

By: Seaman

H.B. No. 1744

A BILL TO BE ENTITLED

AN ACT

1 relating to the operation of the Fair Access to Insurance
2 Requirements (FAIR) Plan Association.

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

4 SECTION 1. Section 1, Article 21.49A, Insurance Code, is
5 amended by amending Subsections (a) and (b) to read as follows:

6 (a) If the commissioner determines, after a public hearing,
7 that in all or any part of the state residential property insurance
8 is not reasonably available in the voluntary market to a
9 substantial number of insurable risks or [~~and~~] that at least 25
10 percent of the applicants to the residential property market
11 assistance program who are qualified under the plan of operation
12 have not been placed with an insurer in the previous six-month
13 period, the commissioner may establish a FAIR (Fair Access to
14 Insurance Requirements) Plan to deliver residential property
15 insurance to citizens of this state in underserved areas, which
16 shall be determined and designated by the commissioner by rule.

17 (b) Except as provided by this subsection, each [~~Each~~]
18 insurer, as defined herein, as a condition of its authority to
19 transact residential property insurance in this state, shall
20 participate in the FAIR Plan Association in accordance with this
21 Act. The Texas Windstorm Insurance Association established by
22 Article 21.49 of this code may not participate in the FAIR Plan
23 Association for any purpose.
24

1 SECTION 2. Section 3, Article 21.49A, Insurance Code, is
2 amended by amending Subsections (b), (d), and (e) and adding
3 Subsections (f) and (g) to read as follows:

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

6 (1) five members who represent the interests of
7 insurers;

8 (2) four public members who reside in this state; and

9 (3) two members who are licensed general property and
10 casualty [~~local recording~~] agents.

11 (d) To be eligible to serve on the governing committee as a
12 representative of insurers, a person must be a full-time employee
13 of an authorized insurer that is a member of the association. A
14 member of the governing committee may be removed by the
15 commissioner without cause and replaced in accordance with
16 Subsection (b) of this section.

17 (e) The plan of operation shall provide:

18 (1) for establishment of a FAIR Plan Association for
19 the issuing of residential property insurance pursuant to this Act
20 and the distribution of the losses and the expenses in the writing
21 of such insurance in this state;

22 (2) that all insurers licensed to write property
23 insurance and writing residential property insurance shall
24 participate in the assessments [~~writings, expenses, and losses~~] of
25 the association, in the proportion that the net direct premiums, of
26 each participating insurer, written in this state during the
27 preceding calendar year, bear to the aggregate net direct premium

1 written in this state by all participating insurers; such
2 information shall be determined in accordance with the residential
3 property statistical plan adopted by the commissioner;

4 (3) that a participating insurer is entitled to
5 receive credit for similar insurance voluntarily written in a
6 designated underserved area and its participation in the
7 assessments of [~~writings in~~] the association shall be reduced in
8 accordance with the provisions of the plan of operation;

9 (4) for the immediate binding of eligible risks; for
10 the use of premium installment payment plans, adequate marketing,
11 and service facilities; and for the establishment of reasonable
12 service standards;

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

15 (6) procedures for determining the net level of
16 participation required for each insurer in the FAIR Plan
17 Association;

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

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

25 (9) reasonable underwriting standards for determining
26 insurability of the risk;

27 (10) procedures for the assumption and ceding of

1 reinsurance by the association; and

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

4 (f) Notwithstanding Chapter 551, Government Code, or any
5 other law, members of the governing committee may meet by telephone
6 conference call, video conference, or other similar
7 telecommunication method. The governing committee may use
8 telephone conference call, video conference, or other similar
9 telecommunication method for purposes of establishing a quorum or
10 voting or for any other meeting purpose in accordance with this
11 subsection and Subsection (g) of this section. This subsection
12 applies without regard to the subject matter discussed or
13 considered by the members of the governing committee at the
14 meeting.

15 (g) A meeting held by telephone conference call, video
16 conference, or other similar telecommunication method:

17 (1) is subject to the notice requirements applicable
18 to other meetings of the governing committee;

19 (2) may not be held unless notice of the meeting
20 specifies the location of the meeting at which at least one member
21 of the governing committee is physically present;

22 (3) must be audible to the public at the location
23 specified in the notice under Subdivision (2) of this subsection;
24 and

25 (4) must provide two-way audio communication between
26 all members of the governing committee attending the meeting during
27 the entire meeting, and if the two-way audio communication link

1 with members attending the meeting is disrupted so that a quorum of
2 the governing committee is no longer participating in the meeting,
3 the meeting may not continue until the two-way audio communication
4 link is reestablished.

5 SECTION 3. Section 5(d), Article 21.49A, Insurance Code, is
6 amended to read as follows:

7 (d) Each insurer must participate in the assessments
8 [writings, expenses, and losses] of the association in the
9 proportion that its net direct premiums written bear to the
10 aggregate net direct premiums written by all insurers.

11 SECTION 4. Section 11, Article 21.49A, Insurance Code, is
12 amended to read as follows:

13 Sec. 11. ASSESSMENTS AND PREMIUM SURCHARGES. Should a
14 deficit occur in the association, the association, at the direction
15 of the commissioner, shall either request the issuance of public
16 securities as authorized by Article 21.49A-1 of this code or assess
17 participating insurers in accordance with this section. As
18 reimbursement for assessments paid under this section or service
19 fees paid under Article 21.49A-1 of this code, each [Each] insurer
20 may charge a premium surcharge on every property insurance policy
21 issued by it insuring property in this state, the effective date of
22 which policy is within the three-year period commencing 90 days
23 after the date of assessment by the association under this section
24 or commencing 90 days after payment of a service fee under Article
25 21.49A-1 of this code. The amount of the surcharge shall be
26 calculated on the basis of a uniform percentage of the premium on
27 such policies equal to one-third of the ratio of the amount of an

1 insurer's assessment or service fee payment to the amount of its
2 direct earned premiums as reported in its financial statement to
3 the department for the calendar year immediately preceding the year
4 in which the assessment is made, such that over the period of three
5 years the aggregate of all such surcharges by an insurer shall be at
6 least equal to the amount of the assessment or service fee payment
7 of such insurer. The amount of any assessment paid and surcharged
8 under this section may be carried by the member insurer as an
9 admitted asset of the insurer for all purposes, including
10 exhibition in annual statements under Section 862.001 of this code,
11 until collected. The commissioner shall adopt rules and procedures
12 as necessary to implement this section. [~~The minimum surcharges on~~
13 ~~a policy may be \$1, all surcharges may be rounded to the nearest~~
14 ~~dollar.~~]

15 SECTION 5. Article 21.49A, Insurance Code, is amended by
16 adding Section 16 to read as follows:

17 Sec. 16. ASSETS OF ASSOCIATION. On dissolution of the
18 association, all assets of the association shall be deposited in
19 the general revenue fund.

20 SECTION 6. This Act takes effect immediately if it receives
21 a vote of two-thirds of all the members elected to each house, as
22 provided by Section 39, Article III, Texas Constitution. If this
23 Act does not receive the vote necessary for immediate effect, this
24 Act takes effect September 1, 2005.