
HOUSE BILL 2780

State of Washington

54th Legislature

1996 Regular Session

By Representatives Chandler and L. Thomas

Read first time 01/19/96. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to private school liability insurance; amending RCW
2 48.05.390; and adding new chapters to Title 48 RCW.

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

4 NEW SECTION. **Sec. 1.** Private schools have experienced major
5 problems in both the availability and affordability of liability
6 insurance. Premiums for these insurance policies have increased
7 dramatically and the availability of such insurance in Washington
8 markets has greatly diminished.

9 The unavailability of adequate liability insurance threatens to
10 decrease the availability of and affordability of private schools.

11 This chapter is intended to remedy the problem of unavailable
12 liability insurance for private schools by requiring all insurers
13 authorized to write commercial or professional liability insurance to
14 be members of a joint underwriting association created to provide
15 liability insurance for private schools.

16 NEW SECTION. **Sec. 2.** Unless the context clearly requires
17 otherwise, the definitions in this section apply throughout this
18 chapter.

1 (1) "Association" means the joint underwriting association
2 established pursuant to the provisions of this chapter.

3 (2) "Private school insurance" means insurance coverage against the
4 legal liability of the insured and against loss, damage, or expense
5 incident to a claim arising out of the death or injury of any person as
6 the result of negligence or malpractice in rendering professional
7 service by any private school.

8 (3) "Private school" means a private school or private school
9 district approved under chapter 28A.195 RCW.

10 NEW SECTION. **Sec. 3.** The commissioner shall approve by July 1,
11 1996, a reasonable plan for the establishment of a nonprofit, joint
12 underwriting association for private school insurance, subject to the
13 conditions and limitations contained in this chapter.

14 NEW SECTION. **Sec. 4.** The association shall be comprised of all
15 insurers possessing a certificate of authority to write and engage in
16 writing property and casualty insurance within this state on a direct
17 basis, including the liability portion of multiperil policies, but not
18 of ocean marine insurance. Every such insurer shall be a member of the
19 association and shall remain a member as a condition of its authority
20 to continue to transact business in this state.

21 NEW SECTION. **Sec. 5.** Any private school may apply to the
22 association to purchase private school insurance, and the association
23 shall offer a policy with liability limits of at least one hundred
24 thousand dollars per occurrence. The commissioner shall require the
25 use of a rating plan for private school insurance that permits rates to
26 be modified for individual private schools according to the type, size,
27 and past loss experience of the private school including any other
28 difference among private schools that can be demonstrated to have a
29 probable effect upon losses.

30 NEW SECTION. **Sec. 6.** By December 1, 1997, the commissioner shall
31 file or cause to be filed a report to the legislature detailing the
32 operations, finances, claims, and marketing experience of the
33 association.

1 NEW SECTION. **Sec. 7.** The commissioner may adopt rules as
2 necessary to ensure the efficient, equitable operation of the
3 association, including but not limited to, rules requiring or limiting
4 certain policy provisions.

5 NEW SECTION. **Sec. 8.** Sections 1 through 7 of this act shall
6 constitute a new chapter in Title 48 RCW.

7 NEW SECTION. **Sec. 9.** The definitions in this section apply
8 throughout this chapter.

9 (1) "Private school" means any private school or private school
10 district approved under chapter 28A.195 RCW.

11 (2) "Association" means a corporation organized under Title 24 RCW,
12 representative of one or more categories of private schools not formed
13 for the sole purpose of establishing and operating a self-insurance
14 program that:

15 (a) Maintains a roster of current names and addresses of member
16 private schools and of former member private schools or their
17 representatives, and of all employees of member or former member
18 private schools;

19 (b) Has a membership of a size and stability to ensure that it will
20 be able to provide consistent and responsible fiscal management; and

21 (c) Maintains a regular newsletter or other periodic communication
22 to member private schools.

23 (3) "Subscriber" means a private school that:

24 (a) Subscribes to a plan created pursuant to this chapter;

25 (b) Complies with all state licensing requirements;

26 (c) Is a member in good standing of an association;

27 (d) Has consistently maintained its approval under chapter 28A.195
28 RCW free from revocation for cause, except where the revocation was not
29 later rescinded or vacated by appellate or administrative decision; and

30 (e) Is prepared to demonstrate the willingness and ability to bear
31 its share of the financial responsibility of its participation in the
32 plan for each applicable contractual period.

33 NEW SECTION. **Sec. 10.** Associations meeting the criteria of
34 section 9 of this act are empowered to create and operate self-
35 insurance plans to provide general liability coverage to member private
36 schools who choose to subscribe to the plans.

1 NEW SECTION. **Sec. 11.** Except as provided in this chapter, self-
2 insurance plans formed and implemented pursuant to this chapter shall
3 be governed by this chapter and shall be exempt from all other
4 provisions of the insurance laws of this state.

5 NEW SECTION. **Sec. 12.** Any association desiring to establish a
6 plan pursuant to this chapter shall prepare and submit to the
7 commissioner a proposed plan of organization and operation, including
8 the following elements:

9 (1) A statement that the association meets the requirements of this
10 chapter;

11 (2) A financial plan specifying:

12 (a) The coverage to be offered by the self-insurance pool, setting
13 forth a deductible level and maximum level of claims that the pool will
14 self-insure;

15 (b) The amount of cash reserves to be maintained for the payment of
16 claims;

17 (c) The amount of insurance, if any, to be purchased to cover
18 claims in excess of the amount of claims to be satisfied directly from
19 the association's own cash reserves;

20 (d) The amount of stop-loss coverage to be purchased in the event
21 the joint self-insurance pool's resources are exhausted in a given
22 fiscal period;

23 (e) A mechanism for determining and assessing the contingent
24 liability of subscribers in the event the assets in the contributing
25 trust fund are at any time insufficient to cover liabilities; and

26 (f) Certification that all subscribers in the pool are apprised of
27 the limitations of coverage to be provided;

28 (3) A plan of management setting forth:

29 (a) The means of fulfilling the requirements in subsection (2) of
30 this section;

31 (b) The names and addresses of board members and their terms of
32 office, and a copy of the corporate bylaws defining the method of
33 election of board members;

34 (c) The frequency of studies or other evaluation to establish the
35 periodic contribution rates for each of the subscribers;

36 (d) The responsibilities of subscribers, including procedures for
37 entry into and withdrawal from the pool, the allocation of contingent
38 liabilities and a procedure for immediate assessments if the

1 contributing trust fund falls below the level set in subsection (2)(b)
2 of this section;

3 (e) A plan for monitoring risks and disseminating information with
4 respect to their reduction or elimination;

5 (f) A contract with a professional insurance management
6 corporation, for the management and operation of any joint self-
7 insurance pool established by the association; and

8 (g) The corporate address of the association.

9 NEW SECTION. **Sec. 13.** If the plan submitted complies with section
10 12 of this act and if the terms of the plan reflect sound financial
11 management, the commissioner shall approve the plan submitted pursuant
12 to section 12 of this act.

13 NEW SECTION. **Sec. 14.** All funds contributed for the purpose of
14 the self-insurance plan shall be deposited in a contributing trust
15 fund, which shall at all times be maintained separately from the
16 general funds of the association. The association shall not contribute
17 to or draw upon the contributing trust fund at any time or for any
18 reason other than administration of the trust fund and operation of the
19 plan. All administration and operating costs related to the trust fund
20 shall be drawn from it.

21 NEW SECTION. **Sec. 15.** The initial implementation of the plan
22 shall be conditioned upon establishment of the minimum deposits in the
23 contributing trust fund at least thirty days prior to the first
24 effective date of the program for its first year of operation.

25 NEW SECTION. **Sec. 16.** In managing the assets of the contributing
26 trust fund, the association shall exercise the reasonable judgment and
27 care that ordinary persons of prudence, intelligence, and discretion
28 exercise in the sound management of their affairs, not in regard to
29 speculation but in regard to preservation of their funds with maximum
30 return, given the information reasonably available. The association
31 may delegate this duty to a responsible fiduciary. If the fiduciary
32 has special skills or represents that it has special skills, then the
33 fiduciary is under a duty to use those skills in the management of the
34 fund's assets.

1 NEW SECTION. **Sec. 17.** The association shall provide an annual
2 report of the operations of the plan to all subscribers and to the
3 commissioner. This report shall:

4 (1) Review claims made, judgments entered, and claims rejected;

5 (2) Certify that the current level of the contributing trust fund
6 is sufficient to meet reasonable needs, or provide a plan for
7 establishing such a level within a reasonable time; and

8 (3) Make recommendations for specific measures of risk reduction.

9 NEW SECTION. **Sec. 18.** The association shall have the power, in
10 its capacity as plan administrator, to contract for or delegate
11 services as necessary for the efficient management and operation of the
12 plan, including but not limited to:

13 (1) Contracting for risk management and loss control services;

14 (2) Designing a continuing program of risk reduction, calling for
15 the participation of all subscribers;

16 (3) Contracting for legal counsel for the defense of claims and
17 other legal services;

18 (4) Consulting with the commissioner or other interested state
19 agencies with respect to any matters affecting the provision of a
20 private school education for the state's children, and related risk
21 problems; and

22 (5) Purchasing commercial insurance coverage in the form and amount
23 as the subscribers may by contract agree, including reinsurance, excess
24 coverage, and stop-loss insurance.

25 NEW SECTION. **Sec. 19.** (1) All contracts between subscribers and
26 the association shall be for one-year periods and shall terminate on
27 the first day of the next fiscal year of the association following
28 their signature. Subscribers withdrawing from participation in the
29 plan during any contract period may do so only upon ceasing operation
30 as a private school.

31 (2) Premiums should be annual, prorated quarterly in the event any
32 subscriber withdraws, or any new subscriber contracts with the
33 association to become part of the plan during the fiscal year.
34 Subscribers should not have the power to delegate or assign the
35 responsibility for their assessments.

1 (3) Contracts should provide for recovery by the association, of
2 any assessments that are not promptly contributed, for methods of
3 collection, and for resolution of related disputes.

4 NEW SECTION. **Sec. 20.** Within six months of the beginning of any
5 fiscal year in which significant modifications of the plan are
6 envisioned, the association shall provide the commissioner with a
7 statement of those modifications, setting forth the proposed changes,
8 reasons for the changes, and reasonable alternatives, if any exist.
9 The statement shall specifically include reference to coverage
10 available in the commercial insurance market, together with suggested
11 solutions within the joint self-insurance plan.

12 NEW SECTION. **Sec. 21.** (1) If at any time the plan can no longer
13 be operated on a sound financial basis, the association may elect to
14 dissolve the plan, subject to explicit approval by the commissioner of
15 a plan for dissolution. Once a plan operated by an association has
16 been dissolved, that association may not again implement a plan
17 pursuant to this chapter for five calendar years.

18 (2) At dissolution, the assets of the association represented by
19 the contributing trust fund shall be deposited with the commissioner
20 for a period of twenty-one years, to be made available for claims
21 arising during that period based upon occurrences during the term of
22 coverage. At the time of transfer of the funds, the association shall
23 certify to the commissioner a list of all current subscribers, with
24 their correct mailing addresses, and shall have notified all current
25 subscribers of their obligation to keep the commissioner informed of
26 any changes in their mailing addresses over the twenty-one year period,
27 and that this obligation extends to their representatives, successors,
28 assigns, and to the representatives of their estates. Upon
29 dissolution, the association shall be required to provide to the
30 commissioner a list of all plan subscribers during all of the years of
31 operation of the plan.

32 At the end of the twenty-one year period, any funds remaining in
33 the trust account shall be distributed to those subscribers who were
34 current subscribers in the most recent year of operation of the plan,
35 with each current subscriber receiving an equal share of the
36 distribution, without regard for the length of time each private school
37 was a subscriber.

1 In the alternative, in the discretion of the association, the
2 balance of the contributing trust fund may be used to purchase similar
3 or more liberal coverage from a commercial insurer. Each subscriber
4 shall, however, be given the option to deposit its share of the fund
5 with the commissioner as provided in this section if it elects not to
6 participate in the proposed commercial insurance.

7 NEW SECTION. **Sec. 22.** No person with a claim covered by a plan
8 established pursuant to this chapter shall be entitled to recover from
9 the plan any amount in excess of the limits of coverage provided for in
10 the plan.

11 NEW SECTION. **Sec. 23.** The commissioner may disapprove, and
12 require suspension of a plan for failure of the association to comply
13 with any provision of this chapter, for gross mismanagement, or for
14 willful disregard and neglect of its fiduciary duty. The association
15 shall have the right to request reconsideration of the commissioner's
16 decision within fifteen days of the receipt of the commissioner's
17 written notification of the decision, or to request a hearing according
18 to chapter 48.04 RCW.

19 NEW SECTION. **Sec. 24.** All reasonable costs of any investigation
20 or review by the commissioner of an association's plan of organization
21 and operation, or any changes or modifications thereof, including the
22 dissolution of a plan, shall be paid by the association before issuance
23 of any approval required under this chapter.

24 NEW SECTION. **Sec. 25.** Sections 9 through 24 of this act shall
25 constitute a new chapter in Title 48 RCW.

26 **Sec. 26.** RCW 48.05.390 and 1994 c 131 s 7 are each amended to read
27 as follows:

28 (1) The report required by RCW 48.05.380 shall include the types of
29 insurance written by the insurer for policies pertaining to:

30 (a) Medical malpractice for physicians and surgeons, hospitals,
31 other health care professions, and other health care facilities
32 individually;

1 (b) Products liability. However, if comparable information is
2 included in the annual statement required by RCW 48.05.250, products
3 liability data must not be reported under RCW 48.05.380;

4 (c) Attorneys' malpractice;

5 (d) Architects' and engineers' malpractice;

6 (e) Municipal liability; (~~and~~)

7 (f) Day care center liability; and

8 (g) Private school liability.

9 (2) The report shall include the following data by the type of
10 insurance for the previous year ending on the thirty-first day of
11 December:

12 (a) Direct premiums written;

13 (b) Direct premiums earned;

14 (c) Net investment income, including net realized capital gain and
15 losses, using appropriate estimates where necessary;

16 (d) Incurred claims, development as the sum of the following:

17 (i) Dollar amount of claims closed with payments; plus

18 (ii) Reserves for reported claims at the end of the current year;
19 minus

20 (iii) Reserves for reported claims at the end of the previous year;
21 plus

22 (iv) Reserves for incurred but not reported claims at the end of
23 the current year; minus

24 (v) Reserves for incurred but not reported claims at the end of the
25 previous year; plus

26 (vi) Reserves for loss adjustment expense at the end of the current
27 year; minus

28 (vii) Reserves for loss adjustment expense at the end of the
29 previous year.

30 (e) Actual incurred expenses allocated separately to loss
31 adjustment, commissions, other acquisition costs, advertising, general
32 office expenses, taxes, licenses and fees, and all other expenses;

33 (f) Net underwriting gain or loss;

34 (g) Net operation gain or loss, including net investment income;
35 and

36 (h) Other information requested by the insurance commissioner.

1 (3) The report shall be filed annually with the commissioner, no
2 later than the first day of May.

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