First Regular Session
Seventy-fifth General Assembly
STATE OF COLORADO

REREVISED

This Version Includes All Amendments Adopted in the Second House

LLS NO. 25-0582.01 Yelana Love x2295

HOUSE BILL 25-1205

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A BILL FOR AN ACT

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

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.

SENATE
3rd Reading Unamended
March 25, 2025

SENATE
Amended 2nd Reading
March 24, 2025

HOUSE
3rd Reading Unamended
March 4, 2025

HOUSE
Amended 2nd Reading
February 28, 2025

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.

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 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.