

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.)

BILL: SB 750

SPONSOR: Senator Forman

SUBJECT: Child Care Facilities

DATE: March 8, 1999 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosby	Whiddon	CF	Favorable
2.	_____	_____	FP	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 750 creates the “Jeremy Fiedelholz Safe Day Care Act,” creates new criminal offenses and substantially modifies the existing criminal offense in s. 402.319, F.S. (relevant to penalties for violation of the child care statutes). This bill:

- ▶ Adds “family day 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 a child care personnel makes a misrepresentation to a parent or guardian who has placed a child in the child care facility or family day care home and the parent or guardian relied upon the misrepresentation and the child suffers great bodily harm, permanent disfigurement, permanent disability, or death as a result of an intentional act or by negligence by the child care personnel.

The bill takes effect on October 1, 1999.

This bill amends sections 402.319 and 921.0022, Florida Statutes.

II. Present Situation:

As of June 30, 1998, the Department of Children and Family Services (DCF), as well as local licensing agencies, report responsibility for the licensure and regulation of 5992 licensed child care facilities and 4657 licensed family day care homes. Another 3431 family day care homes are registered.

Florida's child care program is regulated pursuant to ss. 402.301-402.319, F.S. Penalties are stated at s. 402.319, F.S.

Child Care Facilities:

A "child care facility" is defined in s. 402.302(2), F.S., to include 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, bible schools, and operators of certain transient lodging establishments are not included in the definition.

"Child care personnel" is defined at s. 402.302(3), F.S., to include all owners, operators, employees, and volunteers working in a child care facility. For purposes of screening, the term includes any person 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.

Section 402.305, F.S., sets forth the licensing standards for child care facilities. The state is required to establish licensing standards that each 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. Standards address specified issues including health, safety, sanitation, nutrition, and child development. *See* s. 402.305(1)(b), F.S. Included in this section are the staff-to-child ratios with which a facility must comply. s. 402.305(4), F.S. Screening and training requirements for personnel are listed at s. 402.305(2), F.S.

Section 402.306, F.S., provides that 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 DCF to delegate the administration of state minimum standards in the county to DCF. Child care facilities in any county whose standards do not meet or exceed state minimum standards shall be subject to licensing by DCF under state minimum standards. Every child care facility in the state is required to have a license which shall be renewed annually. s. 402.308, F.S. Pursuant to s. 402.309, F.S., provisional licenses may be granted to applicants who are unable to conform to all the standards.

Family Day Care Homes:

A "family day care home," as defined in s. 402.302(7), F.S., is 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. Under this subsection the specified number of children for whom a family day care home may provide care is designated, by age of the child.

Pursuant to s. 402.313, F.S., 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, DCF shall have the authority to license family day care homes under contract for the purchase of services system in the subsidized child care program. If not subject to licensure, family day care homes shall register annually with DCF.

Penalties:

Penalties are stated at s. 402.319, F.S. Pursuant to this section, it is currently a first degree misdemeanor, which carries a term of imprisonment not to exceed one year in jail, 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 the required license.
- ▶ 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 DCF.

Furthermore, disciplinary actions, as stated at s. 402.310, F.S., will be taken for the violation of provisions stated in ss. 402.301-402.319, F.S., and of the related rules. Disciplinary actions may include denial, suspension, or revocation of licenses or the imposition of administrative fines.

The Offense Severity Ranking Chart:

The offense severity ranking chart, as listed regarding criminal punishment (*see* s. 921.0022, F.S.), is used in conjunction with a Criminal Punishment Code worksheet (*see* s. 921.0024, F.S.) to compute a sentence code score for each felony offender. For the purposes of this analysis it is important to note that the offense severity ranking chart includes 10 offense levels; these levels are ranked from the least severe (level 1) to the most severe (level 10). Each felony offense is assigned to a level commensurate with the severity of the offense. *See generally* s. 921.0022, F.S.

III. Effect of Proposed Changes:

Section 1 cites this act as the “Jeremy Fiedelholz Safe Day Care Act.”

Section 2 amends s. 402.319, F.S., penalties with regard to child care, to amend the state of mind required for all first degree misdemeanor offenses committed under subsection (1). This amendment changes the state of mind from “willfully, knowingly or intentionally” to “knowingly.” In practical usage, 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 following acts are classified as a first degree misdemeanor and are punishable by a definite term of imprisonment not to exceed one year:

- ▶ Fail, by false statement, misrepresentation, impersonation, or other fraudulent means, 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* or a material fact used in making a determination as to the person’s qualifications to be *child care personnel, as defined in s. 402.302, F.S.* in a child care facility, *family day care home*, or other child care program (new text in italics).
- ▶ Operate or attempt to operate a family day care home under a license that is suspended, revoked, or terminated.
- ▶ Misrepresent, by act or omission, that a family day care home is licensed pursuant to this act when it is not so licensed.
- ▶ Make any other misrepresentation, by act or omission, 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, to a representative of the licensing authority or to law enforcement on issues including the number of children in the facility or home, the part of the facility or home which is designated for child care, the credentials/qualifications of the child care personnel, whether the family day care home or child care facility complies with the screening requirements in law, or whether the child care personnel have training as required in s. 402.305, F.S.

A new subsection is created to provide that a second-degree felony (15-year maximum prison sentence) will occur when any child care personnel makes a misrepresentation to a parent or guardian who has placed a child in the child care facility or family day care home and the parent or guardian relied upon the misrepresentation and the child suffers great bodily harm, permanent disfigurement, permanent disability, or death as a result of an intentional act or negligence by the child care personnel.

Section 3 amends s. 921.0022, F.S., the offense severity chart, to add as an offense level 7 felony the above-referenced second-degree felony for misrepresentation by the facility or home

accompanied by a negligent or intentional act which results in great bodily harm, permanent disfigurement, permanent disability, or death of a child.

Section 4 provides that this bill takes effect October 1, 1999.

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 second degree shall not exceed \$10,000.

C. Government Sector Impact:

On April 3, 1998, the Criminal Justice Estimating Conference determined that the prison bed impact of this bill would be insignificant. This year, the Office of Public Defender reports the fiscal impact will be slight. The Office of State Courts Administrator reports that any judicial and governmental expenses, associated with the creation of the new felony, will be insignificant.

The Department of Children and Family Services reports no fiscal impact associated with this bill.

VI. Technical Deficiencies:

None.

VII. Related Issues:

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 fiscal year 1997-1998:

- ▶ 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.

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