

# HOUSE BILL REPORT

## ESSB 5778

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As Passed House  
April 6, 1993

**Title:** An act relating to a joint underwriting association for midwives and birthing centers.

**Brief Description:** Creating a joint underwriting association for midwives.

**Sponsors:** Senate Committee on Labor & Commerce (originally sponsored by Senators Prentice, Hargrove, Jesernig, Prince, Wojahn, Haugen, Franklin, Spanel, Fraser, Barr, Amondson, McAuliffe, Moore, Moyer, Hochstatter and Pelz).

**Brief History:**

Reported by House Committee on:

Financial Institutions & Insurance, March 29, 1993, DP;  
Passed House, April 6, 1993, 77-21.

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### HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

**Majority Report:** Do pass. Signed by 14 members: Representatives Zellinsky, Chair; Mielke, Ranking Minority Member; Anderson; Dellwo; Dorn; Grant; R. Johnson; Kessler; Kremen; Lemmon; R. Meyers; Reams; Schmidt; and Tate.

**Staff:** John Conniff (786-7119).

**Background:** Malpractice insurance for midwives is difficult or impossible to obtain. If a midwife does not have malpractice insurance, the midwife will usually be denied access to hospital facilities and patients may be unable to collect for any injuries that might be caused by the midwife. Creation of a joint underwriting association is often proposed as a solution to problems in obtaining needed insurance. A joint underwriting association is an association of insurers that provides needed insurance by sharing the risk that no one of them will underwrite individually.

**Summary of Bill:** By December 31, 1993, the insurance commissioner must approve a joint underwriting association (JUA) in which malpractice and general casualty insurers are required to participate and sell malpractice insurance to licensed midwives, certified nurse midwives, and licensed birth centers. The JUA may not be used until an attempt is

made to procure needed coverage in the private market through a market assistance plan.

The JUA must offer coverage with liability limits of \$1 million per individual and \$3 million per occurrence. They must use a rating plan that varies rates based upon midwife practice volume. The JUA may not exclude midwives who engage in home birth or birth center deliveries. The JUA may not provide coverage on a claim made basis unless the association guarantees to the satisfaction of the insurance commissioner that midwives will have access to liability insurance subsequent to the midwife's discontinuance of practice.

A risk management program must be established as part of the JUA plan.

The insurance commissioner must file a report to the Legislature by December 1, 1996 regarding the operations of the JUA.

**Fiscal Note:** Not requested.

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

**Testimony For:** There are no liability insurance companies currently selling malpractice insurance to cover nurse midwives. Without malpractice insurance, midwives will be unable to provide services. Midwives provide a cost effective alternative to expensive hospital-based maternity and delivery services. The proposed joint underwriting association for midwives will provide this coverage but only after the insurance industry has made an attempt to find coverage for midwives through a market assistance plan.

**Testimony Against:** Joint underwriting associations typically lose money and therefore, result in an increase in costs to other policyholders. The proposed JUA for midwives includes all liability insurance companies including auto and homeowner insurers; the inclusion of these general casualty insurers is inappropriate.

**Witnesses:** Marty Butzen and Suzy Myers, Midwives Association of Washington State (both pro); Basil Badley, American Insurance Association (con); Mel Sorensen, National Association of Independent Insurers (con); Mike Kapphahn, Farmers Insurance of Washington (con); and Melodie Bankers, Insurance Commissioner's Office (pro).