

NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.

An Act

HOUSE BILL 25-1205

BY REPRESENTATIVE(S) McCluskie and Brown, Bacon, Bird, Boesenecker, Clifford, Duran, Froelich, Joseph, Lieder, Lindsay, Lukens, Mabrey, Rutinel, Sirota, Stewart K., Titone, Marshall, Phillips, Smith; also SENATOR(S) Amabile and Roberts, Cutter, Exum, Jodeh, Kipp, Liston, Michaelson Jenet, Winter F., Coleman.

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

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

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

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

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

powers through a board of directors established under section 10-4-1805.

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

(2) The FAIR plan association is established to provide property insurance coverage, including commercial property insurance, when such coverage is not available from admitted companies. THE FAIR PLAN ASSOCIATION IS NOT AN INSURANCE COMPANY OR A PERSON ENGAGED IN THE BUSINESS OF INSURANCE; EXCEPT THAT THE PLAN ASSOCIATION MUST COMPLY WITH SECTIONS 10-1-128; 10-1-136; 10-1-137; 10-3-1104 (1)(h); 10-4-104; 10-4-109.7; 10-4-110; 10-4-110.5; 10-4-110.7; 10-4-110.8 (1), (2), (3), (4), (7), (9), (10), (11)(a), (11)(b), (11)(c)(I), (12), (13)(h), (14), AND (16); 10-4-110.9; 10-4-111; 10-4-116; 10-4-117; 10-4-119; 10-4-120; AND 10-4-1001 TO 10-4-1009.

(3) The FAIR plan association shall:

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

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

10-4-1810.5. Immunity - exceptions - remedies. (1) A MEMBER INSURER, THE FAIR PLAN ASSOCIATION AND ITS AGENTS OR EMPLOYEES, THE BOARD OF DIRECTORS, AND THE COMMISSIONER OR THE COMMISSIONER'S REPRESENTATIVES ARE IMMUNE FOR ANY ACTION TAKEN BY THEM IN THE

PERFORMANCE OF THEIR POWERS AND DUTIES UNDER THIS PART 18.

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

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

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

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

SECTION 3. Safety clause. The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for

the support and maintenance of the departments of the state and state institutions.

Julie McCluskie
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

James Rashad Coleman, Sr.
PRESIDENT OF
THE SENATE

Vanessa Reilly
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Esther van Mourik
SECRETARY OF
THE SENATE

APPROVED _____
(Date and Time)

Jared S. Polis
GOVERNOR OF THE STATE OF COLORADO