

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/CS/HB 1155 Provisional Child Care Licensing
SPONSOR(S): Health & Human Services Committee and Children, Families & Seniors Subcommittee, Maney
TIED BILLS: IDEN./SIM. **BILLS:** CS/CS/SB 538

FINAL HOUSE FLOOR ACTION: 118 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/CS/HB 1155 passed the House on May 2, 2023, as CS/CS/SB 538 as amended. The Senate concurred in the House amendment to the Senate bill and subsequently passed the bill as amended on May 3, 2023.

The Department of Children and Families (DCF) and local licensing agencies (LLA's) regulate child care facilities, family day care homes, and large family child care homes.

DCF and LLA's may issue a provisional license or registration, as appropriate, for child care facilities, family day care homes, or large family homes unable to meet all the statutory standards. A provisional license or registration allows the child care facility or home to operate while working to come into compliance. However, the child care provider must comply with background screening requirements for all child care personnel to qualify for a provisional license or registration.

The federal Department of Defense (DoD) certifies child care entities that are similar to Florida-licensed child care facilities and homes for the purpose of serving children in military families. DoD child care providers located off the military base must also be licensed by DCF or a local licensing agency. The DoD certification and training requirements for child care providers are similar to DCF licensure and registration requirements.

The bill requires DCF or the LLA to issue a provisional license or registration if the operator or owner is applying for an initial license or registration for a child care facility, family day care home, or a large family child care home; has made adequate provisions for the health and safety of the child; and provides evidence that he or she has completed within the previous 6 months DoD training and background screening to provide child care and received a favorable suitability and fitness determination.

The bill has no fiscal impact on state or local government.

The bill was approved by the Governor on June 16, 2023, ch. 2023-249, L.O.F., and became effective upon becoming law.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Florida Child Care Licensure

Child care is 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.¹ If a program meets the statutory definition of child care, it is subject to regulation by the Department of Children and Families (DCF) or local licensing agencies (LLAs),² unless the statute specifically excludes or exempts it from regulation.³

Types of Child Care Facilities and Homes

DCF licenses and regulates child care facilities,⁴ family day care homes,⁵ and large family child care homes,⁶ establishing the licensing standards that each licensed child care facility must meet.⁷ Child care facilities with religious affiliation and certain family day care homes are exempt from licensure but are required to register with the DCF.

- Child care facilities are child care centers or child care arrangements that care for more than five children unrelated to the operator and receive 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.⁸
- Family day care homes are occupied residences in which child care is regularly provided for children from at least two unrelated families and which receives payments, fees, or grants for the children receiving care, whether or not operated for profit.⁹
- Large family child care homes are occupied residences in which child care is regularly provided for children from at least two unrelated families, which receives payments, fees, or grants for the children receiving care, whether or not operated for profit, and which has at least two full-time child care personnel on the premises during the hours of operation.¹⁰

Currently, DCF licenses and registers child care facilities and homes in 62 counties. Five counties elected to designate an LLA to regulate child care providers in their areas: Broward, Hillsborough, Palm Beach, Pinellas, and Sarasota.¹¹

Registration or Licensure of Child Care Providers

¹ S. 402.302(1), F.S.

² Broward, Hillsborough, Palm Beach, Pinellas and Sarasota counties have decided – either by statute or by the adoption of a local ordinance or resolution – to designate an LLA to regulate child care providers in their areas. However, Hillsborough will transfer licensing duties back to DCF June 30, 2023. See DCF, *Child Care Licensure*, available at <https://www.myflfamilies.com/services/licensing/child-care-licensure> (last visited March 8, 2023) and DCF, *Agency Bill Analysis HB 1155 (2023)*, p. 2.

³ S. 402.306, F.S.

⁴ S. 402.305, F.S.

⁵ S. 402.313, F.S.

⁶ S. 402.3131, F.S. Also see ss. 402.301 through 402.319, F.S.

⁷ See generally ss. 402.301 through 402.319, F.S. See also s. 402.305(1), F.S. The licensing standards must apply to all facilities regardless of the origin or source of the fees used to operate the facility or the type of children served by the facility.

⁸ S. 402.302(2), F.S.

⁹ S. 402.302(8), F.S.

¹⁰ S. 402.302(11), F.S.

¹¹ DCF, *Child Care Licensure*, available at <https://www.myflfamilies.com/services/licensing/child-care-licensure> (last visited March 8, 2023).

Current law establishes statewide minimum standards for the care and protection of children in child care facilities. These standards are enforced and regulated through a program of licensing.¹² Licensing standards address:¹³

- The health, sanitation, safety, and adequate physical surroundings for all children in child care;
- The health and nutrition of all children in child care; and
- The child development needs of all children in child care.

Child Care Facilities and Large Family Day Care Homes

DCF licenses child care facilities and homes. To obtain a license, the child care provider must complete the DCF application process. Licensed child care facilities and homes must comply with the state child care laws in ss. 402.301- 402.319, F.S., and with all training and background screening requirements for child care personnel.¹⁴ Additional requirements for licensed facilities and homes include, but are not limited to:

- Admissions and Record Keeping;
- Transportation Safety;
- Child Discipline;
- Capacity Requirements/Ratios;
- Supervision;
- Planned Activities;
- Fire Safety;
- Emergency Procedures; and
- Enforcement.

Child care provider licenses must be renewed annually. DCF conducts inspections of all licensed child care providers to determine initial and renewal licensure and periodically assesses continued compliance with licensing standards.

A licensed child care facility or home must not be used for any business or purpose unrelated to providing child care that can interfere with compliance with child care standards or permit the unsupervised presence of individuals who do not meet background screening and training requirements.

An operator of a child care facility or a large family child care home must be at least 21 years of age and on the premises at all times during operating hours.¹⁵

Family Day Care Homes

Family day care homes may be licensed or registered. Under current law, a family day care home must be licensed if licensure is required under a specific county ordinance or resolution. Most counties in Florida do not require licensure. However, a family day care provider may choose to be licensed to demonstrate that they meet the state's minimum health, sanitation, and safety standards.¹⁶ If not subject to licensure, family day care homes must register annually with DCF.¹⁷

Before operating a family day care home, the following basic requirements must be met:¹⁸

- The operator must be 18 years of age or older;

¹² S. 402.301(1), F.S.

¹³ S. 402.305(1), F.S.

¹⁴ Ss. 402.305, 402.313, and 402.3131, F.S.

¹⁵ DCF, *Child Care Facility Handbook*, October 21, 2021, at https://www.myflfamilies.com/sites/default/files/2022-12/FacilityHandbook_0.pdf (last visited April 18, 2023).

¹⁶ DCF, *About Family Child Care Home Registration*, at <https://www.myflfamilies.com/services/child-family/child-care/child-care-providers-and-staff/about-family-child-care-home> (last visited March 11, 2023).

¹⁷ S. 402.313, F.S.

¹⁸ Supra note 16.

- The operator must reside in the home;
- The operator cannot work outside the home during the hours of operation of the family day care home; and
- The family day care home operator must have proof of a written Substitute Plan to provide at least one other competent adult, 18 years or older, to be available to substitute for the operator in an emergency.

To register, a family day care home must complete the DCF application process and provide the following:¹⁹

- The name of the operator;
- The number of children served (not to exceed capacity as defined by § 402.302(7), F. S.);
- Proof of written plan to provide at least one competent adult to be available to substitute for the operator in an emergency;
- Proof of screening and background checks;
- Proof that immunization records for the children are kept current;
- Proof that each parent has been provided a copy of a completed Health and Safety Checklist; and
- Proof of completion of the 30-hour family day care home training course as well as an approved 5-hour course in early literacy and language development of children ages birth through five years. The 35 hours of training must be completed prior to registration.

Unlike licensed home providers, registered family day care homes are not subject to yearly inspections.²⁰ However, they are required to annually complete a DCF health and safety home inspection self-evaluation checklist.²¹ The completed checklist must be signed by the family day care home operator and provided to the parents of the children in care as certification that basic health and safety standards are being met.²²

The checklist includes several different health and safety quality indicators in which the family day care home operator must check to acknowledge compliance with and attest that the information provided on the checklist is true and correct. Some of the quality indicators on the checklist include emergency information and procedures, environment and sanitation, and hazardous materials.²³

¹⁹ Supra note 16.

²⁰ During the licensure year, licensure family day care homes receive a minimum of two onsite inspections. See Id. at note 12.

²¹ S. 402.313(7), F.S.

²² Once the checklist is completed and signed by the operator, the checklist is given to each parent with a child in care. The parent must sign the checklist to acknowledge receipt.

²³ DCF, *Registered Family Child Care Home Health and Safety Checklist*, at <https://www.myflfamilies.com/sites/default/files/2022-12/RegisteredFamilyChildCareHomeHealthandSafetyChecklist.pdf> (last visited March 11, 2023).

Provisional Licensure

DCF may issue a provisional license or registration for child care facilities, family day care homes, or large family homes for an initial license or registration or to licensees or registrants seeking a renewal who are unable to meet all the standards provided for in the state's child care law (ss. 402.301-402.319).²⁴ A provisional license or registration allows the operator of the child care facility or home to operate while working to come into compliance with the minimum standards required for a non-provisional license or registration. However, the provisional license or registration may be revoked if, upon periodic inspection or review, DCF determines that insufficient progress has been made towards compliance with the minimum standards. A provisional license cannot exceed 6 months and can be renewed one time for unusual circumstances beyond the control of the applicant.²⁵

DCF may not issue a provisional license or registration unless the operator or owner makes adequate provision for the health and safety of the children they will serve,²⁶ and unless the child care provider complies with the applicable background screening requirements for all child care personnel.²⁷ Child care personnel includes all owners, operators, employees, and volunteers working in a child care facility. For purposes of screening, child care personnel includes any member over the age of 12 years of a family day care homes operator's family or residing in the home. Those between the ages of 12 and 18 years are not be required to be fingerprinted. However, they must be screened for delinquency records.

Military-Operated Child Care Programs

The Department of Defense (DoD) certifies four types of child care programs to provide care for children of military families.²⁸

- **Child Development Centers** are centers located on military installations/bases that provide child care services for infants, pretoddlers, toddlers, and preschoolers. They operate Monday through Friday during standard work hours, and depending on the location offer full-day, part-day, and hourly care.
- **Family Child Care (FCC)** programs provide home based child care. Services are provided by qualified child care professionals in their homes on or off the military installation. FCC programs are designed for infants through school agers. Each FCC provider determines what care they offer, which may include full-day, part-day, school year, summer camp, 24/7, and extended care. Some FCC providers offer flexible operating hours, and are able to adjust their hours to accommodate requests from parents.
- **24/7 Centers** provide child care for infants through school age children in a home-like setting during both traditional and non-traditional hours on a regular basis. The program is designed to support watch standers or shift workers who work rotating or non-traditional schedules (i.e., evenings, overnights, and weekends). While other families may use a 24/7 Center if space is available, priority is given to sponsors who require 24/7 care.
- **School Age Care (SAC)** programs provide facility-based care for children from the start of kindergarten through the end of the summer after seventh grade. This program type operates Monday through Friday during standard work hours. SAC programs provide both School Year Care and Summer Camp.

All military child care providers must be licensed professionals who have obtained favorable background checks and a DoD Certificate to Operate. Each installation's child care program ensures all

²⁴ S. 402.309, F.S.

²⁵ S. 402.309(3), F.S.

²⁶ S. 402.309(2), F.S.

²⁷ Id.

²⁸ Military Childcare, *Military-Operated Child Care Programs*, at <https://public.militarychildcare.csd.disa.mil/mcc-central/mcchome/military-operated-child-care-programs> (last visited March 9, 2023).

providers complete a comprehensive training program that promotes developmentally appropriate intellectual, social, emotional, and physical learning.²⁹

DoD child care certification and screening standards are typically more stringent than state standards, making it easier for applicants who are required to be both state and military certified. Required screenings, inspections, and checks for all military operated child care programs include:³⁰

- Criminal history background checks for all individuals who have regular contact with children in DoD child care programs;
- Annual inspections for fire, safety, sanitation, and health;
- Multi-disciplinary team inspections that includes a parent representative; and
- Military-service headquarters inspections.

The military-service headquarters inspection covers the following programmatic areas:

- Resource management and administration
- Personnel management
- Background checks
- Oversight and inspections
- Facility
- Fire and safety
- Health and sanitation
- Nutrition and food service
- Child maltreatment and reporting
- Supervision of children
- Parent involvement, participation and communication
- Learning activities and interactions with children

DoD required screening, inspections, and checks for FCC providers include:³¹

- Criminal history background checks for the applicant and all residents over 18 years old;
- Health screening and proof of immunizations for the provider and residents;
- Home inspections for fire, safety, sanitation, and preventative medicine;
- Monthly visits by an FCC staff member to observe, mentor and provide support;
- Pet certificate if the provider has a pet to show that it has the appropriate vaccinations and is safe to be around children; and
- Proof of liability insurance.

In addition to meeting the DoD certification standards, FCC home providers that are located off military bases must also meet any additional state licensing and registration requirements.

DCF and DoD Training Requirements

DCF Training Requirements

DCF requires family day care home providers and child care personnel to complete 30 hours of mandated introductory training by passage of a competency exam or educational exemption. The training includes the following:³²

- Family Child Care Home Rules and Regulations (6 hours)
- Health, Safety and Nutrition (8 hours)
- Identifying and Reporting Child Abuse and Neglect (4 hours)
- Child Growth and Development (6 hours)
- Behavioral Observation and Screening (6 hours)

²⁹ Id.

³⁰ Id.

³¹ Id.

³² S. 402.313(1)(a)6, F.S.

Operators of large family child care homes must successfully complete an approved 40-clock-hour introductory course in group child care, as evidenced by passage of a competency examination. This includes the courses within the 30-hour mandated introductory training along with 10 hours as achieved by one of the following options:³³

- Understanding Developmentally Appropriate Practice (5 hours) and one of the following:
 - Infant and Toddler Appropriate Practice (5 hours)
 - Preschool Appropriate Practice (5 hours)
 - School-Age-Appropriate Practice (5 hours)
- Special Needs Appropriate Practice (10 hours)

For home-based providers, DCF mandatory introductory training must be completed prior to licensure and caring for children.

Child care facilities are also required to successfully complete an approved 40-hour training and pass a competency exam or educational exemption. The basic training requirements are similar to the requirements for home-based providers. However, the training requirements for child care facilities are typically more extensive.³⁴ Additional training requirements that must be completed by all child care providers include:³⁵

- Annual In-service Training³⁶
- Early Literacy;
- First Aid and Pediatric CPR;
- Universal Precautions/Exposure Plan;
- Fire Extinguisher Training;
- Safe Sleep/Shaken Baby Syndrome Training; and
- Medication Administration

DoD Training Requirements

DoD requires all child care providers and direct care personnel to complete 40 hours of orientation prior to working with children, with the full 40 hours completed within the first 90 days of employment. The orientation includes:³⁷

- Working with children of different ages, including developmentally appropriate activities and environmental observations;
- Age-appropriate guidance and discipline techniques;
- Applicable regulations, policies, and procedures;
- Child safety and fire prevention;
- Child abuse prevention, identification, and reporting;
- Parent and family relations;
- Health and sanitation procedures, including blood-borne pathogens, occupational health hazards for direct care personnel, and recognizing symptoms of illness;
- Emergency health and safety procedures, including pediatric cardiopulmonary resuscitation (CPR) and first aid;
- Safe infant sleep practices and Sudden Infant Death Syndrome (SIDS) prevention;

³³ S. 402.3131(3), F.S.

³⁴ DCF, *Child Care Facility Training Requirements*, at <https://www.myflfamilies.com/childcaretraining/child-care-facility-training-requirements> (last visited April 18, 2023).

³⁵ DCF, *Family Day Care Home Training Requirements*, at <https://www.myflfamilies.com/services/child-and-family-services/child-care/family-day-care-home-40-hours> (last visited March 9, 2023).

³⁶ Once licensed the operator must complete 10-clock-hours or 1 Continuing Education Unit (CEU) of annual in-service training during the licensure year. See Florida Department of Health, *Opening a Licensed Family Day Care Home*, at https://www.floridahealth.gov/environmental-health/radon/documents/HowToBecomeAFamilyChildCareHome_201912.pdf (last visited March 11, 2023).

³⁷ Washington Headquarters Services, *Department of Defense Instruction*, at <https://www.esd.whs.mil/portals/54/documents/dd/issuances/dodi/606002p.pdf> (last visited March 9, 2023).

- Nutrition, obesity prevention, and meal service;
- Working with children with special needs;
- Accountability and child supervision training;
- For FCC providers only, infant and child (pediatric) CPR and first aid must be completed prior to accepting children for care. Training shall be updated as necessary to maintain current certifications; and
- Training in business operations.

DCF and DoD Background Screening Requirements

DCF Background Screening Requirements

All child care personnel must meet certain background screening requirements. Elements of background screening include:³⁸

- FDLE criminal history background check;
- FBI criminal history background check;
- Criminal background check of any prior states resided within the past five years;
- Sex Offender Registry check (in Florida & any prior states resided within past five years);
- Child Abuse & Neglect check (in Florida & any prior states resided within past five years);
- Attestation of Good Moral Character; and
- Previous five-year employment history check.

Current law establishes standard procedures for criminal history background screening for prospective employees; ch. 435, F.S., outlines the screening requirements. There are two levels of background screening: “level 1” employment screening (s. 435.03, F.S.) and “level 2” employment screening (s. 435.04, F.S.).

Level 1 is a state-only, name-based check through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,³⁹ and may include criminal records checks through local law enforcement agencies.⁴⁰

Level 2 is a state and national fingerprint-based check through 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.⁴¹

For both level 1 and 2 screenings any person required by law to be screened must not have an arrest awaiting final disposition, must not have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, and must not have been adjudicated delinquent and the record has not been sealed or expunged for, any offense prohibited under s. 435.04(2), F.S., or similar law of another jurisdiction.⁴²

Care Provider Background Screening Clearinghouse

All child care licenses and registrations are required to have a Level 2 background screening through Florida’s Care Provider Background Screening Clearinghouse (Clearinghouse). The Clearinghouse is administered by the Agency for Health Care Administration and provides a single data source for background screening results of persons required to be screened by law for employment in positions that provide services to children, the elderly, and disabled individuals.⁴³

³⁸ S. 402.302(15), F.S.

³⁹ The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site. The website is available at <https://www.nsopw.gov/> (last visited March 9, 2022).

⁴⁰ S. 435.03(1), F.S.

⁴¹ S. 435.04, F.S.

⁴² Ss. 435.03 and 435.04, F.S.

⁴³ S. 435.12, F.S.

The Clearinghouse allows the results of a criminal history check to be shared among specified agencies when a person has applied to volunteer, be employed, be licensed, or enter into a contract that requires a state and national fingerprint-based criminal history check.⁴⁴ The Clearinghouse also retains fingerprint data for continuous comparison against new state criminal history information. The Clearinghouse enables employees and volunteers to submit fingerprints once, rather than repeatedly pursuant to a job or volunteer change.

DoD Background Screening Requirements

DoD policy dictates that all individuals who have regular contact with children under 18 years of age in DoD sanctioned child care services programs must undergo a criminal history background check, an Installation Records Check, and annually self-report changes to their criminal histories.⁴⁵ DoD also conducts an FBI fingerprint criminal history background check.

DoD initiates a Tier 1 Investigation (Child Care National Agency Check and Inquiry). Elements of the investigation include:

- FBI criminal history background check;
- State criminal history repository check of any former states of prospective employee;
- State child abuse and neglect repository check; and
- State sex offender registry check.

An installation records check reviews the applicant's relevant and accessible past records, with a minimum coverage of 2 years prior to the date of application, and includes:

- Installation law enforcement or security records;
- Family Advocacy Program records; and⁴⁶
- Alcohol, drug, and substance abuse records (including pre-employment records and the results of any random drug testing).

DCF and DoD Child Care Requirements Comparison

The DoD child care provider certification and training requirements are substantially similar to DCF's child care licensure and registration requirements for child care facilities and homes. Both require introductory training focusing on child development, health and safety, behavioral health, and abuse and neglect. Both DoD and DCF also require ongoing annual in-service training updates as well as training in first aid, CPR, fire prevention, and safe sleep/SIDS.

The background screening requirements are also very similar. Both entities require:

- Federal fingerprint-based NCIC criminal history check;
- Federal fingerprint-based NCIC Sex Offender Registry check;
- A state criminal records search for all states in which the person has resided in the previous five years;

⁴⁴ Id. Also see Agency for Health Care Administration, *Care Provider Background Screening Clearinghouse*, at https://ahca.myflorida.com/mchq/central_services/background_screening/bgs_results.shtml (last visited March 9, 2023).

⁴⁵ Washington Headquarter Services, *DoD Manual 1402.05 Background Checks on Individuals in Department of Defense Child Development and Youth Programs*, January 24, 2017, at https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodm/140205_dodm_2017b.pdf (last visited March 9, 2023).

⁴⁶ A Family Advocacy Program is a DoD program designated to address domestic abuse, child abuse and neglect, and problematic sexual behavior in children and youth. FAP works on every military installation where families are assigned, and supports service members and their spouses, partners and families to prevent abuse, promote victim safety and offer treatment and rehabilitation for healing after a traumatic event has occurred. See Washington Headquarter Services, *DoD Instructions 6400.01 Family Advocacy Program (FAP)*, May 1, 2019, at <https://www.esd.whs.mil/Portals/54/Documents/DD/issuances/dodi/640001p.pdf> (last visited March 9, 2023).

- A state sex-offender registry or repository check for all states in which the person has resided in the previous five years; and
- A state child abuse and neglect registry and database check for all states in which the person has resided in the previous five years.

However, Florida requires all child care personnel to receive a level 2 background screening using the Clearinghouse. Processing through the Clearinghouse may extend the turnaround time for completing background checks which could delay the issuance of a license or registration to provide child care. Processing through the Clearinghouse is not required by DoD.

Effect of the Bill

The bill requires DCF or the local licensing agency to issue a provisional license or registration to operate a child care facility, family day care home, or a large family child care home if the operator or owner:

- Is applying for an initial license or registration for a child care facility, family day care home, or a large family child care home;
- Has made adequate provisions for the health and safety of the child; and
- Provides evidence that he or she, within the previous 6 months, has completed DoD training and background screening to provide child care and received a favorable suitability and fitness determination.

This will allow a child care facility or home operator to operate under the provisional license or registration until the provider is able to come into compliance with all minimum standards required for a non-provisional license or registration, including state background screening requirements.

The bill does not require a child care provider to serve only military families, or any military families, to obtain a provisional license pursuant to this new exception.

The bill is effective upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.