

---

ENGROSSED SENATE BILL 6240

---

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;  
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.** (1) The association may offer policies only  
24 as follows:

25 (a) The coverage of any one policy may not exceed five million  
26 dollars; and

27 (b) The total amount of all coverage offered by the association may  
28 never exceed two hundred fifty million dollars.

29 (2) The board, jointly with the commissioner, shall apportion  
30 policies within these limitations on an equitable basis.

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

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

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

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

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

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

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

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

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

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

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

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

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

1 demonstrated expertise in excess flood insurance. The board may employ  
2 any advisors that the board deems necessary.

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

5 (a) Three board members must be member insurers appointed by each  
6 of the following three trade associations: Property casualty insurers  
7 association of America, American insurance association, and national  
8 association of mutual insurance companies. At least one of the three  
9 insurers on the board must be a domestic insurer.

10 (b) Four board members must be residents of the state. One is  
11 appointed by the insurance commissioner. One is appointed by the King  
12 county council. One is appointed by the association of Washington  
13 cities, to represent one or more of the following municipal  
14 governments: Auburn, Kent, Renton, or Tukwila. One is appointed by  
15 the board of directors of the center for advanced manufacturing Puget  
16 Sound. None of the resident-appointees may be employed by, serve on  
17 the board of directors of, or have a substantial ownership interest in  
18 any insurer.

19 (c) Original board members must be appointed to serve an initial  
20 term of three years and may be appointed for a second term. Board  
21 members may serve consecutive terms. Successor board members must be  
22 appointed as soon as possible subject to (a) and (b) of this  
23 subsection.

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

35 (6) All members of the board shall conduct the business of the  
36 association in a manner that is in the interest of all policyholders of  
37 the association. Board members stand in a fiduciary relationship to

1 the association and must discharge their duties in good faith and with  
2 that diligence, care, and skill that ordinary, prudent persons would  
3 exercise under similar circumstances in a like position.

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

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

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

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

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

34 (b) The association must use rates that are demonstrably sound as  
35 compared to accepted actuarial standards. At the time of filing with  
36 the commissioner, the rates must be accompanied by an actuarial

1 analysis. The rates must comply with chapter 48.19 RCW and be approved  
2 by the commissioner.

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

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

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

22 (3) An association created under this chapter is responsible for  
23 the total costs of its financial and market conduct examinations. RCW  
24 48.03.060 (1) and (2) and 48.37.060(14) (a) and (b) are not applicable  
25 to the examination of an association created under this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30 (3) If the commissioner or the board of directors orders the  
31 association to end all underwriting operations, the commissioner must  
32 supervise the dissolution of the association, including settlement of  
33 all financial and legal obligations and distribution of any remaining  
34 assets as follows:

35 (a) If there has been an assessment on the members of the  
36 association, and after all creditors of the association are paid in



1 full, then to the member insurers in a proportional manner and as  
2 determined by rule by the commissioner; or

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

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

- 11 (1) Creating sample plans of operation for the assistance of the  
12 board;
- 13 (2) Requiring or limiting certain policy provisions;
- 14 (3) Containing the basis and method for assessing members for  
15 operation of the association; and
- 16 (4) Establishing the order in which the assets of the association  
17 that is dissolved by the commissioner must be distributed.

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

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

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

31 (4) A market assistance plan must have a minimum of twenty-five  
32 insurers willing to insure risks within the class designated by the  
33 commissioner. If twenty-five insurers do not voluntarily agree to  
34 participate, the commissioner may require either property or property  
35 and casualty, or both, insurers to participate in a market assistance  
36 plan as a condition of continuing to do business in this state. The

1 commissioner must make this requirement to fulfill the quota of at  
2 least twenty-five insurers. The commissioner must make his or her  
3 designation on the basis of the insurer's premium volume of property  
4 insurance in this state.

5 NEW SECTION. **Sec. 16.** The board and the commissioner shall report  
6 to the respective committees of the house of representatives and senate  
7 having jurisdiction over the insurance code by January 31, 2011, and  
8 each subsequent January 31st of each year that the association remains  
9 in existence.

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

12 If certain insurance coverages cannot be procured from authorized  
13 insurers, such coverages, hereinafter designated as "surplus lines,"  
14 may be procured from unauthorized insurers subject to the following  
15 conditions:

16 (1) The insurance must be procured through a licensed surplus line  
17 broker.

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

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

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

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

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

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

1        NEW SECTION.   **Sec. 19.**   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.

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

--- END ---