

## **BILL ANALYSIS**

H.B. 1897  
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Insurance  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Concerns have been raised regarding the lack of protections against frivolous lawsuits for the Fair Access to Insurance Requirements (FAIR) Plan Association. It has been suggested that overly litigated claims threaten the viability of the market and place financial burdens on consumers in the form of higher premiums. H.B. 1897 seeks to safeguard against these frivolous lawsuits by providing a deadline by which a claim must be filed, imposing limits on recovery, and establishing procedures for resolving certain claim disputes.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the commissioner of insurance in SECTIONS 3 and 4 of this bill.

### **ANALYSIS**

H.B. 1897 amends the Insurance Code to provide the exclusive remedies for a claim against the Fair Access to Insurance Requirements (FAIR) Plan Association, including an agent or representative of the association. The bill prohibits the association from being held liable for any amount other than covered losses payable under the terms of an association policy, subject to the bill's provisions relating to recovery, and prohibits the association, or an agent or representative of the association, from being held liable for damages under Business & Commerce Code provisions relating to deceptive trade practices or, except as otherwise specifically provided by provisions governing the FAIR Plan, under any provision of any law providing for additional damages, exemplary damages, or a penalty. The bill sets out the following:

- procedures for filing and processing a claim under an association policy, including a claim filing deadline and requirements for the association's provision of written notification to a claimant about whether the association has accepted coverage for the claim in full or in part or has denied coverage for the claim;
- deadlines for payment by the association of a claim for which the association has accepted coverage in full or in part;
- procedures for resolving disputes concerning the amount of accepted coverage for a claim through an appraisal process, including a prohibition against a claimant bringing an action against the association with reference to a claim for which coverage is accepted in full, except under certain circumstances in which an action may be filed to vacate an appraisal decision and begin a new appraisal process; and
- procedures for resolving disputes concerning denied coverage for a claim, including:

- a requirement for a claimant to provide notice of intent to bring an action against the association;
- an authorization for the association to require a claimant, as a prerequisite to filing an action, to submit the dispute to alternative dispute resolution by mediation or moderated settlement conference;
- provisions relating to alternative dispute resolution; and
- provisions relating to an action brought by a claimant if the claimant is not satisfied after completion of alternative dispute resolution or if such resolution is not completed within the required time frame.

H.B. 1897 restricts the issues that a claimant may raise in an action concerning denied coverage, establishes limits on the amount that a claimant may recover in such an action, and sets the limitations period for bringing such an action. The bill establishes that nothing in provisions governing the FAIR Plan may be construed to limit the consequential damages, or the amount of consequential damages, that a claimant may recover under common law in an action against the association.

H.B. 1897 requires the commissioner of insurance to adopt rules regarding the bill's provisions relating to claims settlement and dispute resolution, including the provisions relating to disputes concerning denied coverage, and sets out requirements for those rules. The bill sets certain deadlines under those provisions and authorizes the commissioner to extend any of the deadlines on a showing of good cause, including military deployment. The bill prohibits the association from bringing an action against a claimant, for declaratory or other relief, before the 180th day after the date an appraisal or alternative dispute resolution is completed. The bill establishes that the bill's provisions relating to claims settlement and dispute resolution prevail to the extent of any conflict between those provisions and any other law.

H.B. 1897 requires the Texas Department of Insurance (TDI) to establish an ombudsman program to provide information and educational programs to assist persons insured under the FAIR Plan with the claim processes and provides for the funding, administration, and duties of the program. The bill requires the association, in the manner prescribed by the commissioner by rule, to notify each person insured under the plan concerning the operation of the ombudsman program. The bill requires the commissioner to adopt rules relating to the implementation of an amended budget for the program after a catastrophic event and authorizes the commissioner to adopt rules to implement the program.

H.B. 1897 makes the entitlement of a FAIR Plan applicant or affected insurer to appeal an association decision to the commissioner inapplicable to a person who is required to resolve a dispute under the bill's provisions relating to claims settlement and dispute resolution.

H.B. 1897 establishes a process that authorizes the association or another party to a dispute involving the association to object to the assignment of a presiding officer for the dispute who is insured under the FAIR Plan and provides for the assignment of a different presiding officer if the commissioner determines that the presiding officer originally assigned has a direct financial or personal interest in the outcome of the dispute. The bill sets out related procedures, including a deadline for filing an objection, which may be extended by the commissioner on a showing of good cause.

H.B. 1897 prohibits a person from bringing a private action against the association, including a claim against an agent or representative of the association, under Insurance Code provisions relating to unfair methods of competition, unfair or deceptive acts or practices, and the processing and settlement of claims. The bill authorizes a class action to be brought against the association only if it is brought by the attorney general at the request of TDI and makes statutory provisions governing the processing and settlement of claims inapplicable to the processing and settlement of claims by the association.

H.B. 1897 requires an insurance policy issued by the association to contain, in boldface type, a conspicuous notice concerning the resolution of disputes under the policy and to require an insured to file a claim on the policy not later than the first anniversary of the date on which the damage to property that is the basis of the claim occurs. That deadline may be extended by the commissioner on a showing of good cause for a period not to exceed 180 days.

H.B. 1897 authorizes a person insured under the FAIR Plan to elect to purchase a binding arbitration endorsement in a form prescribed by the commissioner and authorizes the association to offer a person who elects to purchase such an endorsement an actuarially justified premium discount on an association policy. The bill caps the premium discount at 10 percent of the policy premium and requires a person who makes such an election to arbitrate a dispute involving an act, ruling, or decision of the association relating to the payment of, the amount of, or the denial of the claim in the manner and under rules and deadlines prescribed by the commissioner by rule. The bill requires the commissioner to adopt rules necessary to implement and enforce these provisions.

H.B. 1897 applies only to an insurance policy that is delivered, issued for delivery, or renewed by the association on or after the 60th day after the bill's effective date, except that the limits on recovery in an action concerning denied coverage apply to any cause of action that accrues against the association on or after the bill's effective date, regardless of the date on which the applicable policy was delivered, issued for delivery, or renewed. The bill requires a person who disputes the amount the association will pay for a partially or fully accepted claim under a policy delivered, issued for delivery, or renewed before the 60th day after the bill's effective date to attempt to resolve the dispute through any appraisal process contained in the policy before an action may be brought against the association concerning the claim. The bill sets out provisions relating to such an appraisal.

#### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2019.