

# HOUSE BILL REPORT

## HB 2740

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### As Reported by House Committee On:

Financial Institutions & Insurance

**Title:** An act relating to a joint underwriting association for persons and entities that provide services to children and vulnerable adults.

**Brief Description:** Regulating a joint underwriting association for persons and entities that provide services to children and vulnerable adults.

**Sponsors:** Representatives Schual-Berke, Clibborn and Morrell; by request of Insurance Commissioner.

### Brief History:

#### Committee Activity:

Financial Institutions & Insurance: 1/28/04, 2/6/04 [DPS].

#### Brief Summary of Substitute Bill

- Authorizes a joint underwriting association for adult family homes and children receiving child welfare services.

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### HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

**Majority Report:** The substitute bill be substituted therefor and the 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:

A joint underwriting association (JUA) is a regulatory tool authorized by the Legislature for specific markets and available to the Commissioner when an insurance market becomes so limited that affordable coverage all but disappears. The Commissioner must

seek authorization from the Legislature before creating a JUA. Once authorized, the Commissioner has the authority to establish a nonprofit JUA that provides insurance coverage to a specified class of prospective insureds. The JUA is comprised of insurers who can be compelled to participate as a condition of continuing to do business in this state. To fund the JUA, the Commissioner imposes monetary assessments. The Commissioner does not directly control the premium rates established by the JUA's members, though such rates are subject to the same rate setting requirements applicable in the standard market.

There are currently two legislatively authorized associations in Washington: one for midwives and one for day care service providers which, though authorized, was never activated by the Commissioner. Approximately 39 states plus the District of Columbia have enacted legislation authorizing the formation of various types of associations.

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### **Summary of Substitute Bill:**

The commissioner must appoint a governing board for the JUA by July 1, 2004, which is charged with developing a plan of operation and establishing a JUA to provide liability insurance to adult family homes and children receiving child welfare services. This insurance coverage must be offered by January 1, 2005.

The plan must offer a policy with reasonable liability limits as determined by the commissioner based on standard industry practices. The association must be funded by premiums paid by the insured entities. The Commissioner may exclude an insurer or risk retention group if participation in the association might threaten the solvency of the insurer or risk retention group. The Commissioner must approve rates and rating plans and ensure they are actuarially sound. The association must consider Washington state loss experience in developing the rating plan. If Washington data is not available or statistically credible, the association must consider data that will likely produce loss experience similar to Washington.

The JUA must be comprised of all insurers licensed to write general casualty insurance in this state. The Commissioner may select one or more insurers to manage the JUA operations.

Those "licensees" qualified to apply for the liability insurance include adult family homes and children receiving child welfare services.

The JUA is not a member of the guaranty fund.

The Commissioner may adopt rules to implement this chapter.

### **Substitute Bill Compared to Original Bill:**

The bill applies to adult family homes and children receiving child welfare services instead of children and vulnerable adults.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date of Substitute Bill:** The bill takes effect 90 days after adjournment of session in which bill is passed.

**Testimony For:** (In support) This bill would assist us greatly. They had a huge increase in their liability insurance - almost 120 percent plus their medical and homeowners increased. Providers are being dropped. Several providers of residential care are up for renewal and have been told they may not be renewed. This is about availability and affordability. There has been a 10 to 20 percent decrease in United Way allocations and decrease in corporate and foundation support. They are cutting direct services to just maintain their liability insurance.

An organization dealing with vulnerable children said their insurance was nonrenewed because they do foster care. They received 11 proposals for insurance, but only two responded and one was not viable. Their insurance increased by 383 percent in one year. They have taken less coverage to meet the state minimums. Their premium is \$117,000 this year. They will be laying off employees in order to afford the insurance. They are unraveling the community based network that has been relied upon for years.

(In support w/amendment) The OIC said there are differences with this legislation than the others the committee has reviewed. This is designed to be implemented without a lot of the prior concerns and conditions of last year's bill. The daycare JUA is the model for this bill. It was never implemented. They would like a JUA for these groups quickly. They suggest an amendment to remove the term "nonprofit entity" because many of these organizations are for profit instead of nonprofit. If the emergency deepens, there isn't capacity to support the market. Many of the concerns legislators are expressing are addressed in SHB 1582, the other JUA bill proposed by the OIC. It includes a sunset clause and has criteria for the establishment of a JUA. They can also describe the characteristics in the market that would result in triggering of a JUA or

shutting down a JUA. The OIC did not do a MAP in this area. There were rules developed for the daycare JUA.

**Testimony Against:** Farmers opposes this bill. The crisis is transient. There hasn't been a crisis in the day care arena for some time, but at one time it was what everyone was discussing in front of the Legislature. The market is a hard market now, but that will change.

Some providers are beyond the crisis point. You know that when DSHS lifts the requirement that adult family homes have liability insurance that there truly is a crisis. That's not a safe position for anyone to be in - not the owners or operators of the home, the workers, or the residents and their families. There's no protection for anyone. They need JUA legislation of some sort this year. There isn't enough of a market selling this insurance, so a MAP probably would not work. These are very important services that the state wants to see continue. These are private entities doing the government's business, in essence, by caring for the vulnerable populations. If it costs more to get the insurance, that's not good, but it's better than having no insurance at all. They hadn't looked at the self-insurance risk pool option, but will think about that as an alternative.

**Persons Testifying:** (In support) Sylvia Fuerstenberg, Community Residential Service Association; Scott Hanauer, Children's Home Society of Washington; David Webster, Northwest Youth Services; Bill Daley, Office of the Insurance Commissioner.

(In support w/amendment) Gail McGaffick, Home Care Association of Washington and Washington State Hospice and Palliative Care Organization.

(Opposed) Mike Kappahn, Farmers Insurance Company.

**Persons Signed In To Testify But Not Testifying:** None.