

By: Bonnen of Galveston

H.B. No. 3430

A BILL TO BE ENTITLED

AN ACT

1
2 relating to dispute resolution for certain claims arising under
3 insurance policies issued by the Fair Access to Insurance
4 Requirements (FAIR) Plan Association; authorizing fees.

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

6 SECTION 1. Section 2211.003, Insurance Code, is amended by
7 adding Subsection (c) to read as follows:

8 (c) Subsection (a) does not apply to a person who is
9 required to resolve a dispute under Subchapter D-1.

10 SECTION 2. Subchapter A, Chapter 2211, Insurance Code, is
11 amended by adding Sections 2211.004 and 2211.005 to read as
12 follows:

13 Sec. 2211.004. CERTAIN CONDUCT IN DISPUTE RESOLUTION
14 PROHIBITED. (a) For purposes of this section, "presiding officer"
15 includes a judge, mediator, arbitrator, appraiser, or panel member.

16 (b) If a person insured under this chapter is assigned to
17 act as presiding officer to preside over or resolve a dispute
18 involving the association and another person insured under this
19 chapter, the presiding officer shall, not later than the seventh
20 day after the date of assignment, give written notice to the
21 association and to each other party to the dispute, or the
22 association's or other party's attorney, that the presiding officer
23 is insured under this chapter.

24 (c) In a proceeding with respect to which the commissioner

1 has authority to designate the presiding officer, the association
2 or other party that receives notice under Subsection (b) may file
3 with the commissioner a written objection to the assignment of the
4 presiding officer to the dispute. The written objection must
5 contain the factual basis on which the association or other party
6 objects to the assignment.

7 (d) The commissioner shall assign a different presiding
8 officer to the dispute if, after reviewing the objection filed
9 under Subsection (c), the commissioner determines that the
10 presiding officer originally assigned to the dispute has a direct
11 financial or personal interest in the outcome of the dispute.

12 (e) The association or other party must file an objection
13 under Subsection (c) not later than the earlier of:

14 (1) the seventh day after the date the association or
15 other party receives actual notice that the presiding officer is
16 insured under this chapter; or

17 (2) the seventh day before the date of the first
18 proceeding concerning the dispute.

19 (f) The commissioner may, on a showing of good cause, extend
20 the deadline to file an objection under Subsection (e).

21 Sec. 2211.005. APPLICABILITY OF CERTAIN OTHER LAW. (a) A
22 person may not bring a private action against the association,
23 including a claim against an agent or representative of the
24 association, under Chapter 541 or 542. Notwithstanding any other
25 provision of this code or this chapter, a class action under
26 Subchapter F, Chapter 541, or under Rule 42, Texas Rules of Civil
27 Procedure, may be brought against the association only by the

1 attorney general at the request of the department.

2 (b) Chapter 542 does not apply to the processing and
3 settlement of claims by the association.

4 SECTION 3. Subchapter D, Chapter 2211, Insurance Code, is
5 amended by adding Sections 2211.158 and 2211.159 to read as
6 follows:

7 Sec. 2211.158. REQUIRED POLICY PROVISIONS: DEADLINE FOR
8 FILING CLAIM; NOTICE CONCERNING RESOLUTION OF CERTAIN DISPUTES.

9 (a) An insurance policy issued by the association must:

10 (1) require an insured to file a claim under the policy
11 not later than the first anniversary of the date on which the damage
12 to property that is the basis of the claim occurs; and

13 (2) contain, in boldface type, a conspicuous notice
14 concerning the resolution of disputes under the policy, including:

15 (A) the processes and deadlines for appraisal
16 under Section 2211.174 and alternative dispute resolution under
17 Section 2211.175;

18 (B) the binding effect of appraisal under Section
19 2211.174; and

20 (C) the necessity of complying with the
21 requirements of Subchapter D-1 to seek relief, including judicial
22 relief.

23 (b) The commissioner, on a showing of good cause by a person
24 insured under this chapter, may extend the one-year period
25 described by Subsection (a)(1) for a period not to exceed 180 days.

26 Sec. 2211.159. VOLUNTARY ARBITRATION OF CERTAIN COVERAGE
27 AND CLAIM DISPUTES. (a) A person insured under this chapter may

1 elect to purchase a binding arbitration endorsement in a form
2 prescribed by the commissioner. A person who elects to purchase an
3 endorsement under this section must arbitrate a dispute involving
4 an act, ruling, or decision of the association relating to the
5 payment of, the amount of, or the denial of the claim.

6 (b) An arbitration under this section shall be conducted in
7 the manner and under rules and deadlines prescribed by the
8 commissioner by rule.

9 (c) The association may offer a person insured under this
10 chapter an actuarially justified premium discount on a policy
11 issued by the association if the person elects to purchase a binding
12 arbitration endorsement under this section. The premium discount
13 may not exceed 10 percent of the premium for the policy, before the
14 application of the discount.

15 (d) The commissioner shall adopt rules necessary to
16 implement and enforce this section, including rules defining
17 "actuarially justified" for the purposes of this section.

18 SECTION 4. Chapter [2211](#), Insurance Code, is amended by
19 adding Subchapter D-1 to read as follows:

20 SUBCHAPTER D-1. CLAIMS: SETTLEMENT AND DISPUTE RESOLUTION

21 Sec. 2211.171. DEFINITIONS. In this subchapter:

22 (1) "Association policy" means an insurance policy
23 issued by the association.

24 (2) "Claim" means a request for payment under an
25 association policy. The term also includes any other claim against
26 the association, or an agent or representative of the association,
27 relating to an insured loss, under any theory or cause of action of

1 any kind, regardless of the theory under which the claim is
2 asserted, the cause of action brought, or the type of damages
3 sought.

4 (3) "Claimant" means a person who makes a claim.

5 Sec. 2211.172. EXCLUSIVE REMEDIES AND LIMITATION ON AWARD.

6 (a) This subchapter provides the exclusive remedies for a claim
7 against the association, including an agent or representative of
8 the association.

9 (b) Subject to Section 2211.176, the association may not be
10 held liable for any amount other than covered losses payable under
11 the terms of the association policy.

12 (c) The association, or an agent or representative of the
13 association, may not be held liable for damages under Chapter 17,
14 Business & Commerce Code, or, except as otherwise specifically
15 provided by this chapter, under any provision of any law providing
16 for additional damages, exemplary damages, or a penalty.

17 Sec. 2211.173. FILING OF CLAIM; CLAIM PROCESSING. (a)
18 Subject to Section 2211.158(b), an insured must file a claim under
19 an association policy not later than the first anniversary of the
20 date on which the damage to property that is the basis of the claim
21 occurs.

22 (b) The claimant may submit written materials, comments,
23 documents, records, and other information to the association
24 relating to the claim. If the claimant fails to submit information
25 in the claimant's possession that is necessary for the association
26 to determine whether to accept or reject the claim, the association
27 may, not later than the 30th day after the date the claim is filed,

1 request in writing the necessary information from the claimant.

2 (c) The association shall, on request, provide a claimant
3 reasonable access to all information relevant to the determination
4 of the association concerning the claim. The claimant may copy the
5 information at the claimant's own cost or may request the
6 association to provide a copy of all or part of the information to
7 the claimant. The association may charge a claimant the actual cost
8 incurred by the association in providing a copy of information
9 under this section, excluding any amount for labor involved in
10 making any information or copy of information available to a
11 claimant.

12 (d) Unless the applicable 60-day period described by this
13 subsection is extended by the commissioner under Section 2211.180,
14 not later than the later of the 60th day after the date the
15 association receives a claim or the 60th day after the date the
16 association receives information requested under Subsection (b),
17 the association shall provide the claimant, in writing,
18 notification that:

19 (1) the association has accepted coverage for the
20 claim in full;

21 (2) the association has accepted coverage for the
22 claim in part and has denied coverage for the claim in part; or

23 (3) the association has denied coverage for the claim
24 in full.

25 (e) In a notice provided under Subsection (d)(1), the
26 association must inform the claimant of the amount of loss the
27 association will pay and of the time limit to demand appraisal under

1 Section 2211.174.

2 (f) In a notice provided under Subsection (d)(2) or (3), the
3 association must inform the claimant of, as applicable:

4 (1) the portion of the loss for which the association
5 accepts coverage and the amount of loss the association will pay;

6 (2) the portion of the loss for which the association
7 denies coverage and a detailed summary of the manner in which the
8 association determined not to accept coverage for that portion of
9 the claim; and

10 (3) the time limit to:

11 (A) demand appraisal under Section 2211.174 of
12 the portion of the loss for which the association accepts coverage;
13 and

14 (B) provide notice of intent to bring an action
15 as required by Section 2211.175.

16 (g) In addition to a notice provided under Subsection (d)(2)
17 or (3), the association shall provide a claimant with a form on
18 which the claimant may provide the association notice of intent to
19 bring an action as required by Section 2211.175.

20 Sec. 2211.1731. PAYMENT OF CLAIM. (a) Except as provided
21 by Subsection (b), if the association notifies a claimant under
22 Section 2211.173(d)(1) or (2) that the association has accepted
23 coverage for a claim in full or has accepted coverage for a claim in
24 part, the association shall pay the accepted claim or accepted
25 portion of the claim not later than the 10th day after the date
26 notice is made.

27 (b) If payment of the accepted claim or accepted portion of

1 the claim is conditioned on the performance of an act by the
2 claimant, the association shall pay the claim not later than the
3 10th day after the date the act is performed.

4 Sec. 2211.174. DISPUTES CONCERNING AMOUNT OF ACCEPTED
5 COVERAGE. (a) If the association accepts coverage for a claim in
6 full and a claimant disputes only the amount of loss the association
7 will pay for the claim, or if the association accepts coverage for a
8 claim in part and a claimant disputes the amount of loss the
9 association will pay for the accepted portion of the claim, the
10 claimant may request from the association a detailed summary of the
11 manner in which the association determined the amount of loss the
12 association will pay.

13 (b) If a claimant disputes the amount of loss the
14 association will pay for a claim or a portion of a claim, the
15 claimant, not later than the 60th day after the date the claimant
16 receives the notice described by Section 2211.173(d)(1) or (2), may
17 demand appraisal in accordance with the terms of the association
18 policy.

19 (c) If a claimant, on a showing of good cause and not later
20 than the 15th day after the expiration of the 60-day period
21 described by Subsection (b), requests in writing that the 60-day
22 period be extended, the association may grant an additional 30-day
23 period in which the claimant may demand appraisal.

24 (d) If a claimant demands appraisal under this section:

25 (1) the appraisal must be conducted as provided by the
26 association policy; and

27 (2) the claimant and the association are responsible

1 in equal shares for paying any costs incurred or charged in
2 connection with the appraisal, including a fee charged under
3 Subsection (e).

4 (e) If a claimant demands appraisal under this section and
5 the appraiser retained by the claimant and the appraiser retained
6 by the association are able to agree on an appraisal umpire to
7 participate in the resolution of the dispute, the appraisal umpire
8 is the umpire chosen by the two appraisers. If the appraiser
9 retained by the claimant and the appraiser retained by the
10 association are unable to agree on an appraisal umpire to
11 participate in the resolution of the dispute, the commissioner
12 shall select an appraisal umpire from a roster of qualified umpires
13 maintained by the department. The department may:

14 (1) require appraisers to register with the department
15 as a condition of being placed on the roster; and

16 (2) charge a reasonable registration fee to defray the
17 cost incurred by the department in maintaining the roster and the
18 commissioner in selecting an appraisal umpire under this
19 subsection.

20 (f) Except as provided by Subsection (g), the appraisal
21 decision is binding on the claimant and the association as to the
22 amount of loss the association will pay for a fully accepted claim
23 or the accepted portion of a partially accepted claim and is not
24 appealable or otherwise reviewable. A claimant that does not
25 demand appraisal before the expiration of the periods described by
26 Subsections (b) and (c) waives the claimant's right to contest the
27 association's determination of the amount of loss the association

1 will pay with reference to a fully accepted claim or the accepted
2 portion of a partially accepted claim.

3 (g) A claimant or the association may, not later than the
4 second anniversary of the date of an appraisal decision, file an
5 action in a district court in the county in which the loss that is
6 the subject of the appraisal occurred to vacate the appraisal
7 decision and begin a new appraisal process if:

8 (1) the appraisal decision was obtained by corruption,
9 fraud, or other undue means;

10 (2) the rights of the claimant or the association were
11 prejudiced by:

12 (A) evident partiality by an appraisal umpire;

13 (B) corruption in an appraiser or appraisal
14 umpire; or

15 (C) misconduct or wilful misbehavior of an
16 appraiser or appraisal umpire; or

17 (3) an appraiser or appraisal umpire:

18 (A) exceeded the appraiser's or appraisal
19 umpire's powers;

20 (B) refused to postpone the appraisal after a
21 showing of sufficient cause for the postponement;

22 (C) refused to consider evidence material to the
23 claim; or

24 (D) conducted the appraisal in a manner that
25 substantially prejudiced the rights of the claimant or the
26 association.

27 (h) Except as provided by Subsection (g), a claimant may not

1 bring an action against the association with reference to a claim
2 for which the association has accepted coverage in full.

3 Sec. 2211.175. DISPUTES CONCERNING DENIED COVERAGE. (a)
4 If the association denies coverage for a claim in part or in full
5 and the claimant disputes that determination, the claimant, not
6 later than the expiration of the limitations period described by
7 Section 2211.177(a) but after the date the claimant receives the
8 notice described by Section 2211.173(d)(2) or (3), must provide the
9 association with notice that the claimant intends to bring an
10 action against the association concerning the partial or full
11 denial of the claim. A claimant that does not provide notice of
12 intent to bring an action before the expiration of the period
13 described by this subsection waives the claimant's right to contest
14 the association's partial or full denial of coverage and is barred
15 from bringing an action against the association concerning the
16 denial of coverage.

17 (b) If a claimant provides notice of intent to bring an
18 action under Subsection (a), the association may require the
19 claimant, as a prerequisite to filing the action against the
20 association, to submit the dispute to alternative dispute
21 resolution by mediation or moderated settlement conference, as
22 provided by Chapter 154, Civil Practice and Remedies Code.

23 (c) The association must request alternative dispute
24 resolution of a dispute described by Subsection (b) not later than
25 the 60th day after the date the association receives from the
26 claimant notice of intent to bring an action.

27 (d) Alternative dispute resolution under this section must

1 be completed not later than the 60th day after the date a request
2 for alternative dispute resolution is made under Subsection (c).
3 The 60-day period described by this subsection may be extended by
4 the commissioner in accordance with Section 2211.180 or by the
5 association and a claimant by mutual consent.

6 (e) If the claimant is not satisfied after completion of
7 alternative dispute resolution, or if alternative dispute
8 resolution is not completed before the expiration of the 60-day
9 period described by Subsection (d) or any extension under that
10 subsection, the claimant may bring an action against the
11 association in a district court in the county in which the loss that
12 is the subject of the coverage denial occurred. An action brought
13 under this subsection shall be presided over by a judge appointed by
14 the judicial panel on multidistrict litigation designated under
15 Section 74.161, Government Code. A judge appointed under this
16 section must be an active judge, as defined by Section 74.041,
17 Government Code, who is a resident of the county in which the loss
18 that is the basis of the disputed denied coverage occurred or of a
19 county adjacent to the county in which that loss occurred.

20 (f) If a claimant brings an action against the association
21 concerning a partial or full denial of coverage, the court shall
22 abate the action until the notice of intent to bring an action has
23 been provided and, if requested by the association, the dispute has
24 been submitted to alternative dispute resolution, in accordance
25 with this section.

26 (g) A moderated settlement conference under this section
27 may be conducted by a panel consisting of one or more impartial

1 third parties.

2 (h) If the association requests mediation under this
3 section, the claimant and the association are responsible in equal
4 shares for paying any costs incurred or charged in connection with
5 the mediation.

6 (i) If the association requests mediation under this
7 section, and the claimant and the association are able to agree on a
8 mediator, the mediator is the mediator agreed to by the claimant and
9 the association. If the claimant and the association are unable to
10 agree on a mediator, the commissioner shall select a mediator from a
11 roster of qualified mediators maintained by the department. The
12 department may:

13 (1) require mediators to register with the department
14 as a condition of being placed on the roster; and

15 (2) charge a reasonable registration fee to defray the
16 cost incurred by the department in maintaining the roster and the
17 commissioner in selecting a mediator under this subsection.

18 (j) The commissioner shall establish rules to implement
19 this section, including provisions for expediting alternative
20 dispute resolution, facilitating the ability of a claimant to
21 appear with or without counsel, establishing qualifications
22 necessary for mediators to be placed on the roster maintained by the
23 department under Subsection (i), and providing that formal rules of
24 evidence shall not apply to the proceedings.

25 Sec. 2211.176. ISSUES BROUGHT TO SUIT; LIMITATIONS ON
26 RECOVERY. (a) The only issues a claimant may raise in an action
27 brought against the association under Section 2211.175 are:

1 (1) whether the association's denial of coverage was
2 proper; and

3 (2) the amount of the damages described by Subsection
4 (b) to which the claimant is entitled, if any.

5 (b) Except as provided by Subsections (c) and (d), a
6 claimant that brings an action against the association under
7 Section 2211.175 may recover only:

8 (1) the covered loss payable under the terms of the
9 association policy less, if applicable, the amount of loss already
10 paid by the association for any portion of a covered loss for which
11 the association accepted coverage;

12 (2) prejudgment interest from the first day after the
13 date specified in Section 2211.1731 by which the association was or
14 would have been required to pay an accepted claim or the accepted
15 portion of a claim, at the prejudgment interest rate provided by
16 Subchapter B, Chapter 304, Finance Code; and

17 (3) court costs and reasonable and necessary
18 attorney's fees.

19 (c) Nothing in this chapter, including Subsection (b), may
20 be construed to limit the consequential damages, or the amount of
21 consequential damages, that a claimant may recover under common law
22 in an action against the association.

23 (d) A claimant that brings an action against the association
24 under Section 2211.175 may, in addition to the covered loss
25 described by Subsection (b)(1) and any consequential damages
26 recovered by the claimant under common law, recover damages in an
27 amount not to exceed the aggregated amount of the covered loss

1 described by Subsection (b)(1) and the consequential damages
2 recovered under common law if the claimant proves by clear and
3 convincing evidence that the association mishandled the claimant's
4 claim to the claimant's detriment by intentionally:

5 (1) failing to meet the deadlines or timelines
6 established under this subchapter without good cause, including the
7 applicable deadline established under Section 2211.1731 for
8 payment of an accepted claim or the accepted portion of a claim;

9 (2) failing to provide the notice required under
10 Section 2211.173(d);

11 (3) rejecting a claim without conducting a reasonable
12 investigation with respect to the claim; or

13 (4) denying coverage for a claim in part or in full if
14 the association's liability has become reasonably clear as a result
15 of the association's investigation with respect to the portion of
16 the claim that was denied.

17 (e) For purposes of Subsection (d), "intentionally" means
18 actual awareness of the facts surrounding the act or practice
19 listed in Subsection (d)(1), (2), (3), or (4), coupled with the
20 specific intent that the claimant suffer harm or damages as a result
21 of the act or practice. Specific intent may be inferred from
22 objective manifestations that the association acted intentionally
23 or from facts that show that the association acted with flagrant
24 disregard of the duty to avoid the acts or practices listed in
25 Subsection (d)(1), (2), (3), or (4).

26 Sec. 2211.177. LIMITATIONS PERIOD. (a) Notwithstanding
27 any other law, a claimant that brings an action against the

1 association under Section 2211.175 must bring the action not later
2 than the second anniversary of the date on which the person receives
3 a notice described by Section 2211.173(d)(2) or (3).

4 (b) This section is a statute of repose and controls over
5 any other applicable limitations period.

6 Sec. 2211.178. CONSTRUCTION WITH OTHER LAW. (a) To the
7 extent of any conflict between a provision of this subchapter and
8 any other law, the provision of this subchapter prevails.

9 (b) Notwithstanding any other law, the association may not
10 bring an action against a claimant, for declaratory or other
11 relief, before the 180th day after the date an appraisal under
12 Section 2211.174, or alternative dispute resolution under Section
13 2211.175, is completed.

14 Sec. 2211.179. RULEMAKING. (a) The commissioner shall
15 adopt rules regarding the provisions of this subchapter, including
16 rules concerning:

17 (1) qualifications and selection of appraisers for the
18 appraisal procedure and mediators for the mediation process;

19 (2) procedures and deadlines for the payment and
20 handling of claims by the association as well as the procedures and
21 deadlines for a review of a claim by the association; and

22 (3) any other matters regarding the handling of claims
23 that are not inconsistent with this subchapter.

24 (b) All rules adopted by the commissioner under this section
25 must promote the fairness of the process, protect the rights of
26 aggrieved policyholders, and ensure that policyholders may
27 participate in the claims review process without the necessity of

1 engaging legal counsel.

2 Sec. 2211.180. COMMISSIONER EXTENSION OF DEADLINES. (a)

3 The commissioner, on a showing of good cause, may extend any
4 deadline established under this subchapter.

5 (b) For the purposes of Subsection (a), "good cause"
6 includes military deployment.

7 Sec. 2211.181. OMBUDSMAN PROGRAM. (a) The department
8 shall establish an ombudsman program to provide information and
9 educational programs to assist persons insured under this chapter
10 with the claim processes under this subchapter.

11 (b) Not later than March 1 of each year, the department
12 shall prepare and submit to the commissioner a budget for the
13 ombudsman program, including approval of all expenditures incurred
14 in administering and operating the program. The commissioner shall
15 adopt or modify and adopt the budget not later than April 1 of the
16 year in which the budget is submitted.

17 (c) Not later than May 1 of each year, the association shall
18 transfer to the ombudsman program money in an amount equal to the
19 amount of the budget adopted under Subsection (b). The ombudsman
20 program, not later than April 30 of each year, shall return to the
21 association any unexpended funds that the program received from the
22 association in the previous year.

23 (d) The department shall, not later than the 60th day after
24 the date of a catastrophic event, as defined by the commissioner for
25 the purposes of this subsection, prepare and submit an amended
26 budget to the commissioner for approval and report to the
27 commissioner the approximate number of claimants eligible for

1 ombudsman services. The commissioner shall adopt rules as
2 necessary to implement an amended budget submitted under this
3 section, including rules regarding the transfer of additional money
4 from the association to the program.

5 (e) The ombudsman program may provide to persons insured
6 under this chapter information and educational programs through:

7 (1) informational materials;

8 (2) toll-free telephone numbers;

9 (3) public meetings;

10 (4) outreach centers;

11 (5) the Internet; and

12 (6) other reasonable means.

13 (f) The ombudsman program is administratively attached to
14 the department. The department shall provide the staff, services,
15 and facilities necessary for the ombudsman program to operate,
16 including:

17 (1) administrative assistance and service, including
18 budget planning and purchasing;

19 (2) personnel services;

20 (3) office space; and

21 (4) computer equipment and support.

22 (g) The ombudsman program shall prepare and make available
23 to each person insured under this chapter information describing
24 the functions of the ombudsman program.

25 (h) The association, in the manner prescribed by the
26 commissioner by rule, shall notify each person insured under this
27 chapter concerning the operation of the ombudsman program.

1 (i) The commissioner may adopt rules as necessary to
2 implement this section.

3 SECTION 5. (a) Except as otherwise specifically provided
4 by this section, this Act applies only to an insurance policy that
5 is delivered, issued for delivery, or renewed by the Fair Access to
6 Insurance Requirements Plan Association on or after the 60th day
7 after the effective date of this Act. An insurance policy that is
8 delivered, issued for delivery, or renewed by the Fair Access to
9 Insurance Requirements Plan Association before the 60th day after
10 the effective date of this Act is governed by the law as it existed
11 immediately before the effective date of this Act, and that law is
12 continued in effect for that purpose.

13 (b) The deadline to file a claim under an insurance policy
14 delivered, issued for delivery, or renewed before the 60th day
15 after the effective date of this Act by the Fair Access to Insurance
16 Requirements Plan Association is governed by the law as it existed
17 immediately before the effective date of this Act, and that law is
18 continued in effect for that purpose.

19 (c) If a person insured by the Fair Access to Insurance
20 Requirements Plan Association disputes the amount the association
21 will pay for a partially or fully accepted claim filed by the
22 person, Section 2211.174, Insurance Code, as added by this Act,
23 applies only if the insurance policy under which the claim is filed
24 is delivered, issued for delivery, or renewed on or after the 60th
25 day after the effective date of this Act.

26 (d) If a person insured by the Fair Access to Insurance
27 Requirements Plan Association disputes the amount the association

1 will pay for a partially or fully accepted claim filed by the person
2 and the insurance policy under which the claim is filed is
3 delivered, issued for delivery, or renewed before the 60th day
4 after the effective date of this Act:

5 (1) Section 2211.174, Insurance Code, as added by this
6 Act, does not apply to the resolution of the dispute; and

7 (2) notwithstanding any other provision of this Act,
8 the claimant must attempt to resolve the dispute through any
9 appraisal process contained in the association policy under which
10 the claim is filed before an action may be brought against the Fair
11 Access to Insurance Requirements Plan Association concerning the
12 claim.

13 (e) The person insured by the Fair Access to Insurance
14 Requirements Plan Association and the association may agree that an
15 appraisal conducted under Subsection (d)(2) of this section is
16 binding on the parties.

17 (f) An action brought against the association concerning a
18 claim described by Subsection (d) of this section shall be abated
19 until the appraisal process under Subsection (d)(2) of this section
20 is completed.

21 (g) Notwithstanding Sections 2211.175 and 2211.176,
22 Insurance Code, as added by this Act, Subsection (b) of this
23 section, or any other provision of this Act, Sections 2211.176(b),
24 (c), (d), and (e), Insurance Code, apply to any cause of action that
25 accrues against the Fair Access to Insurance Requirements Plan
26 Association on or after the effective date of this Act and the basis
27 of which is a claim filed under an insurance policy that is

1 delivered, issued for delivery, or renewed by the association,
2 regardless of the date on which the policy was delivered, issued for
3 delivery, or renewed.

4 SECTION 6. This Act takes effect immediately if it receives
5 a vote of two-thirds of all the members elected to each house, as
6 provided by Section 39, Article III, Texas Constitution. If this
7 Act does not receive the vote necessary for immediate effect, this
8 Act takes effect September 1, 2017.