modifications to the central database but that this funding is currently available for this purpose within the department's budget, unless additional budget reductions occur.

There may be costs associated with transferring the Child Care Program to the Department of Health, but the amount is unknown at this time.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.