

1-1 By: Seaman (Senate Sponsor - Hinojosa) H.B. No. 1744
1-2 (In the Senate - Received from the House May 16, 2005;
1-3 May 17, 2005, read first time and referred to Committee on Business
1-4 and Commerce; May 19, 2005, reported favorably by the following
1-5 vote: Yeas 8, Nays 0; May 19, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the operation of the Fair Access to Insurance
1-9 Requirements (FAIR) Plan Association.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 1, Article 21.49A, Insurance Code, is
1-12 amended by amending Subsections (a) and (b) to read as follows:

1-13 (a) If the commissioner determines, after a public hearing,
1-14 that in all or any part of the state residential property insurance
1-15 is not reasonably available in the voluntary market to a
1-16 substantial number of insurable risks or ~~and~~ that at least 25
1-17 percent of the applicants to the residential property market
1-18 assistance program who are qualified under the plan of operation
1-19 have not been placed with an insurer in the previous six-month
1-20 period, the commissioner may establish a FAIR (Fair Access to
1-21 Insurance Requirements) Plan to deliver residential property
1-22 insurance to citizens of this state in underserved areas, which
1-23 shall be determined and designated by the commissioner by rule.

1-24 (b) Except as provided by this subsection, each ~~Each~~
1-25 insurer, as defined herein, as a condition of its authority to
1-26 transact residential property insurance in this state, shall
1-27 participate in the FAIR Plan Association in accordance with this
1-28 Act. The Texas Windstorm Insurance Association established by
1-29 Article 21.49 of this code may not participate in the FAIR Plan
1-30 Association for any purpose.

1-31 SECTION 2. Section 3, Article 21.49A, Insurance Code, is
1-32 amended by amending Subsections (b), (d), and (e) and adding
1-33 Subsections (f) and (g) to read as follows:

1-34 (b) The governing committee shall be composed of 11 members
1-35 appointed by the commissioner as follows:

1-36 (1) five members who represent the interests of
1-37 insurers;

1-38 (2) four public members who reside in this state; and

1-39 (3) two members who are licensed general property and
1-40 casualty ~~local recording~~ agents.

1-41 (d) To be eligible to serve on the governing committee as a
1-42 representative of insurers, a person must be a full-time employee
1-43 of an authorized insurer that is a member of the association. A
1-44 member of the governing committee may be removed by the
1-45 commissioner without cause and replaced in accordance with
1-46 Subsection (b) of this section.

1-47 (e) The plan of operation shall provide:

1-48 (1) for establishment of a FAIR Plan Association for
1-49 the issuing of residential property insurance pursuant to this Act
1-50 and the distribution of the losses and the expenses in the writing
1-51 of such insurance in this state;

1-52 (2) that all insurers licensed to write property
1-53 insurance and writing residential property insurance shall
1-54 participate in the assessments ~~writings, expenses, and losses~~
1-55 of the association, in the proportion that the net direct premiums, of
1-56 each participating insurer, written in this state during the
1-57 preceding calendar year, bear to the aggregate net direct premium
1-58 written in this state by all participating insurers; such
1-59 information shall be determined in accordance with the residential
1-60 property statistical plan adopted by the commissioner;

1-61 (3) that a participating insurer is entitled to
1-62 receive credit for similar insurance voluntarily written in a
1-63 designated underserved area and its participation in the
1-64 assessments of ~~writings in~~ the association shall be reduced in

2-1 accordance with the provisions of the plan of operation;

2-2 (4) for the immediate binding of eligible risks; for
2-3 the use of premium installment payment plans, adequate marketing,
2-4 and service facilities; and for the establishment of reasonable
2-5 service standards;

2-6 (5) procedures for efficient, economical, fair, and
2-7 nondiscriminatory administration of the FAIR Plan Association;

2-8 (6) procedures for determining the net level of
2-9 participation required for each insurer in the FAIR Plan
2-10 Association;

2-11 (7) for the use of deductibles and other underwriting
2-12 devices and for assessment of all members in amounts sufficient to
2-13 operate the association; and establish maximum limits of liability
2-14 to be placed through the program; and commissions to be paid to the
2-15 licensed agents submitting applications;

2-16 (8) that the association issue policies in its own
2-17 name;

2-18 (9) reasonable underwriting standards for determining
2-19 insurability of the risk;

2-20 (10) procedures for the assumption and ceding of
2-21 reinsurance by the association; and

2-22 (11) any other procedures or operational matters
2-23 deemed necessary by the governing committee or the commissioner.

2-24 (f) Notwithstanding Chapter 551, Government Code, or any
2-25 other law, members of the governing committee may meet by telephone
2-26 conference call, video conference, or other similar
2-27 telecommunication method. The governing committee may use
2-28 telephone conference call, video conference, or other similar
2-29 telecommunication method for purposes of establishing a quorum or
2-30 voting or for any other meeting purpose in accordance with this
2-31 subsection and Subsection (g) of this section. This subsection
2-32 applies without regard to the subject matter discussed or
2-33 considered by the members of the governing committee at the
2-34 meeting.

2-35 (g) A meeting held by telephone conference call, video
2-36 conference, or other similar telecommunication method:

2-37 (1) is subject to the notice requirements applicable
2-38 to other meetings of the governing committee;

2-39 (2) may not be held unless notice of the meeting
2-40 specifies the location of the meeting at which at least one member
2-41 of the governing committee is physically present;

2-42 (3) must be audible to the public at the location
2-43 specified in the notice under Subdivision (2) of this subsection;
2-44 and

2-45 (4) must provide two-way audio communication between
2-46 all members of the governing committee attending the meeting during
2-47 the entire meeting, and if the two-way audio communication link
2-48 with members attending the meeting is disrupted so that a quorum of
2-49 the governing committee is no longer participating in the meeting,
2-50 the meeting may not continue until the two-way audio communication
2-51 link is reestablished.

2-52 SECTION 3. Section 5(d), Article 21.49A, Insurance Code, is
2-53 amended to read as follows:

2-54 (d) Each insurer must participate in the assessments
2-55 [writings, expenses, and losses] of the association in the
2-56 proportion that its net direct premiums written bear to the
2-57 aggregate net direct premiums written by all insurers.

2-58 SECTION 4. Section 11, Article 21.49A, Insurance Code, is
2-59 amended to read as follows:

2-60 Sec. 11. ASSESSMENTS AND PREMIUM SURCHARGES. Should a
2-61 deficit occur in the association, the association, at the direction
2-62 of the commissioner, shall either request the issuance of public
2-63 securities as authorized by Article 21.49A-1 of this code or assess
2-64 participating insurers in accordance with this section. As
2-65 reimbursement for assessments paid under this section or service
2-66 fees paid under Article 21.49A-1 of this code, each [Each] insurer
2-67 may charge a premium surcharge on every property insurance policy
2-68 issued by it insuring property in this state, the effective date of
2-69 which policy is within the three-year period commencing 90 days

3-1 after the date of assessment by the association under this section
 3-2 or commencing 90 days after payment of a service fee under Article
 3-3 21.49A-1 of this code. The amount of the surcharge shall be
 3-4 calculated on the basis of a uniform percentage of the premium on
 3-5 such policies equal to one-third of the ratio of the amount of an
 3-6 insurer's assessment or service fee payment to the amount of its
 3-7 direct earned premiums as reported in its financial statement to
 3-8 the department for the calendar year immediately preceding the year
 3-9 in which the assessment is made, such that over the period of three
 3-10 years the aggregate of all such surcharges by an insurer shall be at
 3-11 least equal to the amount of the assessment or service fee payment
 3-12 of such insurer. The amount of any assessment paid and surcharged
 3-13 under this section may be carried by the member insurer as an
 3-14 admitted asset of the insurer for all purposes, including
 3-15 exhibition in annual statements under Section 862.001 of this code,
 3-16 until collected. The commissioner shall adopt rules and procedures
 3-17 as necessary to implement this section. [~~The minimum surcharges on~~
 3-18 ~~a policy may be \$1; all surcharges may be rounded to the nearest~~
 3-19 ~~dollar.]~~

3-20 SECTION 5. Article 21.49A, Insurance Code, is amended by
 3-21 adding Section 16 to read as follows:

3-22 Sec. 16. ASSETS OF ASSOCIATION. On dissolution of the
 3-23 association, all assets of the association shall be deposited in
 3-24 the general revenue fund.

3-25 SECTION 6. This Act takes effect immediately if it receives
 3-26 a vote of two-thirds of all the members elected to each house, as
 3-27 provided by Section 39, Article III, Texas Constitution. If this
 3-28 Act does not receive the vote necessary for immediate effect, this
 3-29 Act takes effect September 1, 2005.

3-30 * * * * *