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**Financial Institutions &  
Insurance Committee**

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**SHB 1582**

**Brief Description:** Forming market assistance plans and joint underwriting associations.

**Sponsors:** House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Schual-Berke, Rockefeller and Sullivan; by request of Insurance Commissioner).

**Brief Summary of Substitute Bill**

- Authorizes the Insurance Commissioner to create a joint underwriting association for specific insurance markets provided certain market conditions exist.
- Requires the dissolution of a joint underwriting association after three years unless the Insurance Commissioner implements specified procedures for the continuation of the association.

**Hearing Date:** 1/20/04

**Staff:** Carrie Tellefson (786-7127).

**Background:**

Joint underwriting association. A joint underwriting association (JUA) is a regulatory tool available to the Commissioner when an insurance market becomes so limited that affordable coverage all but disappears. The Commissioner must seek authorization from the Legislature before creating a JUA. Once authorized, the Commissioner has the authority to establish a nonprofit JUA that provides insurance coverage to a specified class of prospective insureds. The JUA is comprised of insurers who can be compelled to participate as a condition of continuing to do business in this state. To fund the JUA, the Commissioner imposes monetary assessments. The Commissioner does not directly control the premium rates established by the JUA's members, though such rates are subject to the same rate setting requirements applicable in the standard market.

There are currently two legislatively authorized associations in Washington: one for midwives and one for day care service providers which, though authorized, was never activated by the Commissioner. Approximately 39 states have enacted legislation authorizing the formation of various types of associations.

Market assistance plan. A market assistance plan (MAP) is a regulatory tool that allows the Insurance Commissioner (Commissioner) to intervene in a difficult insurance market to ensure the continued availability of a particular line of casualty insurance. The purpose of a MAP is to help persons acquire insurance coverage; a MAP does not affect insurance rates or premiums. The Commissioner has authority to create a MAP in the event that a line of insurance becomes inadequate. When difficult market conditions exist, the Commissioner is authorized to create a voluntary association of 25 insurers willing to insure risks within a specific class of insurance. If insurers will not voluntarily participate, the Commissioner may require participation as a condition doing business in this state.

In 2002 the Commissioner implemented a MAP for medical malpractice liability insurance after several insurers withdrew from the market, making it difficult for many physicians to find affordable insurance. Under the MAP, a physician in need of coverage may apply to a committee of insurance agents to obtain quotes from participating insurers.

### **Summary of Bill:**

#### Creating liability insurance association.

Subject to certain conditions, the Commissioner is required to create a JUA to provide liability insurance for adult family homes, community residential programs, contractors, hospitals, or health care clinics.

The Commissioner may form a single JUA to provide coverage for all of these types of businesses and entities or may form a separate association for each.

#### Conditions required to create a JUA.

Before creating an association, the Commissioner must provide notice to the public, hold a hearing, and issue specified findings. Following the completion of this process, the Commissioner may form a JUA only if he makes the following findings:

- the creation of a MAP would be insufficient to address the problems of the insurance market and one of the following conditions exists:
- the voluntary market does not have the financial capacity to provide adequate liability insurance; or
- the insurance essential to continue business operations is not available in the voluntary market; or
- there are so few insurers actively selling liability insurance in the market that a competitive market does not exist.

#### Eligibility for insurance coverage from the JUA.

A person is eligible to apply for insurance from a JUA if:

- the business or occupation is within the scope and purpose of the JUA;
- the applicant is a state resident or operates in this state; and
- after making a reasonable effort, the applicant has been unable to purchase adequate liability insurance.

#### Extraordinary risks.

The JUA may decline to insure any applicant that presents certain extraordinary risk factors.

#### JUA Membership.

A JUA must consist of all state authorized casualty insurers and risk retention groups licensed to write liability insurance in this state. JUA membership is required in order to continue to transact business in Washington. The Commissioner may excuse an insurer or risk retention group from participation if participation would threaten its solvency.

#### JUA Funding.

The JUA is funded by the premiums paid by the insureds. However, if necessary, the JUA may assess its members to pay for past and future financial obligations. Such assessments must be based on market share, as determined by specified criteria.

#### Risk management program.

A JUA must have a risk management program for those it insures to attempt to reduce and monitor various risk factors.

#### Governing board and JUA management.

The Commissioner must appoint a governing board to administer the JUA that includes one person selected by each of the two largest caucuses in the Senate and the House to serve as nonvoting ex officio members. This board must adopt a plan of operation that includes specifying policy provisions and coverage limits, a process to assess JUA members, and all other procedures needed for the operation of the association. The Commissioner may select one or more insurer to manage the operations of the JUA.

#### Duration of a JUA.

A JUA may operate for a maximum of three years and must be dissolved at the end of that period unless the Commissioner implements specified procedures for its continuation. The procedures include the following:

- the Commissioner must provide notice, hold a hearing, and make factual findings justifying the continuation of the JUA. These findings are the same as those required for the creation of the JUA.
- if, after this process, the Commissioner finds that adequate liability insurance exists for a particular market currently included in the JUA, the Commissioner must dissolve the JUA with respect that particular market or markets.

#### Examination and reporting requirements.

The Commissioner is required to examine the JUA at least once every three years and must make an annual report to the Legislature on the financial condition of the association.

**Appropriation:** None.

**Fiscal Note:** Available.

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