
SENATE BILL 6806

State of Washington 57th Legislature

2002 Regular Session

By Senators Keiser and Winsley

Read first time 02/07/2002. Referred to Committee on Labor, Commerce & Financial Institutions.

1 AN ACT Relating to creating a construction contractor joint
2 underwriting association; and adding a new chapter to Title 48 RCW.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** INTENT. The construction industry is the
5 largest industry segment in the nation and in Washington state.
6 Construction contractors, large and small, both general contractors and
7 subcontractors, and including contractors doing all kinds of building
8 development work, experience difficulty in obtaining contractor
9 liability insurance coverage in the state of Washington. New
10 contractors, in particular, cannot obtain coverage and existing
11 contractors are finding renewal coverage extremely difficult to obtain.
12 If contractor liability renewals are offered, coverage is often
13 severely restricted, accompanied by extreme rate hikes, or both.

14 The market pull-out from offering this insurance is targeted
15 primarily at contractors building more than ten homes a year,
16 multifamily residences, or condominiums. As a result of this
17 unavailability, many contractors are abandoning multifamily
18 development, despite the growth management act's call for dense urban
19 infill.

1 This chapter is intended to increase the availability of
2 construction contractor liability coverage by creating a mechanism
3 making contractor liability insurance available for construction
4 contractors. This chapter is implemented by requiring all insurers
5 authorized to write general casualty insurance to be members of a joint
6 underwriting association created to provide contractor liability to
7 construction contractors.

8 NEW SECTION. **Sec. 2.** DEFINITIONS. Unless the context clearly
9 requires otherwise, the definitions in this section apply throughout
10 this chapter.

11 (1) "Association" means the joint underwriting association
12 established under this chapter.

13 (2) "Construction contractor liability insurance" means insurance
14 coverage for the legal liability of the insured and for loss, damage,
15 or expense incident to a claim arising from negligence in construction
16 by a contractor as defined in this section.

17 (3) "Contractor" means a person or entity licensed as a contractor
18 under chapter 18.27 RCW.

19 NEW SECTION. **Sec. 3.** PLAN FOR ESTABLISHING ASSOCIATION. The
20 insurance commissioner shall approve by December 31, 2002, a reasonable
21 plan for the establishment of a nonprofit, joint underwriting
22 association for construction contractor liability insurance subject to
23 the conditions and limitations in this chapter. This plan shall
24 include a market assistance plan to be used prior to activating a joint
25 underwriting association.

26 NEW SECTION. **Sec. 4.** MARKET ASSISTANCE PLANS. (1) The
27 commissioner shall by rule require insurers authorized to write general
28 casualty insurance in this state to form a market assistance plan to
29 assist persons and other entities unable to purchase construction
30 contractor liability insurance in an adequate amount from either the
31 admitted market or nonadmitted market.

32 (2) For the purpose of this section, "market assistance plan" means
33 a voluntary mechanism by insurers writing general casualty insurance in
34 this state in either the admitted or nonadmitted market to provide
35 construction contractor liability insurance for a class of insurance
36 designated in writing to the plan by the commissioner.

1 (3) The bylaws and method of operation of any market assistance
2 plan must be approved by the commissioner prior to its operation.

3 (4) A market assistance plan must have a minimum of twenty-five
4 insurers willing to insure risks within the class designated by the
5 commissioner. If twenty-five insurers do not voluntarily agree to
6 participate, the commissioner may require casualty insurers to
7 participate in a market assistance plan as a condition of continuing to
8 do business in this state. The commissioner shall make such a
9 requirement to fulfill the quota of at least twenty-five insurers. The
10 commissioner shall make his or her designation on the basis of the
11 insurer's direct premium for other liability and products liability
12 insurance in this state, as reported in the insurer's annual statement.

13 NEW SECTION. **Sec. 5.** COMPOSITION OF ASSOCIATION. The association
14 is all insurers possessing a certificate of authority to write general
15 casualty insurance, engaged in writing construction contractor
16 liability insurance, or both, within this state. Every insurer is a
17 member of the association and remains a member as a condition of its
18 authority to continue to transact business in this state. Only
19 licensed contractors under chapter 18.27 RCW may obtain insurance from
20 the joint underwriting association.

21 NEW SECTION. **Sec. 6.** CONSTRUCTION CONTRACTOR LIABILITY
22 INSURANCE--RATING PLAN MODIFIED ACCORDING TO PRACTICE VOLUME. A
23 licensed contractor may apply to the association to purchase
24 construction contractor liability insurance, and the association shall
25 offer a policy with liability limits established by the commissioner.
26 The commissioner shall require the use of a rating plan for
27 construction contractor liability insurance that permits rates to be
28 modified according to type of construction and volume of construction.
29 Any rating plan for construction contractor liability insurance under
30 this section must be based on sound actuarial principles.

31 NEW SECTION. **Sec. 7.** ADMINISTERING A PLAN. The commissioner may
32 select an insurer to administer a plan established under this chapter.
33 The insurer must be authorized to write general casualty insurance in
34 the state of Washington.

1 NEW SECTION. **Sec. 8.** POLICIES WRITTEN ON A CLAIMS-MADE BASIS--
2 COMMISSIONER MAY NOT APPROVE WITHOUT INSURER GUARANTEES. The
3 commissioner may not approve a policy written on a claims-made basis by
4 an insurer doing business in this state unless the insurer guarantees
5 to the commissioner the continued availability of suitable liability
6 protection for construction contractors (1) subsequent to the
7 discontinuance of business by the construction contractor, or (2) the
8 sooner termination of the insurance policy by the insurer, for so long
9 as there is a reasonable probability of a claim for damages for which
10 the construction contractor might be liable.

11 NEW SECTION. **Sec. 9.** RISK MANAGEMENT PROGRAM--PART OF PLAN. A
12 risk management program for insureds of the association must be
13 established as a part of the plan. This program must include but not
14 be limited to: Investigation and analysis of frequency, severity, and
15 causes of defective construction projects; development of measures to
16 reduce or control the defective construction; systematic reporting of
17 defect claims; investigation and analysis of property owner complaints;
18 and education of association members to improve construction quality
19 and risk reduction.

20 NEW SECTION. **Sec. 10.** RULE MAKING. The commissioner may adopt
21 all rules necessary to ensure the efficient, equitable operation of the
22 association, including, but not limited to, rules requiring or limiting
23 certain policy provisions.

24 NEW SECTION. **Sec. 11.** CAPTIONS. Captions used in this act are
25 not any part of the law.

26 NEW SECTION. **Sec. 12.** Sections 1 through 11 of this act
27 constitute a new chapter in Title 48 RCW.

--- END ---