

# 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 158

SPONSOR: Children and Families Committee and Senator Lynn

SUBJECT: Religious-Exempt Child Care Programs

DATE: January 7, 2004      REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Dowds</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/CS</u>
2.	_____	_____	<u>CM</u>	_____
3.	_____	_____	<u>AHS</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**I. Summary:**

Committee Substitute for SB 158 amends s. 402.316, F.S., to establish specific requirements for child care programs affiliated with a religious institution to be exempt from child care licensing through their accrediting agencies. The bill also establishes criteria for the accrediting agencies to be recognized by the Department of Children and Families as an accrediting agency that can qualify a child care program as religious exempt. The requirements and criteria set forth by the bill include the following:

- Applying the minimum standards for child care licensure with certain exceptions;
- Informing parents as to whether their program is complying with state licensing standards or accrediting agency standards,
- Providing for time frames within which child care personnel must receive training,
- Verifying compliance with the accrediting agencies' standards,
- Requiring a process for notifying child care programs of revisions to state minimum standards and incorporating the revisions into the accrediting agencies' standards,
- Submitting an annual report, and
- Notifying the Department of Children and Families of changes in membership.

This bill substantially amends section 402.316 of the Florida Statutes.

**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.],
- Child care services operated in transient establishments [s. 402.302(2), F.S.], and
- 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 [s. 402.301(6), F.S.].

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 standards 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 1,468 child care facilities in Florida eligible for licensure exemption according to s. 402.316, F.S., 1,012 have chosen to be licensed and 456 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 does. 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, the health requirements for staff, and liability insurance. 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.

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. One such standard is to require 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 on 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 these recommended standards 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.
- Provision of meals and snacks that meet nutritional needs of children.
- Admission and recordkeeping.
- 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.

### III. Effect of Proposed Changes:

Committee Substitute for SB 158 amends s. 402.316, F.S., to establish specific requirements for child care programs affiliated with a religious institution to be exempt from child care licensing through their accrediting agencies. The bill also establishes criteria for the accrediting agencies to be recognized by the Department of Children and Families as an accrediting agency that can qualify a child care program as religious exempt. The requirements and criteria set forth by the bill include the following:

- Applying the minimum standards for child care licensure with certain exceptions;
- Informing parents as to whether their program is complying with state licensing standards or accrediting agency standards,
- Providing for time frames within which child care personnel must receive training,
- Verifying compliance with the accrediting agencies' standards,
- Requiring a process for notifying child care programs of revisions to state minimum standards and incorporating the revisions into the accrediting agencies' standards,
- Submitting an annual report, and
- Notifying the Department of Children and Families of changes in membership.

Specifically, CS/SB Bill 158 sets forth 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. The 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 that the programs are exempt 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, 2004, or within 90 days after employment and complete the training within 1 year. Credentialing must be completed by July 1, 2008. 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.

A child care program that is eligible for a religious exemption may voluntarily choose to be licensed. However, if the child care program chooses the religious exemption, it must also meet the background screening requirements that religious-exempt programs currently must meet and must display its certificate of compliance issued by the accrediting agency.

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 agencies for religious exemption or the governance, religious curriculum, academic curriculum, testing and assessments, evaluation procedures, academic requirements of the staff, discipline, or hiring practices of religious-exempt child care programs. Within 30 days of any revisions to the minimum standards, 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 agencies' standards.

The accrediting agencies must each 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.

The bill takes effect July 1, 2004.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

None.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. Other Constitutional Issues:**

The constitutional issue that has surfaced relative to religious-based child care facilities has been the constitutionality of exempting or requiring the licensure of these facilities, in particular as it relates to the establishment clause of the first amendment which prohibits government from making any law "respecting establishment of religion, or prohibiting the free exercise thereof." Basically, two of the three court cases identified held that exempting religious child care facilities from licensure did not violate the establishment

clause of the first amendment [725 F. Supp. 488, *Forte v. Coler*, (M.D. Fla. 1989) and 846 F. 2d 260, *Forest Hills Early Learning Center, Inc. v. Grace Baptist Church*, (4<sup>th</sup> Cir. Virginia, 1988)]. One court case held that the state's imposition of the child care licensing standards on religious-affiliated child care centers did not unconstitutionally burden the group's free exercise rights [696 F. Supp. 518, *North Valley Baptist Church v. California State Department of Social Services* (U.S.D.C., E.D., Calif. 1988)].

Committee Substitute SB 158 does not require licensure and, instead, maintains the exemption but does stipulate requirements that the accrediting agencies for religious exemption must impose on the religious based child care facilities.

**V. Economic Impact and Fiscal Note:**

**A. Tax/Fee Issues:**

None.

**B. Private Sector Impact:**

Some portion of the 456 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 of Children and Families reports there is no fiscal impact with this bill.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.