

SENATE BILL REPORT

SB 5341

AS REPORTED BY COMMITTEE ON WAYS & MEANS, MARCH 11, 1991

Brief Description: Providing liability insurance to foster parents.

SPONSORS: Senators L. Kreidler, Bailey, Murray, Talmadge, Stratton and Bauer.

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: That Substitute Senate Bill No. 5341 be substituted therefor, and the substitute bill do pass.

Signed by Senators von Reichbauer, Chairman; Johnson, Vice Chairman; McCaslin, Owen, Pelz, Rasmussen, Sellar, Vognild, and West.

Staff: Meg Jones (786-7416)

Hearing Dates: February 19, 1991; February 28, 1991

SENATE COMMITTEE ON WAYS & MEANS

Majority Report: That Second Substitute Senate Bill No. 5341 be substituted therefor, and the second substitute bill do pass.

Signed by Senators McDonald, Chairman; Craswell, Vice Chairman; Bailey, Bauer, Bluechel, Cantu, Gaspard, Hayner, Johnson, L. Kreidler, Matson, Metcalf, Murray, Newhouse, Niemi, Owen, Rinehart, Saling, L. Smith, Talmadge, West, Williams, and Wojahn.

Staff: Karen Hayes (786-7711)

Hearing Dates: March 8, 1991; March 11, 1991

BACKGROUND:

According to the Foster Parent Liability Task Force study conducted in 1989, there are 6,100 licensed foster homes in the state. They serve a population of children placed for long term, short term and treatment based care. Until 1985, the state purchased commercial insurance for foster parents at an annual cost of between \$73,400 to \$87,054. In 1986, due to an increase in cost (\$137,700), and only one available carrier, the coverage was cancelled. The Department of Social and Health Services (DSHS) began to provide coverage under the Foster Parent Reimbursement Plan for property damage or loss and initial emergency medical treatment. The limits are \$5,000 per occurrence. Under a 1989 law the Attorney General will provide a defense, but the act did not provide for payment of judgments against foster parents.

Claims for personal injury liability may be covered by homeowner's policies, although common exclusions apply to severely limit coverage for claims arising out of the foster parent experience. The carriers serving the homeowner's market reported no plans to extend coverage to foster parent related claims.

Several states have taken steps to provide insurance coverage for foster parents either through the purchase of a group commercial policy, assessment of insurers doing business in the state to fund a pool, or a self-insurance program. Under these state programs, foster homes are typically afforded \$300,000 per occurrence annual coverage. Two commercial carriers reported to the task force that they would make coverage available to the state for an annual premium of approximately \$315,000 but the foster parents report the coverage is not broad enough.

SUMMARY:

The Legislature recognizes that foster parents take unique liability risks caring for foster children that may prevent some foster parents from serving. Assuring insurance to cover those risks may encourage those people to serve.

By July 1, 1991, the Department of Social and Health Services (DSHS) shall provide liability insurance to licensed foster parents for up to \$1 million limits for bodily injury and property damage through the purchase of insurance or self-insurance. Illegal conduct, gross negligence and bad faith acts are excluded. The Foster Parent Reimbursement Plan continues.

EFFECT OF PROPOSED SUBSTITUTE:

The state is required to provide foster parents with liability insurance of up to \$500,000 per occurrence through either the purchase of commercial coverage or self-insurance. Foster parent liability for the willful or malicious acts of their foster children is made identical to natural/adoptive parents.

EFFECT OF PROPOSED SECOND SUBSTITUTE:

Language is added to clarify that claims filed are not limited to property loss. Language is removed which referenced the expected behavior of foster children. The maximum amount that may be expended per biennium is \$500,000. If the secretary of the department opts to self-insure, he or she may set by rule an upper limit to claims paid. An emergency clause is removed. The act is made contingent upon funding in the budget.

Appropriation: none

Revenue: none

Fiscal Note: available

TESTIMONY FOR:

Foster parents cannot obtain coverage on their own for third party claims against them arising out of their status as foster parents. Homeowner's insurance does not cover them either, for their own or their foster child's act or injuries if related to the foster parent-child relationship. This puts foster parents personally at risk for lawsuits and is preventing many needed foster parents from serving the state.

TESTIMONY AGAINST:

The bill is indeterminate as to cost since it offers a choice of two insurance delivery methods. Revenue and necessary appropriations are therefore difficult to forecast. The state may be assuming wider liability by offering this coverage.

TESTIFIED (Financial Institutions & Insurance): Senator Lela Kreidler, prime sponsor (pro); Arlene Sobica, Foster Parents Association of Washington State (FPAWS) (pro); Lori Lepold, Children's Home Society (pro); Gary Alexander, Risk Manager, State of Washington (partial con); Don Knapp, Foster Parent Liability Task Force of 1989 (pro); Colleen Waterhouse, DSHS (pro); Steve Gustaveson, assistant attorney general, DSHS (pro)

TESTIFIED (Ways & Means): Senator Lela Kreidler, prime sponsor (pro); Margaret Casey, Childrens Budget Coalition (pro); Arleen Subica, Foster Parent Association of Washington (pro); Terista Frisley, foster parent (pro); Steve Gustaveson, Attorney General's Office, DSHS; Gary Alexander, Risk Manager, General Administration