

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.)

Date: January 6, 1998 Revised: \_\_\_\_\_

Subject: Insurance for Family Day Care Homes

	<u>Analyst</u>	<u>Staff Director</u>	<u>Reference</u>	<u>Action</u>
1.	<u>Johnson</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Favorable/CS</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

This bill provides an exclusion from liability coverage under residential property insurance policies for claims arising out of the operation of a family day care home and provides that the insurer is under no obligation to defend against lawsuits covering such claims unless liability coverage is obtained for the family day care home operation, and prohibits insurance carriers from canceling, refusing to renew, or denying coverage for residential property insurance solely on the basis of the family day care home operations. The bill also authorizes an insurer to require the homeowner to obtain a commercial policy as a condition for issuing the homeowners' policy and limits the homeowner to caring for the number of children authorized by s. 402.302(5), F.S.

This bill creates section 627.70161 of the Florida Statutes.

II. Present Situation:

**Background**

The state's interest in retaining and increasing the number of family day care providers has been heightened by recent federal and state welfare reform legislation. The demand for subsidized child care for low-income parents has increased and is expected to continue to increase dramatically as legislative changes are implemented. For parents trying to come off welfare, formal child care arrangements are considered a critical need and one of the primary links to a successful transition to self-sufficiency.

One of the reasons for the critical need for child care is the strict employment requirement associated with welfare reform. According to the Department of Children and Family Services,

stringent requirements for adults on public assistance to enter the workforce are expected to significantly increase the number of children needing subsidized child care in fiscal year 1997-98, from approximately 45,000 to 62,000 children. The new statutory changes require parents with infants as young as 3 months to be employed and will result in a higher percentage of younger children needing subsidized child care. Presently, the availability of child care for infants is inadequate to meet the current demands.

The plan for meeting this increased need for child care resources is addressed through the Florida Child Care Initiative, which is an effort to recruit at least 1,000 new home day care providers to augment the state's existing licensed or registered home day care providers. Home day care is considered a more viable option than center-based care for many welfare transition families, since home day care providers are more likely to provide weekend and evening care, to accept infants, and to provide more affordable day care. According to the Florida Children's Forum, 80 percent of home day care providers accept infants, while only 42 percent of day care centers accept them. The Forum also noted that at least a third of the "working poor" work irregular hours, including weekends.

Pursuant to s. 402.302(5), F.S., a family day care home is defined as an occupied home 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. A day care home is authorized to provide care for one of the following groups of children, which includes those children less than 13 years of age who are related to the care giver:

1. A maximum of four children from birth to 12 months of age;
2. A maximum of three children from birth to 12 months of age, and other children, for a maximum of six children;
3. A maximum of six preschool children if all are older than 12 months;
4. A maximum of 10 children if no more than five are preschool age and, of those five, no more than two are less than 12 months of age.

Section 402.313, F.S., requires a family day care home 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." The licensing standards are designed to address the health, sanitation, safety, and adequate physical surroundings for all children in child care; however, proof of insurance coverage is not required for registration or licensure. Eight counties currently require family day care homes to be licensed.

A family day care provider can also volunteer to be licensed; all others must register annually with the Department of Children and Family Services, which entails providing the following information: the name and address of the home, the name of the operator, the number of children served, proof of a written plan to provide substitute care, proof of screening and background checks, proof of completion of the 3 hours training course, and proof that immunization records

are kept current, as required by s. 402.313(1)(a), F.S. The average number of children in the home, but not related to the family child care giver, is typically between five and six.

Concerns have been raised recently concerning the impact on availability and affordability of homeowners' insurance coverage for residences used for home day care due to a proposed clarification issued by the Residential Property Casualty Joint Underwriting Association (RPCJUA) in July. In response, the Senate President directed the Committee on Banking and Insurance staff to conduct an interim project, entitled, *Impact of Insurance Requirements on Availability of Family Child Care*. This bill incorporates the legislative recommendations contained in the interim report that was issued in September 1997.

### **Impact of Insurance Requirements on Availability of Family Child Care**

Florida's private-sector market for homeowners' insurance and other forms of residential property insurance has been unstable since 1992, when Hurricane Andrew struck the state and caused more than \$16 billion in insured losses. For the last 5 years, private-sector homeowners insurance generally has been unavailable in some areas of the state and has, in all areas of the state, been far more difficult to obtain than in the years prior to Hurricane Andrew. The decrease in availability has been driven by insurers' perceived need to reduce their exposures in hurricane-prone areas. As homeowners insurance has become less available, it has also become more expensive. To address the availability of insurance, the Legislature created the RPCJUA, to act as the homeowners' insurer of last resort.

Generally, homeowners insurance is designed to provide coverage for residential risks, as opposed to business risks. A property where a business is conducted is typically considered to be an uninsurable property through homeowners insurance, and therefore excluded from such coverage. Insurance for a home business can generally be obtained through an endorsement to an existing homeowners policy or a commercial liability policy. In the event a homeowner did not obtain an endorsement or commercial policy, generally the homeowner's policy would not cover a business-related liability.

In previous years, the RPCJUA's policies excluded home day care liability coverage. In addition, the RPCJUA's underwriting rules stated that property would not be insured if "significant business activity" was taking place. Exceptions were authorized for "incidental business activity," but day care operations were not specifically mentioned. The general underwriting policy of the RPCJUA was to deny coverage to an applicant that had a day care operation, but this was not consistently applied by the various servicing carriers of the RPCJUA.

In July, the RPCJUA proposed to clarify their "significant business" underwriting standard, relating to uninsurable risks, to deny homeowners coverage, if the applicant provided home day care to more than three children. If a current policyholder was caring for more than three children, the homeowners policy was subject to cancellation or nonrenewal. This proposal was based on standard underwriting practices used by many private insurance carriers. Had this proposal been implemented, many home day care providers, unable to obtain coverage in the private sector

market, would not have been able to obtain homeowners coverage from the RPCJUA. In August the RPCJUA revised its proposed underwriting change.

The RPCJUA's Underwriting Committee adopted a new underwriting standard on August 14, 1997, which authorizes family day care homes registered in Florida and licensed in counties (where required) to be eligible for a homeowners policy or a dwelling fire policy including personal liability coverage, if a separate commercial liability policy is obtained. A family care home is allowed to provide care for the number of children authorized under s. 402.302(5), F.S. If a home day care operation is not registered or licensed as required by Florida law or county requirements, it is ineligible for any coverage. A copy of the certificate of insurance for the commercial liability coverage must be submitted by the commercial insurer to the RPCJUA. This proposed change was recently approved by the Department of Insurance.

Presently, the top ten insurance companies providing homeowners insurance coverage and the RPCJUA require either an endorsement or commercial liability policy for home day care operations. The RPCJUA, Allstate, and State Farm represent the majority of all policies in force in Florida.

Of the insurers surveyed, the maximum number of children covered by a home day care endorsement varied from 1 - 6. Most companies provided endorsements for up to three children. Two companies wrote endorsements for up to six children. Typically, premiums for endorsements, for up to three children, ranged from \$65 to \$300. Some policies include coverage for up to two children under the homeowners' policy. The liability coverage typically provided \$100,000 per occurrence and an aggregate in the amount of \$300,000 to \$1 million.

The number of endorsements issued by the top two private insurers appears to be quite low, given their market share in comparison to their estimated number of home day operations. Approximately 900 endorsements were written for the estimated 1.6 million policies. The top two carriers represent approximately 48 percent of the market share for homeowners policies in force in Florida and it would be expected that they would write approximately 50 percent of the endorsements. However, the 900 endorsements represent only 12 percent of the possible estimated 7,500 total providers.

In the event a homeowner provides day care for more than the number of children authorized by the endorsement, the residence may not be eligible for homeowners insurance coverage. The homeowner would need to obtain a commercial liability policy. However, the major carriers writing homeowners insurance would not provide homeowners coverage even if the applicant obtained a separate commercial policy. Some insurers indicated that they would accept a commercial policy for the home day care operations and would write the homeowners coverage.

With respect to the availability and affordability of commercial liability coverage, committee staff has documented four surplus lines (nonadmitted) companies and one authorized (admitted) company that presently have policies in force in Florida. The admitted company writes policies for licensed home day care providers only. Some of the nonadmitted companies provide coverage for

registered, as well as licensed day care providers. The nonadmitted companies presently have more than 1,000 policies in force. The admitted company has an estimated 500 policies in force. (Rates and forms of surplus lines insurers are not subject to approval by the Department of Insurance.)

The variation in premiums and amount of liability coverage, and exclusions was fairly significant. Some companies based the premium on a per child basis; other companies tied the premium to the number of attendants. For example, the minimum premium for one particular liability policy offered in Dade, Broward, and Palm Beach counties, covering up to 10 children (in a licensed home day care) is \$300 and the policy provides for \$250,000 per occurrence, \$500,000 aggregate for liability, and \$25,000 accident coverage per child. In contrast, the minimum premium for another policy for 7 - 12 children (in a registered or licensed home day care) is \$569 and provides \$100,000 per occurrence, \$300,000 aggregate for liability, and \$5,000 medical payment limit. When offered, coverage for sexual and/or physical abuse was priced on a per child basis or sold separately as an endorsement.

The interim project report contains two legislative recommendations: (1) To ensure that home day care providers caring for more than the number of children authorized by an endorsement to a homeowners insurance are able to obtain homeowners insurance, it is recommended that legislation is necessary to prohibit insurers from denying or nonrenewing homeowners policy solely on the basis that the policyholder or applicant has a family day care home operation, and (2) Given the concerns regarding the possible liability of a homeowner's insurance policy for losses or damages related to home day care operations, it is recommended that the Insurance Code be amended to state that the homeowners policy is not liable for such losses, unless the policy specifically covers such liability or if that liability is covered by a business endorsement attached to the policy.

### **Florida Laws Governing Underwriting**

Underwriting is the process of evaluating, accepting or rejecting risks, and classifying the risks that are accepted, in order to charge the appropriate premium for the risks. Section 627.0651(13), F.S., requires homeowners insurance carriers to file with the Department of Insurance underwriting rules, if the rules are not included in rating manuals. Rates, rating schedules, and ratings must be filed with the department for approval. The department is charged with reviewing the rate filing to determine if a rate is excessive, inadequate, or unfairly discriminatory.

### **Home Day Care Insurance Laws in Other States**

In 1996, the Minnesota Legislature enacted a law which provides that homeowners insurance does not cover liability arising out of providing day care services unless: (1) specifically covered in a policy; or (2) covered by a rider for business coverage attached to a policy.

The California Insurance Code prohibits a residential property insurance policy from providing coverage for liability arising out of, or in connection with, the operation of a family day care

home. This coverage may only be provided by a separate endorsement or insurance policy for which premiums have been assessed and collected. The Insurance Code also prohibits the arbitrary cancellation or nonrenewal of a homeowner's policy solely on the basis that the policyholder has a license to operate a family day care home at the insured location unless, there has been a material misrepresentation of fact, the risk has substantially changed since the policy was issued, there has been a nonpayment of premium, or the insurer no longer writes homeowners policies.

California also requires all family day care homes to maintain in force either liability insurance covering injury to clients and guests in the amount of at least \$100,000 per occurrence and \$300,000 in the total annual aggregate or a bond in the aggregate amount of \$300,000. In lieu of the insurance or bond, the provider may maintain a file of affidavits signed by each parent with a child enrolled in the home. The affidavit will state that the parent has been informed that the day care home does not carry liability insurance or a bond according to standards established by the state.

### III. Effect of Proposed Changes:

**Section 1.** Creates s. 627.70161, F.S., relating to family day care insurance, to provide legislative purpose and intent. It is the intent of the Legislature that residential property insurance coverage should not be canceled, denied, or not renewed solely on the basis of the family day care services provided at the residence. The Legislature also recognizes the potential liability of residential property insurers is substantially increased by the rendition of child care services on the premises. As a result, the Legislature finds there is a public need to specify that contractual liabilities which arise in connection with the operation of a family day care home are excluded from residential property insurance policies, unless they are specifically included in such coverage.

The term, "Child care," is defined to mean the care, protection, and supervision of a child, for 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.

The term, "Family day care home," is defined to mean 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.

The section provides that a residential property insurance policy must exclude coverage for claims for losses 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 specifically covered in the policy or covered by a rider or endorsement for business coverage attached to a policy.

The section also prohibits an insurer from denying, canceling, or refusing to renew a policy for residential property insurance solely on the basis 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 provider if one or more of the following conditions occur:

- (1) Providing care for more children than authorized by s. 402.302(5), F.S.;
- (2) Failure by the homeowner to maintain a separate commercial liability or an endorsement providing liability coverage for the family day care home operations;
- (3) Noncompliance with the family day care home licensure and registration requirements specified in s. 402.313; or
- (4) 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 representative, which materially increase any of the risks insured.

**Section 2.** Provides that the act is effective on October 1, 1998, and applies to residential property insurance policies offered, sold, issued, or renewed on or after such date.

**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:**

Providers of family day care will potentially have greater access to residential property insurance coverage, since insurers will not be permitted to deny, cancel, or refuse to issue coverage solely due to the operations of a family day care home. Insurers will be provided immunity for liability claims arising from the family day care operations, unless specifically covered.

Based on the results of the interim project and a survey by Florida's Children's Forum, it appears that many family day care providers are not purchasing insurance (endorsement or

commercial liability coverage) for family home day care operations due to the costs and/or because the providers are unaware of the need and benefits of such coverage.

Since the bill allows a residential property insurer to require a provider to purchase an endorsement or a separate commercial policy, as a condition for issuing a homeowners policy, the provider will be subject to the additional cost of obtaining the endorsement or commercial policy.

**C. Government Sector Impact:**

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.