
Financial Institutions & Insurance Committee

HB 2560

Brief Description: Regulating joint underwriting associations.

Sponsors: Representatives Orwall, Upthegrove, Quall, Simpson, Nelson and Morrell; by request of Insurance Commissioner.

Brief Summary of Bill

- Grants the Insurance Commissioner the authority to create a joint underwriting authority for excess flood insurance.
- Grants the Insurance Commissioner the authority to create market assistance plans for property insurance.

Hearing Date: 1/13/10

Staff: Jon Hedegard (786-7127).

Background:

Flood Insurance

In 1968, the federal government created the National Flood Insurance Program (NFIP) to limit flood damage and to provide coverage. According to the NFIP, approximately 32 insurers participate in the NFIP in Washington. There is no state oversight of the NFIP policies. The NFIP policies may be offered by participating insurers and their agents. Agents licensed in Washington who sell federal flood insurance policies are required by state law to comply with the minimum training requirements required by the Federal Emergency Management Agency. Flood insurance is not generally provided by the authorized insurance market. Flood damage is excluded in most private property insurance policies. Flood coverage may be available above the NFIP policy limits, often in the surplus lines markets.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

NFIP policy limits are generally as follows (higher limits of building coverage may be available in Alaska, Hawaii, the U.S. Virgin Islands, and Guam):

Building Coverage

Single-family dwelling	\$250,000
Other residential	\$250,000
Non-residential	\$500,000

Contents Coverage

Residential	\$100,000
Non-residential	\$500,000

Market Assistance Plans (MAPs)

A MAP is a voluntary mechanism by insurers writing casualty insurance in this state (in either the admitted or nonadmitted market) to provide casualty insurance for a class of insurance. The bylaws and method of operation of any MAP must be approved by the Insurance Commissioner (Commissioner) prior to its operation. A MAP must have a minimum of 25 insurers willing to insure risks within the designated class of insurance. The Commissioner can compel casualty insurers to participate to fulfill the quota. The Commissioner's requirement is a condition of continuing to do business in this state. The Commissioner's designation must be based on the insurer's premium volume of casualty insurance in this state. Essentially, a MAP does not provide or require coverage. Instead, it is a mechanism intended to allow the potential insured to have their application reviewed by the MAP participants.

Joint Underwriting Authorities (JUAs)

A JUA is a statutorily created entity authorized by the Legislature to provide coverage in specific markets where insurance is all but unavailable. A JUA is generally intended to solve issues of availability of insurance, though it may have some impact on affordability also. Once a JUA is authorized, the Commissioner usually has the authority to establish a nonprofit entity that provides insurance coverage to a specified class of prospective insureds. The JUA is comprised of insurers who can be compelled to participate as a condition of continuing to do business in this state. Those insurers are usually licensed to sell that type of product. To help fund the JUA, the Commissioner may impose monetary assessments. The Commissioner usually adopts a plan of operation by rule. That plan may be developed primarily by the Commissioner or the participating insurers. Administration of the JUA may be contracted to a servicing insurer. Rates and forms are usually established by the JUA's member insurers. Those rates and forms are subject to the same standards as is applicable in the standard market.

There are 2 statutorily created JUAs in the state;

- the Day Care JUA, established in 1986 but never activated; and
- the Midwives' JUA created in 1993.

Midwives' JUA

The JUA providing midwifery and birth center malpractice insurance was activated after a MAP did not resolve market issues. The Midwives' JUA is governed by a board of representatives from member insurers, the service insurer, and other industry licensees. Board members are appointed by the Commissioner. Standards for eligibility for coverage are established by rule. Member insurers are insurers that have a certificate of authority to write medical malpractice,

general casualty insurance, or both, in Washington. Under state law, all member insurers are liable for the assessment for the startup costs of the JUA. Any ongoing assessment is based on "direct premiums earned" in Washington for "medical malpractice" and for specific "other liability" on the member insurer's most recent annual statement. By rule, member insurers reporting zero "direct premiums earned" in those areas are not assessed.

Summary of Bill:

"Excess flood insurance" is defined as "insurance against loss arising from flood that is in excess of the limit of liability insurance offered by" the NFIP.

Establishment of a Joint Underwriting Association for Excess Flood Insurance (Flood JUA)

The Commissioner may establish a Flood JUA. The Commissioner must hold a hearing before forming a Flood JUA. A Flood JUA may not begin underwriting operations for excess flood insurance until the Commissioner finds that:

- persons, businesses, or service providers cannot buy excess flood insurance through the voluntary market; or
- there are so few insurers selling excess flood insurance that a competitive market does not exist.

The Commissioner's finding that excess flood insurance is unavailable through the voluntary market or that a competitive market does not exist is a rebuttable presumption. At the hearing to contest the finding, it is the burden of the person challenging the finding to establish by a preponderance of the evidence that excess flood insurance is available through the voluntary market or that a competitive market does exist.

Qualifications to be Insured Under the Flood JUA

If a Flood JUA is formed, a person that is unable to obtain excess flood insurance because it is unavailable in the voluntary market or because the market is not competitive is eligible to apply to an association for insurance. The Flood JUA may decline to insure persons that present an extraordinary risk because of the nature of their operations, property condition, past claims experience, or inadequate risk management. However, the mere location of the property does not constitute an extraordinary risk. Any denial of coverage must include:

- a statement of the actual reason for declination; and
- a statement that the applicant may appeal the decision to the Commissioner.

If the Commissioner finds that the decision to decline coverage is not supported by the criteria, the Commissioner may require the Flood JUA to provide coverage. A decision of the Commissioner to provide or to decline to provide coverage may be appealed administratively.

Flood JUA members

Every insurer that has a certificate of authority to write either casualty or property insurance, or both, in this state must be a member of the Flood JUA as a condition of its authority to continue to transact business in this state.

Governing Board

The Commissioner must appoint a governing board to administer the Flood JUA. The board is subject to the supervision of the Commissioner. The board may select one or more persons to

manage the operations of the Flood JUA. A manager must be authorized to transact insurance in the state and have demonstrated expertise in excess flood insurance.

The board must consist of seven persons appointed by the Commissioner.

- Four board members must be member insurers, at least one must be a domestic insurer.
- Three board members must be citizens. They may not be employed by, serve on the board of directors of, or have a substantial ownership interest in any insurer.

Three of the board members must be appointed to serve an initial term of three years, two must be appointed to serve an initial term of two years, and the two remaining members must be appointed to serve a one-year initial term. All other terms are for three years or until a successor has been appointed. Members of the board may be removed by the Commissioner.

Indemnification by the Flood JUA is required for costs and expenses in connection with the defense of any action or suit related to the performance of duties for:

- board members;
- officers or employees of Flood JUA; and
- member insurers.

Indemnification is not available for willful misconduct

Board members may be reimbursed by the Flood JUA for actual and necessary expenses incurred to attend meetings.

Flood JUA Plan of Operation

The board must adopt a plan of operation within 30 days of its appointment. The plan of operation may take effect only after approval by the Commissioner. If the board does not adopt a plan of operation acceptable to the Commissioner within 30 days of its appointment, the Commissioner may order the board to adopt a plan of operation chose by the Commissioner. A plan of operation may be amended. All amendments are subject to the approval of the Commissioner.

Rates

The Flood JUA must use rates that comply with chapter 48.19 RCW and that have been approved by the Commissioner.

Annual Statement and Reporting

The Flood JUA must file a statement annually with the Commissioner that contains information about Flood JUA's transactions, financial condition, and operations during the preceding year. The statement must be in the form and in a manner approved by the Commissioner. The Commissioner may require the Flood JUA to furnish additional information.

Examinations

The Commissioner may examine the transactions, financial condition, and operations of the Flood JUA. A Flood JUA is responsible for the total costs of its examinations.

Taxes and the Liability of the Guaranty Fund

The Flood JUA is exempt from payment of all fees and all taxes levied by the state or any of its subdivisions, except taxes levied on real or personal property.

The Flood JUA is not a member of the guaranty fund created in the Washington Insurance Guaranty Association Act. The guaranty fund created under chapter 48.32 RCW, the state, and any political subdivisions are not responsible for losses sustained by the Flood JUA.

Funding of the JUA

The Flood JUA is funded by premiums paid by persons insured by the Flood JUA.

The Flood JUA may assess its members to pay past and future financial obligations of the Flood JUA, not funded by premiums. An assessed insurer must pay within 30 days after it receives notice of the assessment. If an insurer does not pay an assessment in a timely manner:

- the assessment accrues interest at the maximum legal rate until it is paid in full. The interest is paid to the Flood JUA;
- the Flood JUA may collect the assessment in a civil action and must be awarded its attorneys' fees if it prevails;
- the Commissioner may suspend, revoke, or refuse to renew an insurer's certificate of authority; and
- the Commissioner may fine the insurer up to \$10,000.

Duration of the Flood JUA

The Flood JUA may operate for a period of five years. At the end of the five-year period, the Flood JUA must be dissolved unless the legislature authorizes its continued operation. If the Commissioner holds a hearing and determines that excess flood insurance is available in the voluntary market or that a competitive market exists, the Commissioner must order the Flood JUA to end its underwriting operations.

Dissolution of the JUA

If the Commissioner orders the Flood JUA to end all underwriting operations, the Commissioner must supervise the dissolution of the Flood JUA, including settlement of all financial and legal obligations and distribution of any remaining assets.

Rule-making Authority

The Commissioner may adopt all rules needed to implement and administer this chapter and to ensure the efficient operation of the Flood JUA, including but not limited to rules:

- creating plans of operation;
- requiring or limiting certain policy provisions;
- regarding the basis and method for assessing members of the Flood JUA; and
- establishing the order in which the assets of a dissolved Flood JUA must be distributed.

Market Assistance Plans (MAPs)

The Commissioner must by rule require insurers authorized to write property insurance in this state to form a MAP to assist persons and other entities unable to purchase vital property insurance in an adequate amount from either the admitted market or nonadmitted market. The bylaws and method of operation of any market assistance plan must be approved by the Commissioner prior to its operation. A MAP must have a minimum of 25 insurers willing to insure risks within the class designated by the Commissioner. If 25 insurers do not voluntarily

agree to participate, the Commissioner may require certain insurers to participate in a MAP as a condition of continuing to do business in this state. This requirement may be imposed on property insurers, casualty insurers, or insurers licensed to sell property and casualty insurance. The Commissioner must make such a requirement to fulfill the quota of at least 25 insurers. The Commissioner must make his or her designation on the basis of the insurer's premium volume of property insurance in this state.

Appropriation: None.

Fiscal Note: Available.

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