

BILL ANALYSIS

Senate Research Center
81R2183 AJA-F

S.B. 149
By: Ellis
Business & Commerce
5/1/2009
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, the Texas Fair Access to Insurance Requirements Plan Association (FAIR Plan Association) provides residential property insurance. This legislation amends the current law to expand the FAIR Plan Association to provide commercial property insurance.

As proposed, S.B. 149 amends current statute regarding the availability of insurance under the FAIR Plan to include commercial property insurance, adds a subsection requiring the commissioner of insurance to designate the underserved parts of the state that are entitled to insurance under the FAIR Plan, and sets the maximum liability limits on insurable non-governmental commercial property.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the commissioner of insurance is modified in SECTION 9 (Section 2211.152, Insurance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 2211.001, Insurance Code, by amending Subdivisions (6)-(8) and adding Subdivisions (1-b), (6-a), (6-b), and (7-a), to define "commercial property insurance," "participating insurer," "property insurance," and "supplementary rating information" and to redefine "net direct premiums," "residential property insurance," and "underserved area(s)."

SECTION 2. Amends Section 2211.051, Insurance Code, as follows:

Sec. 2211.051. ESTABLISHMENT OF FAIR PLAN. (a) Creates this subsection from existing text. Authorizes the commissioner of insurance (commissioner) to establish a Fair Access to Insurance Requirements Plan (FAIR Plan) to deliver:

(1) residential property insurance to residents of this state in underserved areas designated under Section 2211.152(b) if the commissioner, after a public hearing, makes certain determinations; and

(2) commercial property insurance to persons within a group or groups that share similar risk characteristics and have insurable interest in commercial property in underserved areas designated under Section 2211.152(c) if the commissioner determines, after a public hearing, that in all or any part of the state commercial property insurance is not reasonably available in the voluntary market to that group or groups as determined by the commissioner. Makes nonsubstantive changes.

(b) Provides that the commissioner has sole discretion to designate underserved areas of this state, as designated under Section 2211.152(c), in which the FAIR Plan may provide commercial property insurance, and those persons and risk characteristics that establish a group or groups whose members share similar risk characteristics for purposes of this chapter, including by defining a group as including all persons seeking commercial property insurance.

(c) Authorizes the commissioner, in establishing eligibility for commercial property insurance, to consider whether such a determination creates an adverse

impact to the FAIR Plan Association's (association) exposure, and any other factors the commissioner considers relevant.

SECTION 3. Amends Section 2211.054, Insurance Code, to change references to property insurance, rather than residential property insurance.

SECTION 4. Amends Section 2211.056(a), Insurance Code, to require the association to file with the commissioner for approval the proposed rates and supplementary rating, rather than supplemental rate, information to be used in connection with the issuance of insurance policies or endorsements.

SECTION 5. Amends Subchapter B, Chapter 2211, Insurance Code, by adding Section 2211.060, as follows:

Sec. 2211.060. **COMMERCIAL PROPERTY INSURANCE LIABILITY LIMITS.** (a) Prohibits maximum liability limits for the coverage on a single insurable commercial property from exceeding \$3,200,000, except as provided by Subsections (c) and (d), for a structure and the corporeal movable property located in that structure, and as an extension of coverage, away from those premises, as provided under the policy.

(b) Provides that this section does not apply to insurable commercial property that is owned by, and at least 75 percent of which is occupied by, a government entity; or not owned by, but is wholly and exclusively occupied by a government entity.

(c) Requires the governing committee, not later than September 30 of each year, to propose inflation adjustments to the maximum liability limits imposed under Subsection (a) in increments of \$1,000, rounded to the nearest \$1,000, based on an index that the governing committee determines accurately reflects changes in the cost of construction or commercial property values in the relevant area.

(d) Authorizes the governing committee to propose additional increases in the maximum liability limits as necessary to implement the purposes of the chapter.

(e) Requires the commissioner to approve the inflation adjustments and proposed additional increases, with or without modifications, or disapprove the adjustments and proposed additional increases.

SECTION 6. Amends Section 2211.101, Insurance Code, as follows:

Sec. 2211.101. **COVERAGE PROVIDED TO INSURED IN UNDERSERVED AREA.** (a) Deletes existing text requiring the FAIR Plan Association, in accordance with the plan of operation, to develop and administer a program for participation by each insurer that write residential property insurance in this state.

(b) Requires each insurer, except as provided by this subsection, as a condition of the insurer's authority to engage in the business of property insurance, rather than the business of residential property insurance, in this state to participate in the FAIR Plan Association in accordance with this chapter, including participating in the FAIR Plan Association's assessment in the proportion that the insurer's net direct property insurance premiums written in this state during the preceding calendar year bear to the aggregate net direct property insurance premiums written in this state by all participating insurers.

(c) Requires that an insurer's participation under Subsection (b) in the association's assessments be determined in accordance with the association's plan of operation, rather than the residential property statistical plan adopted by the commissioner.

(d) Entitles a participating insurer to receive credit for similar property insurance voluntarily written in an underserved area.

SECTION 7. Amends Section 2211.104, Insurance Code, by amending Subsection (c) and adding Subsection (f), as follows:

(c) Requires that the percentage be equal to one-third of the ratio of the amount of the participating insurer's assessment or service fee payment to the amount of the insurer's direct written premiums, rather than the insurer's direct earned premiums, as reported to the Texas Department of Insurance in the insurer's financial statement for the calendar year preceding the year in which the assessment or service fee payment is made so that, over the three-year period, the aggregate of all surcharges by the insurer under this section is at least equal to the amount of the assessment or service fee payment.

(f) Authorizes the commissioner, notwithstanding Subsections (a) (relating to requiring the FAIR Plan Association, at the commissioner's direction, if the FAIR Plan Association incurs a deficit to request issuance of certain securities and assess participating insurers), (b) (relating to authorizing each insurer to charge a premium surcharge on every property insurance policy insuring property), (c), and (d) (relating to authorizing the amount of any assessment paid and surcharged under this section to be carried by the insurer), if public securities are issued as authorized by Subsection (a)(1) (relating to requiring the FAIR Plan Association to request the issuance of public securities), to establish a schedule providing for collection of the service fee over the full term of the securities and limiting insurers to collecting in accordance with that schedule.

SECTION 8. Amends Section 2211.151, Insurance Code, as follows:

Sec. 2211.151. MANDATORY COVERAGE PROVIDED TO CERTAIN INSURED.

(a) Authorizes the FAIR Plan Association, as authorized by the commissioner under Section 2211.051(a)(1), to make residential property insurance available to each applicant in an underserved area whose property is insurable in accordance with reasonable underwriting standards but who, after diligent efforts, is unable to obtain residential property insurance through the voluntary market, as evidenced by two declinations from insurers authorized to engage in the business of, and writing, residential property insurance in this state.

(b) Requires the association to make commercial property insurance available, as authorized by the commissioner under Section 2211.051(a)(2), to each applicant who:

(1) has an insurable interest in real or tangible commercial property that is insurable in accordance with reasonable underwriting standards and located at a fixed location in the area designated under Section 2211.051(a)(2);

(2) shares the risk characteristics of the group designated under Section 2211.051(a)(2); and

(3) is unable to obtain commercial property insurance through the voluntary market after diligent efforts are made, as evidenced by two declinations from insurers authorized to engage in the business of, and writing, that commercial property insurance in this state.

SECTION 9. Amends Section 2211.152, Insurance Code, as follows:

Sec. 2211.152. DESIGNATION OF AREA AS UNDERSERVED. (a) Creates this subsection from existing text.

(b) Creates this subsection from existing text. Requires the commissioner to consider factors specified in Section 2004.002 (Designation of Underserved Areas) in determining which area to designate as underserved for residential property insurance.

(c) Requires the commissioner to consider whether commercial property insurance is not reasonably available to individuals within a group or groups that share similar risk characteristics and who have an insurable interest in commercial property in the area, and any other relevant factors when determining which areas to designate as underserved for commercial property insurance.

SECTION 10. Amends Section 2211.153, Insurance Code, to delete existing text requiring the inspection bureau to make inspections to determine the condition of a property for which residential property insurance is sought.

SECTION 11. Amends Sections 2211.154(a) and (c), Insurance Code, as follows:

(a) Entitles a person who has an insurable interest in real or tangible personal property at a fixed location in an underserved area and who, after diligent effort, is unable to obtain property insurance, rather than obtain residential property insurance, as evidence by two current declinations from insurers authorized to engage in the business of property insurance in this state and actually writing the property insurance applied for in this state, on application to the FAIR Plan Association to an inspection and evaluation of the property by representatives of the inspection bureau. Makes conforming changes.

(c) Makes a conforming change.

SECTION 12. Amends Section 2211.155, Insurance Code, to make conforming changes.

SECTION 13. Amends Section 2211.201, Insurance Code, to make conforming changes.

SECTION 14. Amends Section 2211.209(e), Insurance Code, to delete existing text requiring that the amount assessed against an insurer under this subsection be proportionate to the insurer's share of the property insurance market, including residential property insurance, in this state as of the last complete reporting period before the date the insurer ceases to engage in the property insurance business in this state and based on the insurer's gross premiums for property insurance, including residential property insurance, for the insurer's last reporting period.

SECTION 15. Requires the governing committee of the FAIR Plan to amend the plan's plan of operation to reflect changes made by this Act not later than December 1, 2009. Requires the FAIR Plan to begin issuing commercial property insurance in accordance with the plan of operation on January 1, 2010.

SECTION 16. Effective date: September 1, 2009.