
SENATE BILL 5395

State of Washington

58th Legislature

2003 Regular Session

By Senators Prentice and Winsley; by request of Insurance Commissioner

Read first time 01/23/2003. Referred to Committee on Financial Services, Insurance & Housing.

1 AN ACT Relating to forming market assistance plans and joint
2 underwriting associations; amending RCW 48.22.050; adding a new chapter
3 to Title 48 RCW; and repealing RCW 48.88.010, 48.88.020, 48.88.030,
4 48.88.040, 48.88.050, and 48.88.070.

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

6 **Sec. 1.** RCW 48.22.050 and 1986 c 305 s 906 are each amended to
7 read as follows:

8 (1) For the purposes of this section:

9 (a) "Market assistance plan" means a voluntary mechanism operated
10 by a committee to assist individuals, businesses, and public entities
11 to buy general casualty insurance when it cannot be readily obtained
12 from the voluntary market. A market assistance plan is comprised of
13 both insurers and risk retention groups that write general casualty
14 insurance in this state.

15 (b) "Committee" means a committee comprised of licensed agents,
16 brokers, and insurers designated by the commissioner to coordinate
17 activities of the market assistance plan.

18 (c) "Insurer" means the same as in RCW 48.01.050 and includes
19 unauthorized insurers providing surplus line coverage.

1 (2) The commissioner ((shall by regulation require)) may request
2 insurers authorized to write general casualty insurance in this state
3 to form a market assistance plan ((to assist)) if:

4 (a) Persons and other entities are unable to purchase a particular
5 class or type of general casualty insurance in an adequate amount from
6 either the admitted ((market)) or nonadmitted market((-

7 For the purpose of this section, a market assistance plan means a
8 voluntary mechanism by insurers writing casualty insurance in this
9 state in either the admitted or nonadmitted market to provide casualty
10 insurance for a class of insurance designated in writing to the plan by
11 the commissioner.

12 The bylaws and method of operation of any market assistance plan
13 shall be approved by the commissioner prior to its operation.

14 A market assistance plan shall have a minimum of twenty five
15 insurers willing to insure risks within the class designated by the
16 commissioner. If twenty five insurers do not voluntarily agree to
17 participate, the commissioner may require casualty insurers to
18 participate in a market assistance plan as a condition of continuing to
19 do business in this state. The commissioner shall make such a
20 requirement to fulfill the quota of at least twenty five insurers. The
21 commissioner shall make his or her designation on the basis of the
22 insurer's premium volume of casualty insurance in this state)); or

23 (b) There are so few insurers actively selling insurance in a
24 particular class or type of general casualty insurance that a
25 competitive market does not exist. A competitive market does not exist
26 if the commissioner finds:

27 (i) The capacity of insurers and risk retention groups to provide
28 coverage in a particular class or type of general casualty insurance is
29 inadequate to fulfill the reasonable needs of buyers; or

30 (ii) Underwriting practices of insurers and risk retention groups
31 are so restrictive that a significant number of buyers cannot qualify
32 for a particular class or type of general casualty insurance.

33 (3) A market assistance plan may be established only if the
34 commissioner determines a sufficient number of insurers are willing to
35 insure risks to create a market where insurance is available to
36 standard risks at adequate coverage limits. If, upon the request of
37 the commissioner, an insurer declines to participate in a market

1 assistance plan, the insurer must state both the business and financial
2 reasons why it is unable to participate in the market assistance plan.

3 (4) The commissioner, in consultation with the committee, must
4 develop a plan of operation for the market assistance plan.

5 (5) The market assistance plan may charge a reasonable processing
6 fee to applicants who seek insurance coverage through the market
7 assistance plan.

8 (6) Licensed agents and brokers may receive a reasonable commission
9 for insurance placed in the market assistance plan. The plan of
10 operation may allow a commission to be paid regardless of whether the
11 agent or broker is appointed or otherwise represents the insurer
12 accepting the risk.

13 (7) The commissioner may adopt rules to implement this section.

14 NEW SECTION. Sec. 2. Availability of commercial liability
15 insurance is essential to economic vitality and quality of life in the
16 state of Washington. If adequate commercial liability insurance is not
17 available, the viability of some business operations and services is
18 threatened.

19 This chapter gives the commissioner authority to ensure continued
20 availability of essential commercial liability insurance in this state.
21 The commissioner may establish a temporary market for commercial
22 liability insurance coverage if:

23 (1) Commercial liability insurance of a particular class or type is
24 not available from the voluntary market; or

25 (2) There are so few insurers selling insurance in a particular
26 class or type of casualty insurance that a competitive market does not
27 exist.

28 The commissioner may use appropriated funds as needed to establish
29 and supervise the association.

30 NEW SECTION. Sec. 3. The definitions in this section apply
31 throughout this chapter unless the context clearly requires otherwise.

32 (1) "Association" means the nonprofit joint underwriting
33 association established under this chapter.

34 (2) "Board" means the governing board of the association.

35 (3) "Commercial liability insurance" means any casualty insurance
36 policy that provides coverage to businesses or service providers for

1 legal liability that results from negligent acts or omissions related
2 to their operations. "Commercial liability insurance" does not include
3 any type of:

- 4 (a) Workers' compensation insurance;
- 5 (b) Employer's liability insurance; or
- 6 (c) Nuclear liability insurance.

7 NEW SECTION. **Sec. 4.** (1) The commissioner has authority to create
8 a Washington association to provide a class or type of commercial
9 liability insurance if it is not available through the voluntary
10 market. Coverage through the association is available only if the
11 insurance is required by statute, ordinance, rule, or is necessary to
12 earn a livelihood or conduct business operations in this state. At the
13 discretion of the commissioner:

14 (a) More than one class or type of commercial liability insurance
15 may be offered by a single association; and

16 (b) An association may be required to write an additional class or
17 type of commercial liability insurance if the remaining requirements of
18 this section are met.

19 (2) The commissioner must attempt to form a market assistance plan
20 under RCW 48.22.050 before implementing this chapter.

21 (3)(a) The commissioner must provide notice and opportunity for
22 hearing under chapter 48.04 RCW before forming or ending the operations
23 of the association.

24 (b) The association may not begin underwriting operations for any
25 class or type of commercial liability insurance until the commissioner
26 finds that:

27 (i) Certain businesses or service providers cannot buy essential
28 commercial liability insurance through the voluntary market; or

29 (ii)(A) There are so few insurers actively selling insurance in a
30 particular class or type of commercial liability insurance that a
31 competitive market does not exist; and

32 (B) Other mechanisms, such as a voluntary market assistance plan,
33 will not provide an adequate market for these businesses or service
34 providers.

35 (4) The association may not offer insurance coverage to any person
36 or entity the board decides is outside the scope and purpose for which
37 the association was formed.

1 (5) The association may decline to insure persons or entities that
2 present an extraordinary risk because of the nature of their
3 operations, past claims experience, or inadequate risk management
4 program.

5 (a) Any decision to decline coverage must be documented and may be
6 reviewed by the commissioner.

7 (b) If the commissioner finds that either the documentation or
8 criteria used to decline coverage is inadequate, the commissioner may
9 require the association to provide coverage.

10 (c) The association may appeal a decision of the commissioner under
11 chapter 48.04 RCW.

12 NEW SECTION. **Sec. 5.** The association is comprised of all:

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

15 (2) Risk retention groups that are chartered and licensed to write
16 liability insurance in this state.

17 Every general casualty insurer and risk retention group must be a
18 member of the association as a condition of its authority to continue
19 to transact business in this state.

20 NEW SECTION. **Sec. 6.** (1) A person or entity that cannot buy
21 commercial liability insurance that the commissioner has found to be
22 unavailable under section 4 of this act is eligible to apply to the
23 association for insurance.

24 (2) The commissioner must permit the association to use a rating
25 plan to develop insurance premiums. Any rating plan used by the
26 association for premium development must be based on sound actuarial
27 principles. The rating plan must result in premium rates that are not
28 excessive, inadequate, or unfairly discriminatory.

29 NEW SECTION. **Sec. 7.** (1) The commissioner must appoint a
30 governing board to administer the association.

31 (a) The board is subject to the supervision by the commissioner.

32 (b) Members of the board may be reimbursed by the association for
33 actual and necessary expenses incurred to attend meetings.

34 (2) The commissioner may select one or more insurers to manage the
35 operations of the association. Every managing insurer must be admitted

1 to transact the business of insurance in the state of Washington and
2 have demonstrated expertise in the type of commercial liability
3 insurance coverage that it manages.

4 NEW SECTION. **Sec. 8.** (1) The association has the general
5 corporate powers and authority granted under the laws of the state of
6 Washington.

7 (2) The board must adopt a plan of operation and submit the plan to
8 the commissioner. The plan of operation may take affect only after it
9 has been approved by the commissioner.

10 (a) The plan of operation may be amended.

11 (b) All amendments are subject to review and approval by the
12 commissioner.

13 (3) If the board does not submit a suitable plan of operation
14 within one hundred eighty days after the board has been appointed, the
15 commissioner may adopt rules to implement this chapter.

16 NEW SECTION. **Sec. 9.** The association must establish a risk
17 management program for persons or entities insured by the association.
18 The risk management program must include:

19 (1) Standards for systematic investigation and reporting of claims
20 and incidents; and

21 (2) A loss control program. The loss control program must include
22 procedures that:

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

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

25 (c) Develop measures to control losses;

26 (d) Monitor the effectiveness of the loss control measures that are
27 implemented; and

28 (e) Educate insured persons or entities on methods to reduce or
29 prevent losses.

30 NEW SECTION. **Sec. 10.** The association must file a statement
31 annually with the commissioner that contains information about the
32 association's transactions, financial condition, and operations during
33 the preceding year. The statement must be in the form and according to
34 instructions adopted by the national association of insurance
35 commissioners for property and casualty insurers and include all of the

1 information stipulated by the commissioner. The association must
2 maintain its records according to the accounting practices and
3 procedures manual adopted by the national association of insurance
4 commissioners. The commissioner shall establish rules for the form and
5 content of this statement. The commissioner may require the
6 association to furnish additional information if the commissioner
7 considers it necessary to evaluate the scope, operation, and experience
8 of the association.

9 NEW SECTION. **Sec. 11.** (1) The commissioner must examine the
10 transactions, financial condition, and operations of the association at
11 least once every five years. Each examination must be conducted in the
12 manner prescribed for domestic insurance companies in chapter 48.03
13 RCW.

14 (2) The commissioner or designee may visit and examine the
15 operation and experience of the association at any time. The
16 commissioner or designee must have free access to all the books,
17 records, files, papers, and documents that relate to the operation of
18 the association, and may summon, qualify, and examine as witnesses all
19 persons having knowledge of the association's operations.

20 NEW SECTION. **Sec. 12.** (1) The association is a legal entity
21 separate and distinct from its members.

22 (2) Liability or a cause of action may not arise against the
23 following for any acts or omissions made in good faith while performing
24 their duties under this chapter:

- 25 (a) The association or any participating insurer;
- 26 (b) The commissioner or any of the commissioner's staff;
- 27 (c) The commissioner's authorized representatives; or
- 28 (d) Any other person or organization.

29 (3) The state is not liable to pay any debts or obligations of the
30 association.

31 (4) A person may not assert any claim against the state, its
32 agencies, or any of its employees for any act or omission of the
33 association.

34 NEW SECTION. **Sec. 13.** The association is not a member of the

1 guaranty fund created under chapter 48.32 RCW. The guaranty fund, this
2 state, and any political subdivisions are not responsible for losses
3 sustained by the association.

4 NEW SECTION. **Sec. 14.** The association is exempt from payment of
5 all fees and all taxes levied by this state or any of its subdivisions,
6 except taxes levied on real or personal property.

7 NEW SECTION. **Sec. 15.** (1) The association will be funded by
8 premiums paid by people and entities insured by the association.

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

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

13 (2) The association may assess all general casualty insurers and
14 risk retention groups to pay past and future financial obligations.

15 (3) If the association decides it must make an assessment, an
16 assessed insurer or risk retention group must pay the association
17 within thirty days after it receives notice of the assessment. If an
18 insurer or risk retention group does not pay an assessment within
19 thirty days after it receives notice of the assessment:

20 (a) The assessment accrues interest at the maximum legal rate until
21 it is paid in full. The interest is paid to the association; and

22 (b) The commissioner may suspend, revoke, or refuse to renew an
23 insurer's certificate of authority; and

24 (c) The commissioner may fine the insurer or risk retention group
25 up to ten thousand dollars.

26 NEW SECTION. **Sec. 16.** (1) An association may operate for a period
27 of three years. At the end of the three-year period, the association
28 must be dissolved unless the commissioner provides notice and
29 opportunity for hearing under chapter 48.04 RCW to reauthorize the
30 operations of the association.

31 (2) If, at any time, the commissioner provides notice and
32 opportunity for hearing under chapter 48.04 RCW and determines that
33 adequate commercial liability insurance is available in the voluntary
34 market for:

1 (a) A class or type of insurance provided by the association, the
2 commissioner shall order the association to end its underwriting
3 operations for that class or type of insurance; or

4 (b) All classes or types of insurance provided by the association,
5 the commissioner shall order the association to end all underwriting
6 operations and supervise the dissolution of the association, including
7 settlement of all financial and legal obligations and distribution of
8 any remaining assets.

9 NEW SECTION. **Sec. 17.** The commissioner may adopt all rules needed
10 to ensure the efficient, equitable operation of the association,
11 including but not limited to rules:

- 12 (1) Requiring or limiting certain policy provisions;
- 13 (2) Assessing members for operation of the association; and
- 14 (3) Necessary to implement and administer this chapter.

15 NEW SECTION. **Sec. 18.** Sections 2 through 17 of this act
16 constitute a new chapter in Title 48 RCW.

17 NEW SECTION. **Sec. 19.** The following acts or parts of acts are
18 each repealed:

- 19 (1) RCW 48.88.010 (Intent) and 1986 c 141 s 1;
- 20 (2) RCW 48.88.020 (Definitions) and 1986 c 141 s 2;
- 21 (3) RCW 48.88.030 (Plan for joint underwriting association) and
22 1986 c 141 s 3;
- 23 (4) RCW 48.88.040 (Association--Membership) and 1986 c 141 s 4;
- 24 (5) RCW 48.88.050 (Policies--Liability limits--Rating plan) and
25 1986 c 141 s 5; and
- 26 (6) RCW 48.88.070 (Rules) and 1986 c 141 s 7.

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