

SENATE BILL REPORT

SB 6240

As Reported by Senate Committee On:
Financial Institutions, Housing & Insurance, January 27, 2010

Title: An act relating to forming joint underwriting associations.

Brief Description: Regulating joint underwriting associations. [**Revised for 1st Substitute:** Forming joint underwriting associations.]

Sponsors: Senators Keiser, Eide, Kauffman, Gordon and McDermott; by request of Insurance Commissioner.

Brief History:

Committee Activity: Financial Institutions, Housing & Insurance: 1/13/10, 1/26/10, 1/27/10 [DPS, DNP, w/oRec].

SENATE COMMITTEE ON FINANCIAL INSTITUTIONS, HOUSING & INSURANCE

Majority Report: That Substitute Senate Bill No. 6240 be substituted therefor, and the substitute bill 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 (Recommended Substitute): If the commissioner first convenes a MAP and finds either that business interruption or excess flood insurance is not available in the area endangered by flooding at the Green River Valley 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 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, 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.

Prior to forming the association, the commissioner must form a MAP to assist those unable to purchase excess flood and business interruption insurance in an adequate amount from either the admitted or nonadmitted markets. This MAP is identical to existing law for MAPs for casualty insurance, with two exceptions. These exceptions are the limitation to the area

endangered by flooding of the Green River Valley, and the limitation to property insurers willing to write excess flood insurance and business interruption insurance.

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

EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS, HOUSING & INSURANCE COMMITTEE (Recommended Substitute As Passed Committee): The recommended substitute bill passed by the committee makes additions and clarifications to the proposed substitute bill heard at the second public hearing. The standard for both the MAP's finding of inadequacy of the MAP to insure the risk and for the commissioner's finding that a competitive market does exist is less than or more than four admitted or surplus lines insurers, respectively, exclusive of personal lines.

The JUA must submit its actuarial analysis when it submits its rates to the commissioner for approval. The rates must be demonstrably sound as compared to accepted actuarial standards. The JUA must comply with the Unfair Practices & Frauds Act. The commissioner's decision that a competitive market does exist may be appealed in an administrative hearing under the Administrative Procedure Act.

EFFECT OF CHANGES MADE BY FINANCIAL INSTITUTIONS, HOUSING & INSURANCE COMMITTEE (Proposed Substitute As Heard in Committee): Several provisions of the original bill are changed and new provisions are added. Language is added to clarify that the loss insured by the joint underwriting association (JUA) is limited to flooding and business interruption in the Green River Valley, or danger-area. Surety insurance is excluded from the JUA. Excess flood insurance is defined to include business interruption insurance. Person is defined to mean a natural person, associations, partnerships, and corporations. The MAP must be formed before the JUA can be formed. The maximum liability of the JUA is \$250 million. The maximum dollar value of coverage of any one policy cannot exceed \$5 million. The inability of persons in the danger-area to obtain business interruption insurance is a qualifying reason to buy insurance from the JUA. The corporate powers granted the JUA are those of a nonprofit corporation and those of an insurance corporation as needed to transact its business. The governance of the JUA is altered. The board's duty is a fiduciary duty executed in the interest of all policyholders of the association. Return of the remaining assets, if any, is to the insurers if they have been assessed and to the policyholders if there has been no assessment. The MAP is limited to the danger-area and excess flood insurance and business interruption insurance. The board and the commissioner must report to the legislative committees by January 31, 2011, and every year thereafter that the association remains in existence. The act expires on December 31, 2016.

Appropriation: None.

Fiscal Note: Available on original bill.

Committee/Commission/Task Force Created: No.

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

Staff Summary of Public Testimony: On Proposed Substitute:

PRO: Perhaps the composition of the board could include a representative from local government or the manufacturing businesses in the valley. It could be clarified that the Joint Underwriting Associations (JUA) must comply with the Unfair Practices Act. We need stability for the business community in the Kent Valley. They are getting alarming cancellation letters. We must re-establish the sense that they won't be at risk. This is the second largest distribution center on the entire west coast. The aggregate cap limits the potential coverage to 50 businesses at the maximum \$5 million policy limit. We have hundreds of businesses. It is almost February. The real threat is pretty much behind us: One year down and six to go. Like farmers who would not be happy if they could not get crop insurance, these businesses need stability and certainty.

CON: We have continued concerns. We appreciate the efforts to provide limitations to the overall liability exposure. This bill asks individuals to pay more so businesses pay less. The rebuttable presumption is without precedent. There should be objective standards that a non-competitive market exists. It should not be up to others to disprove. The standard should be in place at the Market Assistant Plan (MAP) stage of the process and the evidence drawn from the MAP. The JUA triggers reinsurance requirements for admitted insurers that equal 10 percent of the potential exposure. That's \$25 million passed on to every policyholder. The inclusion of personal lines in the JUA while the testimony was focused on commercial needs is still inappropriate. Flood is a peculiar risk. None of my companies write it. If the will of the committee is to insist on including personal lines, please make sure the JUA is a last resort. It is very difficult for our vehicle insurance policyholders to find a connection with the risks covered by the JUA.

On Original Bill:

PRO: The risk of flood, while decreasing, continues to be real until the dam is repaired. This will take 5 to 7 years. The distribution center in the Valley is the second largest on the west coast: the potential losses are catastrophic to the businesses and the state's economy. We need to stabilize the insurance market and bring insurers back into the market that they have fled. There is a huge human cost from putting housing in the valley at risk. This is not a power-grab by the Office of Insurance Commissioner (OIC); it is a limited response that may not be necessary if the MAP produces a market. FEMA coverage is inadequate.

CON: There is a market providing insurance to the valley. When the risk goes up, the premiums must necessarily go up, too, according to actuarial standards. Making all insured people in the state share the risk to businesses in the valley is unfair and may well displace existing markets. The OIC should already have done a MAP and has left us without the objective information needed to make thoughtful decisions now. The medical community already supports one JUA for midwives: that should be enough.

OTHER: The customers of surplus lines insurers are retail insurance producers. My experience is that we have an apathy issue in the valley, not an availability issue.

Persons Testifying: On Proposed Substitute:

PRO: Senator Karen Keiser, primary sponsor; Drew Bouton, Office of the Insurance Commissioner.

CON: Mel Sorensen, Property Casualty Insurance, Allstate, American Family/Professional Insurance Agents; Jessica Duble-Harbin, Farmers Group Inc., Zurich Insurance; Cliff Webster, American Insurance Association; Carrie Tellefson, Progressive Insurance; Jean Leonard, State Farm Insurance.

On Original Bill:

PRO: Dini Duclos, CEO, Multi-Service Center; Mike Heinish, Kent Youth & Family Services; Tom McLaughlin, Center for Advanced Manufacturing Puget Sound; Robin Nixon, Center for Advanced Manufacturing; Doug Levy, City of Renton; Martin J. Durkan, Tukwila; Carolyn Robertson, City of Auburn; Suzette Cooke, Mayor, City of Kent; Andrew Keikkala, Executive Director, Kent Chamber of Commerce; Terry Davis, Issues Chair, South Sound Chambers of Commerce Legislative Coalition; Candice Bock, Assn of WA Cities; M.B. Kreidler, Office of the Insurance Commissioner.

CON: Gary Strannigan, Safeco; Jessica Harbin, Farmers Insurance/Zurich; James Curry, Allstate American Family Insurance; Karl Newman, NW Insurance Council; Carrie Tellefson, Progressive Insurance; Bill Stauffacher, Independent Insurance Agents & Brokers of WA; Kris Tefft, Assn of WA Business; Steve Buckner, MetLife; Jim Bricker, PEMCO; Nancy Carpenter, State Farm; Tim Layton, WA State Medical Assn; David Babbitt, Professional Insurance Agents of WA & AK; Mel Sorenson, Property-Casualty Insurers Assn of America; Jean Leonard, National Assn of Mutual Insurance Companies and WA Insurers; Cliff Webster, American Insurance Assn.

OTHER: Sam Alexander, Director, Surplus Lines of WA, President, Alexander, Morford & Woo Assn.