

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.)

Prepared By: Community Affairs

BILL: SB 208

SPONSOR: Senator Lynn

SUBJECT: Child Care Facilities

DATE: March 3, 2005

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Sanford</u>	<u>Whiddon</u>	<u>CF</u>	Favorable
2.	<u>Herrin</u>	<u>Yeatman</u>	<u>CA</u>	Favorable
3.	_____	_____	<u>HA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

I. Summary:

Senate Bill 208 clarifies statutory provisions relating to child care regulation. It extends the current requirements for licensure and renewal of licenses of child care facilities to large family child care homes and to those other family day care homes which are already required to be licensed.

The bill strengthens the enforcement authority of the licensing agencies over child care providers by authorizing the issuance of provisional licenses to large family child care homes and family day care homes required to be licensed. It allows provisional registration for those family day care homes which are not required to be licensed. It provides for revocation of the provisional licenses and registrations.

This bill sets out a range of disciplinary actions available to enforcement authorities and makes those actions applicable to registered as well as licensed child care providers.

The bill resolves the conflict between two inconsistent administrative fine provisions in current law by repealing one of the provisions.

It directs the Department of Children and Families (DCF or the department) to adopt rules to administer enforcement actions regarding child care.

The bill requires DCF to establish a statewide data system to capture violations and penalties imposed in child care settings and to make this information available to the public.

This bill substantially amends sections 402.3055, 402.308, 402.309, and 402.310 of the Florida Statutes. Section 402.3105, F.S., is created by the bill. Paragraph (b) of subsection (1) of s. 402.313, F.S., and paragraph (a) of subsection (1) of s. 402.3131, F.S. are repealed.

II. Present Situation:

The Department of Children and Families is responsible for administering child care regulations in Florida,¹ unless a county has chosen to assume this function pursuant to s. 402.306, F.S.² The child care settings to which statutory child care regulation applies are as follows:

- Child care facilities provide child care to more than five children who are unrelated to the operator and for whom a payment is received for the care.³
- Family day care homes are residences where child care is provided for up to ten children, depending on their ages, from at least two unrelated families for a fee.⁴
- Large family child care homes are residences where child care is provided for up to 12 children from at least two unrelated families for a fee, depending on the ages of the children.⁵

Licensing Requirements:

- Child care facilities are required to be licensed unless exempted.⁶
- Family day care homes are required to be licensed only under the following circumstances:⁷
 - County licensing ordinances require licensure,
 - The home is participating in the subsidized child care program,⁸ or
 - The Board of County Commissioners has passed a resolution requiring licensure.
- Family day care homes not licensed must register annually with DCF, providing certain information and complying with statutory requirements such as background screening, training, and maximum number of children in care.⁹
- Large family child care homes are required to be licensed.¹⁰

Licensing Process:

- The licensure process for a child care facility requires an examination of the child care facility, documentation that the licensing standards have been met, and, for license renewal, verification that the facility continues to meet licensing standards. The application for a child care facility license or renewal includes the owner or operator's attesting to the accuracy of the information and that they have never had a license denied, revoked, or suspended or have

¹ Sections 402.301 through 402.319, F.S.

² Currently, seven counties have chosen to assume the responsibility of regulating child care in their counties.

³ Section 402.302(2), F.S.

⁴ Section 402.302(7), F.S.

⁵ Section 402.302(8), F.S.

⁶ Licensing standards are set forth in s. 402.305, F.S.

⁷ Section 402.313(1), F.S.

⁸ Now the early learning program under the Agency for Workforce Innovation.

⁹ Sections 402.302(7), 402.302(13), and 402.313, F.S.

¹⁰ Section 402.3131, F.S.

been subject to any disciplinary action.¹¹ This process is outlined only for licensed child care facilities. There are no similar provisions for the licensure application and renewal process for family day care homes and large family child care homes.

- A provisional license may be issued to applicants for child care licensure or to licensees who are unable to conform to all of the required standards if adequate provisions have been made for the health and safety of the child.¹² The statutory section authorizing the issuance of provisional licenses refers only to child care facilities, raising the question as to the authority to issue provisional licenses to licensed family day care homes and large family child care homes.

Renewals of Licenses and Registrations:

- A license must be renewed annually and requires a reexamination of the facility and determination that the minimum standards continue to be met.¹³
- Registrations must also be renewed annually. The renewal application requires the same information as the original application.¹⁴

Enforcement:

The Department of Children and Families has issued administrative guidelines classifying violations into three categories. Decisions about the application of sanctions are governed by these guidelines:

- A Class I violation is considered a violation that is serious in nature and could or does result in death or serious harm to the health, safety, or 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.
- A Class III violation is the least serious violation type and is generally related to the maintenance and operation of the child care facility.

While there is statutory authority for imposing the administrative fines and specific penalties, DCF reports there is insufficient authority for development of rules for both classifying the levels of violations and the determination of sanctions based on the classification of the violation.

The sanctions available to licensing authorities are set forth in statute,¹⁵ providing the following options:

- **The imposition of an administrative fine:** Section 402.309, F.S., permits the imposing of a fine of up to \$100 per violation per day and, if the violation causes or could cause death or serious harm, up to \$500 per violation per day. Sections 402.313 and 402.3131, F.S., also

¹¹Sections 402.3055 and 402.308, F.S.

¹²Section 402.309, F.S.

¹³Section 402.308, F.S.

¹⁴Section 402.313(1)(b), F.S.

¹⁵Sections 402.309, 402.312, 402.313, and 402.3131, F.S.

provide for imposing administrative fines on family day care homes or large family child care homes not to exceed \$100 for family day care homes and \$1,000 for large family child care homes which conflicts with the fines authorized in s. 402.309, F.S.

- **The denial, suspension, or revocation of a license:** Section 402.309, F.S., authorizes the licensing agency to deny, suspend, or revoke a license. This section does not articulate the licenses to which this provision applies and, while it can be construed to include family day care homes and large family child care homes in addition to child care facilities, this authority is not specified. It has also been reported that since the grounds for which a license may be suspended or revoked are not specified, these sanctions are not applied as often as considered necessary.
- **An injunction to close a child care setting:** Section 402.312, F.S., permits the licensing authority to seek an injunction to close a child care facility, family day care home, or large family child care home for operating without a license or registration, violating the standards which threatens harm to the children, repeated violations of the standards, or continuing to serve children beyond the established closing date.

The current statutory framework for enforcement of child care regulation does not provide clear direction for imposing the specified disciplinary actions in response to the range of violations that occur. Also, the only sanctions available to registered family day care homes not complying with the registration and other statutory requirements are administrative fines and an injunction to close the home. The lack of clear statutory authority has been reported to result in a lack of uniformity in applying sanctions and in a limited ability to impose the type of sanctions that would generate the compliance, in particular, the more severe penalties. This lack of adequate direction is consistent with the findings of the Office of Program Policy Analysis and Government Accountability (OPPAGA) in its November 2000 *Child Care Program Justification Review* which found that the DCF district offices varied in their interpretation of when a violation was to be classified as a Class I, Class II, or Class III. This disparity across districts resulted in enforcement policies for child care licensure that were being applied inconsistently across the state.

Data System:

The OPPAGA report also identified the lack of adequate statewide information on licensing and enforcement actions as another weakness in DCF's enforcement activities. OPPAGA recommended that DCF develop a statewide licensing data system for the child care program that includes not only basic demographic information about regulated child care providers but also specific information about inspections, complaints, violations, and enforcement actions.

The department reports that, since the OPPAGA report was written, it has implemented its Child Care Licensing Information System (CCLIS), containing detailed and accurate information on child care programs and services. Data on the system is available to the public through the internet.¹⁶ This system has been recognized by the United States Government Accountability Office as one of the most innovative and technologically advanced in the nation.¹⁷ While the system does not yet capture specific data on citations and penalties, DCF expects that final

¹⁶ www.myflorida.com/childcare

¹⁷ "Child Care: State Efforts to Enforce Safety and Health Requirements" (GAO-04-786)

administrative actions taken in child care enforcement cases will be available to the public through the website in April 2005.

III. Effect of Proposed Changes:

Senate Bill 208 amends the statutory provisions affecting enforcement of child care regulation to expand and clarify the authority and actions available to ensure compliance.

Section 1 amends s. 402.3055, F.S., to revise the requirements for applicants for child care facility licensure to include that the applicants attest to the accuracy of the information provided regarding any previous denial, revocation, or suspension of a license or disciplinary action by signing an affidavit.

Section 2 amends s. 402.308, F.S., to expand the licensure application and renewal process are to include family day care homes and large family child care homes.

Section 3 amends s. 402.309, F.S., to authorize the licensing agency to issue provisional registrations to family day care homes that are unable to conform to statutory requirements, as well as provisional licenses to child care facilities, family day care homes required to be licensed, and large family child care homes. The option of issuing a provisional license if the screening material has been timely submitted but has not been processed is specifically limited to child care facilities.¹⁸ The licensing agency is explicitly authorized to revoke provisional licenses and registrations. The issuance of a provisional license or registration is limited to the initial license or registration or upon renewal of the license or registration. The department is directed to adopt rules which provide for the conditions and procedures for issuing, as well as suspending or revoking, a provisional license or registration.

Section 4 amends s. 402.310, F.S., to expand the scope of disciplinary actions available to licensing authorities¹⁹ in three ways:

- The disciplinary actions are applied to registered family day care homes.
- The authority to impose disciplinary actions other than the higher administrative fine if the violation could or does cause death or serious harm is clarified.
- The option of converting a license or registration to probationary status is described. Failure to comply with the terms of the probation may result in the license or registration being suspended or revoked. A license or registration may not remain on probationary status for a period in excess of six months.

The due process requirements set forth for denial, suspension, or revocation of a license or imposition of an administrative fine apply to the new disciplinary actions set out in the bill and to family day care home registrants. The department is directed to develop and adopt rules outlining the grounds under which a license or registration may be denied, suspended, revoked or placed

¹⁸ Family day care homes and large family child care homes are excluded from this option because of the potential danger to the children since there is often only the one person for whom the screening is being processed who is caring for the children.

¹⁹ Section 402.310, F.S.

on probationary status. The rules are also to establish a uniform system of procedures for imposing the disciplinary actions, providing for a consistent and progressive application of the disciplinary actions. The department is directed to implement the uniform system of procedures for disciplinary actions by January 1, 2006.

Section 5 creates s. 402.3105, F.S., to require that DCF establish and maintain a statewide data system for information relating to violations, citations, and penalties imposed against child care facilities, family day care homes, and large family child care homes. The data system:

- Is required to be designed to enable DCF to monitor and evaluate the district and local licensing agencies' inspections and enforcement of licensing and registration requirements for child care facilities, family day care homes, and large family child care homes.
- Is intended to be a source of information for the licensing agencies to ensure these facilities are complying with the state's regulatory requirements and evaluating facilities for license renewal.
- Must produce statistical information regarding patterns of violations, classes and types of violations, and sanctions imposed.
- Must make the information available to the public pursuant to the public records provisions of ch. 119, F.S.

In maintaining the data base, DCF is required to consult and comply with the requirements of the State Technology Office pursuant to ch. 282, F.S.

The bill provides that the implementation of the data system is not contingent upon a specific appropriation. These provisions codify the Child Care Licensing Information System already in operation with the addition of capturing and tracking citations and penalties.

Section 6 amends ss. 402.313 and 402.3131, F.S., to repeal the provisions that impose administrative fines on family day care homes and large family child care homes which conflict with the administrative fines permitted by s. 402.310, F.S.

Section 7 provides an effective date of July 1, 2005.

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:

Licensed and registered family day care homes may be subject to an increased administrative fine since, in rectifying the inconsistent administrative fine provisions, the \$100 limit established in s. 402.313, F.S., is removed and the fine of up to \$100 per violation per day is retained, thus becoming the basis for determining the fine to be imposed. Similarly, large family child care homes may be subject to different administrative fines because the \$1,000 limit in s. 402.3131, F.S., is removed and the fine of up to \$100 per violation per day is retained.

C. Government Sector Impact:

The Department of Children and Families predicts no fiscal impact from the enforcement provisions of the bill. The cost to enhance the Child Care Licensing Information System is estimated to be \$18,500 (for system software reconfiguration and modifications to the central database). However, DCF reports that this cost can be accommodated within the existing recurring funds, provided budget reductions do not impact funds available to implement this requirement.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Summary of Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
