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SENATE BILL 6240

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State of Washington

61st Legislature

2010 Regular Session

By Senators Keiser, Eide, Kauffman, Gordon, and McDermott; by request of Insurance Commissioner

Read first time 01/11/10. Referred to Committee on Financial Institutions, Housing & Insurance.

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

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

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

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

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

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

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

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

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

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

9        (a) Workers' compensation insurance;

10       (b) Employers' liability insurance; or

11       (c) Nuclear liability insurance.

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

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

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

19       (2) The commissioner must hold a hearing under chapters 48.04 and  
20 34.05 RCW before forming an association.

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

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

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

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

34       NEW SECTION.    **Sec. 4.**    (1) If an association is formed, a person  
35 that is unable to obtain excess flood insurance because it is

1 unavailable in the voluntary market or because the market is not  
2 competitive is eligible to apply to an association for insurance.

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

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

- 11 (a) A statement of the actual reason for declination; and
- 12 (b) A statement that the applicant may appeal the decision to the  
13 commissioner.

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

17 (5) A decision of the commissioner to provide or to decline to  
18 provide coverage under this may be appealed under chapters 48.04 and  
19 34.05 RCW.

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

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

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

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

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

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

1 (a) Four board members must be member insurers.

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

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

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

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

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

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

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

34 (a) The plan of operation may be amended.

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

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

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

7 NEW SECTION. **Sec. 8.** The association must file a statement  
8 annually with the commissioner that contains information about the  
9 association's transactions, financial condition, and operations during  
10 the preceding year. The statement must be in the form and in a manner  
11 approved by the commissioner. The association must maintain its  
12 records according to the accounting practices and procedures manual  
13 adopted by the national association of insurance commissioners. The  
14 commissioner may require the association to furnish additional  
15 information if the commissioner considers it necessary to evaluate the  
16 scope, operation, and experience of the association.

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

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

26 (3) An association created under this chapter is responsible for  
27 the total costs of its financial and market conduct examinations. RCW  
28 48.03.060 (1) and (2) and 48.37.060(14) (a) and (b) are not applicable  
29 to the examination of an association created under this chapter.

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

34 (2) The association is exempt from payment of all fees and all

1 taxes levied by the state or any of its subdivisions, except taxes  
2 levied on real or personal property.

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

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

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

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

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

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

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

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

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

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

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

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

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

1        NEW SECTION.    **Sec. 13.**    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 plans of operation;

5        (2) Requiring or limiting certain policy provisions;

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

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

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

12       (1) The commissioner must by rule require insurers authorized to  
13 write property insurance in this state to form a market assistance plan  
14 to assist persons and other entities unable to purchase vital property  
15 insurance in an adequate amount from either the admitted market or  
16 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 vital  
20 property insurance for a class of insurance designated in writing to  
21 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 such a 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. 15.**    Sections 1 through 13 of this act  
35 constitute a new chapter in Title 48 RCW.

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

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