

---

SENATE BILL 6725

---

State of Washington

58th Legislature

2004 Regular Session

By Senators Franklin, Kline, Brown and Keiser

Read first time 02/05/2004. Referred to Committee on Financial Services, Insurance & Housing.

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) "Adult family home" has the same meaning as defined in RCW  
8 70.128.010(1).

9 (2) "Association" means a not-for-profit joint underwriting  
10 association established under this chapter.

11 (3) "Board" means the governing board of the association.

12 (4) "Community residential program" means an entity that contracts  
13 with the department of social and health services to provide  
14 individualized support services that enable people with developmental  
15 disabilities to live in community residential settings.

16 (5) "Contractor" has the same meaning as defined in RCW  
17 18.27.010(1).

18 (6) "Health care clinic" means a legal entity formed by a group or  
19 partnership of physicians to provide health care services.

1 (7) "Hospital" has the same meaning as defined in RCW 70.41.020(4).

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

6 (9) "Voluntary market" includes authorized insurers and surplus  
7 lines insurers.

8 NEW SECTION. **Sec. 2.** Subject to section 3 of this act, the  
9 commissioner must create a Washington association to provide liability  
10 insurance for:

- 11 (1) Adult family homes;
- 12 (2) Community residential programs;
- 13 (3) Contractors;
- 14 (4) Hospitals; or
- 15 (5) Health care clinics.

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

19 (2) The commissioner may not form an association unless the  
20 commissioner finds that:

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

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

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

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

33 (3) The commissioner may find that:

34 (a) Liability insurance is available for certain classes or types  
35 of businesses or entities described in section 2 of this act; and

1 (b) Liability insurance is not available for other classes or types  
2 of businesses or entities described in section 2 of this act.

3 (4) If the commissioner makes a finding under subsection (3) of  
4 this section, the commissioner must specify, in accord with that  
5 finding, which classes or types of businesses or entities are eligible  
6 to apply to the association for coverage.

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

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

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

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

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

21 (b) The association must have a formal appeal process for  
22 applicants who are declined coverage through the association. Criteria  
23 for the association's appeal process are subject to approval by the  
24 commissioner.

25 NEW SECTION. **Sec. 5.** (1) A single association may be formed to  
26 provide coverage for all the types of businesses and entities listed in  
27 section 2 of this act.

28 (2) An association is comprised of:

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

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

33 (3) Every general casualty insurer and risk retention group must be  
34 a member of the association as a condition of its authority to continue  
35 to transact business in this state.

1 (4) The commissioner may exclude an insurer or risk retention group  
2 if participation in an association may threaten the solvency of that  
3 insurer or risk retention group.

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

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

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

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

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

14 (c) When determining whether to approve the association's rates and  
15 rating plan, the commissioner must determine that the rates and rating  
16 plan result in premium rates that are not excessive, inadequate, or  
17 unfairly discriminatory. A rate is reasonable and not excessive,  
18 inadequate, or unfairly discriminatory if it is an actuarially sound  
19 estimate of the expected value of all future costs associated with an  
20 individual risk transfer.

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

23 (a) Past and prospective loss experience in Washington state for  
24 experience periods acceptable to the commissioner. If data from  
25 Washington state are not available or are not statistically credible,  
26 the association may use loss experience from those states which are  
27 likely to produce loss experience similar to that in Washington state;

28 (b) Past and prospective operating expenses;

29 (c) Past and prospective investment income;

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

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

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

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

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

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

6 (1) Standards for systematic investigation and reporting of claims  
7 and incidents; and

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

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

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

12 (c) Develop measures to control losses;

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

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

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

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

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

24 (a) An association or any participating insurer;

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

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

27 (d) Any other person or organization.

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

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

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

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

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

5 (c) The association may reimburse board members who attend  
6 meetings.

7 (i) Board members may be reimbursed for actual and necessary  
8 expenses.

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

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

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

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

19 (b) A process to assess members for operation of an association;  
20 and

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

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

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

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

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

35 (a) For general casualty insurers, an assessment is based on

1 written general casualty premiums for the most recent calendar year;  
2 and

3 (b) For risk retention groups, an assessment is based on written  
4 liability premiums for the most recent calendar year.

5 (2) If an association decides it must make an assessment, an  
6 assessed insurer or risk retention group must pay the association  
7 within thirty business days after it receives notice of the assessment.  
8 If an insurer or risk retention group does not pay an assessment within  
9 thirty business days after it receives notice of the assessment:

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

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

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

16 (3) The commissioner may order the association not to assess a  
17 particular insurer or risk retention group if the assessment may  
18 threaten the solvency of that insurer or risk retention group. Data  
19 used by the commissioner to make this determination are subject to  
20 confidential review by the board.

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

26 (a) Be in the form and according to instructions adopted by the  
27 national association of insurance commissioners for property and  
28 casualty insurers; and

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

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

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

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

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

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

10 (a) Financial condition of the association;

11 (b) Condition of the voluntary market for those classes or types of  
12 insurance available through the association; and

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

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

16 (a) Certain classes or types of liability insurance may no longer  
17 be offered by the association; or

18 (b) The association must be dissolved.

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

25 (2) If the commissioner reauthorizes an association after the first  
26 three years, the commissioner must act annually thereafter to  
27 reauthorize the association, following the process in subsection (1) of  
28 this section.

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

32 (a) A class or type of insurance provided by the association, the  
33 commissioner must order the association to end its underwriting  
34 operations for that class or type of insurance; or

35 (b) All classes or types of insurance provided by the association,  
36 the commissioner must order the association to end all underwriting



1 operations and supervise the dissolution of the association, including  
2 settlement of all financial and legal obligations and distribution of  
3 any remaining assets.

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

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

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

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

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

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

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

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

29 NEW SECTION. **Sec. 20.** This act is necessary for the immediate  
30 preservation of the public peace, health, or safety, or support of the  
31 state government and its existing public institutions, and takes effect  
32 immediately.

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

--- END ---