

SHB 2740 - H AMD 918

By Representative Schual-Berke

1 Strike everything after the enacting clause and insert the
2 following:

3 NEW SECTION. **Sec. 1.** The legislature recognizes that the
4 insurance industry is subject to cyclical economic patterns that
5 periodically affect the availability of liability insurance. To ensure
6 that people and entities that provide services to children and
7 vulnerable adults have access to liability insurance, the legislature
8 authorizes the insurance commissioner to form a joint underwriting
9 association for these groups if a market assistance plan formed under
10 RCW 48.22.050 cannot adequately meet their needs.

11 NEW SECTION. **Sec. 2.** The definitions in this section apply
12 throughout this chapter unless the context clearly requires otherwise.

13 (1) "Association" means a not-for-profit joint underwriting
14 association established under this chapter.

15 (2) "Board" means the governing board of the association.

16 (3) "Liability insurance" means any casualty insurance policy that
17 provides coverage to businesses, entities, or service providers for
18 legal liability that results from negligent acts or omissions related
19 to their operations.

20 (4) "Voluntary market" includes authorized insurers and surplus
21 lines insurers.

22 NEW SECTION. **Sec. 3.** (1) If the conditions in section 5 of this
23 act are met, the commissioner must create a Washington association to
24 provide liability insurance for:

25 (a) Adult family homes, as defined in RCW 70.128.010(1); or

26 (b) Providers of child welfare services, as defined in RCW
27 74.13.020.

1 (2) A single association may be formed to provide coverage for all
2 the types of businesses or entities under subsection (1) of this
3 section.

4 NEW SECTION. **Sec. 4.** (1) An association may operate for a period
5 of three years. At the end of the three-year period, the commissioner
6 must dissolve the association unless the commissioner adopts rules to
7 reauthorize the operations of the association. The commissioner must
8 use the criteria in section 5 of this act to reauthorize an
9 association.

10 (2) If the commissioner reauthorizes an association after the first
11 three years, the commissioner must act annually thereafter to
12 reauthorize the association, following the process in subsection (1) of
13 this section.

14 NEW SECTION. **Sec. 5.** To form an association, the commissioner
15 must:

- 16 (1) Adopt rules; and
- 17 (2) Find that:
 - 18 (a) A market assistance plan formed under RCW 48.22.050 cannot
 - 19 adequately serve the needs of Washington businesses or entities; and
 - 20 (b)(i) The voluntary market does not have the financial capacity to
 - 21 provide adequate liability insurance;
 - 22 (ii) Insurance essential for businesses or entities to continue
 - 23 operations is not available in the voluntary market; or
 - 24 (iii) There are so few insurers actively selling a particular class
 - 25 or type of liability insurance that a competitive market does not
 - 26 exist. If appropriate to the class or type of risk, the commissioner
 - 27 must use these factors to determine if a competitive market exists:
 - 28 (A) The extent to which the largest insurer groups control the
 - 29 insurance marketplace;
 - 30 (B) Whether the total number of companies writing the class or type
 - 31 of insurance in Washington state is sufficient to provide multiple
 - 32 options to the public;
 - 33 (C) The availability of insurance coverage in all geographic areas;
 - 34 (D) The profitability of each class or type of insurance over a
 - 35 period of several years;

1 (E) The extent to which the market for each type of insurance is
2 growing; and

3 (F) Any other factors the commissioner considers relevant.

4 (3) If the commissioner makes a finding under subsection (2) of
5 this section, the commissioner must specify which classes or types of
6 businesses or entities are eligible to apply to the association for
7 coverage.

8 NEW SECTION. **Sec. 6.** If the commissioner forms an association,
9 the commissioner must annually report to the legislature regarding the
10 financial condition of the association; the condition of the voluntary
11 market for the class or type of insurance available through the
12 association; and the need to continue the association.

13 NEW SECTION. **Sec. 7.** (1) A person, business, or entity is
14 eligible to apply for insurance coverage from an association only if:

15 (a) Their business or occupation is within the scope and purpose
16 for which the association was formed; and

17 (b) The applicant is a resident of the state of Washington or its
18 operations are located in the state of Washington.

19 (2)(a) An association may decline to insure any person or entity
20 that presents an extraordinary risk because of the nature of their
21 operations, past claims experience, or inadequate risk management
22 program.

23 (b) The association must have a formal appeal process for
24 applicants who are declined coverage through the association. Criteria
25 for the association's appeal process are subject to approval by the
26 commissioner.

27 NEW SECTION. **Sec. 8.** (1) The commissioner must appoint a
28 governing board to administer an association. The board must include
29 one person representing each group listed in section 3(1) of this act,
30 if an association is formed to provide liability insurance to that
31 group.

32 (a) The board is subject to supervision by the commissioner.

33 (b) The association may reimburse board members for actual and
34 necessary expenses.

1 (2) The commissioner may select one or more insurers to manage the
2 operations of an association. Every managing insurer must be admitted
3 to transact the business of insurance in the state of Washington and
4 have demonstrated expertise in the type of liability insurance coverage
5 that the association manages.

6 NEW SECTION. **Sec. 9.** (1) The board, working cooperatively with
7 the commissioner, must adopt a plan of operation. The plan of
8 operation must include:

- 9 (a) Specifications for policy provisions and coverage limits;
- 10 (b) A process to assess members of the association; and
- 11 (c) All other procedures needed to implement and administer the
12 operations of the association.

13 (2) The plan of operation is subject to approval by the
14 commissioner before it takes effect.

15 (3) The board, in consultation with the commissioner, may amend the
16 plan of operation as needed. All amendments are subject to approval by
17 the commissioner before they take effect.

18 (4) The commissioner may adopt rules to implement this section if
19 the board does not adopt a plan of operation within forty-five days
20 after the board members have been appointed.

21 NEW SECTION. **Sec. 10.** (1) If formed, an association is comprised
22 of:

- 23 (a) Insurers that have a certificate of authority to write general
24 casualty insurance in this state; and
- 25 (b) Risk retention groups that are chartered and licensed to write
26 liability insurance in this state.

27 (2) Insurers and risk retention groups listed in subsection (1) of
28 this section must be a member of the association as a condition of its
29 authority to continue to transact business in this state.

30 (3) The commissioner must exclude an insurer or risk retention
31 group if membership in an association would threaten the solvency of
32 the insurer or risk retention group.

33 NEW SECTION. **Sec. 11.** An association is funded by premiums paid

1 by businesses and entities insured by the association. Premium rates
2 charged for each class or type of insurance must not be excessive,
3 inadequate, or unfairly discriminatory.

4 (1) All premiums must be deposited into a fund under the management
5 of the board.

6 (2) Premiums must be used to pay claims, administrative costs, and
7 other expenses of the association.

8 NEW SECTION. **Sec. 12.** (1) An association must file rates and
9 rating plans with the commissioner, and these rates and rating plans
10 are subject to approval by the commissioner. The rates and rating
11 plans must be based on an actuarially sound estimate of the expected
12 value of all future costs associated with an individual risk transfer.
13 The rate filing must comply with the provisions of RCW 48.19.040.

14 (2) In developing the rates and rating plan, the association must
15 comply with RCW 48.19.030(3) (a) and (e) through (g).

16 (3) The association must develop an experience rating plan if it is
17 appropriate for a class or type of risk to be insured by the
18 association.

19 (4) If, under section 3 of this act, more than one class or type of
20 liability insurance is provided, expense and loss experience data must
21 be maintained separately for each class or type of insurance.

22 NEW SECTION. **Sec. 13.** An association must establish a risk
23 management program for businesses or entities insured by the
24 association to prevent and control losses. The risk management program
25 must include, but is not limited to:

26 (1) Standards for systematic investigation and reporting of claims
27 and incidents; and

28 (2) A loss control and prevention program. This program must
29 include procedures that:

30 (a) Analyze claim frequency, severity, and causes of losses;

31 (b) Identify situations that may produce large losses;

32 (c) Develop measures to control losses;

33 (d) Monitor the effectiveness of the loss control and prevention
34 measures that are implemented; and

1 (e) Educate insured businesses or entities on methods to reduce and
2 prevent losses.

3 NEW SECTION. **Sec. 14.** (1) An association may assess all members
4 to pay past and future financial obligations. Assessments must be
5 based on market share, which will be determined as follows:

6 (a) For general casualty insurers, an assessment will be based on
7 written general casualty premiums for the most recent calendar year.

8 (b) For risk retention groups, an assessment will be based on
9 written liability premiums for the most recent calendar year.

10 (2) If an association decides it must make an assessment, an
11 assessed insurer or risk retention group must pay the association
12 within thirty business days after it receives notice of the assessment.
13 If an insurer or risk retention group does not pay an assessment within
14 thirty business days after it receives notice of the assessment:

15 (a) The assessment accrues interest at the maximum legal rate until
16 it is paid in full. The interest is paid to the association;

17 (b) The commissioner may suspend, revoke, or refuse to renew an
18 insurer's certificate of authority; and

19 (c) The commissioner may fine the insurer or risk retention group
20 up to ten thousand dollars.

21 (3) If an assessment may threaten the solvency of an insurer or
22 risk retention group, the commissioner must order the association not
23 to assess that insurer or risk retention group. Data used by the
24 commissioner to make this determination are subject to confidential
25 review by the board.

26 NEW SECTION. **Sec. 15.** When an association is dissolved, all
27 policies must be nonrenewed. If a surplus of funds exists when an
28 association is dissolved, the surplus funds will be disbursed to member
29 insurers. Disbursements must be based on market share, which will be
30 determined as follows:

31 (1) For general casualty insurers, a disbursement will be based on
32 written general casualty premiums for the most recent calendar year.

33 (2) For risk retention groups, a disbursement will be based on
34 written liability premiums for the most recent calendar year.

1 NEW SECTION. **Sec. 16.** (1) An association must file a statement
2 annually with the commissioner that contains information about the
3 association's transactions, financial condition, and operations during
4 the preceding year. The statement must be prepared according to
5 instructions adopted by the national association of insurance
6 commissioners for property and casualty insurers and include all of the
7 information requested by the commissioner.

8 (2) The association must maintain its records according to the
9 accounting practices and procedures manual adopted by the national
10 association of insurance commissioners.

11 (3) The association must, at all times, provide the commissioner
12 with free access to all the books, records, files, papers, and
13 documents that relate to the operation of the association. The
14 commissioner may summon, qualify, and examine as witnesses all persons
15 having knowledge of the association's operations.

16 (4) The commissioner must examine the transactions, financial
17 condition, and operations of an association at least once every three
18 years. Each examination must be conducted in the manner prescribed for
19 domestic insurance companies in chapter 48.03 RCW.

20 NEW SECTION. **Sec. 17.** (1) An association has the general
21 corporate powers and authority granted under the laws of the state of
22 Washington.

23 (2) An association is a legal entity separate and distinct from its
24 members.

25 (3) Liability or a cause of action may not arise against the
26 following for any acts or omissions made in good faith while performing
27 their duties under this chapter:

- 28 (a) An association or any member insurer;
- 29 (b) The commissioner or any of the commissioner's staff;
- 30 (c) The commissioner's authorized representatives; or
- 31 (d) Any other person or organization.

32 (4) The state is not liable to pay any debts or obligations of the
33 association.

34 (5) A person may not assert any claim against the state, its
35 agencies, or any of its employees for any act or omission of an
36 association.

1 NEW SECTION. **Sec. 18.** An association is not a member of the
2 guaranty fund created under chapter 48.32 RCW. The guaranty fund, this
3 state, and any political subdivisions are not responsible for losses
4 sustained by an association.

5 NEW SECTION. **Sec. 19.** An association is exempt from payment of
6 all fees and all taxes levied by this state or any of its subdivisions,
7 except taxes levied on real or personal property.

8 NEW SECTION. **Sec. 20.** The commissioner may adopt all rules needed
9 to implement this chapter.

10 NEW SECTION. **Sec. 21.** Sections 1 through 20 of this act
11 constitute a new chapter in Title 48 RCW.

12 NEW SECTION. **Sec. 22.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

16 NEW SECTION. **Sec. 23.** This act is necessary for the immediate
17 preservation of the public peace, health, or safety, or support of the
18 state government and its existing public institutions, and takes effect
19 immediately."

20 Correct the title.

EFFECT: Requires the Insurance Commissioner to attempt to form a
market assistance plan before forming JUA.

Provides that the JUA will dissolve in three years unless the
Commissioner reauthorizes it through rule making.

Specifies the Administrative Procedure Act rule-making process as
the mechanism for establishing a JUA.

Includes additional criteria for the Commissioner to consider in
determining whether to form a JUA.

Establishes the board's responsibilities and specifies the
composition of the board.

Provides the JUA with corporate powers and immunity for good faith efforts to perform duties.

Cites existing statutory criteria for JUA rate-making purposes.

Allows the JUA to decline applicants that pose an extraordinary risk.

Establishes criteria for assessments and return of funds when the JUA is dissolved.

Provides that the JUA must nonrenew policies once the JUA is dissolved.

Establishes the Commissioner's examination process.

Establishes the format for annual statements.

Exempts the JUA from paying taxes and fees.

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