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**SUBSTITUTE HOUSE BILL 2740**

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**State of Washington**

**58th Legislature**

**2004 Regular Session**

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

READ FIRST TIME 02/06/04.

1       AN ACT Relating to a joint underwriting association for persons and  
2 entities that provide services to children and vulnerable adults;  
3 amending RCW 48.88.010, 48.88.020, 48.88.030, 48.88.040, 48.88.050, and  
4 48.88.070; and adding new sections to chapter 48.88 RCW.

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

6       **Sec. 1.** RCW 48.88.010 and 1986 c 141 s 1 are each amended to read  
7 as follows:

8       (~~Day care service providers~~) Persons and entities that provide  
9 services to children and vulnerable adults have experienced major  
10 problems in both the availability and affordability of liability  
11 insurance. Premiums for such insurance policies have recently grown  
12 (~~as much as five hundred percent~~) and the availability of such  
13 insurance in Washington markets has greatly diminished.

14       The availability of quality (~~day care~~) services for children and  
15 vulnerable adults is essential to achieving such goals as increased  
16 work force productivity, family self-sufficiency, and protection for  
17 adults and children at risk (~~due to poverty and abuse~~). The  
18 unavailability of adequate liability insurance threatens to decrease

1 the availability of (~~day care~~) essential services for children and  
2 vulnerable adults.

3 This chapter is intended to remedy the problem of unavailable  
4 liability insurance (~~for day care services~~) by requiring all insurers  
5 authorized to write (~~commercial or professional liability~~) general  
6 casualty insurance to be members of a joint underwriting association  
7 created to provide liability insurance for (~~day care services~~)  
8 persons and entities who provide services to children and vulnerable  
9 adults.

10 **Sec. 2.** RCW 48.88.020 and 1986 c 141 s 2 are each amended to read  
11 as follows:

12 Unless the context clearly requires otherwise, the definitions in  
13 this section apply throughout this chapter.

14 (1) "Association" means the joint underwriting association  
15 established (~~pursuant to the provisions of~~) under this chapter.

16 (2) (~~"Day care~~) "Board" means the governing board of the  
17 association.

18 (3) "Liability insurance" means insurance coverage against the  
19 legal liability of the insured and against loss, damage, or expense  
20 incident to a claim arising out of the death or injury of any person as  
21 the result of negligence or malpractice in rendering professional  
22 service by any licensee.

23 (~~(3)~~) (4) "Licensee" means any (~~person~~) entity or facility  
24 (~~licensed to provide day care~~) providing services (~~pursuant to~~  
25 ~~chapter 74.15 RCW~~) to adult family homes as defined in RCW  
26 70.128.010(1) or children receiving child welfare services as defined  
27 in RCW 74.13.020.

28 **Sec. 3.** RCW 48.88.030 and 1986 c 141 s 3 are each amended to read  
29 as follows:

30 (1) The commissioner (~~shall approve by July 1, 1986,~~) must  
31 appoint a board by July 1, 2004. The governing board is subject to  
32 supervision by the commissioner. Members of the governing board may be  
33 reimbursed by the association for actual and necessary expenses  
34 incurred to attend meetings.

35 (2) The board must develop a reasonable plan (~~for the~~

1 ~~establishment of~~) of operation to establish a nonprofit, joint  
2 underwriting association for (~~day care~~) liability insurance, subject  
3 to the conditions and limitations contained in this chapter.

4 (3) The association must offer coverage by January 1, 2005.

5 **Sec. 4.** RCW 48.88.040 and 1986 c 141 s 4 are each amended to read  
6 as follows:

7 The association shall be comprised of all insurers possessing a  
8 certificate of authority to write and engage in writing (~~property~~  
9 ~~and~~) general casualty insurance within this state on a direct basis,  
10 including the liability portion of multiperil policies, but not of  
11 ocean marine insurance. Every such insurer shall be a member of the  
12 association and shall remain a member as a condition of its authority  
13 to continue to transact business in this state. However, the  
14 commissioner may exclude an insurer or risk retention group if  
15 participation in an association may threaten the solvency of that  
16 insurer or risk retention group.

17 **Sec. 5.** RCW 48.88.050 and 1986 c 141 s 5 are each amended to read  
18 as follows:

19 Any licensee may apply to the association to purchase (~~day care~~)  
20 liability insurance, and the association shall offer a policy with  
21 reasonable liability limits (~~of at least one hundred thousand dollars~~  
22 ~~per occurrence. The commissioner shall require the use of a rating~~  
23 ~~plan for day care insurance that permits rates to be modified for~~  
24 ~~individual licensees according to the type, size and past loss~~  
25 ~~experience of the licensee including any other difference among~~  
26 ~~licensees that can be demonstrated to have a probable effect upon~~  
27 ~~losses~~) as determined by the commissioner based on standard insurance  
28 industry practices.

29 NEW SECTION. **Sec. 6.** A new section is added to chapter 48.88 RCW  
30 to read as follows:

31 (1) An association must be funded by premiums paid by businesses  
32 and entities insured by the association.

33 (a) All premiums must be deposited into a fund under the management  
34 of the association.

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

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

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

7 (c) When determining whether to approve the association's rates and  
8 rating plan, the commissioner must determine that the rates and rating  
9 plan result in premium rates that are not excessive, inadequate, or  
10 unfairly discriminatory. A rate is reasonable and not excessive,  
11 inadequate, or unfairly discriminatory if it is an actuarially sound  
12 estimate of the expected value of all future costs associated with an  
13 individual risk transfer.

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

16 (a) Past and prospective loss experience in Washington state for  
17 experience periods acceptable to the commissioner. If data from  
18 Washington state are not available or are not statistically credible,  
19 the association may use loss experience from those states that are  
20 likely to produce loss experience similar to that in Washington state;

21 (b) Past and prospective operating expenses;

22 (c) Past and prospective investment income;

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

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

26 NEW SECTION. **Sec. 7.** A new section is added to chapter 48.88 RCW  
27 to read as follows:

28 The commissioner may select one or more insurers to manage the  
29 operations of the association established under this chapter. Every  
30 managing insurer must be admitted to transact the business of insurance  
31 in the state of Washington.

32 **Sec. 8.** RCW 48.88.070 and 1986 c 141 s 7 are each amended to read  
33 as follows:

34 The commissioner may adopt all rules necessary to ensure the  
35 efficient, equitable operation of the association, including but not

1 limited to, rules requiring or limiting certain policy provisions or  
2 requiring development and implementation of risk management programs.

3 NEW SECTION. **Sec. 9.** A new section is added to chapter 48.88 RCW  
4 to read as follows:

5 The association is not a member of the guaranty fund created under  
6 chapter 48.32 RCW. The guaranty fund, this state, and any political  
7 subdivisions are not responsible for the losses sustained by the  
8 association.

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