HOUSE BILL REPORT
HB 1582

As Reported by House Committee On:
Financial Institutions & Insurance
Appropriations

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: 2/12/03, 3/5/03 [DPS];
Appropriations: 3/8/03 [DPS(FII)].

Brief Summary of Substitute Bill

- Authorizes the Insurance Commissioner to create a joint underwriting association for certain insurance markets provided specified market conditions exist.
- Requires the Insurance Commissioner to satisfy specified procedural requirements before creating a joint underwriting association.
- Creates a regulatory scheme for the creation, operation, and oversight of joint underwriting associations.
- 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 substitute bill be substituted therefor and the substitute bill do pass. Signed by 6 members: Representatives Schual-Berke, Chair; Simpson, Vice Chair; Cooper, Hatfield, Hunter and Santos.

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

Staff: Thamas Osborn (786-7129).

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 to obtain quotes for medical malpractice coverage from participating insurers.

Joint underwriting association. A joint underwriting association (association) 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 an association. Once the association 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 association. The Commissioner does not directly control the premium rates established by the association'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 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 associations.

Summary of Substitute Bill:

Creating liability insurance association. Subject to certain conditions, the Commissioner is required to create an association to provide liability insurance for adult family homes, community residential programs, contractors, hospitals, or health care clinics.

The Commissioner may form a single association to provide coverage for all of these types of businesses and entities, or may form a separate association for each.

Conditions precedent to creating an association. Before creating an association, the Commissioner is required to provide notice to the public, hold a public hearing, and issue specified findings. Following the completion of this process, the Commissioner may form an association only if he/she makes the following factual findings:

- the creation of a MAP would be insufficient to address the problems of the insurance market; and
- the voluntary market does not have the financial capacity to provide adequate liability insurance to the market;
- 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 association. A person, business, or entity is eligible to apply for insurance from an association only if:

- the business or occupation of the applicant is within the scope and purpose for which the association was formed;
- the applicant is a state resident or its operations are located in this state; and
- after making a reasonable effort, the applicant has been unable to purchase adequate liability insurance.

Extraordinary risks. The association may decline to insure any applicant that presents certain extraordinary risk factors.

Membership in the association. An association formed by the Commissioner must consist of all state authorized casualty insurers and state chartered risk retention groups licensed to write liability insurance in this state. Membership in the association is required if the insurer or risk retention group is to continue to transact business in Washington. The Commissioner may excuse an insurer or risk retention group from participation in the association if such participation threatens its solvency.

Funding of the association. The association is funded by the premiums paid by the businesses and entities insured by the association. However, if necessary, the association may assess the association 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. An association must have a risk management program for covered businesses and entities that meets specified criteria for the reduction and monitoring of various risk factors.

Governing board. The Commissioner must appoint a governing board to administer the association 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 which includes specifications for policy provisions and coverage limits, an assessment process and all other procedures needed for the operation of the association.

Duration of an association. An association 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 the continuation of the association. In order to prevent the dissolution of the association, the Commissioner must provide notice to the public, hold a public hearing, and make factual findings justifying the continuation of the association. The requisite factual findings are the same as those required for the creation of the association.

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

Substitute Bill Compared to Original Bill:

The substitute bill substantially revises most of the provisions in the original bill and contains the following changes:

- eliminates the repeal of Chapter 48.88 RCW, regarding the association created for providers of day care services;
- deletes all amendments of RCW 48.22.050, which is the statute authorizing the creation of market assistance plans;
- eliminates the blanket authority granted to the Commissioner to create an association without specific legislative authorization;
- requires that the Commissioner creates an association to provide liability insurance for adult family homes, community residential programs, contractors, hospitals, or health care clinics, provided specified conditions are met. The Commissioner may form a single association to provide coverage for all of these types of businesses and entities;
- requires the Commissioner to provide notice to the public, hold a hearing, and issue specified findings before an association may be created;

- allows the Commissioner to establish an association if (1) a market assistance plan will not work, and (2) the voluntary market does not have enough financial capacity to provide insurance, (3) insurance is not available, or (4) so few insurers are in the marketplace that a competitive market does not exist;
- specifies requirements that must be met before a person, business, or entity is eligible to apply for insurance from an association;
- requires the Commissioner to appoint a governing board to administer the association 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 for the association;
- requires that rates and rating plans be developed in accordance with specified criteria;
- requires the Commissioner to examine the association at least once every three years and that he/she report to the Legislature annually on the financial condition of the association; and
- allows the Commissioner to excuse an insurer from participation in the association if it may threaten its solvency.

Appropriation: None.

Fiscal Note: Available. A new fiscal note for the proposed sub was requested on March 5, 2003.

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

Testimony For: (Original bill) Many insurance markets are in crisis, insofar as insurance is either unavailable or huge increases in premiums have made it unaffordable. Currently, adult family homes and construction contractors are unable to find affordable insurance. As a result, many have gone out of business since they must have affordable insurance in order to continue operating. Allowing the creation of associations would at least make some form of insurance available, even if it would not necessarily provide relief from high premiums. Availability of insurance is the key, cost is secondary. In Washington, as well as other states, associations have been successful in at least making insurance available. An association acts as a sort of safety net when there has ceased to be a competitive insurance market and is an effective tool for weathering the current insurance crisis. Twenty-six other states have statutes creating associations similar to the those that would be created by the bill. The Commissioner would only use his authority to create an association if a true emergency existed within a particular market.

The bill applies to only general casualty insurers within the commercial insurance market. It does not cover auto, homeowners, health, or life insurance. The bill is targeted to address the problems that specified entities are having in finding insurance and focuses on those markets most in need of state intervention. Once created by the Commissioner, an association acts as a company. It must have a governing board, a plan of operation, and a risk management program. An association can refuse to insure "extraordinary risks."

Testimony Against: (Original bill) Insurers and agents oppose the bill. It fails to address any of the core issues that are currently creating problems in various insurance markets. Historically, associations have not been successful at addressing problems in the insurance market. Creating associations will be counterproductive insofar as this could result in more insurers leaving the market and in higher premiums. The insurance marketplace should be allowed to address its own problems without state intervention. Currently, there is an adequate supply of insurance and thus there is no need to create an artificial, state controlled, competing market. Furthermore, the bill does not address the insurance problems that are being driven by tort issues. It does not resolve the problem of litigation costs or other tort reform issues that are key to resolving problems in the insurance marketplace.

(With concerns) Because an association does not deal with the problem of skyrocketing insurance rates, it will do nothing to ease the insurance crisis being faced by contractors. An association treats only symptoms, not the primary problem.

Testified: (In support) Bill Daley, Office of the Insurance Commissioner; Duke Schaub and Margo Easton, Associated General Contractors of Washington; Debra Dawkins, Valley General Hospital; Audrey Woodin, Washington State Residential Care Council; Nick Federici, Midwives Association of Washington State and the Washington Low-Income Housing Congress; Mike Lewis, Christine Muth, and Sue Closser, Washington State Residential Care Council; and Larry Shannon, Washington State Trial Lawyer's Association.

(Opposed) Basil Badley, American Insurance Association; Bill Stauffacher, Independent Insurance Agents and Brokers; Larry Byers, Contractors Bonding and Insurance Company; Mel Sorenson, National Association of Independent Insurers and Allstate Insurance Company; and Mike Kapphahn, Farmer's Insurance.

(With concerns) Jeff Hansell and Brian Minnich, Building Industry Association of Washington.

HOUSE COMMITTEE ON APPROPRIATIONS

Majority Report: The substitute bill by Committee on Financial Institutions & Insurance be substituted therefor and the substitute bill do pass. Signed by 14 members: Representatives Sommers, Chair; Fromhold, Vice Chair; Cody, Conway, Dunshee, Grant, Hunter, Kagi, Kenney, Linville, McIntire, Miloscia, Ruderman and Schual-Berke.

Minority Report: Do not pass. Signed by 13 members: Representatives Sehlin, Ranking Minority Member; Pearson, Assistant Ranking Minority Member; Alexander, Boldt, Buck, Clements, Cox, DeBolt, Kessler, McDonald, Pflug, Sump and Talcott.

Staff: Heather Flodstrom (786-7391).

Summary of Recommendation of Committee On Appropriations Compared to Recommendation of Committee On Financial Institutions & Insurance:

No new changes were recommended.

Appropriation: None.

Fiscal Note: Available.

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

Testimony For: This bill allows the Insurance Commissioner to respond to emergencies in the insurance industry. Some insurance markets are near collapse, so this bill will help remedy that by allowing the Insurance Commissioner to create a Joint Underwriting Association (JUA). A JUA is not a government run insurance company, and the Insurance Commissioner won't institute these types of associations unless necessary. The fiscal note is the worst case scenario and appropriation authority is not necessary until the Insurance Commissioner needs to set up a JUA.

Many construction contractors are in breach of contract or have gone out of business because they can't get insurance. Availability of insurance is the key, the cost is secondary. There is great need for this legislation for insurance liability coverage. The midwives JUA has worked well and they can now get liability coverage. This coverage would be helpful for home-care agencies.

Testimony Against: This bill is before you because of the difficult insurance market, and if passed it will further that difficult market. This bill takes money from the free-market system and puts it into a government mechanism. Insurance companies are assessed based on how much business they write, and companies will end up getting free-risk management services through coverage provided in this bill. This bill will reduce the amount of premium tax paid to the state. Insurance companies in this state already pay the assessments to finance the Office of the Insurance Commissioner, and they don't want to pay more for a structure that would compromise a competitive market. This bill has the potential to restrict free markets in the insurance industry.

This bill will force small companies to participate in losses, and those costs will be passed on. Washington will have to pay retaliatory tax costs if this bill is passed, which will make it difficult to be competitive. The biggest problem with this bill is the assessment because it is not actuarially sound writing. This bill sets up a preferred class of insurers to be subsidized by policy holders of all types“which is exactly like a tax. This bill does nothing to address the real problems in the marketplace. Everyone would like to have broad liability protection whether they’re in an association or not. The insurance market is tough, and we’re working on market assistance plans, but we hope that it does not have to get to a government regulated JUA.

Testified: (In support) Duke Schaub, Associated General Contractors; Nick Federici, Midwives Association, Low-Income Housing Congress, Association of Home Care Services; and Bill Daley, Office of the Insurance Commissioner.

(Opposed) Bill Stauffacher, Independent Insurance Agents and Brokers of Washington; Mel Sorensen, National Association of Independent Insurers, Allstate Insurance Company, Professional Insurance Agents; Basil Badley, American Insurance Association; Larry Byers, Contractors Bonding and Insurance Company; Gary Strannigan, SAFECO; and Mike Kapphahn, Farmers Insurance.