
SECOND SUBSTITUTE HOUSE BILL 1582

State of Washington

58th Legislature

2004 Regular Session

By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Schual-Berke, Rockefeller and Sullivan; by request of Insurance Commissioner)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to forming market assistance plans and joint
2 underwriting associations; adding a new chapter to Title 48 RCW; and
3 declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** The definitions in this section apply
6 throughout this chapter unless the context clearly requires otherwise.

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

9 (2) "Contractor" has the same meaning as in RCW 18.27.010(1).

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

14 (4) "Voluntary market" includes authorized insurers and surplus
15 lines insurers.

16 NEW SECTION. **Sec. 2.** Subject to section 3 of this act, the
17 commissioner must create a Washington association to provide liability
18 insurance for contractors.

1 NEW SECTION. **Sec. 3.** (1) The commissioner must provide notice,
2 hold a hearing, and issue findings under chapter 48.04 RCW before
3 forming an association.

4 (2) The commissioner may not form an association unless the
5 commissioner finds that:

6 (a) A market assistance plan formed under RCW 48.22.050 cannot
7 adequately serve the needs of businesses or entities described in
8 section 2 of this act; and

9 (b)(i) The voluntary market does not have the financial capacity to
10 provide adequate liability insurance to the businesses or entities
11 described in section 2 of this act;

12 (ii) Insurance essential for the businesses or entities described
13 in section 2 of this act to continue business operations is not
14 available in the voluntary market; or

15 (iii) There are so few insurers actively selling liability
16 insurance to the businesses or entities described in section 2 of this
17 act that a competitive market does not exist.

18 NEW SECTION. **Sec. 4.** (1) If an association is formed, a person,
19 business, or entity is eligible to apply for insurance coverage from an
20 association only if:

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

23 (b) The applicant is a resident of the state of Washington or its
24 operations are located in the state of Washington; and

25 (c) The applicant has been unable to buy adequate liability
26 insurance after contacting, through an agent or broker, a majority of
27 the voluntary insurance market.

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

32 (b) The association must have a formal appeal process for
33 applicants who are declined coverage through the association. Criteria
34 for the association's appeal process are subject to approval by the
35 commissioner.

36 NEW SECTION. **Sec. 5.** (1) An association is comprised of:

1 (a) Insurers that have a certificate of authority to write general
2 casualty insurance in this state; and

3 (b) Risk retention groups that are chartered and licensed to write
4 liability insurance in this state.

5 (2) Every general casualty insurer and risk retention group must be
6 a member of the association as a condition of its authority to continue
7 to transact business in this state.

8 (3) The commissioner may exclude an insurer or risk retention group
9 if participation in an association may threaten the solvency of that
10 insurer or risk retention group.

11 NEW SECTION. **Sec. 6.** (1) An association must be funded by
12 premiums paid by businesses and entities insured by the association.

13 (a) All premiums must be deposited into a fund under the management
14 of the board.

15 (b) Premiums must be used to pay claims, administrative costs, and
16 other expenses of the association.

17 (2)(a) An association must file rates and a rating plan with the
18 commissioner.

19 (b) The rates and rating plan used by the association are subject
20 to approval by the commissioner.

21 (c) When determining whether to approve the association's rates and
22 rating plan, the commissioner must determine that the rates and rating
23 plan result in premium rates that are not excessive, inadequate, or
24 unfairly discriminatory. A rate is reasonable and not excessive,
25 inadequate, or unfairly discriminatory if it is an actuarially sound
26 estimate of the expected value of all future costs associated with an
27 individual risk transfer.

28 (3) In developing the rates and rating plan, the association must
29 give due consideration to:

30 (a) Past and prospective loss experience in Washington state for
31 experience periods acceptable to the commissioner. If data from
32 Washington state are not available or are not statistically credible,
33 the association may use loss experience from those states which are
34 likely to produce loss experience similar to that in Washington state;

35 (b) Past and prospective operating expenses;

36 (c) Past and prospective investment income;

1 (d) Whether an experience rating plan is appropriate for a class or
2 type of risk to be insured by the association; and

3 (e) All other relevant factors within and outside Washington state.

4 (4) If more than one class or type of liability insurance is
5 offered in a single association:

6 (a) Expenses and loss experience must be separated for each class
7 or type of insurance; and

8 (b) Premium rates charged for each class or type of insurance must
9 not be excessive, inadequate, or unfairly discriminatory.

10 NEW SECTION. **Sec. 7.** An association must establish a risk
11 management program for businesses or entities insured by the
12 association. The risk management program must include:

13 (1) Standards for systematic investigation and reporting of claims
14 and incidents; and

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

17 (a) Analyze claim frequency, severity, and causes of loss;

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

19 (c) Develop measures to control losses;

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

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

24 NEW SECTION. **Sec. 8.** (1) An association has the general corporate
25 powers and authority granted under the laws of the state of Washington.

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

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

31 (a) An association or any participating insurer;

32 (b) The commissioner or any of the commissioner's staff;

33 (c) The commissioner's authorized representatives; or

34 (d) Any other person or organization.

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

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

4 NEW SECTION. **Sec. 9.** (1) The commissioner must appoint a
5 governing board to administer an association.

6 (a) The board must include one person selected by each of the two
7 largest caucuses in the senate and house of representatives to act as
8 nonvoting ex officio members.

9 (b) The board is subject to supervision by the commissioner.

10 (c) The association may reimburse board members who attend
11 meetings.

12 (i) Board members may be reimbursed for actual and necessary
13 expenses.

14 (ii) Legislators must be reimbursed under RCW 44.04.120.

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

20 NEW SECTION. **Sec. 10.** (1) The board, working cooperatively with
21 the commissioner, must adopt a plan of operation. The plan of
22 operation must include:

23 (a) Specifications for policy provisions and coverage limits;

24 (b) A process to assess members for operation of an association;
25 and

26 (c) All other procedures needed to implement and administer the
27 operations of the association.

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

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

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

1 NEW SECTION. **Sec. 11.** (1) An association may assess all general
2 casualty insurers and risk retention groups to pay past and future
3 financial obligations. Assessments must be based on market share,
4 which is determined as follows:

5 (a) For general casualty insurers, an assessment is based on
6 written general casualty premiums for the most recent calendar year;
7 and

8 (b) For risk retention groups, an assessment is based on written
9 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) The commissioner may order the association not to assess a
22 particular insurer or risk retention group if the assessment may
23 threaten the solvency of that insurer or risk retention group. Data
24 used by the commissioner to make this determination are subject to
25 confidential review by the board.

26 NEW SECTION. **Sec. 12.** (1) An association must file a statement
27 annually with the commissioner that contains information about the
28 association's transactions, financial condition, and operations during
29 the preceding year. The commissioner may establish rules for the form
30 and content of this statement. The statement must:

31 (a) Be in the form and according to instructions adopted by the
32 national association of insurance commissioners for property and
33 casualty insurers; and

34 (b) Include all of the information stipulated by the commissioner.

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

1 (3) The association must provide the commissioner with free access
2 to all the books, records, files, papers, and documents that relate to
3 the operation of the association. The commissioner may summon,
4 qualify, and examine as witnesses all persons having knowledge of the
5 association's operations.

6 (4) The commissioner may enter and examine the operation and
7 experience of an association at any time.

8 (5) The commissioner must examine the transactions, financial
9 condition, and operations of an association at least once every three
10 years. Each examination must be conducted in the manner prescribed for
11 domestic insurance companies in chapter 48.03 RCW.

12 NEW SECTION. **Sec. 13.** (1) If the commissioner forms an
13 association, the commissioner must report to the legislature annually
14 about the:

15 (a) Financial condition of the association;

16 (b) Condition of the voluntary market for the class or type of
17 insurance available through the association; and

18 (c) Need to continue the operations of the association.

19 (2) By resolution, the legislature may determine, after the
20 commissioner's report, that:

21 (a) The class or type of liability insurance may no longer be
22 offered by the association; or

23 (b) The association must be dissolved.

24 NEW SECTION. **Sec. 14.** (1) An association may operate for a period
25 of three years. At the end of the three-year period, the association
26 must be dissolved unless the commissioner provides notice, holds a
27 hearing, and issues findings under chapter 48.04 RCW to reauthorize the
28 operations of the association. The commissioner must use the criteria
29 in section 3 of this act to reauthorize an association.

30 (2) If the commissioner reauthorizes an association after the first
31 three years, the commissioner must act annually thereafter to
32 reauthorize the association, following the process in subsection (1) of
33 this section.

34 (3) If, at any time, the commissioner provides notice, holds a
35 hearing, and issues findings under chapter 48.04 RCW and finds that
36 adequate liability insurance is available in the voluntary market for

1 the class or type of insurance provided by the association, the
2 commissioner must order the association to end all underwriting
3 operations and supervise the dissolution of the association, including
4 settlement of all financial and legal obligations and distribution of
5 any remaining assets.

6 NEW SECTION. **Sec. 15.** (1) If, under section 13 or 14 of this act,
7 an association is dissolved, all policies must be denied renewal.

8 (2) If a surplus of funds exists when an association is dissolved,
9 the surplus funds must be disbursed to participating insurers.
10 Disbursements must be based on market share, which is determined as
11 follows:

12 (a) For general casualty insurers, a disbursement is based on
13 written general casualty premiums for the most recent calendar year;
14 and

15 (b) For risk retention groups, a disbursement is based on written
16 liability premiums for the most recent calendar year.

17 NEW SECTION. **Sec. 16.** An association is not a member of the
18 Washington insurance guaranty association created under chapter 48.32
19 RCW. The Washington insurance guaranty association, this state, and
20 any political subdivisions of this state are not responsible for losses
21 sustained by an association.

22 NEW SECTION. **Sec. 17.** An association is exempt from payment of
23 all fees and all taxes levied by this state or any of its subdivisions,
24 except taxes levied on real or personal property.

25 NEW SECTION. **Sec. 18.** The commissioner may adopt all rules needed
26 to ensure the efficient, equitable operation of the association.

27 NEW SECTION. **Sec. 19.** If any provision of this act or its
28 application to any person or circumstance is held invalid, the
29 remainder of the act or the application of the provision to other
30 persons or circumstances is not affected.

31 NEW SECTION. **Sec. 20.** This act is necessary for the immediate

1 preservation of the public peace, health, or safety, or support of the
2 state government and its existing public institutions, and takes effect
3 immediately.

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

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