

THE IMPACT



FAMILY CHILD CARE

IN THE STATE OF FLORIDA

PREPARED BY:

THE FLORIDA FAMILY CHILD CARE HOME ASSOCIATION, INC.

www.familychildcare.org

Florida Family Child Care Home Association, Inc.

Established 1993



A united voice on behalf of all children to promote and encourage quality professional family child care through education, legislation, advocacy, mentoring, caring and love.

Dear Child Care Advocate,

Equal access to all child care programs has become particularly challenging for family child care in Florida for many years. A family child care home in Florida is defined in statute as 'care in an occupied residence'. Providers are required to be regulated by state law (registered or licensed) and federal law (report income and pay taxes). However, the very essence of family child care is currently being denied by communities around the state. All across the state, **parents are being denied access to family child care** in the very same neighborhood that they live in. Why? This ruling has not been made by the Department of Children and Families or the IRS. It is **because of deed restrictions!**

Deed restrictions on property are set at the time a community is being developed. Most of the time, the residents are not involved in the development of those deed restrictions or even informed of their existence. Some developers will actually set aside land for public schools, child care centers, and churches (which may also have preschools). Then they will impose deed restrictions that do not allow businesses in the home – which includes family child care (according to recent court rulings). The obvious reasoning behind these deed restrictions was to protect the homeowners and their investment. The unfortunate reality is that it is also being used to discriminate against the oldest type of child care in existence. Child care that is vital to the very well-being of those same neighborhoods.

If you think you are not personally affected by deed restrictions, you may want to think again. According to recent court rulings, any neighborhood can prohibit family child care homes. This deed restriction **discriminates not only against the profession of family child care – but also against parents and their children** who have chosen family child care. Parents are being forced to seek family child care outside their neighborhoods - or choose another form of care because of the unavailability of family child care. Unfortunately, some will choose unregulated care.

“No one can do everything, but everyone can do something.”

On behalf of **all** children,
FFCCHA

... quality care from providers with love to share
www.familychildcare.org

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ISSUE PAPER
DEED RESTRICTIONS AND FAMILY CHILD CARE
IN THE STATE OF FLORIDA

Issue:

At issue are the rights of parents to have access to family child care in their neighborhoods regardless of whether or not there is a current deed restriction prohibiting ‘business use of property’ or simply stating ‘residential use only’.

Solution Strategy:

Gather support to pass legislation stating:

1. Any deed restriction that would prohibit the use of a single-family dwelling unit as a licensed family child care home shall not be enforceable unless that restriction is necessary for the preservation of the health, safety and welfare of the other residents in the neighborhood (who were meant to benefit from this restriction).
2. Deed restrictions *would be* enforceable in cases where communities have been specifically designed for retirees or the elderly.
3. Deed restrictions *would be* enforceable, or restrictions may be applied to family child care in condominiums and cooperatives.
4. Place the burden of proof on the party seeking to enforce the deed restriction to demonstrate, on a case by case basis, that the restriction is necessary.

Impact:

Parents will continue to have the right to choose the type of care that they want for their children.

Background:

In two recent court cases, and in numerous other non-court cases, family child care providers have been ordered to close their child care program due to deed restrictions that either state ‘for residential use only’ or ‘no business use’. In many of these cases, it was a disgruntled neighbor who complained to their homeowner’s association that instigated the action against the provider. *There are remedies other than closing the child care home to address these concerns.*

Family child care is the *only* “business” that by legal definition must be performed in a caregiver’s own home. It is also the only business in Florida where our government controls the number of clients, thereby controlling the actual profit margin of that business. Until just recently, family child care was simply an unregulated ‘informal’ type of care. In more recent years legislation and training requirements served to *promote* family child care as a professional business in an effort to enhance their quality of care. However, family child care really remains more of a social service, financially subsidized by these home-based providers.

Common reasons for complaints against family child care homes are usually very vague, and often times based on a perceived problem instead of actual fact. Increased noise and traffic seem to be the most commonly anticipated problems. In reality, most people would have a hard time identifying a family child care home in most neighborhoods. In those incidences where noise and traffic do become unreasonable, there are less drastic remedies (*such as nuisance actions*). In addition, enforcing these restrictions gives negligible benefits to neighbors when compared to the harm suffered by parents and children. Families struggle to find appropriate quality care for their children. Continuity of care is extremely important for the healthy development of young children. Parents and children enrolled in family child care homes are devastated when their child care homes are closed down.

Another common complaint from neighbors is the prospect of lowered property values. *There is no substantiated evidence showing that having a family child care home in a neighborhood decreases the value of any home in the neighborhood.* Indeed, real estate agents have successfully used the availability of quality child care as a positive selling point to prospective buyers. As a fail safe measure, the proposed legislation could state that if the association can prove that the ‘health, safety or welfare’ of the neighborhood is in jeopardy then a family child care home can be closed (on a case by case basis).

POSITION STATEMENT: DEED RESTRICTIONS AND FAMILY CHILD CARE Florida Family Child Care Home Association

The Florida Family Child Care Home Association (FFCCHA) supports the proposed legislation.

◆ **Background: Family Child Care Definitions**

1. Family child care is considered the oldest form of child care in our society, where the “business” is that of “taking care of children” in a home environment much like a family takes care of its children. Family Child Care has been “woven into the fabric of every neighborhood”.¹
2. Family child care is a home-based service where child care is provided in the caregiver’s home, sometimes also known as home child care or family day care. By definition, family child care must be provided in an occupied residence. Unlike any other business, this service cannot be provided on commercial property. (please see page 8 – Family Child Care Definition)

- ◆ The operation of family child care is merely incidental to the primary residential purposes of the home. There are currently four types of legal in-home child care: Informal Caregivers, Registered Providers, Licensed Providers and Large Family Child Care Homes. Of these choices, *only Licensed and Large Family Child Care Homes require on-site inspections at least twice a year, thus offering parents at least one indicator of quality.* Licensed providers also have to comply with additional health, safety and nutritional guidelines outlined on both the state and local level.

◆ **Background: Statistics**

1. 1 million family child care providers care for approximately 4 million children in the United States.²
2. Nearly half of all child care outside the child’s home occurs in family child care - according to the Census Bureau.³
3. The following is a breakdown of the percentage of children under age 5 in child care settings out of their own homes⁴
 - Family Child Care (37%)
 - Child Care Centers (26%)
 - Non-parental relatives’ homes, some of which are Family Child Care Homes (21%)
 - Nursery schools and preschools (14%)
 - Schools (2%)
4. The total number of children currently under the age of five in Florida is 956,929.⁵
5. The number of regulated Family Child Care providers in Florida is 4,819 licensed and 3,616 registered.⁶

◆ **How Family Child Care Meets Parental Needs**

1. The desirability of a home-like atmosphere – most closely resembling the parent’s own home.
2. The availability of care for mixed age groups in the same program – offering great learning experiences from each other as they grow.
3. The desirability of having siblings together in one group – the bonding and building of communication.
4. Closer proximity to child’s own home – cutting down on transportation costs and time.
5. The need for flexible scheduling due to odd hour jobs and last minute overtime requirements of the parent’s job.
6. Ease of start-up as compared to a center – establishment of child care can more easily respond to needs of parents.
7. One consistent caregiver for several years as compared to having a different teacher each year as they are promoted.

¹ *Quality 2000, Advancing Early Care and Education ‘Working Paper’*, Kathy Modigliani, Ed.D, Wheelock college, February 1994

² Willer, Hofferth, Kisker, Divine-Hawkins, Farquhar, & Glantz, 1991 - combined data from the *Profile of Child Care Settings Study* and the *National Child Care Survey*, 1990

³ O’Connell & Bachu, 1992

⁴ calculated from 1988 Census data – O’Connell & Bachu, 1992 (for children of working mothers, eliminating arrangements where the father cared for the child, or the mother did so while working, or the care occurred in the child’s home by a nanny or babysitter)

⁵ *Charting the Progress of Child Care in Florida, County by County Report*, Florida Children’s Forum, 1999

⁶ *1999 Family Child Care Licensing Study*, The Children’s Foundation

8. The need for family support is often met by family child care providers actually acting in the role as an 'extended family'.

◆ **Parental Choice at Risk**

With over 50 percent of working-age women now in the workforce, family child care is the most preferred form of out-of-home child care for infants and toddlers by most parents⁷ and many child development specialists.⁸ Therefore deed restrictions affect not only providers trying to care for the children in their community, it also affects parents by limiting their available choices of care for their children. It is the position of FFCCHA that there should be a variety of child care settings available as suitable alternatives for parents because no one type of child care program is right for all parents and children.

◆ **Current Public Policy**

There is overriding public policy in favor of family day care homes as evidenced by our state statues and statewide programs supporting family child care.

1. Florida legislation provides protection for licensed family child care homes from being charged commercial utility rates (*please see page 9*).
2. Florida legislation provides protection for registered and licensed family child care homes from local zoning regulations that would restrict allowing family child care homes to operate (*please see page 10*).
3. Florida legislation provides protection for licensed family child care homes from having their homeowner's insurance cancelled due to offering child care in their home (*please see page 11*).
4. Florida legislation offers Gold Seal Family Child Care Providers enhanced rates.
5. Florida legislation gives licensed Family Child Care Providers the right to participate in the Subsidized Child Care Program now under the School Readiness Coalitions.

◆ **Current Statewide Initiatives:**

Currently there are statewide efforts to increase the number, availability and quality of family child care homes. Unfortunately, providers often find themselves subjected to deed restrictions that are in direct conflict with these programs.

◆ **'Underground' and/or 'Illegal' Family Child Care Providers**

'Underground' or 'illegal' child care providers are those caregivers who have not registered with state and/or local authorities. Most of these caregivers do not claim their income for tax purposes, nor do they generally comply with state or local provider/child ratio requirements. In addition, and probably more importantly, they have not been screened or fingerprinted, nor have the other occupants of the household. Therefore the likelihood of 'undesirable' and/or potentially dangerous situations increases in these arrangements and children may be in danger. These caregivers should not be confused with 'informal' caregivers who are largely relatives or friends of the child's family and care for children from only one family.

1. In many instances, providers are beginning to operate an 'underground' and/or 'illegal' program because they are anticipating that their neighbors may sue them. Unfortunately, when they sidestep the importance of regulations and the consistency it brings through the development and enforcement of minimum standards, the children often suffer from unhealthy and unsafe conditions.
2. There is a huge problem statewide with underground, illegal caregivers. While there is no way to actually count the number of illegal 'underground providers' in the state, it is estimated that for every legal provider, there is at least one illegal provider (based on provider association members who reported knowing at least one illegal caregiver in her neighborhood). Reasons for this range from fear of the deed restrictions, ignorance, being unable to comply, or simply refusing to comply with the law. Unfortunately, this number will only go up if barriers such as deed restrictions continue to impede providers from becoming regulated.
3. As long as parents continue to demand family child care, caregivers will continue to meet this demand whether or not they have sidestepped current regulations that have been developed for the health, safety and welfare of all children.

⁷ O'Connell & Bacha, 1992

⁸ *How to Maximize Your Child's Learning Ability*; Dr. Lauren Bradway and Barbara Albers Hill, 1993

IN THE CIRCLIT COURT FOR PASCO COUNTY, FLORIDA

99069459

JOSEPH J. BARRER, et al.,

4
Plaintiffs,

JED PITTMAN, PASCO COUNTY CLERK
06/02/99 10:42am 1 3 1
OR WK 4 1 5 2 PG 1 0 0 6

Case No. 98-6879 CA

v.

Division G

PAMELA NAVARRA,

Defendant

MAY 27 1 35 PM '99
JED PITTMAN

FINAL SUMMARY JUDGMENT AND INJUNCTION

This action was heard upon plaintiffs' Motion for Summary Judgment. Based upon the pleadings, admissions, and affidavits submitted in support of and in opposition to the motion for summary judgment, if any, it is hereby

ADJUDGED that there exists no genuine dispute as to any material fact, and that plaintiffs are entitled to judgment as a matter of law. The court finds that the defendant is operating, according to her pleadings, a "Family Child Care Home" on the real property described as Lot 75, WINDSOR MILL SUBDIVISION UNIT TWO, according to the plat recorded in Plat Book 17 at page 22 of the public records of Pasco County, Florida, located at 7207 Cheshire Court, Hudson, FL 34667. The court finds that such activity is a "trades, businesses, profession, or other type of commercial activity" which is prohibited by paragraph 7 of the restrictive covenants applicable to the defendant's lot. The court further finds that the prohibition contained in that restrictive covenant is not affected or invalidated by §§ 125.0109, 402.302 or 402.313, Fla. Stat. It is therefore

ORDERED that defendant PAMELA NAVARRA, and her agents, servants, employees and attorneys, and all persons in active concert or participation with her who receive actual notice of this injunction, are hereby enjoined from operating or continuing to operate a family child care home or other similar activity on the real property described above, effective May 31, 1999.

The court reserves jurisdiction to enforce this injunction, and as to taxation of costs, and for such other relief as may be appropriate.

DONE AND ORDERED at New Port Richey, Pasco County, Florida, this 28th day of May, 1999.

[Signature]
Circuit Judge

copies to:
Matthew D. Elrod
Edward Boncek

REM NPA N/C

DIET

PCB CF

This is a copy of the injunction that closed the licensed family child care home of Pamela Navarra in Pasco County. Pam served only special needs children. She had three spina bifida children in wheelchairs. Her neighbor told her "he did not want those kind of kids in his neighborhood". He proceeded to file a complaint that led to the injunction that closed her licensed family child care home. The judge said he had no recourse but to close her family child home because of the deed restrictions.

Family Day Care Definitions

Florida Statute 402.302

(7) **"Family day care home" means 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. A family day care home shall be allowed to provide care for one of the following groups of children, which shall include those children under 13 years of age who are related to the caregiver:

- (a) A maximum of four children from birth to 12 months of age.
- (b) A maximum of three children from birth to 12 months of age, and other children, for a maximum total of six children.
- (c) A maximum of six preschool children if all are older than 12 months of age.
- (d) A maximum of 10 children if no more than 5 are preschool age and, of those 5, no more than 2 are under 12 months of age.

(8) **A Large family child care home means an occupied residence** in which child care is regularly provided for children from at least two unrelated families, which receives a payment, fee, or grant for any of 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. One of the two full-time child care personnel must be the owner or occupant of the residence. A large family child care home must first have operated as a licensed family day care home for 2 years, with an operator who has had a child development associate credential or its equivalent for 1 year, before seeking licensure as a large family child care home. A large family child care home shall be allowed to provide care for one of the following groups of children, which shall include those children under 12 years of age who are related to the caregiver:

- (a) A maximum of 8 children from birth to 24 months of age.
- (b) A maximum of 12 children, with no more than 4 children under 24 months of age.

Florida Statute 212.08
Sales, Rental, Use, Consumption, Distribution, and Storage Tax
- Specified Exemptions.

The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter

(7) MISCELLANEOUS EXEMPTIONS— (sales tax exemption for licensed Family Child Care Homes on utilities – non-commercial rates)

(j) Household fuels.--Also exempt from payment of the tax imposed by this chapter are sales of utilities to residential households or owners of residential models in this state by utility companies who pay the gross receipts tax imposed under s. 203.01, and sales of fuel to residential households or owners of residential models, including oil, kerosene, liquefied petroleum gas, coal, wood, and other fuel products used in the household or residential model for the purposes of heating, cooking, lighting, and refrigeration, regardless of whether such sales of utilities and fuels are separately metered and billed direct to the residents or are metered and billed to the landlord. If any part of the utility or fuel is used for a nonexempt purpose, the entire sale is taxable. The landlord shall provide a separate meter for nonexempt utility or fuel consumption. For the purposes of this paragraph, licensed family day care homes shall also be exempt.

**Family Day Care Homes - Local Zoning Regulation
Florida State Statue 166.0445**

Family day care zoning regulations - The operation of a residence as a family day care home, as defined by law, registered or licensed with the Department of Children and Family Services shall constitute a valid residential use for purposes of any local zoning regulations, and no such regulation shall require the owner or operator of such family day care home to obtain any special exemption or use permit or waiver, or to pay any special fee in excess of \$50, to operate in an area zoned for residential use.

History.--s. 3, ch. 86-87; s. 15, ch. 99-8.

INote. --Also published at s. 125.0109.

-ALSO-

Florida Statue 125.0109

Family day care home local zoning regulation. --The operation of a residence as a family day care home, as defined by law, registered or licensed with the Department of Children and Family Services shall constitute a valid residential use for purposes of any local zoning regulations, and no such regulation shall require the owner or operator of such family day care home to obtain any special exemption or use permit or waiver, or to pay any special fee in excess of \$50, to operate in an area zoned for residential use.

INote. --Also published at s. 166.0445.

History. --s. 3, ch. 86-87; s. 11, ch. 99-8.

**Family Day Care Insurance.—
Florida Statute 1627.70161**

(1) PURPOSE AND INTENT.--The Legislature recognizes that family day care homes fulfill a vital role in providing child care in Florida. It is the intent of the Legislature that residential property insurance coverage should not be canceled, denied, or non-renewed solely on the basis of the family day care services at the residence. The Legislature also recognizes that the potential liability of residential property insurers is substantially increased by the rendition of child care services on the premises. The Legislature therefore finds that there is a public need to specify that contractual liabilities that arise in connection with the operation of the family day care home are excluded from residential property insurance policies unless they are specifically included in such coverage.

(2) DEFINITIONS.--As used in this section, the term:

(a) "Child care" means 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.

(b) "Family day care home" means 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 a profit.

(3) FAMILY DAY CARE; COVERAGE.--A residential property insurance policy shall not provide coverage for liability for claims arising out of, or in connection with, the operation of a family day care home, and the insurer shall be under no obligation to defend against lawsuits covering such claims, unless:

(a) Specifically covered in a policy; or

(b) Covered by a rider or endorsement for business coverage attached to a policy.

(4) DENIAL, CANCELLATION, REFUSAL TO RENEW PROHIBITED.--An insurer may not deny, cancel, or refuse to renew a policy for residential property insurance solely on the basis that the policyholder or applicant operates a family day care home. In addition to other lawful reasons for refusing to insure, an insurer may deny, cancel, or refuse to renew a policy of a family day care home provider if one or more of the following conditions occur:

(a) The policyholder or applicant provides care for more children than authorized for family day care homes by s. 402.302;

(b) The policyholder or applicant fails to maintain a separate commercial liability policy or an endorsement providing liability coverage for the family day care home operations;

(c) The policyholder or applicant fails to comply with the family day care home licensure and registration requirements specified in s. 402.313; or

(d) Discovery of willful or grossly negligent acts or omissions or any violations of state laws or regulations establishing safety standards for family day care homes by the named insured or his or her representative which materially increase any of the risks insured.

History.--s. 1, ch. 98-6; s. 43, ch. 99-7.

1 Note.--Section 2, ch. 98-6, provides that "[t]his act shall take effect October 1 of [1998], and applies to residential property insurance policies offered, sold, issued, or renewed on or after that date."

LEGISLATION IN OTHER STATES
NEW JERSEY
MISCELLANEOUS PROVISIONS

40:55D-66.5a. Findings, declarations

1. The Legislature finds and declares that:

- a. With over 50 percent of working-age women now in the workforce, the need for high quality childcare is of vital importance;
- b. Not only does the availability of childcare allow parents the peace of mind to pursue their careers and lead active, productive, professional lives, but it is also a necessity given the high cost of living in this State and the ever increasing need for families to bring home two incomes just to get by;
- c. A significant number of people in this State, recognizing the tremendous need for quality childcare, and who, in some cases, are already staying home caring for their own children, are providing child care services for a few additional children, thereby augmenting the supply of child care and providing a vital service that might otherwise not be available elsewhere; and
- d. Given the paucity of decent, affordable childcare combined with the current labor shortage in this State, it seems unreasonable to erect zoning barriers which effectively prevent the establishment of or, in some cases, continuation of, these valuable and vitally necessary family day care homes.
- e. It is therefore in the public interest and a valid public policy for this Legislature to eliminate those barriers which currently exist which prevent the establishment, or continued operation of, family day care homes in residential neighborhoods.

L.1991,c.278,s.1.

40:55D-66.5b.

2. Family day care homes permitted use in residential districts; definitions

- a. Family day care homes shall be a permitted use in all residential districts of municipality. The requirements for family day care homes shall be the same as for single family dwelling units located within such residential districts. Any deed restriction that would prohibit the use of a single family dwelling unit as a family day care home shall not be enforceable unless that restriction is necessary for the preservation of the health, safety, and welfare of the other residents in the neighborhood. The burden of proof shall be on the party seeking to enforce the deed restriction to demonstrate, on a case-by-case basis, that the restriction is necessary for the preservation of the health, safety and welfare of the residents in the neighborhood who were meant to benefit from the restriction.
- b. In condominiums, cooperatives and horizontal property regimes that represent themselves as being primarily for retirees or elderly persons, or which impose a minimum age limit tending to attract persons who are nearing retirement age, deed restrictions or bylaws may prohibit family day care homes from being a permitted use.
- c. In condominiums, cooperatives and horizontal property regimes other than those permitted to prohibit family day care homes from being a permitted use under subsection b. of this section, deed restrictions or bylaws may prohibit family day care homes from being a permitted use; however, if such condominiums, cooperatives, or horizontal property regimes prohibit such use, the burden of proof shall be on the condominium association, cooperative association, or council of co-owners to demonstrate, on a case-by-case basis, that the prohibition is reasonably related to the health, safety, and welfare of the residents. The burden of proof also shall be on the condominium association, cooperative association, or council of co-owners to demonstrate, on a case-by-case basis, that any other restrictions imposed upon a family day care home, including but not limited to noise restrictions and restrictions on the use of interior common areas, are reasonably related to the health, safety and welfare of the residents.

d. For the purposes of this act:

"Family day care home" means the private residence of a family day care provider which is registered as a family day care home pursuant to the

"Family Day Care Provider Registration Act," P.L.1987, c.27 (C.30:5B-16 et seq.);

"Applicant" means a person who applies for a certificate of registration pursuant to the "Family Day Care Provider Registration Act," P.L.1987, c.27 (C.30:5B-16 et seq.);

"Commissioner" means the Commissioner of Human Services;

"Condominium" means a condominium formed under the "Condominium Act," P.L.1969, c.257 (C.46:8B-1 et seq.); "Cooperative" means a cooperative as defined under "The Cooperative Recording Act of New Jersey," P.L.1987, c.381 (C.46:8D-1 et seq.); and Web sit address: www.njleg.state.nj.us/ s-Search for family child care home Municipalities and Counties 40A go to and Counties 40A go to 40:55D-66.5

* California Codes

* California Health and Safety Code

* HEALTH AND SAFETY CODE SECTION 1597.30-1597.621

1597.30. The Legislature finds and declares:

1597.45. All of the following shall apply to small family day care homes:

(a) The use of single-family residence as a small family day care home shall be considered a residential use of property for the purposes of all local ordinances.

(b) No local jurisdiction shall impose any business license, fee, or tax for the privilege of operating a small family day care home.

(c) Use of a single-family dwelling for purposes of a small family day care home shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 (State Housing Law) or for purposes of local building codes.

(d) A small family day care home shall not be subject to Article 1 (commencing with Section 13100) or Article 2 (commencing with Section 13140) of Chapter 1 of Part 2, except that a small family day care home shall contain a fire extinguisher and smoke detector device that meet standards established by the State Fire Marshal.

1597.46. All of the following shall apply to large family day care homes:

(a) A city, county, or city and county shall not prohibit large family day care homes on lots zoned for single-family dwellings, but shall do one of the following:

(1) Classify these homes as a permitted use of residential property for zoning purposes.

(2) Grant a non discretionary permit to use a lot zoned for a single-family dwelling to any large family day care home that complies with local ordinances prescribing reasonable standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking, and noise control relating to such homes, and complies with subdivision (d) and any regulations adopted by the State Fire Marshal pursuant to that subdivision. Any noise standards shall be consistent with local noise ordinances implementing the noise element of the general plan and shall take into consideration the noise level generated by children. The permit issued pursuant to this paragraph shall be granted by the zoning administrator, if any, or if there is no zoning administrator by the person or persons designated by the planning agency to grant such permits, upon the certification without a hearing.

(3) Require any large family day care home to apply for a permit to use a lot zoned for single-family dwellings. The zoning administrator, if any, or if there is no zoning administrator, the person or persons designated by the planning agency to handle the use permits shall review and decide the applications. The use permit shall be granted if the large family day care home complies with local ordinances, if any, prescribing reasonable standards, restrictions, and requirements concerning spacing and concentration, traffic control, parking, and noise control relating to such homes, and complies with subdivision (d) and any regulations adopted by the State Fire Marshal pursuant to that subdivision. Any noise standards shall be consistent with local noise ordinances implementing the noise element of the general plan and shall take into consideration the noise levels generated by children. The local government shall process any required permit as economically as possible, and fees charged for review shall not exceed the costs of the review and permit process. Not less than 10 days prior to the date on which the decision will be made on the application, the zoning administrator or person designated to handle such use permits shall give notice of the proposed use by mail or delivery to all owners shown on the last equalized assessment roll as owning real property within a 100 foot radius of the exterior boundaries of the proposed large family day care home. No hearing on the application for a permit issued pursuant to this paragraph shall be held before a decision is made unless a hearing is requested by the applicant or other affected person. The applicant or other affected person may appeal the decision. The appellant shall pay the cost, if any of the appeal.

(b) A large family day care home shall not be subject to the provisions of Division 13 (commencing with Section 21000) of the Public Resources Code.

(c) Use of a single-family dwelling for the purposes of a large family day care home shall not constitute a change of occupancy for purposes of Part 1.5 (commencing with Section 17910) of Division 13 (State Housing Law), or for purposes of local building and fire codes.

(d) Large family day care homes shall be considered as single-family residences for the purposes of the State Uniform Building Standards Code and local building and fire codes, except with respect to any additional standards specifically designed to promote the fire and life safety of the children in these homes adopted by the State Fire Marshal pursuant to this subdivision. The State Fire Marshal shall adopt separate building standards specifically relating to the subject of fire and life safety in large family day care homes which shall be published in Title 24 of the California Administrative Code. These standards shall apply uniformly throughout the state and shall include, but not be limited to:

the requirement that a large family day care home contain a fire extinguisher or smoke detector device, or both, which meets standards established by the State Fire Marshal;
specification as to the number of required exits from the home; and
specification as to the floor or floors on which day care may be provided. Enforcement of these provisions shall be in accordance with Sections 13145 and 13146. No city, county, city and county, or district shall adopt or enforce any building ordinance or local rule or regulation relating to the subject of fire and life safety in large family day care homes which is inconsistent with those standards adopted by the State Fire Marshal, except to the extent the building ordinance or local rule or regulation applies to single-family residences in which day care is not provided.

(e) No later than April 1, 1984, the State Fire Marshal shall adopt the building standards required in subdivision (d) and any other regulations necessary to implement the provisions of this section.

1597.465. A large family day care home may provide care for more than 12 children and up to and including 14 children, if all of the following conditions are met:

- (a) At least two of the children are at least six years of age.
- (b) No more than three infants are cared for during any time when more than 12 children are being cared for.
- (c) The licensee notifies a parent that the facility is caring for two additional school-age children and that there may be up to 13 or 14 children in the home at one time.

(D) THE LICENSEE OBTAINS THE WRITTEN CONSENT OF THE PROPERTY OWNER WHEN THE FAMILY DAY CARE HOME IS OPERATED ON PROPERTY THAT IS LEASED OR RENTED

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A bill to be entitled
 An act relating to family day care homes; creating s.
 402.31302, F.S.; providing that a deed restriction,
 covenants, or similar binding agreement running with the
 land may not prohibit the use of a residential dwelling as
 a family day care home; providing exceptions and a burden
 of proof; specifying certain accommodations and real
 property that are exempt from the act; providing
 legislative intent; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 402.31302, Florida Statutes, is created
 to read:

402.31302 Family day care homes; deed restrictions.--

(1) The operation of a family day care home, as defined in
s. 402.302 and licensed under s. 402.313, in a residential
dwelling constitutes a valid residential use for the purpose of
any deed restriction, covenant, or other similar binding
agreement running with the land. A deed restriction, covenant,
or similar binding agreement running with the land may not be
interpreted so that the operation of a family day care home is
considered a business, commercial activity, or trade and does
not prohibit the use of a residential dwelling as a family day
care home unless prohibiting the use is necessary to preserve
the health, safety, and welfare of the other residents in the
neighborhood.

28 (2) The burden of proof is on the party seeking to enforce
29 the deed restriction to demonstrate, on a case-by-case basis,
30 that the restriction is necessary to preserve the health,
31 safety, and welfare of the residents of the neighborhood who
32 were meant to benefit from the restriction.

33 (3) A condominium as defined in s. 718.103, timeshare
34 property as defined in s. 721.05, or cooperative as defined in
35 s. 719.103 is exempt from this section. A community as defined
36 in s. 720.301, which includes in its declaration of covenants a
37 prohibition against children residing in the community, is also
38 exempt from this section.

39 (4) The Legislature intends that families have appropriate
40 licensed family child care to protect the public health, safety,
41 and welfare of the children in this state.

42 (a) The Legislature finds that:

43 1. Family child care meets the transportation, scheduling,
44 financial, and emotional needs of many working families by
45 providing child care in an atmosphere most closely resembling
46 the parents' own homes.

47 2. Family child care increases the availability of care
48 for mixed-age groups, including siblings in the same program,
49 offering children enhanced communication and learning
50 experiences.

51 (b) The legislative intent in enacting this section is to
52 facilitate suitable care for young children by providing that
53 working parents have the option of child care in a homelike,
54 neighborhood setting, under ss. 166.0445, 402.26, and 402.313.

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55 (c) The Legislature supports the establishment of family
56 day care homes by licensing the homes under s. 402.313 and
57 providing funding for day care services through subsidized child
58 care.

59 (d) The Legislature specifically exempts family day care
60 homes from local zoning restrictions in residential areas under
61 ss. 125.0109 and 166.0445.

62 (e) It is in the public interest and a valid public policy
63 for this Legislature to eliminate the use of deed restrictions,
64 covenants, or similar binding agreements as barriers to the
65 establishment or continued operation of licensed family day care
66 homes.

67 Section 2. This act shall take effect upon becoming a law.

33-25-05

1 A bill to be entitled
2 An act relating to family day care homes;
3 creating s. 402.31302, F.S.; providing that a
4 deed restriction, covenant, or similar binding
5 agreement running with the land may not
6 prohibit the use of a residential dwelling as a
7 family day care home; providing an exception
8 and a burden of proof; specifying certain
9 accommodations and real property that are
10 exempt from the act; providing legislative
11 intent; providing an effective date.

12
13 Be It Enacted by the Legislature of the State of Florida:

14
15 Section 1. Section 402.31302, Florida Statutes, is
16 created to read:

17 ~~402.31302 Family day care homes; deed restrictions.--~~

18 (1) The operation of a family day care home, as
19 defined in s. 402.302 and licensed under s. 402.313, in a
20 residential dwelling constitutes a valid residential use for
21 the purpose of any deed restriction, covenant, or other
22 similar binding agreement running with the land. A deed
23 restriction, covenant, or similar binding agreement running
24 with the land may not be interpreted so that the operation of
25 a family day care home is considered a business, commercial
26 activity, or trade and does not prohibit the use of a
27 residential dwelling as a family day care home unless
28 prohibiting the use is necessary to preserve the health,
29 safety, and welfare of the other residents in the
30 neighborhood.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

1 (2) The burden of proof is on the party seeking to
2 enforce the deed restriction to demonstrate, on a case-by-case
3 basis, that the restriction is necessary to preserve the
4 health, safety, and welfare of the residents of the
5 neighborhood who were meant to benefit from the restriction.

6 (3) A condominium as defined in s. 718.103, timeshare
7 property as defined in s. 721.05, or cooperative as defined in
8 s. 719.103, is exempt from this section. A community as
9 defined in s. 720.301, which includes in its declaration of
10 covenants a prohibition against children residing in the
11 community, is also exempt from this section.

12 (4) The Legislature intends that families have
13 appropriate licensed family child care to protect the public
14 health, safety, and welfare of the children in this state.

15 (a) The Legislature finds that:

16 1. Family child care meets the transportation,
17 scheduling, financial, and emotional needs of many working
18 families by providing child care in an atmosphere most closely
19 resembling the parents' own homes.

20 2. Family child care increases the availability of
21 care for mixed-age groups, including siblings in the same
22 program, offering children enhanced communication and learning
23 experiences.

24 (b) The legislative intent in enacting this section is
25 to facilitate suitable care for young children by providing
26 that working parents have the option of child care in a
27 homelike, neighborhood setting, under ss. 166.0445, 402.26,
28 and 402.313.

29 (c) The Legislature supports the establishment of
30 family day care homes by licensing the homes under s. 402.313
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1 and providing funding for day care services through subsidized
2 child care.

3 (d) The Legislature specifically exempts family day
4 care homes from local zoning restrictions in residential areas
5 under ss. 125.0109 and 166.0445.

6 (e) It is in the public interest and a valid public
7 policy for this Legislature to eliminate the use of deed
8 restrictions, covenants, or similar binding agreements as
9 barriers to the establishment or continued operation of
10 licensed family day care homes.

11 Section 2. This act shall take effect upon becoming a
12 law.

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15 SENATE SUMMARY

16 Provides that a deed restriction, covenant, or similar
17 binding agreement running with the land may not prohibit
18 the use of a residential dwelling as a family day care
19 home. Provides certain exemptions. Provides legislative
20 intent.

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PROPOSED FLORIDA FAMILY CHILD CARE HOME BILL - 2005

SB 336 By Senator Wilson

HB 239 By Representative Henriquez

A bill to be entitled An act relating to family day care homes; creating s. 402.31302, F.S.; providing that a deed restriction, covenant, or similar binding agreement running with the land may not prohibit the use of a residential dwelling as a family day care home; providing an exception and a burden of proof; specifying certain accommodations and real property that are exempt from the act; providing legislative intent; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 402.31302, Florida Statutes, is created to read: 402.31302 Family day care homes; deed restrictions.--

(1) The operation of a family day care home, as defined in s. 402.302 and licensed under s. 402.313, in a residential dwelling constitutes a valid residential use for the purpose of any deed restriction, covenant, or other similar binding agreement running with the land. A deed restriction, covenant, or similar binding agreement running with the land may not be interpreted so that the operation of a family day care home is considered a business, commercial activity, or trade and does not prohibit the use of a residential dwelling as a family day care home unless prohibiting the use is necessary to preserve the health, safety, and welfare of the other residents in the neighborhood.

2) The burden of proof is on the party seeking to enforce the deed restriction to demonstrate, on a case-by-case basis, that the restriction is necessary to preserve the health, safety, and welfare of the residents of the neighborhood who were meant to benefit from the restriction.

(3) A condominium as defined in s. 718.103, timeshare property as defined in s. 721.05, or cooperative as defined in s. 719.103, is exempt from this section. A community as defined in s. 720.301, which includes in its declaration of covenants a prohibition against children residing in the community, is also exempt from this section.

(4) The Legislature intends that families have appropriate licensed family child care to protect the public health, safety, and welfare of the children in this state.

(a) The Legislature finds that:

1. Family child care meets the transportation, scheduling, financial, and emotional needs of many working families by providing child care in an atmosphere most closely resembling the parents' own homes.

2. Family child care increases the availability of care for mixed-age groups, including siblings in the same program, offering children enhanced communication and learning experiences.

(b) The legislative intent in enacting this section is to facilitate suitable care for young children by providing that working parents have the option of child care in a homelike, neighborhood setting, under ss. 166.0445, 402.26, and 402.313.

(c) The Legislature supports the establishment of family day care homes by licensing the homes under s. 402.313 and providing funding for day care services through subsidized child care.

(d) The Legislature specifically exempts family day care homes from local zoning restrictions in residential areas under ss. 125.0109 and 166.0445.

(e) It is in the public interest and a valid public policy for this Legislature to eliminate the use of deed restrictions, covenants, or similar binding agreements as barriers to the establishment or continued operation of licensed family day care homes.

Section 2. This act shall take effect upon becoming a law.

SENATE SUMMARY

Provides that a deed restriction, covenant, or similar binding agreement running with the land may not prohibit the use of a residential dwelling as a family day care home. Provides certain exemptions. Provides legislative intent.