

First Regular Session  
Seventy-fifth General Assembly  
STATE OF COLORADO

**PREAMENDED**

*This Unofficial Version Includes Committee  
Amendments Not Yet Adopted on Second Reading*

LLS NO. 25-0582.01 Yelana Love x2295

**HOUSE BILL 25-1205**

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**HOUSE SPONSORSHIP**

**McCluskie and Brown,**

**SENATE SPONSORSHIP**

**Amabile and Roberts,**

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**House Committees**

Business Affairs & Labor

**Senate Committees**

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**A BILL FOR AN ACT**

101     **CONCERNING MEASURES TO FACILITATE THE IMPLEMENTATION OF**  
102     **FAIR ACCESS TO INSURANCE REQUIREMENTS PLANS.**

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**Bill Summary**

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)*

The bill clarifies that the fair access to insurance requirements plan association (association) is not:

- A department, unit, agency, political subdivision, or instrumentality of the state; or
- An insurance company or a person engaged in the business of insurance.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
Capital letters or bold & italic numbers indicate new material to be added to existing law.  
Dashes through the words or numbers indicate deletions from existing law.

The bill also grants a member insurer, the association and its agents or employees, the board of directors of the association, and the commissioner of the division of insurance or the commissioner's representatives immunity for any action taken by them in the performance of their powers and duties. The bill specifies that the only causes of action and remedies available to a policyholder of a fair access to insurance requirements plan policy against the association is for breach of contract or breach of the common law covenant of good faith and fair dealing.

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1       *Be it enacted by the General Assembly of the State of Colorado:*

2           **SECTION 1.** In Colorado Revised Statutes, 10-4-1804, amend  
3       (1), (2), and (3)(b); and **add** (1.5) as follows:

4           **10-4-1804. Fair access to insurance requirements plan**  
5       **association - creation - participation required.** (1) There is created the  
6       fair access to insurance requirements plan association, or FAIR plan  
7       association, which is a nonprofit, unincorporated ~~public~~ **LEGAL** entity. All  
8       member insurers are and remain members of the association as a  
9       condition of each member insurer's authority to transact insurance  
10      business in this state. The association shall perform its functions under a  
11      plan of operation established and approved under section 10-4-1807 and  
12      shall exercise its powers through a board of directors established under  
13      section 10-4-1805.

14           (1.5) THE FAIR PLAN ASSOCIATION IS NOT A DEPARTMENT, UNIT,  
15       AGENCY, POLITICAL SUBDIVISION, OR INSTRUMENTALITY OF THE STATE.  
16       ALL DEBTS, CLAIMS, OBLIGATIONS, AND LIABILITIES INCURRED BY THE  
17       ASSOCIATION ARE THE DEBTS, CLAIMS, OBLIGATIONS, AND LIABILITIES OF  
18       THE ASSOCIATION ONLY, AND ARE NOT THE DEBTS OR PLEDGES OF CREDIT  
19       OF THE STATE OR THE STATE'S AGENCIES, INSTRUMENTALITIES, OFFICERS,  
20       OR EMPLOYEES. THE FUNDS OF THE ASSOCIATION ARE NOT PART OF THE  
21       GENERAL FUND OF THE STATE, AND THE STATE SHALL NOT BUDGET FOR OR

1 PROVIDE GENERAL FUND APPROPRIATIONS TO THE ASSOCIATION.

2 (2) The FAIR plan association is established to provide property  
3 insurance coverage, including commercial property insurance, when such  
4 coverage is not available from admitted companies. THE FAIR PLAN  
5 ASSOCIATION IS NOT AN INSURANCE COMPANY OR A PERSON ENGAGED IN  
6 THE BUSINESS OF INSURANCE.

7 (3) The FAIR plan association shall:

8 (b) Assess and share among member insurers, on a fair and  
9 equitable basis, all expenses, income, and losses based on each member  
10 insurer's written premium for property and commercial property insurance  
11 AND IN THE SAME PROPORTION THAT A MEMBER INSURER'S PREMIUMS  
12 WRITTEN BEAR TO THE AGGREGATE PREMIUMS WRITTEN IN THE STATE BY  
13 ALL MEMBER INSURERS OF THE ASSOCIATION DURING THE PRECEDING  
14 CALENDAR YEAR, consistent with this part 18.

15   
16 **SECTION 2.** In Colorado Revised Statutes, **add** 10-4-1810.5 as  
17 follows:

18 **10-4-1810.5. Immunity - exceptions - remedies.** (1) A MEMBER  
19 INSURER, THE FAIR PLAN ASSOCIATION AND ITS AGENTS OR EMPLOYEES,  
20 THE BOARD OF DIRECTORS, AND THE COMMISSIONER OR THE  
21 COMMISSIONER'S REPRESENTATIVES ARE IMMUNE FOR ANY ACTION TAKEN  
22 BY THEM IN THE PERFORMANCE OF THEIR POWERS AND DUTIES UNDER THIS  
23 PART 18.

24 (2) (a) THE EXCLUSIVE CAUSES OF ACTION AND REMEDIES  
25 AVAILABLE TO A POLICYHOLDER OF A FAIR PLAN POLICY AGAINST THE  
26 ASSOCIATION IS FOR BREACH OF CONTRACT OR BREACH OF THE COMMON  
27 LAW COVENANT OF GOOD FAITH AND FAIR DEALING.

1 (b) A CLAIM FOR BREACH OF THE COMMON LAW COVENANT OF  
2 GOOD FAITH AND FAIR DEALING AGAINST THE ASSOCIATION REQUIRES  
3 PROOF THAT THE ASSOCIATION ACTED UNREASONABLY AND THAT THE  
4 ASSOCIATION KNEW OR RECKLESSLY DISREGARDED THAT THE  
5 ASSOCIATION'S ACTIONS WERE UNREASONABLE.

6 (c) DAMAGES IN AN ACTION FOR A BREACH OF THE COVENANT OF  
7 GOOD FAITH AND FAIR DEALING ARE LIMITED TO COMPENSATORY  
8 DAMAGES FOR ECONOMIC AND NONECONOMIC LOSSES. A COURT MAY  
9 AWARD PUNITIVE DAMAGES ONLY IF THE ASSOCIATION'S BREACH WAS  
10 ACCOMPANIED BY CIRCUMSTANCES OF FRAUD, MALICE, OR WILLFUL AND  
11 WANTON CONDUCT.

12 (d) IF A POLICYHOLDER SUCCESSFULLY PROVES THAT THE  
13 ASSOCIATION BREACHED THE COVENANT OF GOOD FAITH AND FAIR  
14 DEALING, THE POLICYHOLDER IS ENTITLED TO ATTORNEY FEES AND COSTS.  
15 IF THE COURT FINDS THAT AN ACTION BROUGHT PURSUANT TO THIS  
16 SECTION WAS FRIVOLOUS, AS PROVIDED IN ARTICLE 17 OF TITLE 13, THE  
17 COURT SHALL AWARD COSTS AND ATTORNEY FEES TO THE ASSOCIATION.

18                   **SECTION 3. Safety clause.** The general assembly finds,  
19                   determines, and declares that this act is necessary for the immediate  
20                   preservation of the public peace, health, or safety or for appropriations for  
21                   the support and maintenance of the departments of the state and state  
22                   institutions.