SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: CS/SB 1300

SPONSOR: Banking and Insurance Committee and Senator Holzendorf

SUBJECT: Employee Health Care Access Act

DATE: April 4, 2000 REVISED: _____ _____ _____ _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Deffenbaugh	Deffenbaugh	BI	Favorable/CS
2.				
3.				
4.				
5.				

I. Summary:

The current Employee Health Care Access Act in s. 627.6699, F.S., requires insurers in the small group market to guarantee the issue of coverage to any small employer with 1 to 50 employees, including sole proprietors and self-employed individuals, regardless of their health condition. Rates for such policies must be established on a "modified community rating" basis, which prohibits consideration of health status or claims experience, and allows only age, gender, geographic location, tobacco usage, and family composition (size) to be used as rating factors.

The Committee Substitute for Senate Bill 1300 makes the following changes:

- Eliminates the prohibition that rates not be based on the health status or claims experience of any individual or group and allows limited use of such factors. Small group carriers would be allowed to adjust a small employer's rate by plus or minus 15 percent, based on health status, claims experience, or duration of coverage. The renewal premium could be adjusted up to 10 percent annually (up to the total 15 percent limit) of the carrier's approved rate, based on these additional factors.

Deletes the guaranteed-issue requirements for employers with one employee, sole proprietors, and self-employed individuals and, instead, provides for an annual open enrollment period for such persons, during the month of August. Coverage would begin on October 1, unless the insurer and the policyholder agree to a different date. Any one-person small employer getting coverage must not be formed primarily for the purposes of buying health insurance and if an individual hires his or her spouse and dependent children as employees, the entire family unit would be considered a one-person group, unless both spouses are working full-time.

- Allows small group carriers to provide a credit to reflect the administrative and acquisition expense savings resulting from the size of the group. This is expected to result in about a 3 to 5 percent credit for larger groups (for example, 25 to 50 employees), and be transferred as an overall cost increase to the smaller groups.

- Prohibits small group carriers from using "composite rating" for employers with fewer than 10 employees, which would prohibit a premium statement to an employer that averages the rates for all employees and, instead, would require the carrier to list the rate applicable to each employee based on that employee's age and gender. (But, the total premium remains unchanged.)

- Specifies certain family-size categories that a small group carriers may use.

- Clarifies the applicability of additional rate filing procedure and standards for insurers and HMOs, respectively.

The bill will result in higher rates for small employers with greater than average health claims costs and lower rates for small employers with less than average health claims costs, as compared to the rates that would be charged under the current law. Over the long-term, the effect on the total number of small employers who buy and maintain health insurance is likely to be neutral. The bill's limitation of guarantee-issue for sole proprietors and self-employed individuals to an annual 31-day (August) open enrollment period may force persons with health problems to be uninsured until this period. It may also reduce carriers' claims costs by limiting the effects of adverse selection, which could favorably impact rates for other small employer groups.

This bill substantially amends section 627.6699, Florida Statutes.

II. Present Situation:

Florida's Employee Health Care Access Act

In 1992, the Employee Health Care Access Act (act) was enacted to require insurers in the small group market to guarantee the issue of coverage to any small employer that applies for coverage, regardless of the health condition of the employees. (s. 627.6699, F.S.) In 1993, the act was expanded to cover employers with one employee, including sole proprietors and self-employed individuals.

The act further requires that policies issued to small employers have premiums established on a "modified community rating" basis. Rates may be based only on age, gender, family composition, tobacco usage, and geographic location [s. 627.6699(3), F.S.]. Rates may not be based on the health status or claims experience of any individual or group, or any other factor.

An insurer or HMO that writes small group policies in Florida (a "small employer carrier") must elect to either be a risk-assuming carrier and assume all risk or be a reinsuring carrier and have the option of reinsuring identified high-risk individuals or groups with a reinsurance pool [s. 627.6699(9), F.S.]. The reinsurance pool is funded through premiums paid by the reinsuring carrier and assessments on insurers. Risk-assuming carriers are not subject to losses in the reinsurance pool [s. 627.6699(11), F.S.].

Small group carriers are required to offer a "standard" and "basic" policy to small employers. The standard policy is generally intended to be comparable to a major medical policy typically sold in

the group market, with cost containment features intended to make the policy affordable. The statute specifies certain mandated benefits that apply to both the standard and basic policy and a Health Benefit Plan Committee is created to develop and modify the standard and basic benefit plans. Small group carriers are required to offer all health benefit plans (not just the basic and standard plans) on a guaranteed-issue basis, but additional or increased benefits may be added to the standard health benefit plan by rider and such riders may be medically underwritten.
The act defines the term "small employer" to mean, "in connection with a health benefit plan with respect to a calendar year and a plan year, any person, sole proprietor, self-employed individual, independent contractor, firm, corporation, partnership, or association that is actively engaged in business, has its principal place of business in this state, employed an average of at least 1 but not more than 50 eligible employees on business days during the preceding calendar year, and employs at least 1 employee on the first day of the plan year. For purposes of this section, a sole proprietor, an independent contractor, or a self-employed individual is considered a small employer only if all of the conditions and criteria established in this section are met." (s. 627.6699(3)(v), F.S.)

The act defines the term "self-employed individual" to mean "an individual or sole proprietor who derives his or her income from a trade or business carried on by the individual or sole proprietor which results in taxable income as indicated on IRS Form 1040, schedule C or F, and which generated taxable income in one of the 2 previous years." (s. 627.6699(3)(u), F.S.)

Other aspects of the current law particularly affected by the bill are addressed in Effects of Proposed Changes, below.

The Small Group Market in Florida

The Senate Banking and Insurance Committee prepared an interim report, *Review of Florida's Health Insurance Laws Relating to Rates and Access to Coverage,* (Report No. 2000-04; August 1999). The report included information regarding the small group market in Florida. As of March 31, 1999, approximately 1.73 million persons were insured under small group policies in Florida, as compared to 1.71 mil. at the end of 1998, 1.6 mil. in 1997, 1.45 mil. in 1996, and 1.30 mil. in 1995. The number of small group carriers dropped from 116 carriers in 1997 to 90 carriers in 1998, but remained at 90 carriers in 1999.

The following table from the interim report shows the average annual rate increases for small group coverage in Florida for the 3-year period, 1995-1997, weighted for market share for the leading thirteen health insurers[1] representing 79.8 percent of the small group market and the six HMOs[2] representing 83.6 percent of the small group HMO market in 1997. These rate increases have been substantial, averaging over 17 percent a year for small group insurers and nearly 10 percent a year for small group HMOs.

[1] Blue Cross & Blue Shield of Florida (17.18% market share), Principal Mutual Life Insur. Co. (13.53%), John Alden Life Insur. Co. (12.46%), Humana Health Insur. Co. of Fla. (8.48%), United HealthCare Insur. Co. (7.41%), PFL Life Insur. Co. (2.01%), and Time Insur. Co. (1.84%).

[2] Health Options (18.39% market share), Humana Medical Plan (18.04 %), United HealthCare Plans of Fla. (15.13%), Principal Health Care of Fla. (13.9%), Prudential Health Care of Fla. (13.9%), and Neighborhood Health Partnership (4.2%).

Small Group Rates — Average Annual Rate Increase
Leading Florida Carriers (1995-1997)

Year	Small Group Insurance	Small Group HMO
1995	21.16%	9.03%
1996	17.18%	7.12%
1997	14.06%	11.50%
3-Year Cumulative Total	61.93%	30.23%
Average Annual Change	17.43%	9.20%

The following table shows the most current rate filings that had been approved by the department for small group insurers and small group HMOs, as of August 1, 1999, and the average premium per covered employee for a sample 10-life group developed by the department. Small group premiums are continuing to increase at significant levels. Unlike previous years, HMOs are experiencing rate increases comparable with health insurers.

MOST RECENT FLORIDA SMALL GROUP RATE FILINGS
(APPROVED AS OF 8/1/99)

Company	Percentage Increase	Annual (& Monthly) Premium After Increase (Avg.)
Small Group Major Medical —Indemnity:		
Principal Life Ins. Co.	22.0%	$5,291 ($441)
Anthem Health and Life Ins. Co.	11.2%	$5,463 ($455)
Blue Cross/Blue Shield	14.6%	$4,953 ($413)
Aetna Life Ins. Co.	13.1%	$6,269 ($522)
Humana Health Ins. Co. of Fla.	12.0%	$5,189 ($432)
PM Group Life Ins. Co.	0.7%	$4,048 ($337)
Prudential Life Ins. Co.	14.0%	$3,587 ($299)
Anthem Health and Life Ins. Co.	11.8%	$5,173 ($431)
New England Life Ins. Co.	0.0%	$5,117 ($426)
Trustmark Ins. Co.	10.0%	$6,568 ($547)
Principal Life Ins. Co.	17.0%	$6,221 ($518)
United Wisconsin Ins. Co.	23.0%	$3,241 ($270)
Small Group HMO (Out of CHPA)		
HIP Health Plan of Florida	18.1%	$4,558 ($380)
Aetna US HealthCare	20.1%	$4,139 ($345)
Health Options	24.1%	$4,773 ($398)

Company	Percentage Increase	Annual (& Monthly) Premium After Increase (Avg.)
Healthplan Southeast	8.3%	$4,155 ($346)
Well Care HMO	2.9%	$4,475 ($373)
Florida Health Care Plan	19.5%	$4,121 ($343)
Foundation HealthCare	14.7%	$3,522 ($294)
American Medical HealthCare	25.4%	$3,634 ($303)
Physicians HealthCare Plans	29.1%	$5,239 ($437)
Health First Health Plan	10.9%	$3,689 ($307)

Source: Department of Insurance

Federal HIPAA Requirements

In 1996, the federal Health Insurance Portability and Accountability Act (HIPAA) was enacted to provide guaranteed availability and renewability of health insurance coverage for certain employees and individuals, and to increase portability through the limitation on preexisting condition exclusions. HIPAA requires small employer carriers to guarantee the issuance of coverage to small employers with 2 to 50 employees.

HIPAA allows each state the option to enact and enforce the federal provisions or fall back to federal enforcement. HIPAA specifies that the federal provisions pertaining to health insurers generally do not preempt state regulation. However, if the state's statutory provisions prevent the application of a federal requirement, HIPAA preempts the statutes and the federal requirements prevail. At a minimum, each state must ensure that its provisions comport with HIPAA and do not diminish the federal requirements. However, each state is permitted to adopt provisions that expand or provide more favorable treatment for the individual.

III. Effect of Proposed Changes:

This bill amends s. 627.6699 F.S., the Employee Health Care Access Act, to make the following changes:

1. *Basing Rates on Health Factors* -- The bill eliminates the prohibition that rates for small employers not be based on the health status or claims experience of any individual or group and allows limited use of such factors. Small group carriers would be allowed to adjust a small employer's rate by plus or minus 15 percent, based on health status, claims experience, or duration of coverage. The renewal premium could be adjusted up to 10 percent annually (up to the total 15 percent limit) of the carrier's approved rate, based on these additional factors. Any adjustments in rates for claims experience or health status may not be charged to individual employees or dependents, but would be averaged over all of the employees of a particular small employer. For example, if the carrier's approved rate is $500 per month, the carrier would be permitted to charge from $425 to $575 per month, based on health status factors.

The bill requires small employer carriers to report information to the department on a semiannual basis, to enable the department to monitor the relationship of aggregate adjusted premiums actually charged policyholders by each carrier to the premiums that would have been charged by application of the approved rate. If the aggregate actual premium exceeds the premium that would have been charged under the approved rate by more than 5 percent, the carrier must use only *minus* adjustments (credits), beginning not more than 60 days after the report is sent to the department. For any subsequent reporting period, if the total aggregate premium actually charged does not exceed the premium that would have been charged under the approved rate by more than 5 percent, the carrier may apply both plus and minus adjustments.

2. *One-month Open Enrollment for One-Life Groups* -- The bill excludes from the law's guaranteed-issue requirements employers with one employee, sole proprietors, and self-employed individuals. However, such individuals who are insured on July 1, 2000, would continue to be covered by the law's requirements that such polices be guaranteed-renewable. For employers with one employee, sole proprietors, and self-employed individuals, small employer carriers would be required to provide an annual open enrollment period during the month of August in each year. Coverage would begin on the following October 1, unless the insurer and the policyholder agree to a different date. Any such one-person small employer must not be formed primarily for the purposes of buying health insurance. If an individual hires his or her spouse and dependent children as employees, the entire family unit would be considered a one-person group, if the individual or his or her spouse has a normal work week of less than 25 hours. In other words, if both spouses are working full time, they would be counted as a two-person group.

   Since the federal HIPAA law definition of small employer covers 2 to 50 employees, this change does not affect Florida's compliance with the federal law. However, the criteria that the one-person small employer not be formed primarily for the purposes of buying health insurance may result in factual disputes, in the event of a carrier's denial of coverage based on such criteria, that will require departmental or judicial intervention to resolve.

3. *Credit for Administrative Cost Savings* -- The bill adds another rating factor that small group carriers may use, to provide a credit to reflect the administrative and acquisition expense savings resulting from the size of the group. In general, a carrier has higher administrative and acquisition costs for smaller size employers, although many carriers have reduced commissions for groups below a certain number of employers (a practice that the department has attempted to restrict as an unfair practice under s. 627.6699, F.S.). The bill would allow the carrier to use this rating factor as a credit, based on its experience, subject to department approval. Industry sources state that this factor may result in a rate credit (differential) of between 3 to 5 percent for the larger groups, for example employers with 25 to 50 employees. This is also likely to result in an overall cost increase to the smaller size employers.
4. *Composite Rating Prohibited* -- The bill prohibits small group carriers from using a *composite rating methodology* for employers with fewer than 10 employees. This term is defined in the bill as averaging the impact of the rating factors for age and gender. Currently, the use of composite rating by a small group carrier is optional, under which the carrier sends a premium statement to the employer that lists the same (averaged) premium for all the

employees. The bill would *prohibit* composite rating for employers with fewer than 10 employees. Therefore, the premium statement sent to a small employer would be required to list the premium charged for each employee based on that employee's age and gender. In either case, the total premium billed to the employer is the same and it would appear to be within the discretion of the employer as to whether the premiums billed to each employee are equal (averaged) or would differ based on that employee's age and gender.

5. *Family Size Rating Categories* -- The bill specifies certain family-size categories that a small group carriers may use. The current law allows carriers to base rates on family size, but does not specifically limit the type or number of categories. However, the department has imposed certain restrictions in this regard, requiring that a carrier have only one category for dependent children, regardless of the number of dependent children. The bill would specifically allow a small group carrier to have three categories for: one dependent child, two dependent children, and three or more dependent children, and further categorized for employees having a spouse and dependent children or employees having dependent children only. The bill allows a carrier to use *fewer* rating categories for dependent children, but not a *greater* number of categories.

6. *Clarification of Other Applicable Rating Laws* -- The bill clarifies the applicability of additional rate filing procedure and standards for insurers and HMOs, respectively. It clarifies that the additional rating law procedures of ss. 627.410 and 627.411, F.S., apply to health insurance companies and that the rating law procedures of s. 641.31, F.S., apply to health maintenance organizations that sell small employer coverage.

This bill provides that the act shall take effect July 1, 2000.

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:

The bill will result in higher rates for small employers with greater than average health claims costs and lower rates for small employers with less than average health claims costs, as compared to the rates that would be charged under the current law. It should be noted that allowing a 15 percent credit or surcharge results in about a 30 percent difference in the rates charged to one employer with the maximum credit, as compared to another employer with the maximum surcharge (who have identical characteristics other than health status, claims experience, or duration of coverage.)

Over the long-term, the effect on the total number of small employers who buy and maintain health insurance is likely to be neutral. For every employer who is able to afford coverage due to a premium credit, there is likely to be an employer who cannot afford the coverage due to a premium surcharge. The bill may impact an employer's hiring decisions, due to an employer's concerns about how the health status of employees will affect the employer's group health insurance premium.

The bill's limitation of guaranteed-issue for sole proprietors and self-employed individuals to an annual 31-day (August) open enrollment period may force persons with health problems to be uninsured until the open enrollment period. It may also reduce carriers' claims costs by limiting the effects of adverse selection, which could favorably impact rates for other small employer groups.

For employees who work for an employer with fewer than 10 employees, "composite rating" would be prohibited. This will not necessarily affect the premiums that are billed to each employee, because this appears to be within the discretion of the employer. However, it would enable the employer to charge each individual employee the rate associated with his or her age and gender. If this is the case, elderly and middle-age persons will be required to pay higher rates than younger employees which, in combination with an employer surcharge based on health status, could be significant.

C. Government Sector Impact:

The Department of Insurance may be required to expend additional resources reviewing and approving small group rate filings.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.