

**SENATE BILL 6240**

**State of Washington -- 61st Legislature -- 2010 Regular Session**

**By** Senator Keiser

AN ACT Relating to forming joint underwriting associations; adding a new section to chapter 48.27 RCW; adding a new chapter to Title 48 RCW; and declaring an emergency.

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

NEW SECTION. **Sec. 1** Availability of property for loss arising from flood insurance is vital to the economy of the state of Washington. If adequate property insurance for loss arising from flood is not available, the security of citizens' property and the viability of business operations and services are threatened. This chapter gives the commissioner authority to ensure continued availability of excess flood insurance in this state. The commissioner may establish a temporary joint underwriting association for excess flood insurance if:

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

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

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

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

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

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

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

(a) Workers' compensation insurance;

(b) Employers' liability insurance; or

(c) Nuclear liability insurance.

(4) "Excess flood insurance" means insurance against loss arising from flood that is in excess of the limit of liability insurance offered by the national flood insurance program.

(5) "Property insurance" has the same meaning as in RCW 48.11.040.

NEW SECTION. **Sec. 3** (1) The commissioner has the authority to create an association to provide excess flood insurance if the requirements of this section are met.

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

(3) An association may not begin underwriting operations for excess flood insurance until the commissioner finds that:

(a) Persons, businesses, or service providers cannot buy excess flood insurance through the voluntary market; or

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

(4) At a hearing to appeal the commissioner's finding that excess flood insurance is unavailable through the voluntary market or that a competitive market does not exist, the finding is a rebuttable presumption. At the hearing it is the burden of the person challenging the commissioner's finding to establish by a preponderance of the evidence that excess flood insurance is available through the voluntary market or that a competitive market does exist.

**NEW SECTION. Sec. 4** (1) If an association is formed, a person that is unable to obtain excess flood insurance because it is unavailable in the voluntary market or because the market is not competitive is eligible to apply to an association for insurance.

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

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

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

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

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

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

**NEW SECTION. Sec. 5** (1) The association is composed of all insurers that have a certificate of authority to write either casualty or property insurance, or both, in this state. Every property or casualty insurer, or both, must be a member of the association as a condition of its authority to continue to transact business in this state.

(2) The association has the general corporate powers and authority granted under the laws of the state of Washington.

**NEW SECTION. Sec. 6** (1) The commissioner must appoint a governing board to administer an association.

(2) The board is subject to the supervision of the commissioner.

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

(4) The board must consist of seven persons appointed by the commissioner.

(a) Four board members must be member insurers.

(b) Three board members must be citizens, none of whom are employed by, serve on the board of directors of, or have a substantial ownership interest in any insurer.

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

(5) Members of the board may be removed by the commissioner.

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

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

**NEW SECTION. Sec. 7** (1) The board must adopt a plan of operation within thirty days of its appointment.

(2) The plan of operation may take effect only after it has been approved by the commissioner.

(a) The plan of operation may be amended.

(b) All amendments are subject to review and approval by the commissioner.

(3) If the board has not adopted a plan of operation that is acceptable to the commissioner within thirty days of its appointment, the commissioner may order the board to adopt a plan of operation of his or her choosing.

(4) Each association must use rates that comply with chapter 48.19 RCW and that have been approved by the commissioner.

**NEW SECTION. Sec. 8** The association must file a statement annually with the commissioner that contains information about the association's transactions, financial condition, and operations during the preceding year. The statement must be in the form and in a manner approved by the commissioner. The association must maintain its records

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

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

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

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

**NEW SECTION. Sec. 10** (1) The association is not a member of the guaranty fund created under chapter 48.32 RCW. The guaranty fund, this state, and any political subdivisions are not responsible for losses sustained by the association.

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

**NEW SECTION. Sec. 11** (1) The association is funded by premiums paid by persons insured by the association.

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

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

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

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

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

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

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

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

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

**NEW SECTION. Sec. 12** (1) The association may operate for a period of five years. At the end of the five-year period, the association must be dissolved unless the legislature authorizes its continued operation.

(2) If, at any time, the commissioner holds a hearing under chapters 48.04 and 34.05 RCW and determines that excess flood insurance is available in the voluntary market or that a competitive market exists, the commissioner must order the association to end its underwriting operations.

(3) If the commissioner orders the association to end all underwriting operations, the commissioner must supervise the dissolution of the association, including settlement of all financial and legal obligations and distribution of any remaining assets.

**NEW SECTION. Sec. 13** The commissioner may adopt all rules needed to implement and administer this chapter and to ensure the efficient operation of the association, including but not limited to rules:

(1) Creating plans of operation;

(2) Requiring or limiting certain policy provisions;

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

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

**NEW SECTION. Sec. 14** A new section is added to chapter 48.27 RCW to read as follows:

(1) The commissioner must by rule require insurers authorized to write property insurance in this state to form a market assistance plan to assist persons and other entities unable to purchase vital property insurance in an adequate amount from either the admitted market or nonadmitted market.

(2) For the purpose of this section, a market assistance plan means a voluntary mechanism by insurers writing property insurance in this state in either the admitted or nonadmitted market to provide vital property insurance for a class of insurance designated in writing to the plan by the commissioner.

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

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

**NEW SECTION. Sec. 15** Sections 1 through 13 of this act constitute a new chapter in Title 48 RCW.

NEW SECTION. **Sec. 16** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.