

By: Taylor

H.B. No. 2737

A BILL TO BE ENTITLED

AN ACT

relating to FAIR Plan (Fair Access to Insurance Requirements) Act.

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

SECTION 1. Chapter 21, Insurance Code, is amended by amending Article 21.49A to read as follows:

Art. 21.49A. FAIR Plan (Fair Access to Insurance Requirements) Act

Sec. 1. Authority; Purpose. (a) If the commissioner determines, after a public hearing, that in all or any part of the state residential property insurance is not reasonably available in the voluntary market to a substantial number of insurable risks ~~[and that at least 50 percent of the applicants to the residential property market assistance program who are qualified under the plan of operation, after the commissioner has made insurer participation mandatory under the plan of operation, have not been placed with an insurer in the previous 12-month period,~~] the commissioner may establish a FAIR (Fair Access to Insurance Requirements) Plan to deliver residential property insurance to citizens of this state in underserved areas, which shall be determined and designated by the commissioner by rule. Each insurer, as defined herein, as a condition of its authority to transact residential property insurance in this state, shall participate in the FAIR Plan Association in accordance with this Act.

(b) The FAIR Plan may not provide windstorm and hail

1 insurance coverage for a risk eligible for that coverage under
2 Article 21.49 of this code.

3 Sec. 2. Definitions. (1) "FAIR Plan Association" or
4 "association" means a nonprofit association established pursuant
5 to this Act to develop and administer a program to provide
6 residential property insurance in designated underserved areas in
7 this state.

8 (2) "Insurer" means any licensed insurer writing
9 property and casualty insurance in this state, including:

10 (A) a Lloyd's plan company; and

11 (B) a reciprocal or interinsurance exchange.

12 (3) "Residential property insurance" means the
13 coverage against loss to real or tangible personal property at a
14 fixed location provided in a homeowners policy, residential fire
15 and allied lines policy, or farm and ranch owners policy.

16 (4) "Inspection bureau" means the organization or
17 organizations designated by the FAIR Plan Association with the
18 approval of the commissioner to make inspections to determine the
19 condition of the properties for which residential property
20 insurance is sought and to perform such other duties as may be
21 authorized by the FAIR Plan Association or the commissioner. The
22 manner and scope of the inspection and evaluation report for
23 residential property shall be prescribed by the association
24 pursuant to the plan of operation.

25 (5) "Net direct premiums" means gross direct written
26 premiums less return premiums upon canceled contracts
27 (irrespective of reinsurance assumed or ceded) written on

1 residential property pursuant to this Act.

2 (6) "Underserved area(s)" means area(s) designated as
3 underserved by the commissioner by rule. In determining which
4 areas will be designated as underserved, the commissioner shall
5 consider the factors specified in Section 1, Article 5.35-3, of
6 this code.

7 Sec. 3. Governing Committee; Plan of Operation. (a) The
8 FAIR Plan shall be administered by the governing committee of the
9 association pursuant to a plan of operation. Subject to the
10 approval of the commissioner, the governing committee shall develop
11 the plan of operation and propose amendments thereto. The plan of
12 operation and any amendments thereto shall be adopted by the
13 commissioner by rule. The governing committee may on its own
14 initiative or at the request of the commissioner amend the plan of
15 operation.

16 (b) The governing committee shall be composed of 11 members
17 appointed by the commissioner as follows:

18 (1) five members who represent the interests of
19 insurers;

20 (2) four public members; and

21 (3) two members who are licensed local recording
22 agents.

23 (c) The commissioner or the commissioner's designated
24 representative from within the Texas Department of Insurance shall
25 serve as an ex officio member.

26 (d) To be eligible to serve on the governing committee as a
27 representative of insurers, a person must be a full-time employee

1 of an authorized insurer.

2 (e) The plan of operation shall provide:

3 (1) for establishment of a FAIR Plan Association for
4 the issuing of residential property insurance pursuant to this Act
5 and the distribution of the losses and the expenses in the writing
6 of such insurance in this state;

7 (2) that all insurers licensed to write property
8 insurance and writing residential property insurance shall
9 participate in the writings, expenses, profits, and losses of the
10 association, in the proportion that the net direct premiums, of
11 each participating insurer, written in this state during the
12 preceding calendar year, bear to the aggregate net direct premium
13 written in this state by all participating insurers; such
14 information shall be determined in accordance with the residential
15 property statistical plan adopted by the commissioner;

16 (3) that a participating insurer is entitled to
17 receive credit for similar insurance voluntarily written in a
18 designated underserved area and its participation in the writings
19 in the association shall be reduced in accordance with the
20 provisions of the plan of operation;

21 (4) for the immediate binding of eligible risks; for
22 the use of premium installment payment plans, adequate marketing,
23 and service facilities; and for the establishment of reasonable
24 service standards;

25 (5) procedures for efficient, economical, fair, and
26 nondiscriminatory administration of the FAIR Plan Association;

27 (6) procedures for determining the net level of

1 participation required for each insurer in the FAIR Plan
2 Association;

3 (7) for the use of deductibles and other underwriting
4 devices and for assessment of all members in amounts sufficient to
5 operate the association; and establish maximum limits of liability
6 to be placed through the program; and commissions to be paid to the
7 licensed agents submitting applications;

8 (8) that the association issue policies in its own
9 name;

10 (9) reasonable underwriting standards for determining
11 insurability of the risk;

12 (10) procedures for the assumption and ceding of
13 reinsurance by the association; and

14 (11) any other procedures or operational matters
15 deemed necessary by the governing committee or the commissioner.

16 Sec. 4. FAIR Plan Association. Pursuant to procedures and
17 requirements set forth in the plan of operation, the FAIR Plan
18 Association (association) shall develop and administer a program
19 for participation by all insurers licensed to write property
20 insurance in this state and writing residential property insurance
21 in this state. The association shall make residential property
22 insurance available to applicants in underserved areas whose
23 property is insurable in accordance with reasonable underwriting
24 standards but who, after diligent efforts, are unable to procure
25 such insurance through the voluntary market, as evidenced by two
26 declinations from insurers licensed to write and actually writing
27 residential property insurance in the state.

1 Sec. 5. Powers of the Association; Centralized Operations
2 Authorized. (a) The association is authorized, for FAIR Plan
3 purposes only, to issue policies of insurance and endorsements
4 thereto in its own name or a trade name duly adopted for that
5 purpose, and to act on behalf of all participating insurers in
6 connection with said policies and otherwise in any manner necessary
7 to accomplish the purposes of this Act, including but not limited to
8 issuance of policies, collection of premiums, issuance of
9 cancellations, and payment of commissions, losses, judgments, and
10 expenses.

11 (b) The participating insurers shall be liable to the
12 association as provided in this Act and the plan of operation for
13 the expenses and liabilities so incurred by the association, and
14 the association shall make assessments against the participating
15 insurers as required to meet such expenses and liabilities. In
16 connection with any policy issued by the association:

17 (1) service of any notice, proof of loss, legal
18 process, or other communication with respect to the policy shall be
19 made upon the association; and

20 (2) any action by the insured constituting a claim
21 under the policy shall be brought only against the association, and
22 the association shall be the proper party for all purposes in any
23 action brought under or in connection with any such policy. The
24 foregoing requirements shall be set forth in any policy issued by
25 the association and the form and content of any such policy shall be
26 subject to the approval of the commissioner.

27 (c) The association is authorized to assume and cede

1 reinsurance in conformity with the plan of operation.

2 (d) Each insurer must participate in the writings,
3 expenses, profits, and losses of the association in the proportion
4 that its net direct premiums written bear to the aggregate net
5 direct premiums written by all insurers.

6 Sec. 6. Property Inspection; FAIR Plan Procedure. (a) Any
7 person having an insurable interest in real or tangible personal
8 property at a fixed location in an underserved area who, after
9 diligent effort has been unable to obtain residential property
10 insurance, as evidenced by two current declinations from insurers
11 licensed to write property insurance and actually writing
12 residential property insurance in the state, is entitled upon
13 application to the association to an inspection and evaluation of
14 the property by representatives of the inspection bureau.

15 (b) Applications may be made on behalf of the applicant by a
16 licensed general lines property and casualty [~~local recording~~]
17 agent and shall be submitted on forms prescribed by the
18 association.

19 (c) Promptly after the request for inspection is received,
20 an inspection must be made and an inspection report filed with the
21 association and made available to the applicant upon request.

22 (d) If the inspection bureau finds that the residential
23 property meets the reasonable underwriting standards established
24 in the plan of operation, the applicant shall be so informed in
25 writing and a policy or binder shall be issued by the association.
26 If the residential property does not meet the criteria, the
27 applicant shall be informed, in writing, of the reasons for the

1 failure of the residential property to meet the criteria.

2 (e) If, at any time, the applicant makes improvements in the
3 residential property or its condition which the applicant believes
4 are sufficient to make the residential property meet the criteria,
5 a representative of the inspection bureau shall reinspect the
6 residential property upon request. In any case, the applicant for
7 residential property insurance shall be eligible for one
8 reinspection any time within 60 days after the initial FAIR Plan
9 inspection. If upon reinspection the residential property meets
10 the reasonable underwriting standards established in the plan of
11 operation, the applicant shall be so informed in writing and a
12 policy or binder shall be issued by the association.

13 Sec. 7. Approval of Rates. The association shall file with
14 the commissioner for approval the proposed rates and supplemental
15 rate information to be used in connection with the issuance of
16 policies or endorsements. Rates shall be set in an amount
17 sufficient to carry all claims to maturity and to meet the expenses
18 incurred in the writing and servicing of the business. Within 60
19 days of the filing of the proposed rates, the commissioner shall
20 enter an order either approving or disapproving, in whole or in
21 part, the proposed rates. The commissioner may, upon notice to the
22 association, extend the period for entering an order under this
23 section an additional 30 days. No such policies or endorsements
24 shall be issued until such time as the commissioner approves the
25 rates to be applied to the policy or endorsement. An order
26 disapproving a rate shall state the grounds for the disapproval and
27 the findings in support thereof.

1 Sec. 8. Appeals; Judicial Review. (a) Any applicant or
2 affected insurer has the right of appeal to the association. A
3 decision of the association may be appealed to the commissioner
4 within 30 days after such decision.

5 (b) All orders or decisions of the commissioner made
6 pursuant to this Act are subject to judicial review in accordance
7 with Sec. 36.201-36.205 [~~Article 1.04~~] of this code.

8 Sec. 9. Immunity from Liability. There is no liability on
9 the part of, and no cause of action against insurers, the inspection
10 bureau, the association, the governing committee, their agents or
11 employees, or the commissioner or the commissioner's authorized
12 representatives, with respect to any inspections required to be
13 undertaken by this Act or for any acts or omissions in connection
14 therewith, or for any statements made in any report and
15 communication concerning the insurability of the property, or in
16 the findings required by the provisions of this Act, or at the
17 hearings conducted in connection with such inspections.

18 Sec. 10. Insolvency. In the event any participating
19 insurer fails, by reason of insolvency, to pay any assessment, the
20 association shall cause the reimbursement ratios to be immediately
21 recalculated, excluding therefrom the amount of the insolvent
22 insurer's assessment determined by the commissioner to be
23 uncollectible, so that such uncollectible amount is, in effect,
24 assumed and redistributed among the remaining participating
25 insurers.

26 Sec. 11. Assessments and Premium Surcharges. Should a
27 deficit occur in the association, the association shall assess

1 participating insurers in accordance with this section and each
2 insurer may charge a premium surcharge on every property insurance
3 policy issued by it insuring property in this state, the effective
4 date of which policy is within the three-year period commencing 90
5 days after the date of assessment by the association. The amount of
6 the surcharge shall be calculated on the basis of a uniform
7 percentage of the premium on such policies equal to one-third of the
8 ratio of the amount of an insurer's assessment to the amount of its
9 direct earned premiums as reported in its financial statement to
10 the department for the calendar year immediately preceding the year
11 in which the assessment is made, such that over the period of three
12 years the aggregate of all such surcharges by an insurer shall be
13 equal to the amount of the assessment of such insurer. The minimum
14 surcharges on a policy may be \$1; all surcharges may be rounded to
15 the nearest dollar.

16 Sec. 12. Sanctions. If the association, inspection bureau,
17 or participating insurer is found to be in violation of or in
18 failure to comply with this Act, each entity shall be subject to the
19 sanctions authorized by Sec. 82.001-82.003 and 82.051-82.056 [~~in~~
20 ~~Article 1.10~~] of this code, including administrative penalties
21 authorized under Sec. 84.001-84.003 and 84.021-84.022 [~~Article~~
22 ~~1.10E~~] of this code. The commissioner may also utilize any other
23 disciplinary procedures authorized by this code, including the
24 cease and desist procedures authorized Sec. 83.001-83.004 and
25 83.051-83.055 [~~by Article 1.10A~~] of this code.

26 Sec. 13. Annual Report. The association shall compile a
27 calendar year annual operating report and submit such annual report

1 to the commissioner on or before March 31 of the following calendar
2 year. This annual report shall be a matter of public record.

3 Sec. 14. Powers of the Commissioner. (a) In addition to
4 any powers conferred upon the commissioner by this or any other law,
5 the commissioner is charged with the authority to supervise the
6 association and the inspection bureau. In addition, the
7 commissioner has the power:

8 (1) to examine the operation of the association and
9 the inspection bureau through free access to all the books,
10 records, files, papers, and documents relating to their operation
11 and may summon, qualify, and examine as witnesses all persons
12 having knowledge of such operations, including the governing
13 committee, officers, or employees thereof;

14 (2) to do all things necessary to enable the State of
15 Texas and the association to fully participate in any federal
16 program of reinsurance which may be enacted for purposes similar to
17 the purposes of this Act;

18 (3) to require such reports from the association
19 concerning risks insured by the association pursuant to this Act as
20 may be deemed necessary; and

21 (4) to adopt policy forms, endorsements, rates, and
22 rating and rule manuals for use by the association.

23 SECTION 2. This Act takes effect immediately if it receives
24 a vote of two-thirds of all the members elected to each house, as
25 provided by Section 39, Article III, Texas Constitution. If this
26 Act does not receive the vote necessary for immediate effect, this
27 Act takes effect September 1, 2003.