

HOUSE BILL REPORT

HB 1582

As Reported by House Committee On:
Financial Institutions & Insurance

Title: An act relating to forming market assistance plans and joint underwriting associations.

Brief Description: Forming market assistance plans and joint underwriting associations.

Sponsors: Representatives Schual-Berke, Rockefeller and Sullivan; by request of Insurance Commissioner.

Brief History:

Committee Activity:

Financial Institutions & Insurance: 1/20/04, 2/6/04 [DP2S].

Brief Summary of Second Substitute Bill

- Authorizes the Insurance Commissioner to create a joint underwriting association for contractors provided certain market conditions exist.
- Requires the dissolution of a joint underwriting association after three years unless the Insurance Commissioner implements specified procedures for the continuation of the association.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: The second substitute bill be substituted therefor and the second substitute bill do pass. Signed by 6 members: Representatives Schual-Berke, Chair; G. Simpson, Vice Chair; Cooper, Hatfield, Santos and D. Simpson.

Minority Report: Do not pass. Signed by 5 members: Representatives Benson, Ranking Minority Member; Newhouse, Assistant Ranking Minority Member; Cairnes, Carrell and Roach.

Staff: Carrie Tellefson (786-7127).

Background:

Market assistance plan: A market assistance plan (MAP) is a regulatory tool that allows the Insurance Commissioner (Commissioner) to intervene in a difficult insurance market

so as to ensure the continuing availability of a particular line of casualty insurance. The purpose of a MAP is to assist persons in finding insurance coverage from private carriers, although a MAP does not control the rates at which insurance will be offered. Under current law, the Commissioner has discretionary authority to implement a MAP in the event that the supply of a line of insurance becomes inadequate to meet demand. When such difficult market conditions exist, the Commissioner is authorized to create a voluntary association of 25 insurers willing to insure risks within a specific class of insurance. In the event that 25 insurers will not voluntarily participate, the Commissioner may require that insurers take part as a condition of continuing to do business in this state.

In 2002, the Commissioner implemented a MAP in order to deal with the contraction in the medical malpractice liability insurance market that resulted when several major insurers withdrew from the market altogether. This market contraction has made it difficult for many physicians to find affordable insurance. Under the MAP, if a physician is having difficulty finding coverage, he or she may apply to a committee of insurance agents in order to obtain quotes for medical malpractice coverage from participating insurers.

Joint underwriting association: A joint underwriting association (JUA) is another regulatory tool available to the Commissioner in the event that an insurance market undergoes a contraction so severe that affordable coverage all but disappears. Under current law, the Commissioner must seek authorization from the Legislature before creating a JUA. Once the JUA is authorized, the Commissioner has the authority to establish a nonprofit, joint underwriting association that directly provides insurance coverage to a specified class of prospective insureds. The association is comprised of specified insurers who can be compelled to participate as a condition of continuing to do business in this state. Participating insurers are subject to monetary assessments by the Commissioner in order to fund the operations of the JUA. The Commissioner does not directly control the premium rates established by the JUA members, though such rates are subject to the same rate setting requirements applicable in the standard market.

There are currently two legislatively authorized JUAs in the state of Washington; one pertains to liability insurance for midwives and the other pertains to liability insurance for day care service providers which, though authorized, was never activated by the Commissioner. Approximately 39 states have enacted legislation authorizing the formation of various types of JUAs.

Summary of Second Substitute Bill:

Creating liability insurance association.

Subject to certain conditions, the Commissioner is required to create a JUA to provide liability insurance for contractors.

Conditions required to create a JUA.

Before creating an association, the Commissioner must provide notice to the public, hold a hearing, and issue specified findings. Following the completion of this process, the Commissioner may form a JUA only if he makes the following findings:

- the creation of a MAP would be insufficient to address the problems of the insurance market and one of the following conditions exists:
- the voluntary market does not have the financial capacity to provide adequate liability insurance; or
- the insurance essential to continue business operations is not available in the voluntary market; or
- there are so few insurers actively selling liability insurance in the market that a competitive market does not exist.

Eligibility for insurance coverage from the JUA.

A person is eligible to apply for insurance from a JUA if:

- the business or occupation is within the scope and purpose of the JUA;
- the applicant is a state resident or operates in this state; and
- after making a reasonable effort, the applicant has been unable to purchase adequate liability insurance.

Extraordinary risks.

The JUA may decline to insure any applicant that presents certain extraordinary risk factors.

JUA Membership.

A JUA must consist of all state authorized casualty insurers and risk retention groups licensed to write liability insurance in this state. A JUA membership is required in order to continue to transact business in Washington. The Commissioner may excuse an insurer or risk retention group from participation if participation would threaten its solvency.

JUA Funding.

The JUA is funded by the premiums paid by the insureds. However, if necessary, the JUA may assess its members to pay for past and future financial obligations. Such assessments must be based on market share, as determined by specified criteria.

Risk management program.

A JUA must have a risk management program for those it insures to attempt to reduce and monitor various risk factors.

Governing board and JUA management.

The Commissioner must appoint a governing board to administer the JUA that includes one person selected by each of the two largest caucuses in the Senate and the House to serve as nonvoting ex officio members. This board must adopt a plan of operation that

includes specifying policy provisions and coverage limits, a process to assess JUA members, and all other procedures needed for the operation of the association. The Commissioner may select one or more insurer to manage the operations of the JUA.

Duration of a JUA.

A JUA may operate for a maximum of three years and must be dissolved at the end of that period unless the Commissioner implements specified procedures for its continuation. The procedures include the following:

- The Commissioner must provide notice, hold a hearing, and make factual findings justifying the continuation of the JUA. These findings are the same as those required for the creation of the JUA.
- If, after this process, the Commissioner finds that adequate liability insurance exists in the market, the Commissioner must dissolve the JUA.

Examination and reporting requirements.

The Commissioner is required to examine the JUA at least once every three years and must make an annual report to the Legislature on the financial condition of the association.

Second Substitute Bill Compared to Original Bill:

Adult family homes, community residential programs, health care clinics, and hospitals are no longer referenced in the bill, which applies to contractors only.

Appropriation: None.

Fiscal Note: Requested on February 3, 2003.

Effective Date of Second Substitute Bill: The bill contains an emergency clause and takes effect immediately.

Testimony For: (In support) OIC supported this bill last year. There will be another bill this year dealing with Joint Underwriting Associations (JUAs). A JUA differs from a Market Assistance Plan (MAP) in that a JUA establishes rates and terms. A MAP is mostly voluntary. Adult family homes have only one carrier that they know of and this carrier is only writing renewal business and not new business. There are currently no tools to compel coverage. Twenty-eight states have comprehensive JUAs. In addition to social service type of businesses, construction contractors are also in need of liability coverage. There's one major broker in Washington that is selling insurance to contractors. The OIC doesn't have very good information about who is and is not getting the coverage they need. It's not part of the regulatory information they would receive. They only hear about it if people call the OIC. That is what leads to the development of a MAP. The OIC regulates rates but not underwriting. Not many states regulate

underwriting. Plus, the surplus lines market covers a large part of the liability insurance market. Changing the law to involve the OIC in underwriting would really not help this market because they are served by the unregulated market. There were several amendments agreed to last year to address various concerns. Those include more clearly outlining the market conditions that must exist before a JUA can be implemented and allowing the Legislature to reverse a JUA if they feel OIC has gone beyond their authority.

There are larger issues at play in the market. The reinsurance market was depleted following 911. These markets are starting to come back but they won't come into the high risk areas and specialties right away. In addition, the tort issue has impacted the adult family homes and other businesses like that. Another problem is national underwriting. Often Washington is penalized for problems in other states, such as mold in Texas. This JUA allows Washington-only underwriting.

(In support w/amendment) There is also a pending lawsuit against an adult family home in Oregon, involving the department of Housing and Urban Development (HUD). The outcome of this case will also determine whether insurers come back into the adult family home insurance market. Many insurance carriers who wrote adult family home insurance are simply not going to write it until this case is resolved.

The DSHS has lifted the requirement that adult family homes have insurance. No one wants to do business this way, though. It's too risky. Many are faced with closing their doors. These are necessary services to the aging population and to children.

All casualty insurers would be included in a JUA, even if they're not selling liability insurance. This is essentially a pass-through to every consumer who buys auto and homeowners insurance. Those are the people who will be subsidizing the JUA. However, the premise is that all insurers have to participate in the solution in order to do business in this state.

Testimony Against: (Opposed) This bill would cause the Legislature to give up their last bit of authority over this issue. What's happening here is that no insurer is willing to write this coverage - at any price. This really may not solve the problem. There seems to be a confusion between availability and affordability. The JUAs only address availability and have no impact on affordability of coverage.

The building contractors are having problems with insurance also. This is their number one issue. They are required to have insurance to do business in this state. They are faced with the issue of going underground and operating without a license because they don't have insurance or closing up shop.

There's nothing in the bill to address the underlying risk. This bill just requires all policyholders to pay to cover problem areas in the market but it doesn't really provide a

long term solution.

Persons Testifying: (In support) Representative Schual-Berke, prime sponsor; Bill Daley and Lisa Smego, Office of the Insurance Commissioner; David Merchant, Washington Homeowners Coalition; and Larry Shannon, Washington State Trial Lawyers Association.

(In support w/amendment) Seth Dawson, Washington State Coalition of Residential Care Services; Donna Christiansen, Washington State Catholic Conference; Scott Hanauer, Children's Home Society of Washington; and Gail McGaffick, Home Care Association of Washington and Washington State Hospice & Palliative Care Organization.

(Neutral) Jodi Slavik, Building Industry Association of Washington.

(Opposed) Larry Byers, CBIC; Gary Strannigan, Safeco Insurance Company; Bill Stauffacher, Independent Insurance Agents & Brokers; Mel Sorenson, PCI, PIA and Allstate; Tim Layton, Associated Builders & Contractors; and Jean Leonard, State Farm Washington Insurers and AIG.

Persons Signed In To Testify But Not Testifying: None.