
SUBSTITUTE SENATE BILL 6240

State of Washington

61st Legislature

2010 Regular Session

By Senate Financial Institutions, Housing & Insurance (originally sponsored by Senators Keiser, Eide, Kauffman, Gordon, and McDermott; by request of Insurance Commissioner)

READ FIRST TIME 01/28/10.

1 AN ACT Relating to forming joint underwriting associations;
2 amending RCW 48.15.040; adding a new chapter to Title 48 RCW; providing
3 an expiration date; and declaring an emergency.

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

5 NEW SECTION. **Sec. 1.** Availability of insurance for loss arising
6 from flooding in the geographical area protected by any dam on the
7 Green river is vital to the economy of the state of Washington. If
8 adequate property insurance for loss arising from this flood is not
9 available, the security of citizens' property and the viability of
10 business operations and services are threatened. This chapter gives
11 the commissioner authority to ensure continued availability of excess
12 insurance to insure property at risk from, and business that is
13 interrupted by, flood arising from the failure of a dam on the Green
14 river or from efforts to prevent the failure of a dam on the Green
15 river. The commissioner may establish a temporary joint underwriting
16 association for excess flood insurance to insure property at risk from,
17 and business that is interrupted by, flood arising from the failure of
18 a dam on the Green river or from efforts to prevent the failure of a
19 dam on the Green river if:

1 (1) Excess flood insurance of a particular class or type is not
2 available from the voluntary market; or

3 (2) There are so few insurers selling excess flood insurance that
4 a competitive market does not exist.

5 The commissioner may use appropriated funds as needed to establish
6 and supervise the association.

7 NEW SECTION. **Sec. 2.** The definitions in this section apply
8 throughout this chapter unless the context clearly requires otherwise.

9 (1) "Association" means a nonprofit underwriting association
10 established under this chapter.

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

12 (3) "Casualty insurance" has the same meaning as "general casualty
13 insurance" in RCW 48.11.070. "Casualty insurance" does not include any
14 type of:

15 (a) Workers' compensation insurance;

16 (b) Employers' liability insurance;

17 (c) Nuclear liability insurance; or

18 (d) Surety insurance.

19 (4) "Excess flood insurance" means insurance against loss,
20 including business interruption, arising from flood that is in excess
21 of the limit of liability insurance offered by the national flood
22 insurance program.

23 (5) "Person" means a natural person, association, partnership, or
24 corporation.

25 (6) "Property insurance" has the same meaning as in RCW 48.11.040
26 and does not include surety insurance.

27 NEW SECTION. **Sec. 3.** (1) The commissioner may create an
28 association to provide excess flood insurance to insure property at
29 risk from, and business that is interrupted by, flood arising from the
30 failure of a dam on the Green river or from efforts to prevent the
31 failure of a dam on the Green river if the requirements of this section
32 are met.

33 (2) The commissioner must hold a hearing under chapters 48.04 and
34 34.05 RCW before forming an association.

35 (3) An association may not begin underwriting operations for excess

1 flood or business interruption insurance until the commissioner finds
2 that:

3 (a) If a market assistance plan formed under section 15 of this act
4 finds that there are fewer than four admitted or surplus lines insurers
5 offering excess flood insurance, exclusive of personal insurance, then
6 the market assistance plan is inadequate to insure property at risk
7 from, and business that is interrupted by, flood arising from the
8 failure of a dam on the Green river or from efforts to prevent the
9 failure of a dam on the Green river;

10 (b) Persons cannot buy excess flood insurance through the voluntary
11 market; or

12 (c) There are so few insurers selling excess flood insurance that
13 a competitive market does not exist.

14 (4) At a hearing to appeal the commissioner's finding that excess
15 flood insurance is unavailable through the voluntary market or that a
16 competitive market does not exist, the finding that four or more
17 admitted or surplus lines insurers are offering excess flood insurance,
18 exclusive of personal insurance, is prima facie evidence that a
19 competitive market does exist. A decision of the commissioner, finding
20 that excess flood insurance is unavailable through the market
21 assistance plan, voluntary market, or that a competitive market does
22 not exist, may be appealed under chapters 48.04 and 34.05 RCW.

23 NEW SECTION. **Sec. 4.** (1) The association may offer policies only
24 as follows:

25 (a) The coverage of any one policy may not exceed five million
26 dollars; and

27 (b) The total amount of all coverage offered by the association may
28 never exceed two hundred fifty million dollars.

29 (2) The board, jointly with the commissioner, shall apportion
30 policies within these limitations on an equitable basis.

31 NEW SECTION. **Sec. 5.** (1) If an association is formed, a person
32 that is unable to obtain excess flood or business interruption
33 insurance because it is unavailable in the voluntary market or because
34 the market is not competitive is eligible to apply to an association
35 for insurance.

1 (2) The association may decline to insure particular persons that
2 present an extraordinary risk because of the nature of their
3 operations, property condition, past claims experience, or inadequate
4 risk management. However, the location of a property for which
5 insurance is sought from the association must not, in and of itself,
6 constitute an extraordinary risk.

7 (3) Any decision to decline coverage must be sent to the applicant
8 and include:

9 (a) A statement of the actual reason for declination; and

10 (b) A statement that the applicant may appeal the decision to the
11 commissioner.

12 (4) If the commissioner finds that the decision to decline coverage
13 is not supported by the criteria in this section, the commissioner may
14 require the association to provide coverage.

15 (5) A decision of the commissioner to provide or to decline to
16 provide coverage under this may be appealed under chapters 48.04 and
17 34.05 RCW.

18 NEW SECTION. **Sec. 6.** (1) The association is composed of all
19 insurers that have a certificate of authority to write either casualty
20 or property insurance, or both, in this state. Every property or
21 casualty insurer, or both, must be a member of the association as a
22 condition of its authority to continue to transact business in this
23 state.

24 (2) The association has the general powers and limitations of a
25 nonprofit corporation under chapter 24.03 RCW and of an insurance
26 company under Title 48 RCW, as needed to transact its business.

27 (3) To the extent consistent with this chapter, the association and
28 its member insurers are "persons" under chapter 48.30 RCW.

29 NEW SECTION. **Sec. 7.** (1) A governing board shall administer the
30 association.

31 (2) The board and the commissioner shall work cooperatively to
32 achieve the objectives of this chapter.

33 (3) The board may select and employ one or more persons to manage
34 the operations of an association. Every managing person must be
35 authorized to transact insurance in the state of Washington and have

1 demonstrated expertise in excess flood insurance. The board may employ
2 any advisors that the board deems necessary.

3 (4) The board must consist of seven persons appointed as set forth
4 in this subsection.

5 (a) Four board members must be member insurers appointed by each of
6 the following four trade associations: Property casualty insurers
7 association of America, American insurance association, national
8 association of mutual insurance companies, and Washington insurers.

9 (b) Three board members must be residents of the state. Two are
10 appointed by the state auditor. One is appointed by the state
11 treasurer. None of the resident-appointees may be employed by, serve
12 on the board of directors of, or have a substantial ownership interest
13 in any insurer.

14 (c) Three of the original board members must be appointed to serve
15 an initial term of three years, two must be appointed to serve an
16 initial term of two years, and the two remaining members must be
17 appointed to serve a one-year initial term. All other terms are for
18 three years or until a successor has been appointed. Only one member
19 insurer in a group under the same management or ownership may serve on
20 the board at the same time. At least one of the four insurers on the
21 board must be a domestic insurer.

22 (5) The commissioner shall notify the members of the board if he or
23 she has information that any board member is dishonest, reckless, or
24 incompetent or is failing to perform any duty of his or her office, and
25 the board shall meet immediately to consider the matter. The
26 commissioner must receive notice of the time and place of this meeting.
27 If the board finds by a majority of the board members, with the accused
28 board member not voting on this matter, that the commissioner's
29 objection is well-founded, the accused board member shall be removed
30 immediately. The successor of a board member removed under this
31 section must be appointed as soon as possible subject to subsection (4)
32 of this section.

33 (6) All members of the board shall conduct the business of the
34 association in a manner that is in the interest of all policyholders of
35 the association. Board members stand in a fiduciary relationship to
36 the association and must discharge their duties in good faith and with
37 that diligence, care, and skill that ordinary, prudent persons would
38 exercise under similar circumstances in a like position.

1 (7) Each person serving on the board or any subcommittee thereof,
2 each member insurer of the association, and each officer and employee
3 of the association must be indemnified by the association against all
4 costs and expenses actually and necessarily incurred by him, her, or it
5 in connection with the defense of any action, suit, or proceeding in
6 which he, she, or it is made a party by reason of his, her, or its
7 being or having been a member of the board, or a member or officer or
8 employee of the association, except in relation to matters as to which
9 he, she, or it has been judged in such action, suit, or proceeding to
10 be liable by reason of willful misconduct in the performance of his,
11 her, or its duties as a member of the board, or member, officer, or
12 employee of the association. This indemnification is not exclusive of
13 other rights as to which the member, officer, or employee may be
14 entitled as a matter of law.

15 (8) Members of the board may be reimbursed by the association for
16 actual and necessary expenses incurred to attend meetings.

17 NEW SECTION. **Sec. 8.** (1) The board must adopt a plan of operation
18 within thirty days of its appointment.

19 (2) The plan of operation may take effect only after it has been
20 reviewed by the commissioner. Any changes recommended by the
21 commissioner must be either approved by a majority of the members of
22 the board or a written statement of the board's reasons for rejection
23 of any provision provided to the commissioner. The commissioner may
24 continue to consult with the board to arrive at a plan of operation
25 that is approved by both the commissioner and the board, or the
26 commissioner may accept the plan of operation of the board. This
27 process must conclude with a plan of operation accepted by the board
28 within thirty days of the first board appointed under this act.

29 (a) The plan of operation may be amended by agreement of a majority
30 of the members of the board and the commissioner.

31 (b) The association must use rates that are demonstrably sound as
32 compared to accepted actuarial standards. At the time of filing with
33 the commissioner, the rates must be accompanied by an actuarial
34 analysis. The rates must comply with chapter 48.19 RCW and be approved
35 by the commissioner.

1 NEW SECTION. **Sec. 9.** The association must file a statement
2 annually with the commissioner that contains information about the
3 association's transactions, financial condition, and operations during
4 the preceding year. The statement must be in the form and in a manner
5 approved by the commissioner. The association must maintain its
6 records according to the accounting practices and procedures manual
7 adopted by the national association of insurance commissioners. The
8 commissioner may require the association to furnish additional
9 information if the commissioner considers it necessary to evaluate the
10 scope, operation, and experience of the association.

11 NEW SECTION. **Sec. 10.** (1) The commissioner may examine the
12 transactions, financial condition, and operations of the association
13 when the commissioner finds it necessary in order to carry out the
14 purposes of this chapter. Except as set forth in subsections (2) and
15 (3) of this section, each examination must be conducted in the manner
16 prescribed for domestic insurance companies in chapter 48.03 or 48.37
17 RCW.

18 (2) The commissioner is not required to examine any association on
19 a prescribed cycle or schedule.

20 (3) An association created under this chapter is responsible for
21 the total costs of its financial and market conduct examinations. RCW
22 48.03.060 (1) and (2) and 48.37.060(14) (a) and (b) are not applicable
23 to the examination of an association created under this chapter.

24 NEW SECTION. **Sec. 11.** (1) The association is not a member of the
25 guaranty fund created under chapter 48.32 RCW. The guaranty fund, this
26 state, and any political subdivisions are not responsible for losses
27 sustained by the association.

28 (2) The association is exempt from payment of all fees and all
29 taxes levied by the state or any of its subdivisions, except taxes
30 levied on real or personal property.

31 NEW SECTION. **Sec. 12.** (1) The association is funded by premiums
32 paid by persons insured by the association.

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

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

3 (2) The association may assess its members to pay past and future
4 financial obligations of the association, not funded by premiums.

5 (3) If the association makes an assessment, an assessed insurer
6 must pay the association within thirty days after it receives notice of
7 the assessment. If an insurer does not pay an assessment within thirty
8 days after it receives notice of the assessment:

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

11 (b) The association may collect the assessment in a civil action
12 and must be awarded its attorneys' fees if it prevails;

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

15 (d) The commissioner may fine the insurer up to ten thousand
16 dollars.

17 (4) This section may be enforced under RCW 48.02.080.

18 NEW SECTION. **Sec. 13.** (1) The association may operate for a
19 period of five years. At the end of the five-year period, the
20 association must be dissolved unless the legislature authorizes its
21 continued operation.

22 (2) If, at any time, the commissioner or the board of directors
23 holds a hearing under chapters 48.04 and 34.05 RCW and determines that
24 excess flood and business interruption insurance is available through
25 a market assistance plan, in the voluntary market, or that a
26 competitive market exists, the commissioner must order the association
27 to end its underwriting operations.

28 (3) If the commissioner or the board of directors orders the
29 association to end all underwriting operations, the commissioner must
30 supervise the dissolution of the association, including settlement of
31 all financial and legal obligations and distribution of any remaining
32 assets as follows:

33 (a) If there has been an assessment on the members of the
34 association, and after all creditors of the association are paid in
35 full, then to the member insurers in a proportional manner and as
36 determined by rule by the commissioner; or

1 (b) If there has not been an assessment on the members of the
2 association, or if there are funds remaining after distribution under
3 (a) of this subsection and after all creditors of the association are
4 paid in full, then to the policyholders in a proportional manner and as
5 determined by rule by the commissioner.

6 NEW SECTION. **Sec. 14.** The commissioner may adopt all rules needed
7 to implement and administer this chapter and to ensure the efficient
8 operation of the association, including but not limited to rules:

9 (1) Creating sample plans of operation for the assistance of the
10 board;

11 (2) Requiring or limiting certain policy provisions;

12 (3) Containing the basis and method for assessing members for
13 operation of the association; and

14 (4) Establishing the order in which the assets of the association
15 that is dissolved by the commissioner must be distributed.

16 NEW SECTION. **Sec. 15.** (1) The commissioner must by rule require
17 insurers authorized to write property insurance in this state to form
18 a market assistance plan to assist persons located in the geographical
19 area protected by any dam on the Green river that are unable to
20 purchase excess flood or business interruption insurance in an adequate
21 amount from either the admitted or nonadmitted market.

22 (2) For the purpose of this section, a market assistance plan means
23 a voluntary mechanism by insurers writing property insurance in this
24 state in either the admitted or nonadmitted market to provide excess
25 flood or business interruption insurance for a class of insurance as
26 designated in writing to the plan by the commissioner.

27 (3) The bylaws and method of operation of any market assistance
28 plan must be approved by the commissioner prior to its operation.

29 (4) A market assistance plan must have a minimum of twenty-five
30 insurers willing to insure risks within the class designated by the
31 commissioner. If twenty-five insurers do not voluntarily agree to
32 participate, the commissioner may require either property or property
33 and casualty, or both, insurers to participate in a market assistance
34 plan as a condition of continuing to do business in this state. The
35 commissioner must make this requirement to fulfill the quota of at

1 least twenty-five insurers. The commissioner must make his or her
2 designation on the basis of the insurer's premium volume of property
3 insurance in this state.

4 NEW SECTION. **Sec. 16.** The board and the commissioner shall report
5 to the respective committees of the house of representatives and senate
6 having jurisdiction over the insurance code by January 31, 2011, and
7 each subsequent January 31st of each year that the association remains
8 in existence.

9 **Sec. 17.** RCW 48.15.040 and 1983 1st ex.s. c 32 s 4 are each
10 amended to read as follows:

11 If certain insurance coverages cannot be procured from authorized
12 insurers, such coverages, hereinafter designated as "surplus lines,"
13 may be procured from unauthorized insurers subject to the following
14 conditions:

15 (1) The insurance must be procured through a licensed surplus line
16 broker.

17 (2) The insurance must not be procurable, after diligent effort has
18 been made to do so from among a majority of the insurers authorized to
19 transact that kind of insurance in this state.

20 (3) Coverage shall not be procured from an unauthorized insurer for
21 the purpose of securing a lower premium rate than would be accepted by
22 any authorized insurer nor to secure any other competitive advantage.

23 (4) The commissioner may by regulation establish the degree of
24 effort required to comply with subsections (2) and (3) of this section.

25 (5) At the time of the procuring of any such insurance an affidavit
26 setting forth the facts referred to in subsections (2) and (3) of this
27 section must be executed by the surplus line broker. Such affidavit
28 shall be filed with the commissioner within thirty days after the
29 insurance is procured.

30 (6) For purposes of chapter 48.-- RCW (the new chapter created in
31 section 18 of this act), a joint underwriting association established
32 or authorized by the legislature is not an authorized insurer.

33 NEW SECTION. **Sec. 18.** Sections 1 through 16 of this act
34 constitute a new chapter in Title 48 RCW.

1 NEW SECTION. **Sec. 19.** This act is necessary for the immediate
2 preservation of the public peace, health, or safety, or support of the
3 state government and its existing public institutions, and takes effect
4 immediately.

5 NEW SECTION. **Sec. 20.** This act expires December 31, 2016.

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