

SENATE BILL REPORT

ESSB 6538

As Amended by House, March 9, 2010

Title: An act relating to the definition of small groups for insurance purposes.

Brief Description: Defining small groups for insurance purposes.

Sponsors: Senate Committee on Health & Long-Term Care (originally sponsored by Senators Keiser and Pflug).

Brief History:

Committee Activity: Health & Long-Term Care: 1/28/10, 2/04/10 [DPS].

Passed Senate: 2/16/10, 45-2.

Passed House: 2/28/10, 58-36; 3/09/10, 61-36.

SENATE COMMITTEE ON HEALTH & LONG-TERM CARE

Majority Report: That Substitute Senate Bill No. 6538 be substituted therefor, and the substitute bill do pass.

Signed by Senators Keiser, Chair; Franklin, Vice Chair; Pflug, Ranking Minority Member; Becker, Fairley, Marr, Murray and Parlette.

Staff: Mich'l Needham (786-7442)

Background: Small groups are defined for insurance purposes as two to 50 employees. Licensed insurance products that are available to small groups are subject to a number of laws, including minimum benefit requirements, and rating and pooling requirements. In 2004 a number of changes were made to the small group insurance statutes, including changing the small group size from one to 50 employees. The self-employed and sole proprietor's with coverage in the small group market prior to June 10, 2004, were grandfathered into the small group. Policies are guaranteed issue, which means they are available to every person in the small group without any health screening. Individuals purchasing health insurance through the individual market are required to complete a health screening exam, unless they are transitioning from other qualified coverage.

Federal health reform bills passed by the House and Senate include proposals to create insurance exchanges for individuals and small groups to purchase insurance. The Senate bill includes individual and small group exchanges by 2014 and would initially permit states the option to either define small employers eligible to obtain exchange coverage as those with

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100 or fewer employees, or as those with 50 or fewer employees. The House bill includes one exchange for individuals and small groups by 2013 and would initially permit employers with up to 25 employees to be exchange eligible.

Summary of Engrossed Substitute Bill: Effective January 1, 2011, the definition of small employer or small group for insurance purposes is changed to a group that has between one and 50 employees. Provisions grandfathering the sole proprietors or self-employed that had small coverage prior to June 2004 are removed. Self-employed and sole proprietors must show they have been employed by the same small employer for at least 12 months prior to application for small group coverage, and verify that they derived at least 75 percent of their income from a trade or business and filed the appropriate Internal Revenue Service (IRS) form 1040 for the previous taxable year, except a self-employed person or sole proprietor in an agricultural trade or business must have derived at least 51 percent of income from the business and filed the appropriate IRS form for the previous taxable year.

Appropriation: None.

Fiscal Note: Not requested.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Staff Summary of Public Testimony on Original Bill: PRO: This will align with the federal health reform proposals and be good for sole proprietors and improve the small group market by making it a larger risk pool. This broadens the access to the small group pool and the rate review that accompanies it. Premiums are increasing rapidly and any help reviewing the rates is welcome. The federal change for small groups could also provide broader access to subsidies and tax breaks. Allowing the small group definition to include larger groups will accommodate businesses that are growing just beyond the 50 employee limit today. These businesses still do not have the leverage to negotiate with carriers like really big businesses such as Starbucks. There are thousands of sole-proprietors that would find this very helpful to access more affordable group coverage. Broadening the group definition also will allow broader access to the Health Insurance Partnership program that will be starting up next fall.

CON: Opening the small group market to groups of one may return the market to conditions like we had in 2000. Carriers saw individuals gaming the system, choosing which market to purchase in, and their experience drives up the cost for the rest of the small groups. It is a concern that an individual can avoid the standard health screening exam by filing a business license. There may be some unintended consequences for groups with under 100 employees if they move into the small group market since there are some benefit differences such as pre-existing condition waiting periods and chemical dependency benefits.

Persons Testifying: PRO: Senator Keiser, prime sponsor; Bill Daley, Washington Community Action Network; Mona Smith, sole proprietor and the Greater Seattle Business Association; Roslyn Solomon, IA Consulting, Washington Small Business for Secure Health Care Coalition; Molly Moon Netizel, Molly Moon Ice Cream, Washington Small Business for Secure Health Care Coalition.

CON: Kathy Gano, Premera Blue Cross; Amber Ulvenes, Group Health; Chris Bandoli, Regence Blue Shield; Sydney Smith Zvara, Association of Washington Healthcare Plans.

House Amendment(s): The underlying bill applies the small group definition change for groups of one to policies issued on or after January 1, 2011. The House amendments also provide a contingent effective date of 180 days after the Office of Insurance Commissioner certified that Congress has passed and the President has signed federal legislation that provides guaranteed issue for individuals, and a null and void clause if federal legislation that provides guaranteed issue for individuals is not signed by the President by December 31, 2010. The small group census date is established in statute to allow insurance carriers to determine the census makeup of the small group and quote a firm premium. The small group applying for health benefits from a contractor other than its current contractor will have a census date the date the final group composition is received. Small groups renewing health benefits with the current contractor will have a census date 90 days prior to the effective date of the renewal.