
SUBSTITUTE HOUSE BILL 2560

State of Washington

61st Legislature

2010 Regular Session

By House Financial Institutions & Insurance (originally sponsored by Representatives Orwall, Upthegrove, Quall, Simpson, Nelson, and Morrell; by request of Insurance Commissioner)

READ FIRST TIME 02/02/10.

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.** The association may offer a variety of
24 different policy limits to best serve policyholders and the persons
25 seeking excess flood insurance. The association must offer excess
26 flood insurance policies that have maximum aggregate coverage limits,
27 including business interruption insurance, of ten million dollars.

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

33 (2) The association may decline to insure particular persons that
34 present an extraordinary risk because of the nature of their
35 operations, property condition, past claims experience, or inadequate

1 risk management. However, the location of a property for which
2 insurance is sought from the association must not, in and of itself,
3 constitute an extraordinary risk.

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

- 6 (a) A statement of the actual reason for declination; and
- 7 (b) A statement that the applicant may appeal the decision to the
8 commissioner.

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

12 (5) A decision of the commissioner to provide or to decline to
13 provide coverage under this may be appealed under chapters 48.04 and
14 34.05 RCW.

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

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

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

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

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

30 (3) The board may select and employ one or more persons to manage
31 the operations of an association. Every managing person must be
32 authorized to transact insurance in the state of Washington and have
33 demonstrated expertise in excess flood insurance. The board may employ
34 any advisors that the board deems necessary.

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

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

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

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

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

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

35 (7) Each person serving on the board or any subcommittee thereof,
36 each member insurer of the association, and each officer and employee
37 of the association must be indemnified by the association against all
38 costs and expenses actually and necessarily incurred by him, her, or it

1 in connection with the defense of any action, suit, or proceeding in
2 which he, she, or it is made a party by reason of his, her, or its
3 being or having been a member of the board, or a member or officer or
4 employee of the association, except in relation to matters as to which
5 he, she, or it has been judged in such action, suit, or proceeding to
6 be liable by reason of willful misconduct in the performance of his,
7 her, or its duties as a member of the board, or member, officer, or
8 employee of the association. This indemnification is not exclusive of
9 other rights as to which the member, officer, or employee may be
10 entitled as a matter of law.

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

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

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

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

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

32 NEW SECTION. **Sec. 9.** The association must file a statement
33 annually with the commissioner that contains information about the
34 association's transactions, financial condition, and operations during
35 the preceding year. The statement must be in the form and in a manner
36 approved by the commissioner. The association must maintain its

1 records according to the accounting practices and procedures manual
2 adopted by the national association of insurance commissioners. The
3 commissioner may require the association to furnish additional
4 information if the commissioner considers it necessary to evaluate the
5 scope, operation, and experience of the association.

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

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

15 (3) An association created under this chapter is responsible for
16 the total costs of its financial and market conduct examinations. RCW
17 48.03.060 (1) and (2) and 48.37.060(14) (a) and (b) are not applicable
18 to the examination of an association created under this chapter.

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

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

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

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

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

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

34 (3) If the association makes an assessment, an assessed insurer

1 must pay the association within thirty days after it receives notice of
2 the assessment. If an insurer does not pay an assessment within thirty
3 days after it receives notice of the assessment:

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

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

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

10 (d) The commissioner may fine the insurer up to ten thousand
11 dollars.

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

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

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

23 (3) If the commissioner or the board of directors orders the
24 association to end all underwriting operations, the commissioner must
25 supervise the dissolution of the association, including settlement of
26 all financial and legal obligations and distribution of any remaining
27 assets as follows:

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

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

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

4 (1) Creating sample plans of operation for the assistance of the
5 board;

6 (2) Requiring or limiting certain policy provisions;

7 (3) Containing the basis and method for assessing members for
8 operation of the association; and

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

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

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

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

24 (4) A market assistance plan must have a minimum of twenty-five
25 insurers willing to insure risks within the class designated by the
26 commissioner. If twenty-five insurers do not voluntarily agree to
27 participate, the commissioner may require either property or property
28 and casualty, or both, insurers to participate in a market assistance
29 plan as a condition of continuing to do business in this state. The
30 commissioner must make this requirement to fulfill the quota of at
31 least twenty-five insurers. The commissioner must make his or her
32 designation on the basis of the insurer's premium volume of property
33 insurance in this state.

34 NEW SECTION. **Sec. 16.** The board and the commissioner shall report
35 to the respective committees of the house of representatives and senate

1 having jurisdiction over the insurance code by January 31, 2011, and
2 each subsequent January 31st of each year that the association remains
3 in existence.

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

6 If certain insurance coverages cannot be procured from authorized
7 insurers, such coverages, hereinafter designated as "surplus lines,"
8 may be procured from unauthorized insurers subject to the following
9 conditions:

10 (1) The insurance must be procured through a licensed surplus line
11 broker.

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

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

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

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

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

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

30 NEW SECTION. **Sec. 19.** This act is necessary for the immediate
31 preservation of the public peace, health, or safety, or support of the
32 state government and its existing public institutions, and takes effect
33 immediately.

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

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