

By: Burnam

H.B. No. 116

A BILL TO BE ENTITLED

AN ACT

relating to the Texas Residential Property Insurance Plan Association.

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

SECTION 1. Subchapter F, Chapter 21, Insurance Code, is amended by adding Article 21.82 to read as follows:

Art. 21.82. TEXAS RESIDENTIAL PROPERTY INSURANCE PLAN

Sec. 1. DEFINITIONS. In this article:

(1) "Association" means the Texas Residential Property Insurance Plan Association established under this article.

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

(3) "Insurer" means an insurer authorized to write residential property insurance under Chapter 5 of this code, including a county mutual insurance company, farm mutual insurance company, Lloyd's plan, or reciprocal or interinsurance exchange.

(4) "Plan of operation" means the plan of operation adopted under Section 4 of this article.

(5) "Residential property insurance" means homeowners or residential fire and allied lines insurance.

Sec. 2. TEXAS RESIDENTIAL PROPERTY INSURANCE PLAN ASSOCIATION. The Texas Residential Property Insurance Plan Association is a nonprofit corporate body composed of all insurers.

1 Each insurer is a member of the association and remains a member of
2 the association as long as the association is in existence as a
3 condition of the insurer's authority to write residential property
4 insurance in this state.

5 Sec. 3. ADMINISTRATION OF ASSOCIATION; GOVERNING
6 BOARD. (a) The association has the powers granted to a nonprofit
7 corporation under the Texas Non-Profit Corporation Act (Article
8 1396-1.01 et seq., Vernon's Texas Civil Statutes).

9 (b) The association is administered by a governing board
10 composed of 15 members as follows:

11 (1) eight members who represent the interests of
12 member insurers, selected in accordance with the plan of operation;

13 (2) two members who are general property and casualty
14 agents, selected in accordance with the plan of operation; and

15 (3) five public members nominated by the office of
16 public insurance counsel and selected by the commissioner.

17 (c) To be eligible to serve on the board as a representative
18 of insurers, a person must be a full-time employee of an insurer.

19 (d) A person may not serve on the board as a public member if
20 that person, an individual related to that person within the second
21 degree by consanguinity or affinity, or an individual residing in
22 the same household with that person is:

23 (1) required to be authorized, registered, or licensed
24 under this code;

25 (2) employed by or acts as a consultant to a person
26 required to be authorized, registered, or licensed under this code;

27 (3) the owner of, has a financial interest in, or

1 participates in the management of an organization required to be
2 authorized, registered, or licensed under this code;

3 (4) an officer, employer, or consultant of a trade
4 association in the field of insurance; or

5 (5) required to register as a lobbyist under Chapter
6 305, Government Code.

7 Sec. 4. PLAN OF OPERATION. (a) The board shall administer
8 the association in accordance with the plan of operation.

9 (b) The plan of operation must provide for the efficient,
10 economical, fair, and nondiscriminatory administration of the
11 association.

12 (c) Subject to the approval of the commissioner, the board
13 may adopt and amend the plan of operation.

14 (d) If the commissioner at any time believes that any part
15 of the plan of operation is not consistent with the purposes of this
16 article, the commissioner shall notify the board in writing so that
17 the board may take corrective action.

18 Sec. 5. ASSESSMENTS. (a) The association may assess the
19 member insurers to provide funds for the operation of the
20 association.

21 (b) An assessment made on an insurer must be in proportion
22 to that insurer's writings of residential property insurance in
23 this state.

24 (c) If an insurer does not pay an assessment within a
25 reasonable time, the association may bring an action to collect the
26 assessment. In addition, the association may report to the
27 commissioner the failure to pay, and the commissioner may institute

1 a disciplinary action under Chapter 82 of this code.

2 Sec. 6. INCENTIVE PROGRAMS. (a) The plan of operation must
3 include incentive programs to encourage member insurers to write
4 residential property insurance on a voluntary basis and to minimize
5 the use of the association as a means to obtain insurance.

6 (b) One of the incentive programs must target underserved
7 geographic areas which shall be determined and designated by the
8 commissioner by rule. In determining which areas will be
9 designated as underserved, the commissioner shall consider the
10 availability of insurance, the number of persons insured through
11 the association, and any other relevant factor.

12 (c) An incentive program is effective on approval of the
13 commissioner.

14 Sec. 7. LIMITED ASSIGNMENT DISTRIBUTION PLAN. (a) The plan
15 of operation must include a voluntary, competitive limited
16 assignment distribution plan that allows members to contract
17 directly with a servicing carrier to accept assignments to that
18 carrier by the association.

19 (b) A servicing carrier must be an insurer authorized to
20 write residential property insurance in this state. An insurer is
21 qualified if the insurer has written residential property insurance
22 in this state for at least five years or is currently engaged as a
23 servicing carrier for assigned risk insurance business in at least
24 one other state.

25 (c) After notice and hearing, the commissioner may prohibit
26 an insurer from acting as a servicing carrier.

27 (d) The terms of the contract between the servicing carrier

1 and the insurer, including the buy-out fee, shall be determined by
2 negotiation between the parties.

3 (e) The board may adopt reasonable rules for the conduct of
4 business under the contract and may establish reasonable standards
5 of eligibility for servicing carriers.

6 Sec. 8. ASSIGNMENT OF INSURANCE THROUGH ASSOCIATION. (a)
7 The association shall provide a means by which an applicant for
8 insurance coverage may obtain residential property insurance
9 through assignment of that insurance to a member insurer.

10 (b) An applicant is not eligible for residential property
11 insurance through the association unless the applicant and the
12 servicing agent certify to the association as part of the
13 application that the applicant has been rejected for insurance by
14 at least two insurers authorized to engage in the business of
15 insurance in this state and actually writing residential property
16 insurance in this state.

17 Sec. 9. POLICY FORMS. Residential property insurance made
18 available through the association shall be written on policy forms
19 and endorsements adopted or approved under Article 5.35 of this
20 code, in accordance with the plan of operation.

21 Sec. 10. RATES; HEARING. (a) Rates to be charged for
22 residential property insurance provided through the association
23 shall be established in accordance with this section.

24 (b) The rates must be just, reasonable, adequate, not
25 excessive, not confiscatory, and not unfairly discriminatory for
26 the risks to which the rates apply. Rates shall be set in an amount
27 sufficient to carry all claims to maturity and to meet the expenses

1 incurred in the writing and servicing of the business. In making a
2 determination, the commissioner shall consider the reports of
3 aggregated premiums earned and losses and expenses incurred in the
4 writing of residential property insurance through the association
5 collected under the statistical plans required under Subsection (c)
6 of this section.

7 (c) The commissioner shall adopt statistical plans to be
8 used by each insurer to record and report:

9 (1) premium, loss, and expense experience, reported
10 separately for business assigned to the insurer; and

11 (2) other information required by the commissioner.

12 (d) The association shall file annually with the
13 department, for approval by the commissioner, the rates to be
14 charged for residential property insurance provided through the
15 association. The association may not make the filing more than once
16 in any 12-month period. Subchapter B, Chapter 40, of this code does
17 not apply to:

18 (1) a filing made under this subsection;

19 (2) Subsections (e)-(i) of this section; or

20 (3) a department action with respect to a filing made
21 under this subsection.

22 (e) Before approving, disapproving, or modifying a filing
23 made under Subsection (d) of this section, the commissioner shall
24 provide all interested persons a reasonable opportunity to:

25 (1) review the filing;

26 (2) obtain copies of the filing on payment of any
27 legally required copying cost; and

1 (3) submit to the commissioner written comments,
2 analyses, or information related to the filing.

3 (f) Not later than the 45th day after the date on which the
4 department receives the filing required under Subsection (d) of
5 this section, the commissioner shall schedule a hearing at which
6 interested persons may present written or oral comments relating to
7 the filing. A hearing under this subsection is not a contested case
8 hearing under Chapter 2001, Government Code. The association, the
9 office of public insurance counsel, and any other interested person
10 or entity that has submitted proposed changes or actuarial analyses
11 may ask questions of any person testifying at the hearing.

12 (g) The department shall file with the Texas Register notice
13 that a filing has been made under Subsection (d) of this section not
14 later than the seventh day after the date the filing is received by
15 the department. The notice must include information relating to:

16 (1) the availability of the filing for public
17 inspection at the department during regular business hours and the
18 procedures for obtaining copies of the filing;

19 (2) procedures for making written comments related to
20 the filing; and

21 (3) the time, place, and date of the hearing scheduled
22 under Subsection (f) of this section.

23 (h) After the conclusion of the hearing, the commissioner
24 shall approve, disapprove, or modify the filing in writing. If the
25 commissioner disapproves a filing, the commissioner shall state in
26 writing the reasons for the disapproval and the criteria to be met
27 by the association to obtain approval. The association may file

1 with the commissioner, not later than the 10th day after the date on
2 which the association receives the commissioner's written
3 disapproval, an amended filing to comply with the commissioner's
4 comments.

5 (i) Before approving or disapproving an amended filing, the
6 commissioner:

7 (1) shall provide all interested persons a reasonable
8 opportunity to review the amended filing, obtain copies of the
9 amended filing on payment of any legally required copying cost, and
10 submit to the commissioner written comments, analyses, or
11 information related to the amended filing in the manner provided by
12 Subsection (e) of this section; and

13 (2) may hold a hearing not later than the 20th day
14 after the date on which the department receives the amended filing
15 in the manner provided by Subsection (f) of this section.

16 (j) Not later than the 10th day after the date on which the
17 hearing under Subsection (i) on the amended filing is concluded,
18 the commissioner shall approve or disapprove the amended filing.
19 If, not later than the 30th day after the date on which the amended
20 filing is received by the department the commissioner has not
21 disapproved the amended filing, the amended filing is considered
22 approved. The requirements adopted under Subsections (g) and (h)
23 of this section apply to a hearing conducted under Subsection (i).

24 (k) A person aggrieved by a decision of the commissioner
25 under this section may, not later than the 30th day after the date
26 of the commissioner's decision, appeal the decision. An appeal of a
27 commissioner's decision under this section must be made in

1 accordance with Subchapter D, Chapter 36, of this code.

2 Sec. 11. IMMUNITY FROM LIABILITY. (a) The association, a
3 member of the board, and any employee of the association is not
4 personally liable for any act performed in good faith within the
5 scope of the person's authority as determined under this article or
6 the plan of operation or for damages occasioned by the person's
7 official acts or omissions except for an act or omission that is
8 corrupt or malicious. The association shall provide counsel to
9 defend any action brought against a member of the board or an
10 employee by reason of the person's official act or omission whether
11 or not at the time of the institution of the action the defendant
12 has terminated service with the association.

13 (b) This section is cumulative with and does not affect or
14 modify any common law or statutory privilege or immunity.

15 SECTION 2. Subchapter F, Chapter 21, Insurance Code, is
16 amended by amending the subchapter heading to read as follows:

17 SUBCHAPTER F. CERTAIN INSURANCE PLANS [~~JUDICIAL REVIEW~~]

18 SECTION 3. (a) This Act takes effect September 1, 2003.

19 (b) Not later than November 1, 2003, the commissioner of
20 insurance shall appoint an initial governing board for the Texas
21 Residential Property Insurance Plan Association composed of:

22 (1) eight members who represent the interests of
23 insurers, as that term is defined by Article 21.82, Insurance Code,
24 as added by this Act, and appointed in accordance with Section 3(c),
25 Article 21.82, Insurance Code, as added by this Act;

26 (2) two members who are general property and casualty
27 agents; and

1 (3) five public members nominated by the Office of
2 Public Insurance Counsel.

3 (c) Not later than March 1, 2004, the initial governing
4 board shall submit a proposed plan of operation to the commissioner
5 of insurance for approval in accordance with Article 21.82,
6 Insurance Code, as added by this Act.

7 (d) The Texas Residential Property Insurance Plan
8 Association shall make residential property insurance available in
9 accordance with Article 21.82, Insurance Code, as added by this
10 Act, beginning not later than September 1, 2004.

11 (e) The terms of the initial governing board appointed under
12 this section expire February 1, 2005.