

By: Smithee

H.B. No. 3024

A BILL TO BE ENTITLED

AN ACT

relating to the Fair Access to Insurance Requirements (FAIR) Plan Association.

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

SECTION 1. Subchapter A, Chapter 541, Insurance Code, is amended by adding Section 541.0051 to read as follows:

Sec. 541.0051. EXEMPTION: FAIR PLAN. This chapter does not apply to the Fair Access to Insurance Requirements (FAIR) Plan Association or an action brought against the association by a person who is insured under Chapter 2211.

SECTION 2. Subchapter A, Chapter 542, Insurance Code, is amended by adding Section 542.0021 to read as follows:

Sec. 542.0021. EXEMPTION: FAIR PLAN. This chapter does not apply to the Fair Access to Insurance Requirements (FAIR) Plan Association or a claim made against the association by a person who is insured under Chapter 2211.

SECTION 3. Subchapter A, Chapter 2211, Insurance Code, is amended by adding Sections 2211.004 and 2211.005 to read as follows:

Sec. 2211.004. FAIR POLICYHOLDER AS ARBITRATOR OR JUDGE. A person who holds a policy issued by the association may not serve as an arbitrator or judge in an arbitration or judicial or administrative proceeding in which the association is a party.

Sec. 2211.005. EXEMPLARY DAMAGES; ATTORNEY'S FEES. (a) The

1 association is not subject to exemplary damages or multiplied
2 damages under any other law.

3 (b) The association may be required to pay another party's
4 attorney's fees only as provided by this chapter.

5 SECTION 4. Section 2211.0521, Insurance Code, is amended by
6 adding Subsections (c), (d), (e), and (f) to read as follows:

7 (c) The association is subject to Chapter 551, Government
8 Code.

9 (d) Notice of a meeting of the association's governing
10 committee must, not later than the seventh day before the date the
11 meeting is scheduled, be conspicuously posted on the department's
12 Internet website and on the association's Internet website. This
13 subsection does not apply to a meeting subject to Section
14 551.0411(b) or 551.045, Government Code.

15 (e) Meetings of the association's governing committee must
16 be made readily accessible to the public by video or audio on the
17 Internet.

18 (f) The association's governing committee shall allow a
19 representative of the department to be present at meetings of the
20 association's governing committee, physically or otherwise, at the
21 department's option. This subsection applies to a closed meeting
22 authorized by Subchapter D, Chapter 551, Government Code.

23 SECTION 5. Subchapter B, Chapter 2211, Insurance Code, is
24 amended by adding Sections 2211.0522, 2211.0541, and 2211.0542 to
25 read as follows:

26 Sec. 2211.0522. RECORDS OF ASSOCIATION. The association is
27 subject to Chapter 552, Government Code.

1 Sec. 2211.0541. AGENT COMMISSIONS. The commissioner shall
2 ensure that the agent commissions adopted under Section 2211.054
3 are fair and reasonable with respect to the work performed by the
4 agents and the prevailing compensation of agents in the private
5 residential property insurance market.

6 Sec. 2211.0542. REINSURANCE. The association may recoup
7 the costs of ceding reinsurance by imposing a pro rata premium
8 surcharge on policies issued by the association.

9 SECTION 6. Subchapter D, Chapter 2211, Insurance Code, is
10 amended by adding Sections 2211.158, 2211.159, 2211.160, 2211.161,
11 and 2211.162 to read as follows:

12 Sec. 2211.158. FLOOD INSURANCE. (a) The association may
13 not issue an insurance policy for initial or renewal coverage
14 unless evidence is submitted to the association that the property
15 to be covered under the policy is also covered by a flood insurance
16 policy issued under the National Flood Insurance Program in an
17 amount equal to or greater than the amount of coverage under the
18 policy to be issued by the association. This section does not apply
19 to property for which flood insurance is not available under the
20 National Flood Insurance Program.

21 (b) An insurance agent who submits an application for a
22 policy under this chapter shall offer flood insurance coverage
23 required by this section to the prospective insured if that
24 coverage is available.

25 Sec. 2211.159. COVERAGE LIMITS IN CERTAIN FLOOD ZONES. A
26 policy issued by the association to cover property all or part of
27 which is located in Zone A or Zone V, as defined by the Federal

1 Emergency Management Agency, must contain coverage limits that are
2 the same as any applicable coverage limits for flood insurance
3 coverage provided under the National Flood Insurance Program.

4 Sec. 2211.160. REQUIRED POLICY PROVISION: EVIDENCE OF
5 FLOOD INSURANCE. A policy issued by the association must require an
6 insured to submit to the association evidence of coverage required
7 by Section 2211.158(a) before the association will be required to
8 pay the insured's claim under the policy.

9 Sec. 2211.161. REQUIRED POLICY PROVISIONS: DEADLINE FOR
10 FILING CLAIM; NOTICE CONCERNING MANDATORY ARBITRATION. (a) A
11 policy issued by the association must:

12 (1) require an insured to file a claim under the policy
13 not later than the first anniversary of the date on which the damage
14 or loss that is the basis of the claim occurs unless an extension is
15 obtained from the commissioner under this section; and

16 (2) contain, in boldface type, a conspicuous notice
17 concerning the mandatory arbitration of coverage and claim disputes
18 under Subchapter H, including the deadline for requesting
19 arbitration.

20 (b) The commissioner for good cause shown may extend the
21 deadline for filing a claim prescribed by this section for up to 90
22 days.

23 Sec. 2211.162. CLAIMS HANDLING. (a) Not later than the 30th
24 day after the date a policyholder submits a claim, the association
25 shall provide the policyholder a written appraisal of the damages
26 that are the subject of the claim.

27 (b) On or before the 60th day after the date a policyholder

1 receives an appraisal under Subsection (a), the policyholder may:

2 (1) contest the appraisal; or

3 (2) request a supplemental review or payment.

4 (c) The commissioner for good cause shown may extend a
5 deadline prescribed by this section.

6 (d) Not later than the 30th day after the date a
7 policyholder contests an appraisal or makes a request under
8 Subsection (b), the association shall respond to the contest or
9 request.

10 SECTION 7. Chapter 2211, Insurance Code, is amended by
11 adding Subchapter H to read as follows:

12 SUBCHAPTER H. ARBITRATION

13 Sec. 2211.351. ARBITRATION OF CLAIM DISPUTES REQUIRED. A
14 dispute between the association and a person insured under this
15 chapter relating to the payment of, the amount of, or the denial of
16 a particular claim must be resolved through binding arbitration in
17 accordance with this subchapter.

18 Sec. 2211.352. NOTICE OF CLAIM; DEMAND FOR ARBITRATION.

19 (a) Not later than the 30th day before the date an insured submits
20 a demand for arbitration under this section, the insured must
21 provide the association with a notice of claim that states the
22 amount of damages or additional damages demanded by the insured and
23 details each specific complaint of the insured.

24 (b) The insured may request arbitration under this section
25 by submitting a written demand to the department not later than the
26 second anniversary of the date on which the damage or loss that is
27 the basis of the particular claim occurs. The commissioner by rule

1 shall prescribe the method for filing a demand for arbitration
2 under this section, which may allow or require submission by mail or
3 the Internet or by a method of local submission in the county in
4 which the loss that is the subject of the claim occurred.

5 (c) An arbitration under this section may not commence until
6 the notice of claim required by this section has been given and the
7 prescribed notice period has expired.

8 (d) The commissioner for good cause shown may extend the
9 deadline for requesting arbitration under this section for up to 90
10 days.

11 Sec. 2211.353. ARBITRATION PROCEDURES. (a) The
12 commissioner by rule shall establish procedures for conducting an
13 arbitration under this subchapter. The procedures must:

14 (1) be consistent with any applicable rules of the
15 American Arbitration Association in effect on the date on which a
16 policy under which a claim arbitrated under this subchapter was
17 issued;

18 (2) provide for the parameters of mandatory and
19 permissible discovery; and

20 (3) establish deadlines for various stages of the
21 arbitration proceeding.

22 (b) Rules adopted under this section must contain
23 provisions to ensure that awards under this subchapter are fair and
24 to prevent unfair deviations in awards under this subchapter.

25 (c) A policyholder may be represented by an attorney in an
26 arbitration conducted under this subchapter.

27 (d) An arbitrator conducting an arbitration under this

1 subchapter shall issue scheduling orders for the arbitration in
2 accordance with commissioner rules.

3 Sec. 2211.354. QUALIFICATION AND CERTIFICATION OF
4 ARBITRATOR. (a) The commissioner by rule shall:

5 (1) require an arbitrator conducting an arbitration
6 under this subchapter to be certified by the department;

7 (2) prescribe qualifications for being certified as an
8 arbitrator under this section; and

9 (3) establish a procedure through which an arbitrator
10 may become certified to conduct arbitrations under this subchapter.

11 (b) A member of the legislature or a person who holds a
12 policy issued by the association may not be certified or serve as an
13 arbitrator under this section.

14 Sec. 2211.355. LIST OF ARBITRATORS. The department shall
15 make publicly available a list of the arbitrators certified to
16 conduct arbitrations under this subchapter.

17 Sec. 2211.356. SELECTION OF ARBITRATOR. (a) The
18 commissioner shall randomly assign a certified arbitrator to
19 conduct an arbitration demanded under this subchapter.

20 (b) Subject to this subsection, on or before the 10th day
21 after the date the commissioner notifies the insured or the
22 association of the assigned arbitrator, the insured or the
23 association may strike the assigned arbitrator. The insured and
24 the association are each entitled to strike only one assigned
25 arbitrator under this subsection.

26 (c) If an assigned arbitrator is struck under this section,
27 the commissioner shall promptly assign another certified

1 arbitrator.

2 Sec. 2211.357. COMPENSATION OF ARBITRATOR. (a) The
3 commissioner shall adopt rules governing the compensation of a
4 certified arbitrator for conducting an arbitration under this
5 subchapter, including the amount of compensation, which party or
6 parties are liable for the payment of the compensation, and other
7 necessary billing and payment procedures.

8 (b) The commissioner shall approve all final requests for
9 compensation by an arbitrator who conducts an arbitration under
10 this subchapter.

11 Sec. 2211.358. SETTLEMENT OFFERS. (a) Not later than the
12 30th day before the date an arbitration proceeding under this
13 subchapter is scheduled to commence, the association and the
14 insured must each submit a settlement offer to the department. The
15 arbitrator assigned to conduct the arbitration may not be informed
16 of or consider the content of the settlement offers.

17 (b) If the arbitrator's award is at least 10 percent greater
18 than the settlement amount offered by the association under this
19 section, the insured is entitled to the insured's reasonable and
20 necessary attorney's fees in connection with the arbitration. The
21 commissioner by rule shall adopt guidelines for an arbitrator to
22 consider in awarding attorney's fees under this subsection.

23 (c) An arbitrator may award interest on the amount otherwise
24 awarded to pay the insured's claim at a rate of six percent
25 annually, computed from the 30th day after the date the association
26 received the required notice of the claim until the date the claim
27 is paid.

1 Sec. 2211.359. APPLICABILITY OF CERTAIN OTHER LAW TO
2 ARBITRATION. Except to the extent of any conflict with this
3 subchapter, Chapter 171, Civil Practice and Remedies Code, applies
4 to an arbitration conducted under this subchapter.

5 Sec. 2211.360. ADDITIONAL RULES. In addition to the rules
6 otherwise required by this subchapter, the commissioner may adopt
7 any other rules necessary to implement this subchapter.

8 SECTION 8. (a) The changes in law made by Sections 541.0051
9 and 542.0021, Insurance Code, as added by this Act, apply only to
10 conduct of the Fair Access to Insurance Requirements (FAIR) Plan
11 Association that occurs on or after the effective date of this Act.
12 Conduct of the association that occurs before the effective date of
13 this Act is governed by the law in effect immediately before the
14 effective date of this Act, and that law is continued in effect for
15 that purpose.

16 (b) Section 2211.004, Insurance Code, as added by this Act,
17 applies to an arbitration or judicial or administrative proceeding
18 commenced on or after the effective date of this Act.

19 (c) Section 2211.005, Insurance Code, as added by this Act,
20 applies to a cause of action that is not to recover the amount of a
21 claim under an insurance policy issued under Chapter 2211,
22 Insurance Code, that accrues on or after the effective date of this
23 Act. With respect to a claim under an insurance policy issued under
24 Chapter 2211, Insurance Code, Section 2211.005, Insurance Code, as
25 added by this Act, applies only to a claim under a policy delivered,
26 issued for delivery, or renewed on or after the effective date of
27 this Act.

1 (d) Subchapter D, Chapter 2211, Insurance Code, as amended
2 by this Act, and Subchapter H, Chapter 2211, Insurance Code, as
3 added by this Act, apply only to an insurance policy delivered,
4 issued for delivery, or renewed on or after January 1, 2012, and a
5 claim under that policy. A policy delivered, issued for delivery,
6 or renewed before January 1, 2012, and a claim under that policy are
7 governed by the law in effect immediately before the effective date
8 of this Act, and that law is continued in effect for that purpose.

9 SECTION 9. This Act takes effect September 1, 2011.