

SENATE BILL REPORT

ESHB 2560

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, February 23, 2010

Title: An act relating to forming joint underwriting associations.

Brief Description: Forming joint underwriting associations.

Sponsors: House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Orwall, Upthegrove, Quall, Simpson, Nelson and Morrell; by request of Insurance Commissioner).

Brief History: Passed House: 2/12/10, 66-30.

Committee Activity: Financial Institutions, Housing & Insurance: 2/23/10 [DP, DNP, w/oRec].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: Do pass.

Signed by Senators Berkey, Chair; Hobbs, Vice Chair; Franklin and McDermott.

Minority Report: Do not pass.

Signed by Senator Schoesler.

Minority Report: That it be referred without recommendation.

Signed by Senator Parlette.

Staff: Diane Smith (786-7410)

Background: Casualty insurance includes the following: vehicle insurance; liability insurance for death, injury, or disability of persons and associated medical insurance and funeral benefits; workers' compensation; insurance for losses caused by property crimes; insurance for damage to personal effects; insurance for liability for damage to property caused by boiler explosions; insurance against damage to property caused by water leaks; credit insurance; and insurance against any other kind of loss, damage, or liability.

Property insurance is insurance against loss of, or damage to, real or personal property from any cause, including losses from consequential damage.

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.

Overall, premium rates for insurance must not be excessive, inadequate, or unfairly discriminatory. In addition, premium rates must meet specific criteria, such as being based upon loss experience, operating expenses, and investment income, among other criteria.

The Washington Insurance Guaranty Association pays claims in excess of \$100 but less than \$300,000 of policyholders when the policyholder's insurance company becomes insolvent and the claim otherwise qualifies.

The federal government offers flood insurance. Coverage for flood damage in excess of the maximum coverage the federal government offers is called excess flood insurance.

A market assistance plan (MAP) is a voluntary mechanism whereby casualty insurers provide casualty insurance for a class of insurance that the Insurance Commissioner (commissioner) designates. The commissioner must establish a MAP when persons are not able to purchase casualty insurance in an adequate amount from either the admitted or nonadmitted market. A MAP must have at least 25 insurers that are willing to participate. If the quota of 25 is not reached voluntarily, then the commissioner can require casualty insurers to participate as a condition of continuing to do business in this state.

Summary of Bill: For purposes of this joint underwriting association and MAP, insurance does not include personal insurance or surety insurance.

If the commissioner first convenes a MAP and finds either that business interruption or excess flood insurance is not available in the area protected by a U.S. Army Corps of Engineers dam in a county with a population over one million people, or that there are so few insurers selling it that a competitive market does not exist, then the commissioner has the authority to establish a nonprofit underwriting association (association). The standard for availability is four or more insurers offering coverage. A seven-member governing board is appointed to administer the association.

If an association is established, a person in the area protected by a U.S. Army Corps of Engineers dam in a county with a population over one million people and who is unable to obtain excess flood insurance because it is unavailable in the voluntary market or because the market is not competitive, may apply to the association for insurance. The rates charged to the association's policyholders are set according to existing law. Those premiums fund the association. Premiums must be used to pay claims and expenses of the association.

If there are costs above the amount of premiums, the association may assess its member-insurers. Any assessment not paid within 30 days accrues interest at the maximum rate and may be collected by the association in a civil action, with the recovery including attorneys' fees if the association prevails. The commissioner may also revoke the insurer's certificate of authority, refer enforcement of the matter to the prosecutor, and levy a fine of up to \$10,000.

All insurers with a certificate of authority to write either casualty or property insurance, or both, exclusive of personal insurance and surety insurance, must be members of the association. The term of the association is five years unless the Legislature authorizes its continued operation. The statutory authority for the association ends on December 31, 2016.

The maximum liability of the association is \$250 million. The maximum dollar value of coverage of any one policy cannot exceed \$5 million.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: PRO: This bill is needed to provide stability and protection for the 86,000 jobs, 30 percent of which are manufacturing in the Valley. The maximum combined \$1 million federal flood insurance is inadequate to cover many of these businesses that have a heavy investment in machinery. Likewise, the distributors in the Valley, which is the second largest distribution center on the West Coast, must have business interruption insurance which is not available from the federal program. Given that this is new territory full of difficult information, this bill is acceptable. It is a good first step with the limitation to commercial insurance and the caps. Even those businesses that have had Lloyds of London excess coverage for years' past have found this coverage cancelled by Lloyds due to the recent issues with the soundness of the Howard Hanson Dam. Even though the risk for a catastrophic flood has dropped from one in three to much less, excess flood and business interruption insurance is still unavailable.

CON: While this bill provides greater predictability, there is still some potential for responsibility to be assigned to unrelated lines of insurance. Now that the MAP must come first, we remain confident that the MAP will be a success and the formation of the JUA will be moot.

OTHER: The changes to this bill have moved us from opposing it to not opposing it, especially due to the exclusion of personal lines. Thank you for your hard work.

Persons Testifying: PRO: Senator Keiser, sponsor of Senate companion bill (SB 6240); Representative Orwall, prime sponsor; Suzette Cooke, Mayor, City of Kent; Teresa Hutchens, Plemmons Industries.

CON: Mel Sorensen, Property Casualty Insurers Association; Cliff Webster, American Insurance Association.

OTHER: Jean Leonard, Washington Insurers; Carrie Tellefson, Progressive Insurance.