

1-1 By: Taylor of Galveston S.B. No. 1537
 1-2 (In the Senate - Filed March 8, 2017; March 21, 2017, read
 1-3 first time and referred to Committee on Business & Commerce;
 1-4 April 18, 2017, reported favorably by the following vote: Yeas 8,
 1-5 Nays 1; April 18, 2017, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16		X		

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to dispute resolution for certain claims arising under
 1-20 insurance policies issued by the Fair Access to Insurance
 1-21 Requirements (FAIR) Plan Association; authorizing fees.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Section 2211.003, Insurance Code, is amended by
 1-24 adding Subsection (c) to read as follows:

1-25 (c) Subsection (a) does not apply to a person who is
 1-26 required to resolve a dispute under Subchapter D-1.

1-27 SECTION 2. Subchapter A, Chapter 2211, Insurance Code, is
 1-28 amended by adding Sections 2211.004 and 2211.005 to read as
 1-29 follows:

1-30 Sec. 2211.004. CERTAIN CONDUCT IN DISPUTE RESOLUTION
 1-31 PROHIBITED. (a) For purposes of this section, "presiding officer"
 1-32 includes a judge, mediator, arbitrator, appraiser, or panel member.

1-33 (b) If a person insured under this chapter is assigned to
 1-34 act as presiding officer to preside over or resolve a dispute
 1-35 involving the association and another person insured under this
 1-36 chapter, the presiding officer shall, not later than the seventh
 1-37 day after the date of assignment, give written notice to the
 1-38 association and to each other party to the dispute, or the
 1-39 association's or other party's attorney, that the presiding officer
 1-40 is insured under this chapter.

1-41 (c) In a proceeding with respect to which the commissioner
 1-42 has authority to designate the presiding officer, the association
 1-43 or other party that receives notice under Subsection (b) may file
 1-44 with the commissioner a written objection to the assignment of the
 1-45 presiding officer to the dispute. The written objection must
 1-46 contain the factual basis on which the association or other party
 1-47 objects to the assignment.

1-48 (d) The commissioner shall assign a different presiding
 1-49 officer to the dispute if, after reviewing the objection filed
 1-50 under Subsection (c), the commissioner determines that the
 1-51 presiding officer originally assigned to the dispute has a direct
 1-52 financial or personal interest in the outcome of the dispute.

1-53 (e) The association or other party must file an objection
 1-54 under Subsection (c) not later than the earlier of:

1-55 (1) the seventh day after the date the association or
 1-56 other party receives actual notice that the presiding officer is
 1-57 insured under this chapter; or

1-58 (2) the seventh day before the date of the first
 1-59 proceeding concerning the dispute.

1-60 (f) The commissioner may, on a showing of good cause, extend
 1-61 the deadline to file an objection under Subsection (e).

2-1 Sec. 2211.005. APPLICABILITY OF CERTAIN OTHER LAW. (a) A
2-2 person may not bring a private action against the association,
2-3 including a claim against an agent or representative of the
2-4 association, under Chapter 541 or 542. Notwithstanding any other
2-5 provision of this code or this chapter, a class action under
2-6 Subchapter F, Chapter 541, or under Rule 42, Texas Rules of Civil
2-7 Procedure, may be brought against the association only by the
2-8 attorney general at the request of the department.

2-9 (b) Chapter 542 does not apply to the processing and
2-10 settlement of claims by the association.

2-11 SECTION 3. Subchapter D, Chapter 2211, Insurance Code, is
2-12 amended by adding Sections 2211.158 and 2211.159 to read as
2-13 follows:

2-14 Sec. 2211.158. REQUIRED POLICY PROVISIONS: DEADLINE FOR
2-15 FILING CLAIM; NOTICE CONCERNING RESOLUTION OF CERTAIN DISPUTES.

2-16 (a) An insurance policy issued by the association must:

2-17 (1) require an insured to file a claim under the policy
2-18 not later than the first anniversary of the date on which the damage
2-19 to property that is the basis of the claim occurs; and

2-20 (2) contain, in boldface type, a conspicuous notice
2-21 concerning the resolution of disputes under the policy, including:

2-22 (A) the processes and deadlines for appraisal
2-23 under Section 2211.174 and alternative dispute resolution under
2-24 Section 2211.175;

2-25 (B) the binding effect of appraisal under Section
2-26 2211.174; and

2-27 (C) the necessity of complying with the
2-28 requirements of Subchapter D-1 to seek relief, including judicial
2-29 relief.

2-30 (b) The commissioner, on a showing of good cause by a person
2-31 insured under this chapter, may extend the one-year period
2-32 described by Subsection (a)(1) for a period not to exceed 180 days.

2-33 Sec. 2211.159. VOLUNTARY ARBITRATION OF CERTAIN COVERAGE
2-34 AND CLAIM DISPUTES. (a) A person insured under this chapter may
2-35 elect to purchase a binding arbitration endorsement in a form
2-36 prescribed by the commissioner. A person who elects to purchase an
2-37 endorsement under this section must arbitrate a dispute involving
2-38 an act, ruling, or decision of the association relating to the
2-39 payment of, the amount of, or the denial of the claim.

2-40 (b) An arbitration under this section shall be conducted in
2-41 the manner and under rules and deadlines prescribed by the
2-42 commissioner by rule.

2-43 (c) The association may offer a person insured under this
2-44 chapter an actuarially justified premium discount on a policy
2-45 issued by the association if the person elects to purchase a binding
2-46 arbitration endorsement under this section. The premium discount
2-47 may not exceed 10 percent of the premium for the policy, before the
2-48 application of the discount.

2-49 (d) The commissioner shall adopt rules necessary to
2-50 implement and enforce this section, including rules defining
2-51 "actuarially justified" for the purposes of this section.

2-52 SECTION 4. Chapter 2211, Insurance Code, is amended by
2-53 adding Subchapter D-1 to read as follows:

2-54 SUBCHAPTER D-1. CLAIMS: SETTLEMENT AND DISPUTE RESOLUTION

2-55 Sec. 2211.171. DEFINITIONS. In this subchapter:

2-56 (1) "Association policy" means an insurance policy
2-57 issued by the association.

2-58 (2) "Claim" means a request for payment under an
2-59 association policy. The term also includes any other claim against
2-60 the association, or an agent or representative of the association,
2-61 relating to an insured loss, under any theory or cause of action of
2-62 any kind, regardless of the theory under which the claim is
2-63 asserted, the cause of action brought, or the type of damages
2-64 sought.

2-65 (3) "Claimant" means a person who makes a claim.

2-66 Sec. 2211.172. EXCLUSIVE REMEDIES AND LIMITATION ON AWARD.

2-67 (a) This subchapter provides the exclusive remedies for a claim
2-68 against the association, including an agent or representative of
2-69 the association.

3-1 (b) Subject to Section 2211.176, the association may not be
 3-2 held liable for any amount other than covered losses payable under
 3-3 the terms of the association policy.

3-4 (c) The association, or an agent or representative of the
 3-5 association, may not be held liable for damages under Chapter 17,
 3-6 Business & Commerce Code, or, except as otherwise specifically
 3-7 provided by this chapter, under any provision of any law providing
 3-8 for additional damages, exemplary damages, or a penalty.

3-9 Sec. 2211.173. FILING OF CLAIM; CLAIM PROCESSING.

3-10 (a) Subject to Section 2211.158(b), an insured must file a claim
 3-11 under an association policy not later than the first anniversary of
 3-12 the date on which the damage to property that is the basis of the
 3-13 claim occurs.

3-14 (b) The claimant may submit written materials, comments,
 3-15 documents, records, and other information to the association
 3-16 relating to the claim. If the claimant fails to submit information
 3-17 in the claimant's possession that is necessary for the association
 3-18 to determine whether to accept or reject the claim, the association
 3-19 may, not later than the 30th day after the date the claim is filed,
 3-20 request in writing the necessary information from the claimant.

3-21 (c) The association shall, on request, provide a claimant
 3-22 reasonable access to all information relevant to the determination
 3-23 of the association concerning the claim. The claimant may copy the
 3-24 information at the claimant's own cost or may request the
 3-25 association to provide a copy of all or part of the information to
 3-26 the claimant. The association may charge a claimant the actual cost
 3-27 incurred by the association in providing a copy of information
 3-28 under this section, excluding any amount for labor involved in
 3-29 making any information or copy of information available to a
 3-30 claimant.

3-31 (d) Unless the applicable 60-day period described by this
 3-32 subsection is extended by the commissioner under Section 2211.180,
 3-33 not later than the later of the 60th day after the date the
 3-34 association receives a claim or the 60th day after the date the
 3-35 association receives information requested under Subsection (b),
 3-36 the association shall provide the claimant, in writing,
 3-37 notification that:

3-38 (1) the association has accepted coverage for the
 3-39 claim in full;

3-40 (2) the association has accepted coverage for the
 3-41 claim in part and has denied coverage for the claim in part; or

3-42 (3) the association has denied coverage for the claim
 3-43 in full.

3-44 (e) In a notice provided under Subsection (d)(1), the
 3-45 association must inform the claimant of the amount of loss the
 3-46 association will pay and of the time limit to demand appraisal under
 3-47 Section 2211.174.

3-48 (f) In a notice provided under Subsection (d)(2) or (3), the
 3-49 association must inform the claimant of, as applicable:

3-50 (1) the portion of the loss for which the association
 3-51 accepts coverage and the amount of loss the association will pay;

3-52 (2) the portion of the loss for which the association
 3-53 denies coverage and a detailed summary of the manner in which the
 3-54 association determined not to accept coverage for that portion of
 3-55 the claim; and

3-56 (3) the time limit to:
 3-57 (A) demand appraisal under Section 2211.174 of
 3-58 the portion of the loss for which the association accepts coverage;
 3-59 and

3-60 (B) provide notice of intent to bring an action
 3-61 as required by Section 2211.175.

3-62 (g) In addition to a notice provided under Subsection (d)(2)
 3-63 or (3), the association shall provide a claimant with a form on
 3-64 which the claimant may provide the association notice of intent to
 3-65 bring an action as required by Section 2211.175.

3-66 Sec. 2211.1731. PAYMENT OF CLAIM. (a) Except as provided
 3-67 by Subsection (b), if the association notifies a claimant under
 3-68 Section 2211.173(d)(1) or (2) that the association has accepted
 3-69 coverage for a claim in full or has accepted coverage for a claim in

4-1 part, the association shall pay the accepted claim or accepted
 4-2 portion of the claim not later than the 10th day after the date
 4-3 notice is made.

4-4 (b) If payment of the accepted claim or accepted portion of
 4-5 the claim is conditioned on the performance of an act by the
 4-6 claimant, the association shall pay the claim not later than the
 4-7 10th day after the date the act is performed.

4-8 Sec. 2211.174. DISPUTES CONCERNING AMOUNT OF ACCEPTED
 4-9 COVERAGE. (a) If the association accepts coverage for a claim in
 4-10 full and a claimant disputes only the amount of loss the association
 4-11 will pay for the claim, or if the association accepts coverage for a
 4-12 claim in part and a claimant disputes the amount of loss the
 4-13 association will pay for the accepted portion of the claim, the
 4-14 claimant may request from the association a detailed summary of the
 4-15 manner in which the association determined the amount of loss the
 4-16 association will pay.

4-17 (b) If a claimant disputes the amount of loss the
 4-18 association will pay for a claim or a portion of a claim, the
 4-19 claimant, not later than the 60th day after the date the claimant
 4-20 receives the notice described by Section 2211.173(d)(1) or (2), may
 4-21 demand appraisal in accordance with the terms of the association
 4-22 policy.

4-23 (c) If a claimant, on a showing of good cause and not later
 4-24 than the 15th day after the expiration of the 60-day period
 4-25 described by Subsection (b), requests in writing that the 60-day
 4-26 period be extended, the association may grant an additional 30-day
 4-27 period in which the claimant may demand appraisal.

4-28 (d) If a claimant demands appraisal under this section:

4-29 (1) the appraisal must be conducted as provided by the
 4-30 association policy; and

4-31 (2) the claimant and the association are responsible
 4-32 in equal shares for paying any costs incurred or charged in
 4-33 connection with the appraisal, including a fee charged under
 4-34 Subsection (e).

4-35 (e) If a claimant demands appraisal under this section and
 4-36 the appraiser retained by the claimant and the appraiser retained
 4-37 by the association are able to agree on an appraisal umpire to
 4-38 participate in the resolution of the dispute, the appraisal umpire
 4-39 is the umpire chosen by the two appraisers. If the appraiser
 4-40 retained by the claimant and the appraiser retained by the
 4-41 association are unable to agree on an appraisal umpire to
 4-42 participate in the resolution of the dispute, the commissioner
 4-43 shall select an appraisal umpire from a roster of qualified umpires
 4-44 maintained by the department. The department may:

4-45 (1) require appraisers to register with the department
 4-46 as a condition of being placed on the roster; and

4-47 (2) charge a reasonable registration fee to defray the
 4-48 cost incurred by the department in maintaining the roster and the
 4-49 commissioner in selecting an appraisal umpire under this
 4-50 subsection.

4-51 (f) Except as provided by Subsection (g), the appraisal
 4-52 decision is binding on the claimant and the association as to the
 4-53 amount of loss the association will pay for a fully accepted claim
 4-54 or the accepted portion of a partially accepted claim and is not
 4-55 appealable or otherwise reviewable. A claimant that does not
 4-56 demand appraisal before the expiration of the periods described by
 4-57 Subsections (b) and (c) waives the claimant's right to contest the
 4-58 association's determination of the amount of loss the association
 4-59 will pay with reference to a fully accepted claim or the accepted
 4-60 portion of a partially accepted claim.

4-61 (g) A claimant or the association may, not later than the
 4-62 second anniversary of the date of an appraisal decision, file an
 4-63 action in a district court in the county in which the loss that is
 4-64 the subject of the appraisal occurred to vacate the appraisal
 4-65 decision and begin a new appraisal process if:

4-66 (1) the appraisal decision was obtained by corruption,
 4-67 fraud, or other undue means;

4-68 (2) the rights of the claimant or the association were
 4-69 prejudiced by:

5-1 (A) evident partiality by an appraisal umpire;
 5-2 (B) corruption in an appraiser or appraisal
 5-3 umpire; or
 5-4 (C) misconduct or wilful misbehavior of an
 5-5 appraiser or appraisal umpire; or
 5-6 (3) an appraiser or appraisal umpire:
 5-7 (A) exceeded the appraiser's or appraisal
 5-8 umpire's powers;
 5-9 (B) refused to postpone the appraisal after a
 5-10 showing of sufficient cause for the postponement;
 5-11 (C) refused to consider evidence material to the
 5-12 claim; or
 5-13 (D) conducted the appraisal in a manner that
 5-14 substantially prejudiced the rights of the claimant or the
 5-15 association.
 5-16 (h) Except as provided by Subsection (g), a claimant may not
 5-17 bring an action against the association with reference to a claim
 5-18 for which the association has accepted coverage in full.
 5-19 Sec. 2211.175. DISPUTES CONCERNING DENIED COVERAGE.
 5-20 (a) If the association denies coverage for a claim in part or in
 5-21 full and the claimant disputes that determination, the claimant,
 5-22 not later than the expiration of the limitations period described
 5-23 by Section 2211.177(a) but after the date the claimant receives the
 5-24 notice described by Section 2211.173(d)(2) or (3), must provide the
 5-25 association with notice that the claimant intends to bring an
 5-26 action against the association concerning the partial or full
 5-27 denial of the claim. A claimant that does not provide notice of
 5-28 intent to bring an action before the expiration of the period
 5-29 described by this subsection waives the claimant's right to contest
 5-30 the association's partial or full denial of coverage and is barred
 5-31 from bringing an action against the association concerning the
 5-32 denial of coverage.
 5-33 (b) If a claimant provides notice of intent to bring an
 5-34 action under Subsection (a), the association may require the
 5-35 claimant, as a prerequisite to filing the action against the
 5-36 association, to submit the dispute to alternative dispute
 5-37 resolution by mediation or moderated settlement conference, as
 5-38 provided by Chapter 154, Civil Practice and Remedies Code.
 5-39 (c) The association must request alternative dispute
 5-40 resolution of a dispute described by Subsection (b) not later than
 5-41 the 60th day after the date the association receives from the
 5-42 claimant notice of intent to bring an action.
 5-43 (d) Alternative dispute resolution under this section must
 5-44 be completed not later than the 60th day after the date a request
 5-45 for alternative dispute resolution is made under Subsection (c).
 5-46 The 60-day period described by this subsection may be extended by
 5-47 the commissioner in accordance with Section 2211.180 or by the
 5-48 association and a claimant by mutual consent.
 5-49 (e) If the claimant is not satisfied after completion of
 5-50 alternative dispute resolution, or if alternative dispute
 5-51 resolution is not completed before the expiration of the 60-day
 5-52 period described by Subsection (d) or any extension under that
 5-53 subsection, the claimant may bring an action against the
 5-54 association in a district court in the county in which the loss that
 5-55 is the subject of the coverage denial occurred. An action brought
 5-56 under this subsection shall be presided over by a judge appointed by
 5-57 the judicial panel on multidistrict litigation designated under
 5-58 Section 74.161, Government Code. A judge appointed under this
 5-59 section must be an active judge, as defined by Section 74.041,
 5-60 Government Code, who is a resident of the county in which the loss
 5-61 that is the basis of the disputed denied coverage occurred or of a
 5-62 county adjacent to the county in which that loss occurred.
 5-63 (f) If a claimant brings an action against the association
 5-64 concerning a partial or full denial of coverage, the court shall
 5-65 abate the action until the notice of intent to bring an action has
 5-66 been provided and, if requested by the association, the dispute has
 5-67 been submitted to alternative dispute resolution, in accordance
 5-68 with this section.
 5-69 (g) A moderated settlement conference under this section

6-1 may be conducted by a panel consisting of one or more impartial
 6-2 third parties.

6-3 (h) If the association requests mediation under this
 6-4 section, the claimant and the association are responsible in equal
 6-5 shares for paying any costs incurred or charged in connection with
 6-6 the mediation.

6-7 (i) If the association requests mediation under this
 6-8 section, and the claimant and the association are able to agree on a
 6-9 mediator, the mediator is the mediator agreed to by the claimant and
 6-10 the association. If the claimant and the association are unable to
 6-11 agree on a mediator, the commissioner shall select a mediator from a
 6-12 roster of qualified mediators maintained by the department. The
 6-13 department may:

6-14 (1) require mediators to register with the department
 6-15 as a condition of being placed on the roster; and

6-16 (2) charge a reasonable registration fee to defray the
 6-17 cost incurred by the department in maintaining the roster and the
 6-18 commissioner in selecting a mediator under this subsection.

6-19 (j) The commissioner shall establish rules to implement
 6-20 this section, including provisions for expediting alternative
 6-21 dispute resolution, facilitating the ability of a claimant to
 6-22 appear with or without counsel, establishing qualifications
 6-23 necessary for mediators to be placed on the roster maintained by the
 6-24 department under Subsection (i), and providing that formal rules of
 6-25 evidence shall not apply to the proceedings.

6-26 Sec. 2211.176. ISSUES BROUGHT TO SUIT; LIMITATIONS ON
 6-27 RECOVERY. (a) The only issues a claimant may raise in an action
 6-28 brought against the association under Section 2211.175 are:

6-29 (1) whether the association's denial of coverage was
 6-30 proper; and

6-31 (2) the amount of the damages described by Subsection
 6-32 (b) to which the claimant is entitled, if any.

6-33 (b) Except as provided by Subsections (c) and (d), a
 6-34 claimant that brings an action against the association under
 6-35 Section 2211.175 may recover only:

6-36 (1) the covered loss payable under the terms of the
 6-37 association policy less, if applicable, the amount of loss already
 6-38 paid by the association for any portion of a covered loss for which
 6-39 the association accepted coverage;

6-40 (2) prejudgment interest from the first day after the
 6-41 date specified in Section 2211.1731 by which the association was or
 6-42 would have been required to pay an accepted claim or the accepted
 6-43 portion of a claim, at the prejudgment interest rate provided by
 6-44 Subchapter B, Chapter 304, Finance Code; and

6-45 (3) court costs and reasonable and necessary
 6-46 attorney's fees.

6-47 (c) Nothing in this chapter, including Subsection (b), may
 6-48 be construed to limit the consequential damages, or the amount of
 6-49 consequential damages, that a claimant may recover under common law
 6-50 in an action against the association.

6-51 (d) A claimant that brings an action against the association
 6-52 under Section 2211.175 may, in addition to the covered loss
 6-53 described by Subsection (b)(1) and any consequential damages
 6-54 recovered by the claimant under common law, recover damages in an
 6-55 amount not to exceed the aggregated amount of the covered loss
 6-56 described by Subsection (b)(1) and the consequential damages
 6-57 recovered under common law if the claimant proves by clear and
 6-58 convincing evidence that the association mishandled the claimant's
 6-59 claim to the claimant's detriment by intentionally:

6-60 (1) failing to meet the deadlines or timelines
 6-61 established under this subchapter without good cause, including the
 6-62 applicable deadline established under Section 2211.1731 for
 6-63 payment of an accepted claim or the accepted portion of a claim;

6-64 (2) failing to provide the notice required under
 6-65 Section 2211.173(d);

6-66 (3) rejecting a claim without conducting a reasonable
 6-67 investigation with respect to the claim; or

6-68 (4) denying coverage for a claim in part or in full if
 6-69 the association's liability has become reasonably clear as a result

7-1 of the association's investigation with respect to the portion of
7-2 the claim that was denied.

7-3 (e) For purposes of Subsection (d), "intentionally" means
7-4 actual awareness of the facts surrounding the act or practice
7-5 listed in Subsection (d)(1), (2), (3), or (4), coupled with the
7-6 specific intent that the claimant suffer harm or damages as a result
7-7 of the act or practice. Specific intent may be inferred from
7-8 objective manifestations that the association acted intentionally
7-9 or from facts that show that the association acted with flagrant
7-10 disregard of the duty to avoid the acts or practices listed in
7-11 Subsection (d)(1), (2), (3), or (4).

7-12 Sec. 2211.177. LIMITATIONS PERIOD. (a) Notwithstanding
7-13 any other law, a claimant that brings an action against the
7-14 association under Section 2211.175 must bring the action not later
7-15 than the second anniversary of the date on which the person receives
7-16 a notice described by Section 2211.173(d)(2) or (3).

7-17 (b) This section is a statute of repose and controls over
7-18 any other applicable limitations period.

7-19 Sec. 2211.178. CONSTRUCTION WITH OTHER LAW. (a) To the
7-20 extent of any conflict between a provision of this subchapter and
7-21 any other law, the provision of this subchapter prevails.

7-22 (b) Notwithstanding any other law, the association may not
7-23 bring an action against a claimant, for declaratory or other
7-24 relief, before the 180th day after the date an appraisal under
7-25 Section 2211.174, or alternative dispute resolution under Section
7-26 2211.175, is completed.

7-27 Sec. 2211.179. RULEMAKING. (a) The commissioner shall
7-28 adopt rules regarding the provisions of this subchapter, including
7-29 rules concerning:

7-30 (1) qualifications and selection of appraisers for the
7-31 appraisal procedure and mediators for the mediation process;

7-32 (2) procedures and deadlines for the payment and
7-33 handling of claims by the association as well as the procedures and
7-34 deadlines for a review of a claim by the association; and

7-35 (3) any other matters regarding the handling of claims
7-36 that are not inconsistent with this subchapter.

7-37 (b) All rules adopted by the commissioner under this section
7-38 must promote the fairness of the process, protect the rights of
7-39 aggrieved policyholders, and ensure that policyholders may
7-40 participate in the claims review process without the necessity of
7-41 engaging legal counsel.

7-42 Sec. 2211.180. COMMISSIONER EXTENSION OF DEADLINES.
7-43 (a) The commissioner, on a showing of good cause, may extend any
7-44 deadline established under this subchapter.

7-45 (b) For the purposes of Subsection (a), "good cause"
7-46 includes military deployment.

7-47 Sec. 2211.181. OMBUDSMAN PROGRAM. (a) The department
7-48 shall establish an ombudsman program to provide information and
7-49 educational programs to assist persons insured under this chapter
7-50 with the claim processes under this subchapter.

7-51 (b) Not later than March 1 of each year, the department
7-52 shall prepare and submit to the commissioner a budget for the
7-53 ombudsman program, including approval of all expenditures incurred
7-54 in administering and operating the program. The commissioner shall
7-55 adopt or modify and adopt the budget not later than April 1 of the
7-56 year in which the budget is submitted.

7-57 (c) Not later than May 1 of each year, the association shall
7-58 transfer to the ombudsman program money in an amount equal to the
7-59 amount of the budget adopted under Subsection (b). The ombudsman
7-60 program, not later than April 30 of each year, shall return to the
7-61 association any unexpended funds that the program received from the
7-62 association in the previous year.

7-63 (d) The department shall, not later than the 60th day after
7-64 the date of a catastrophic event, as defined by the commissioner for
7-65 the purposes of this subsection, prepare and submit an amended
7-66 budget to the commissioner for approval and report to the
7-67 commissioner the approximate number of claimants eligible for
7-68 ombudsman services. The commissioner shall adopt rules as
7-69 necessary to implement an amended budget submitted under this

8-1 section, including rules regarding the transfer of additional money
 8-2 from the association to the program.

8-3 (e) The ombudsman program may provide to persons insured
 8-4 under this chapter information and educational programs through:

- 8-5 (1) informational materials;
- 8-6 (2) toll-free telephone numbers;
- 8-7 (3) public meetings;
- 8-8 (4) outreach centers;
- 8-9 (5) the Internet; and
- 8-10 (6) other reasonable means.

8-11 (f) The ombudsman program is administratively attached to
 8-12 the department. The department shall provide the staff, services,
 8-13 and facilities necessary for the ombudsman program to operate,
 8-14 including:

- 8-15 (1) administrative assistance and service, including
 8-16 budget planning and purchasing;
- 8-17 (2) personnel services;
- 8-18 (3) office space; and
- 8-19 (4) computer equipment and support.

8-20 (g) The ombudsman program shall prepare and make available
 8-21 to each person insured under this chapter information describing
 8-22 the functions of the ombudsman program.

8-23 (h) The association, in the manner prescribed by the
 8-24 commissioner by rule, shall notify each person insured under this
 8-25 chapter concerning the operation of the ombudsman program.

8-26 (i) The commissioner may adopt rules as necessary to
 8-27 implement this section.

8-28 SECTION 5. (a) Except as otherwise specifically provided
 8-29 by this section, this Act applies only to an insurance policy that
 8-30 is delivered, issued for delivery, or renewed by the Fair Access to
 8-31 Insurance Requirements Plan Association on or after the 60th day
 8-32 after the effective date of this Act. An insurance policy that is
 8-33 delivered, issued for delivery, or renewed by the Fair Access to
 8-34 Insurance Requirements Plan Association before the 60th day after
 8-35 the effective date of this Act is governed by the law as it existed
 8-36 immediately before the effective date of this Act, and that law is
 8-37 continued in effect for that purpose.

8-38 (b) The deadline to file a claim under an insurance policy
 8-39 delivered, issued for delivery, or renewed before the 60th day
 8-40 after the effective date of this Act by the Fair Access to Insurance
 8-41 Requirements Plan Association is governed by the law as it existed
 8-42 immediately before the effective date of this Act, and that law is
 8-43 continued in effect for that purpose.

8-44 (c) If a person insured by the Fair Access to Insurance
 8-45 Requirements Plan Association disputes the amount the association
 8-46 will pay for a partially or fully accepted claim filed by the
 8-47 person, Section 2211.174, Insurance Code, as added by this Act,
 8-48 applies only if the insurance policy under which the claim is filed
 8-49 is delivered, issued for delivery, or renewed on or after the 60th
 8-50 day after the effective date of this Act.

8-51 (d) If a person insured by the Fair Access to Insurance
 8-52 Requirements Plan Association disputes the amount the association
 8-53 will pay for a partially or fully accepted claim filed by the person
 8-54 and the insurance policy under which the claim is filed is
 8-55 delivered, issued for delivery, or renewed before the 60th day
 8-56 after the effective date of this Act:

8-57 (1) Section 2211.174, Insurance Code, as added by this
 8-58 Act, does not apply to the resolution of the dispute; and

8-59 (2) notwithstanding any other provision of this Act,
 8-60 the claimant must attempt to resolve the dispute through any
 8-61 appraisal process contained in the association policy under which
 8-62 the claim is filed before an action may be brought against the Fair
 8-63 Access to Insurance Requirements Plan Association concerning the
 8-64 claim.

8-65 (e) The person insured by the Fair Access to Insurance
 8-66 Requirements Plan Association and the association may agree that an
 8-67 appraisal conducted under Subsection (d)(2) of this section is
 8-68 binding on the parties.

8-69 (f) An action brought against the association concerning a

9-1 claim described by Subsection (d) of this section shall be abated
9-2 until the appraisal process under Subsection (d)(2) of this section
9-3 is completed.

9-4 (g) Notwithstanding Sections 2211.175 and 2211.176,
9-5 Insurance Code, as added by this Act, Subsection (b) of this
9-6 section, or any other provision of this Act, Sections 2211.176(b),
9-7 (c), (d), and (e), Insurance Code, apply to any cause of action that
9-8 accrues against the Fair Access to Insurance Requirements Plan
9-9 Association on or after the effective date of this Act and the basis
9-10 of which is a claim filed under an insurance policy that is
9-11 delivered, issued for delivery, or renewed by the association,
9-12 regardless of the date on which the policy was delivered, issued for
9-13 delivery, or renewed.

9-14 SECTION 6. This Act takes effect immediately if it receives
9-15 a vote of two-thirds of all the members elected to each house, as
9-16 provided by Section 39, Article III, Texas Constitution. If this
9-17 Act does not receive the vote necessary for immediate effect, this
9-18 Act takes effect September 1, 2017.

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