

The bill substantially amends s. 402.305, Florida Statutes.

II. Present Situation:

Licensing Standards for Child Care Facilities

The Department of Children and Families (DCF) establishes licensing standards that each licensed child care facility in the state must meet under the authority of s. 402.305, F.S. A child care facility generally includes 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.¹ DCF currently regulates over 8,362 child care arrangements which include child care facilities, large family child care homes and family day care homes.² In addition, six counties in the state which conduct their own licensure of homes currently license 4,292 child care arrangements.³

The statutory licensing standards for child care facilities are extensive and include standards for physical facilities. However, current standards for licensed child care providers do not address blinds or window coverings.

Window Blinds and Coverings

For the past 15 years, the Consumer Products Safety Commission (CPSC)⁴ has been investigating window covering hazards and working with the Window Covering Safety Council (WCSC) to increase safety of window coverings and blinds. Additionally the WCSC provides consumers with free repair kits that make window coverings and blinds safer.⁵ From 1991 to 2000, the CPSC received 160 reports of strangulations involving cords on window blinds. Of those 160 reports, 140 involved the outer pull cords, and 20 involved the inner cords that run through the blind slats. The CPSC found that the formation of loops in the pull cords and inner cords likely caused the strangulation.⁶

Since 2006, the CPSC received reports of five deaths and 16 near strangulations from Roman shades and three deaths from roll-up blinds.⁷ Roman shades have a looped pull cord and

¹ s. 402.302(2), F.S.

² DCF Quick Facts, December 31, 2009, <http://www.dcf.state.fl.us/publications/docs/quickfacts.pdf>, (last accessed March 6, 2010); s. 402.313(3)(1)(a), F.S., provides that family day care homes may be registered and not licensed under certain conditions.

³ Florida House of Representatives Health Care Services Policy Committee, Staff Analysis on HB 487, January 26, 2010 (referencing e-mail from James Cheatham, dated January 28, 2010, on file with the Health Care Services Policy Committee).

⁴ The Consumer Production Safety Commission (CPSC) was established in 1972 when Congress passed the Consumer Products Safety Act. In passing the act, Congress intended to protect the public against unreasonable risks of injuries associated with consumer products. 15 U.S.C. 2051(a).

⁵ "Window Covering Safety Council Recalls to Repair All Roman and Roll-Up Blinds Due to Risk of Strangulation." U.S. Consumer Products Safety Commission, December 15, 2009, <http://www.cpsc.gov/cpscpub/prerel/prhtml10/10073.html>, (last accessed March 5, 2010).

⁶ "Children Can Strangle in Window Coverings Cords." U.S. Consumer Products Safety Commission, <http://www.cpsc.gov/cpscpub/pubs/cords.html>, (last accessed March 5, 2010).

⁷ "Window Covering Safety Council Recall to Repair All Roman and Roll-Up Blinds Due to Risk of Strangulation." U.S. Consumer Products Safety Commission, December 15, 2009, <http://www.cpsc.gov/cpscpub/preel/prhtml09/09090.html>, (last accessed March 5, 2010).

exposed inner cords on the back of the shade. Roll-up blinds have a looped cord and two lifting cord loops that pass around the bottom rail of the blind.⁸

On December 15, 2009, the CPSC and the WCSC announced a voluntary recall to repair millions of Roman shades and roll-up blinds to eliminate the risk of strangulation to young children. The CPSC estimates that approximately five million Roman shades and three million roll-up blinds are sold yearly.⁹

III. Effect of Proposed Changes:

This bill creates minimum requirements for licensure of child care facilities relating to window blinds and other window coverings. The intent of the bill is to eliminate the risk of strangulation of children in licensed child care facilities by prohibiting child care facilities from using window blinds and coverings that contain cords with loops. The effect of this change will not have an impact on registered family child care homes since they are not required to comply with licensing standards.

The bill also requires DCF to review and consider recommendations of the Consumer Product Safety Commission (CPSC) relating to window blinds and window coverings. The effect of this change will require DCF to consider CPSC recommendations when promulgating rules to address blind and window covering requirements.

The bill appears to impose strict civil liability against a child care facility for any act that results from not properly retrofitting existing window blinds, window coverings, pull cords, or inner cords by January 1, 2011. Strict liability imposes liability regardless of fault.¹⁰ Thus, in a strict liability cause of action, a plaintiff does not have to prove that the defendant was negligent in order to recover damages.¹¹ The bill provides a definition for “properly retrofit” to mean to modify in a way that eliminates long dangling cords or the formation of inner or outer cord loops that pose a risk of strangulation.

The bill also permits DCF to provide information on reduced-cost or no-cost options for retrofitting or replacing unsafe window blinds and window coverings.

The bill provides a short title for the legislation as the “John F. Serrano, Rachel Lou Napier, and Alexandra Ali Safety and Accountability Act.”¹²

The bill provides an effective date of July 1, 2010.

⁸ *Id.*

⁹ *Id.*

¹⁰ BLACK’S LAW DICTIONARY, 1422 (6th ed. 1990).

¹¹ See 6 Fla. Practice, *Personal Injury and Wrongful Death Action*, s. 13:16 (2008-2009 ed.) This does not mean that the plaintiff may not prove other issues in order to prevail in a strict liability case.

¹² Rachel Lou Napier, a resident of Miami-Dade, Florida, became entangled in the inner cords of custom-cut mini-blinds, while in her crib, which choked her. She is currently a disabled child and requires constant care. John F. Serrano was a three-year old boy from Miramar, Florida, who died when he became entangled in a window cord. Alexandra Ali was a five-year old girl from Miami-Dade, Florida, who died when she became entangled in a window blind cord while in her crib.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill will create additional equipment standards for licensed child care facilities that are not addressed in current law or rule. The bill will affect 10,745 licensed child care providers, requiring them to examine their blinds and window coverings and to replace or retrofit window blinds or other window coverings as needed to comply with the new licensing standard. While the Window Covering Safety Council (WCSC) provides free kits for retrofitting unsafe blinds,¹³ this change may place costs on child care facilities by requiring them to replace or retrofit existing equipment by a certain date.

C. Government Sector Impact:

None.

VI. Technical Deficiencies:

Lines 48-49 should be redrafted as follows: Cordless window blinds are in compliance with this subsection.

Lines 65-67: It is unclear to whom DCF may provide information regarding retrofitting or replacing window coverings.

VII. Related Issues:

None.

¹³ “Window Covering Safety Council Recalls to Repair All Roman and Roll-Up Blinds Due to Risk of Strangulation.” U.S. Consumer Products Safety Commission, December 15, 2009, <http://www.cpsc.gov/cpsc/pub/prerel/prhtml10/10073.html>, (last accessed March 5, 2010).

VIII. Additional Information:

- A. **Committee Substitute – Statement of Substantial Changes:**
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

- B. **Amendments:**

Barcode 171928 by Children, Families, and Elder Affairs on March 9, 2010:

Removes the provision that creates strict liability against child care facilities for acts that result from failure to properly retrofit or replace unsafe window blinds and window coverings by January 1, 2011.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.
