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HOUSE OF REPRESENTATIVES
COMMITTEE ON
FINANCIAL SERVICES
BILL RESEARCH & ECONOMIC IMPACT STATEMENT

BILL #: HB 3597 (PCB FS 98-02)

RELATING TO: Insurance for family day care homes

SPONSOR(S): Committee on Financial Services, Representative Safley & others

COMPANION BILL(S): CS/SB 226 (i)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:
(1) FINANCIAL SERVICES YEAS 11 NAYS 0
(2)
(3)
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(5)

I. SUMMARY:

A typical residential property insurance policy includes coverage for “personal” liability, which covers the insured’s obligation to pay damages because of bodily injury or property damage arising out of the insured’s premises or personal activities. Residential policies typically exclude coverage for liability arising out of commercial activities. Standard residential policies are often unavailable to persons who conduct day care activities in their homes, because of insurance underwriting standards that prohibit the issuance of policies that include personal liability coverage on properties used for business purposes.

Under the bill, insurers would not be able to deny, cancel, or nonrenew residential property insurance policies solely on the basis that a family day care home is operated on the property, except in limited circumstances. Insurers would be able to deny, cancel, or nonrenew policies if the homeowner provided day care for more children than allowed by law, if the homeowner failed to maintain separate liability coverage for the day care activities, it the homeowner failed to comply with the applicable licensing and registration laws, or if certain negligent acts or violations of law or rule were discovered.

The bill would also provide that a residential property insurance policy must exclude coverage for claims arising out of the operation of a family day care home, unless the liability coverage was specifically provided in the policy or in a rider or endorsement attached to the policy.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

A typical residential property insurance policy includes coverage for “personal” liability, which covers the insured’s obligation to pay damages because of bodily injury or property damage arising out of the insured’s premises or personal activities. Residential policies typically exclude coverage for liability arising out of commercial activities.

The underwriting standards of many property insurers, and of the Residential Property and Casualty Joint Underwriting Association (RPCJUA), preclude them from writing a homeowners’ (or other personal lines residential) policy for a property at which there is significant business activity. The basis for this underwriting standard is the possibility that damages resulting from the business activities might be deemed to be covered under the personal liability portion of the homeowners’ policy, even if the homeowners’ policy contained language purporting to exclude business-related liability.

This practice attracted attention in 1997, when the RPCJUA attempted to clarify its underwriting standards. The RPCJUA’s prohibition against issuing policies for homes at which there was significant business activity had not been applied consistently with respect to residences at which day-care activities were being conducted.[1]

In July, 1997, the RPCJUA proposed a revision to their underwriting standards that would have listed a number of activities that qualified as “significant business activity” and, therefore, would be ineligible for an RPCJUA homeowners’ policy, including the operation of day care activities. Apparently as a result of the public reaction to the possibility that many family day care homes would lose their basic homeowners’ coverage, the RPCJUA board in August 1997, determined that family day care homes would be eligible for RPCJUA homeowners’ policies (containing a specific exclusion for day care liability) if the home complied with the applicable licensing or registration requirements and was also covered by a separate commercial day care liability policy.

Insurers will often provide the home day care coverage as an endorsement to the homeowners’ policy for an additional premium, which typically ranges from $65 to $300 a year. Separate home day care liability policies are available from both admitted insurers and surplus lines insurers, with premiums ranging from $300 to $600 a year.

B. EFFECT OF PROPOSED CHANGES:

Insurers would not be able to deny, cancel, or nonrenew residential property insurance policies solely on the basis that a family day care home is operated on the property, except in limited circumstances. Insurers would be able to deny, cancel, or nonrenew policies in any of the following circumstances:

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[1]Recent welfare reforms have increased the demand for child care facilities, including in-home child care facilities known as “family day care homes.” A family day care home provides care for a limited number of children from at least two unrelated families; the maximum number of children ranges from 4 to 10, depending on the age of the children. Family day care homes are either licensed by or registered with the Department of Children and Family Services, depending on local requirements.

The property was used to provide day care to more children than are authorized under the family day care home statute,[2]

The homeowner failed to maintain a separate commercial liability policy or an endorsement providing day care liability coverage,

The homeowner failed to comply with applicable family day care licensing requirements,[3] or

Discovery of willful or grossly negligent acts or violations of law or safety standards that materially increase any of the risks insured.

The bill would also prohibit a residential insurance policy from providing coverage for liability arising out of the operation of a family day care home (and provide that the property insurer had no duty to defend a claim for such liability) unless the family day care liability was specifically provided in the policy or in a rider or endorsement attached to the policy.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

No.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

[2]Section 402.302, F.S.

[3]Section 402.313, F.S.

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

N/A

b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

N/A

4. Individual Freedom:

   a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

      N/A

   b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

      N/A

5. Family Empowerment:

   a. If the bill purports to provide services to families or children:

      (1) Who evaluates the family's needs?

         N/A

      (2) Who makes the decisions?

         N/A

      (3) Are private alternatives permitted?

         N/A

      (4) Are families required to participate in a program?

         N/A

      (5) Are families penalized for not participating in a program?

         N/A

   b. Does the bill directly affect the legal rights and obligations between family members?

      N/A

   c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Creates s. 627.70161, F.S.

E. SECTION-BY-SECTION RESEARCH:

Section 1 creates s. 627.70161, F.S., the substance of which is described above, under "Effect of Proposed Changes." In addition, the section also provides legislative intent and definitions. The intent provision recognizes the need for family day care homes, states that property coverage should not be denied solely on the basis of day care activities, and states that day care activities substantially increase the liability of property insurers. 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 for which a payment, fee, or grant is made.

Section 2 provides that the act will take effect October 1 of the year in which enacted, and will apply to policies offered, sold, issued, or renewed on or after that date.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

   None.

2. Recurring Effects:

   None.

3. Long Run Effects Other Than Normal Growth:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

   Some homeowners who conduct family day care activities apparently do not today have separate liability coverage for the day care activities. The bill would allow insurance companies to require the homeowner to obtain separate day care liability coverage as a condition of maintaining basic homeowners' coverage. For homeowners who do not currently have the separate liability coverage such a requirement would, in effect, force the purchase of liability coverage and thereby increase the cost of conducting the day care activities.

2. Direct Private Sector Benefits:

   The bill should reduce the likelihood that property insurance considerations will prevent property owners from operating family day care homes. By indirectly requiring operators of family day care homes to obtain day care liability coverage, the bill should assure that in the event of bodily injury or property damage arising out of the day care operations, insurance will be available to pay the damages.

3. Effects on Competition, Private Enterprise and Employment Markets:

   N/A

D. FISCAL COMMENTS:

   N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

N/A

V. COMMENTS:

N/A

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

N/A

VII. SIGNATURES:

COMMITTEE ON FINANCIAL SERVICES:

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