

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

LLS NO. 23-0809.01 Yelana Love x2295

HOUSE BILL 23-1288

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A BILL FOR AN ACT

101 **CONCERNING FAIR ACCESS TO INSURANCE COVERAGE FOR PERSONS**
102 **UNABLE TO OBTAIN INSURANCE COVERAGE FOR THEIR REAL**
103 **PROPERTY.**

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 creates a nonprofit unincorporated legal entity, the fair access to insurance requirements plan association (association), to help persons who are unable to find coverage in the voluntary market obtain property insurance coverage for their real property.

The association must:

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
May 4, 2023

SENATE
2nd Reading Unamended
May 3, 2023

HOUSE
3rd Reading Unamended
April 21, 2023

HOUSE
Amended 2nd Reading
April 19, 2023

- Establish, offer, and maintain a property insurance policy that satisfies the requirements specified in the bill;
- Establish a reinsurance association; and
- Assess and share among member insurers all expenses, income, and losses based on each member insurer's written premium in the state.

The association is managed by a board of directors consisting of 9 members appointed by the governor. The board is required to administer the fair access to insurance requirements plan (FAIR plan).

The FAIR plan must include rates that:

- Are not excessive, inadequate, or unfairly discriminatory;
- Are actuarially sound so that revenue generated from premiums is adequate to pay for expected losses, expenses, and taxes and the cost of reinsurance; and
- Reflect the investment income of the FAIR plan.

The plan of operation for the FAIR plan may include provisions establishing maximum limits of liability, reasonable underwriting standards for determining the insurability of a risk, and commissions to be paid to the licensed producers that offer the FAIR plan.

The commissioner of insurance may suspend or revoke the certificate of authority to transact insurance business in this state of any member insurer that fails to timely pay a fee or to comply with the plan of operation for the FAIR plan.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** part 18 to article
3 4 of title 10 as follows:

4 **PART 18**

5 **FAIR ACCESS TO INSURANCE REQUIREMENTS**

6 **10-4-1801. Short title.** THE SHORT TITLE OF THIS PART 18 IS THE
7 "FAIR ACCESS TO INSURANCE REQUIREMENTS ACT" OR "FAIR ACT".

8 **10-4-1802. Legislative declaration.** (1) THE GENERAL ASSEMBLY
9 FINDS THAT:

10 (a) THE IMPACTS OF CLIMATE CHANGE HAVE RESULTED IN AN
11 INCREASING FREQUENCY OF NATURAL DISASTERS IN COLORADO;

12 (b) COLORADO EXPERIENCED THREE OF THE LARGEST WILDFIRES

1 IN ITS HISTORY IN THE LAST FIVE YEARS, AND THE 2021 MARSHALL FIRE
2 RESULTED IN THE LOSS OF OVER ONE THOUSAND HOMES AND COMMERCIAL
3 PROPERTIES;

4 (c) THE GROWING THREATS POSED BY WILDFIRES AND OTHER
5 NATURAL DISASTERS IN COLORADO HAVE PUT NEW PRESSURE ON THE
6 RESIDENTIAL AND COMMERCIAL INSURANCE MARKETS; AND

7 (d) IF HOMEOWNERS AND COMMERCIAL PROPERTY OWNERS ARE
8 UNABLE TO SECURE INSURANCE COVERAGE FOR THE HOMES AND
9 PROPERTIES IN THEIR COMMUNITIES, THE LACK OF COVERAGE WILL
10 FRUSTRATE AND ERODE THOSE COMMUNITIES' HOUSING AND COMMERCIAL
11 PROPERTY MARKETS.

12 (2) THE GENERAL ASSEMBLY DECLARES THAT IT IS IMPERATIVE TO
13 ESTABLISH AND MAKE AVAILABLE TO COLORADO HOMEOWNERS AND
14 COMMERCIAL PROPERTY OWNERS AN INSURANCE PLAN THAT:

15 (a) ENSURES STABILITY IN THE PROPERTY INSURANCE MARKET FOR
16 PROPERTY LOCATED IN COLORADO AND PROVIDES OPPORTUNITY FOR THE
17 PRIVATE INSURANCE MARKET TO ADAPT TO CHANGING CONDITIONS;

18 (b) ENSURES THE AVAILABILITY OF PROPERTY INSURANCE FOR
19 RESIDENTS OF COLORADO; AND

20 (c) COMPLEMENTS THE PRIVATE MARKET BY REQUIRING
21 CONSUMERS TO PURCHASE COVERAGE THROUGH THE PRIVATE MARKET
22 WHEN POSSIBLE.

23 **10-4-1803. Definitions.** AS USED IN THIS PART 18, UNLESS THE
24 CONTEXT OTHERWISE REQUIRES:

25 (1) "BOARD" MEANS THE BOARD OF DIRECTORS OF THE FAIR PLAN
26 ASSOCIATION CREATED IN SECTION 10-4-1805.

27 (2) "COMMERCIAL PROPERTY INSURANCE" MEANS INSURANCE

1 AGAINST DIRECT LOSS TO COMMERCIAL PROPERTY, INCLUDING BUILDINGS
2 AND BUILDING CONTENTS, RESULTING FROM THE PERILS OF FIRE, PERILS
3 COVERED UNDER EXTENDED COVERAGE, VANDALISM, OR MALICIOUS
4 MISCHIEF. "COMMERCIAL PROPERTY INSURANCE" DOES NOT INCLUDE
5 COMMERCIAL AUTOMOBILE INSURANCE OR FARM RISKS.

6 (3) "FAIR PLAN" OR "PLAN" MEANS THE FAIR ACCESS TO
7 INSURANCE REQUIREMENTS PLAN ESTABLISHED BY THE BOARD PURSUANT
8 TO SECTION 10-4-1806.

9 (4) "FAIR PLAN ASSOCIATION" OR "ASSOCIATION" MEANS THE FAIR
10 ACCESS TO INSURANCE REQUIREMENTS PLAN ASSOCIATION CREATED IN
11 SECTION 10-4-1804.

12 (5) "MEMBER INSURER" MEANS ANY ADMITTED COMPANY THAT
13 OFFERS OR SELLS ANY PROPERTY INSURANCE, INCLUDING COMMERCIAL
14 PROPERTY INSURANCE.

15 (6) "PROPERTY INSURANCE" MEANS INSURANCE AGAINST DIRECT
16 LOSS TO RESIDENTIAL PROPERTY, INCLUDING BUILDINGS AND BUILDING
17 CONTENTS, RESULTING FROM THE PERILS OF FIRE, PERILS COVERED UNDER
18 EXTENDED COVERAGE, VANDALISM, OR MALICIOUS MISCHIEF. "PROPERTY
19 INSURANCE" DOES NOT INCLUDE AUTOMOBILE INSURANCE OR FARM RISKS.

20 **10-4-1804. Fair access to insurance requirements plan**
21 **association - creation - participation required.** (1) THERE IS CREATED
22 THE FAIR ACCESS TO INSURANCE REQUIREMENTS PLAN ASSOCIATION, OR
23 FAIR PLAN ASSOCIATION, WHICH IS A NONPROFIT UNINCORPORATED
24 PUBLIC ENTITY. ALL MEMBER INSURERS ARE AND REMAIN MEMBERS OF
25 THE ASSOCIATION AS A CONDITION OF EACH MEMBER INSURER'S
26 AUTHORITY TO TRANSACT INSURANCE BUSINESS IN THIS STATE. THE
27 ASSOCIATION SHALL PERFORM ITS FUNCTIONS UNDER A PLAN OF

1 OPERATION ESTABLISHED AND APPROVED UNDER SECTION 10-4-1807 AND
2 SHALL EXERCISE ITS POWERS THROUGH A BOARD OF DIRECTORS
3 ESTABLISHED UNDER SECTION 10-4-1805.

4 (2) THE FAIR PLAN ASSOCIATION IS ESTABLISHED TO PROVIDE
5 PROPERTY INSURANCE COVERAGE, INCLUDING COMMERCIAL PROPERTY
6 INSURANCE, WHEN SUCH COVERAGE IS NOT AVAILABLE FROM ADMITTED
7 COMPANIES.

8 (3) THE FAIR PLAN ASSOCIATION SHALL:

9 (a) ESTABLISH, OFFER, AND MAINTAIN A PROPERTY INSURANCE
10 AND A COMMERCIAL PROPERTY INSURANCE POLICY THAT SATISFY THE
11 REQUIREMENTS OF THE FAIR PLAN SPECIFIED IN SECTION 10-4-1806; AND

12 (b) ASSESS AND SHARE AMONG MEMBER INSURERS, ON A FAIR AND
13 EQUITABLE BASIS, ALL EXPENSES, INCOME, AND LOSSES BASED ON EACH
14 MEMBER INSURER'S WRITTEN PREMIUM FOR PROPERTY AND COMMERCIAL
15 PROPERTY INSURANCE CONSISTENT WITH THIS PART 18.

16 (4) THE FAIR PLAN ASSOCIATION MAY ISSUE PROPERTY
17 INSURANCE POLICIES, INCLUDING COMMERCIAL PROPERTY INSURANCE
18 POLICIES, AND REINSURE IN WHOLE OR IN PART ANY SUCH POLICIES, CEDE
19 ANY SUCH REINSURANCE, OR TRANSFER RISK TO OTHER CAPITAL MARKETS.

20 (5) THE ASSOCIATION SHALL ESTABLISH A PUBLIC WEBSITE THAT
21 INCLUDES INFORMATION ABOUT THE FAIR PLAN. THE WEBSITE MUST
22 INCLUDE A TOLL-FREE TELEPHONE NUMBER THAT A PERSON MAY USE TO
23 OBTAIN INFORMATION ABOUT THE PLAN.

24 **10-4-1805. Fair access to insurance requirements plan**
25 **association - board of directors - membership - duties.** (1) (a) THE
26 FAIR PLAN ASSOCIATION BOARD OF DIRECTORS IS CREATED AS THE
27 GOVERNING BODY OF THE ASSOCIATION AND TO ADMINISTER THE FAIR

1 PLAN. THE BOARD CONSISTS OF [REDACTED] MEMBERS APPOINTED BY THE
2 GOVERNOR AS FOLLOWS:

3 (I) TWO MEMBERS REPRESENTING ADMITTED MUTUAL INSURERS
4 WRITING PROPERTY INSURANCE IN COLORADO;

5 (II) TWO MEMBERS REPRESENTING ADMITTED STOCK INSURERS
6 WRITING PROPERTY INSURANCE IN COLORADO;

7 (III) ONE MEMBER REPRESENTING A COLORADO-BASED INSURANCE
8 TRADE ORGANIZATION THAT REPRESENTS INSURERS OF VARIOUS PROPERTY
9 INTERESTS;

10 [REDACTED]

11 (IV) ONE MEMBER REPRESENTING A COLORADO-BASED
12 INSURANCE TRADE ASSOCIATION THAT REPRESENTS INDEPENDENT
13 INSURANCE AGENTS LICENSED TO WRITE PROPERTY AND CASUALTY
14 INSURANCE IN COLORADO;

15 (V) ONE MEMBER WHO IS AN INSURANCE PRODUCER LICENSED
16 PURSUANT TO ARTICLE 2 OF THIS TITLE 10 TO WRITE PROPERTY AND
17 CASUALTY INSURANCE IN COLORADO; AND

18 (VI) TWO MEMBERS REPRESENTING THE INTERESTS OF CONSUMERS
19 AND, TO THE EXTENT PRACTICABLE, REPRESENTING CONSUMER ADVOCACY
20 ORGANIZATIONS AND DIVERSE GEOGRAPHIC AREAS OF THE STATE.

21 (b) THE GOVERNOR SHALL MAKE THE INITIAL APPOINTMENTS TO
22 THE BOARD ON OR BEFORE JANUARY 1, 2024.

23 (c) THE TERM OF OFFICE OF BOARD MEMBERS IS THREE YEARS;
24 EXCEPT THAT:

25 (I) EACH BOARD MEMBER SERVES AT THE PLEASURE OF THE
26 GOVERNOR; AND

27 (II) TO ENSURE STAGGERED MEMBERSHIP, OF THE INITIAL

1 MEMBERS APPOINTED TO THE BOARD:

2 (A) ONE OF THE MEMBERS INITIALLY APPOINTED PURSUANT TO
3 SUBSECTION (1)(a)(I) OR (1)(a)(II) OF THIS SECTION AND ONE OF THE
4 MEMBERS INITIALLY APPOINTED PURSUANT TO SUBSECTION (1)(a)(IV) OR
5 (1)(a)(V) OF THIS SECTION SHALL EACH SERVE AN INITIAL TERM OF ONE
6 YEAR; AND

7 (B) THE MEMBER INITIALLY APPOINTED PURSUANT TO SUBSECTION
8 (1)(a)(III) OF THIS SECTION AND ONE OF THE MEMBERS INITIALLY
9 APPOINTED PURSUANT TO SUBSECTION (1)(a)(VI) OF THIS SECTION SHALL
10 EACH SERVE AN INITIAL TERM OF TWO YEARS.

11 (d) A BOARD MEMBER MAY SERVE FOUR TERMS.

12 (e) IF A VACANCY OCCURS ON THE BOARD, THE GOVERNOR SHALL
13 APPOINT A NEW BOARD MEMBER TO COMPLETE THE REMAINDER OF THE
14 BOARD MEMBER'S TERM.

15 (2) THE BOARD MAY, ON ITS OWN INITIATIVE OR AT THE REQUEST
16 OF THE COMMISSIONER, AMEND THE PLAN OF OPERATION DESCRIBED IN
17 SECTION 10-4-1807, SUBJECT TO APPROVAL BY THE COMMISSIONER.

18
19 (3) (a) ON OR BEFORE APRIL 1, 2025, AND ON OR BEFORE EACH
20 APRIL 1 THEREAFTER, THE BOARD SHALL SUBMIT TO THE COMMISSIONER,
21 IN THE FORM AND MANNER DETERMINED BY THE COMMISSIONER, A REPORT
22 CONCERNING THE FAIR PLAN DURING THE PRECEDING CALENDAR YEAR.

23 THE REPORT MUST INCLUDE INFORMATION CONCERNING:

24 (I) THE FINANCIAL CONDITION OF THE PLAN;

25 (II) THE NUMBER OF POLICIES AND THE COVERAGE AVAILABLE
26 THROUGH THE PLAN;

27 (III) THE NUMBER AND TYPES OF CLAIMS MADE UNDER THE PLAN;

1 AND

2 (IV) A DESCRIPTION OF THE SUFFICIENCY OF COVERAGE UNDER
3 AND FINANCES OF THE PLAN.

4 (b) IN ADDITION TO THIS ANNUAL REPORTING REQUIREMENT, THE
5 COMMISSIONER MAY REQUIRE THE BOARD TO SUBMIT QUARTERLY REPORTS
6 OR MAY EXAMINE THE AFFAIRS OF THE FAIR PLAN ASSOCIATION IF THE
7 COMMISSIONER DETERMINES THAT SUCH ACTION IS NECESSARY TO ENSURE
8 THE CONTINUED SOLVENCY OF THE PLAN.

9 **10-4-1806. FAIR plan - plan requirements - insurer**
10 **requirements.** (1) THE BOARD SHALL ESTABLISH THE FAIR PLAN. THE
11 FAIR PLAN MUST SATISFY THE REQUIREMENTS OF THIS PART 18 AND ANY
12 RULES PROMULGATED BY THE COMMISSIONER PURSUANT TO THIS PART 18.

13 (2) RATES FOR THE FAIR PLAN MUST:

14 (a) NOT BE EXCESSIVE, INADEQUATE, OR UNFAIRLY
15 DISCRIMINATORY;

16 (b) BE ACTUARIALLY SOUND SO THAT REVENUE GENERATED FROM
17 PREMIUMS IS ADEQUATE TO PAY FOR EXPECTED LOSSES, EXPENSES, AND
18 TAXES;

19 (c) REFLECT THE INVESTMENT INCOME OF THE PLAN; AND

20 (d) REFLECT THE COST OF REINSURANCE OR OTHER CAPITAL RISK
21 TRANSFER MARKETS.

22 (3) THE FAIR PLAN IS SUBJECT TO THE RATE FILING AND REVIEW
23 REQUIREMENTS IN THIS ARTICLE 4.

24 **10-4-1807. Plan of operation - mandatory components -**
25 **amendments - revocation by commissioner - rules.** (1) ON OR BEFORE
26 JULY 1, 2024, THE BOARD SHALL ESTABLISH AND SUBMIT TO THE
27 COMMISSIONER A PLAN OF OPERATION FOR THE FAIR PLAN, WHICH PLAN

1 OF OPERATION SATISFIES THIS PART 18. THE PLAN OF OPERATION AND ANY
2 AMENDMENTS TO THE PLAN OF OPERATION BECOME EFFECTIVE UPON
3 WRITTEN APPROVAL BY THE COMMISSIONER.

4 (2) WITH REGARD TO THE FAIR PLAN, THE PLAN OF OPERATION
5 MUST PROVIDE FOR:

6 (a) THE LINES OF INSURANCE COVERAGES TO BE WRITTEN;

7 (b) COVERAGE LIMITS NOT TO EXCEED SEVEN HUNDRED FIFTY
8 THOUSAND DOLLARS FOR PROPERTY AND FIVE MILLION DOLLARS FOR
9 COMMERCIAL PROPERTY OWNERS;

10 (c) THE POLICY FORMS TO BE USED;

11 (d) THE PERILS TO BE COVERED;

12 (e) THE ESTABLISHMENT OF REASONABLE UNDERWRITING
13 STANDARDS TO DETERMINE THE ELIGIBILITY OF A RISK, INCLUDING
14 MITIGATION REQUIREMENTS AND PROPERTY INSPECTIONS;

15 (f) THE COMPENSATION AND COMMISSIONS TO BE PAID TO
16 LICENSED PRODUCERS OFFERING THE FAIR PLAN;

17 (g) THE TIME FRAMES FOR FEES TO BE COLLECTED FROM MEMBER
18 INSURERS;

19 (h) ASSESSMENTS AGAINST MEMBER INSURERS IN THE PROPORTION
20 THAT THE PREMIUMS RECEIVED ON PROPERTY AND COMMERCIAL
21 PROPERTY INSURANCE LINES IN THIS STATE BY EACH ASSESSED MEMBER
22 INSURER FOR THE THREE MOST RECENT CALENDAR YEARS FOR WHICH
23 INFORMATION IS AVAILABLE BEARS TO PREMIUMS RECEIVED ON PROPERTY
24 AND COMMERCIAL PROPERTY INSURANCE LINES IN THIS STATE FOR SUCH
25 CALENDAR YEARS BY ALL ASSESSED MEMBER INSURERS;

26 (i) THE ADMINISTRATION OF THE PLAN OF OPERATION BY THE
27 BOARD, INCLUDING ANY SERVICING AGREEMENTS THE BOARD MAY ENTER

1 INTO TO SUPPORT THE OPERATIONS OF THE FAIR PLAN ASSOCIATION; AND

2 (j) ANY OTHER MATTER NECESSARY OR CONVENIENT FOR THE
3 PURPOSE OF ASSURING FAIR ACCESS TO A FAIR PLAN.

4 (3) IF THE BOARD FAILS TO SUBMIT A SUITABLE PLAN OF
5 OPERATION THAT SATISFIES THIS PART 18 BY JULY 1, 2024, OR FAILS TO
6 TIMELY SUBMIT SUITABLE AMENDMENTS TO THE PLAN, THE COMMISSIONER
7 SHALL, AFTER NOTICE AND HEARING, ADOPT REASONABLE RULES THAT
8 ARE NECESSARY TO EFFECTUATE THE PROVISIONS OF THIS PART 18. IF THE
9 BOARD SUBSEQUENTLY SUBMITS A SUITABLE PLAN OF OPERATION OR
10 SUITABLE AMENDMENTS, THE COMMISSIONER SHALL PROMULGATE RULES
11 ALLOWING THE PLAN OF OPERATION OR AMENDMENTS TO SUPERSEDE THE
12 FORMER RULES.

13 (4) (a) IF THE COMMISSIONER DETERMINES THAT AN APPROVED
14 PLAN OF OPERATION IS INSUFFICIENT TO SATISFY THE REQUIREMENTS OF
15 THIS PART 18, THE COMMISSIONER SHALL PROVIDE AT LEAST THIRTY DAYS'
16 NOTICE TO THE BOARD OF THE COMMISSIONER'S INTENT TO REVOKE
17 APPROVAL OF ALL OR PART OF THE PLAN OF OPERATION. WITHIN THIRTY
18 DAYS AFTER THE COMMISSIONER'S NOTICE OF INTENT TO REVOKE THE PLAN
19 OF OPERATION, THE BOARD MAY SUBMIT A REVISED PLAN OF OPERATION
20 OR REVISED PART OF THE PLAN OF OPERATION FOR THE COMMISSIONER'S
21 REVIEW AND APPROVAL.

22 (b) IF THE BOARD FAILS TO SUBMIT A REVISED PLAN OF OPERATION
23 WITHIN THIRTY DAYS AFTER THE NOTICE PROVIDED PURSUANT TO
24 SUBSECTION (4)(a) OF THIS SECTION, THE COMMISSIONER MAY MAKE
25 SPECIFIC CHANGES TO THE EXISTING PLAN OF OPERATION SO THAT THE
26 PLAN SATISFIES THE REQUIREMENTS OF THIS PART 18. THE
27 COMMISSIONER'S CHANGES TO THE PLAN OF OPERATION DO NOT AFFECT

1 THE VALIDITY OF ANY POLICIES EXECUTED BEFORE THE DATE OF THE
2 CHANGE.

3 (c) IF THE BOARD SUBSEQUENTLY SUBMITS A SUITABLE PLAN OF
4 OPERATION TO SATISFY THE REQUIREMENTS OF THIS PART 18, THAT PLAN
5 OF OPERATION OR AMENDMENTS SUPERSEDES THE COMMISSIONER'S
6 CHANGES.

7 **10-4-1808. FAIR plans - requirements for licensed producers.**

8 THE FAIR PLAN ASSOCIATION SHALL NOT SELL A POLICY SUBJECT TO THIS
9 PART 18 DIRECTLY TO ANY PERSON OR ENTITY. A FAIR PLAN POLICY MAY
10 BE ISSUED ONLY THROUGH A LICENSED PRODUCER WHO SHALL, ON BEHALF
11 OF A PERSON OR ENTITY, INCLUDE EVIDENCE OF AT LEAST THREE
12 DECLINATIONS OF COVERAGE FOR THE PROPERTY AS PART OF THE
13 SUBMITTAL OF AN APPLICATION FOR A POLICY WITH THE FAIR PLAN
14 ASSOCIATION.

15 **10-4-1809. Assessment of fees.** (1) (a) THE FAIR PLAN
16 ASSOCIATION MAY COLLECT FEES FROM MEMBER INSURERS TO GENERATE
17 SUFFICIENT REVENUE TO START UP THE ASSOCIATION.

18 (b) A MEMBER INSURER THAT PAYS A FEE BASED ON SUBSECTION
19 (1)(a) OF THIS SECTION MAY RECOUP THE AMOUNT DIRECTLY FROM THE
20 MEMBER INSURERS' POLICYHOLDERS.

21 (c) A MEMBER INSURER SHALL NOT INCREASE PREMIUMS BASED ON
22 A FEE ASSESSED PURSUANT TO SUBSECTION (1)(a) OF THIS SECTION.

23 (d) THE FEE DESCRIBED IN SUBSECTION (1)(a) OF THIS SECTION IS
24 NOT A PREMIUM FOR ANY PURPOSE, INCLUDING THE COMPUTATION OF THE
25 GROSS PREMIUM TAX DESCRIBED IN SECTION 10-3-209, OR A LICENSED
26 PRODUCER'S COMMISSION.

27 (2) (a) THE FAIR PLAN ASSOCIATION MAY COLLECT FEES FROM

1 MEMBER INSURERS AS NEEDED FOR THE ASSOCIATION TO MEET ITS
2 FINANCIAL OBLIGATIONS, SUBJECT TO APPROVAL BY THE COMMISSIONER.

3 (b) A MEMBER INSURER ASSESSED A FEE PURSUANT TO SUBSECTION
4 (2)(a) OF THIS SECTION MAY RECOUP THE FEE DIRECTLY FROM THE
5 MEMBER INSURER'S POLICYHOLDERS AS A SURCHARGE ON THE
6 POLICYHOLDERS. THE SURCHARGE MAY BE RECOUPED OVER A
7 REASONABLE AMOUNT OF TIME.

8 (c) A MEMBER INSURER SHALL NOT INCREASE PREMIUMS BASED ON
9 A FEE ASSESSED PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION.

10 (d) THE FEE DESCRIBED IN SUBSECTION (2)(a) OF THIS SECTION IS
11 NOT A PREMIUM FOR ANY PURPOSE, INCLUDING THE COMPUTATION OF THE
12 GROSS PREMIUM TAX DESCRIBED IN SECTION 10-3-209, OR A LICENSED
13 PRODUCER'S COMMISSION.

14 (3) IF THE COMMISSIONER DETERMINES AT ANY TIME THAT THE
15 FAIR PLAN ASSOCIATION IS OR MAY BECOME UNABLE TO MEET ITS
16 FINANCIAL OBLIGATIONS, THE COMMISSIONER SHALL DIRECT THE BOARD
17 TO COLLECT FEES IN ACCORDANCE WITH SUBSECTION (2) OF THIS SECTION.

18 (4) THE FAIR PLAN ASSOCIATION MAY ABATE OR DEFER, IN WHOLE
19 OR IN PART, A FEE ASSESSED TO A MEMBER INSURER IF, IN THE OPINION OF
20 THE BOARD, PAYMENT OF THE FEE WOULD ENDANGER THE SOLVENCY OF
21 A MEMBER INSURER. IN THE EVENT A FEE ASSESSED AGAINST A MEMBER
22 INSURER IS ABATED OR DEFERRED, IN WHOLE OR IN PART, THE AMOUNT BY
23 WHICH SUCH FEE IS ABATED OR DEFERRED MAY BE ASSESSED AGAINST THE
24 OTHER MEMBER INSURERS.

25 **10-4-1810. Enforcement - suspension or revocation of**
26 **certificate of authority - fines.** (1) AFTER NOTICE AND HEARING, THE
27 COMMISSIONER MAY SUSPEND OR REVOKE THE CERTIFICATE OF AUTHORITY

1 TO TRANSACT INSURANCE BUSINESS IN THIS STATE OF ANY MEMBER
2 INSURER THAT FAILS TO TIMELY PAY A FEE OR TO COMPLY WITH THE PLAN
3 OF OPERATION.

4 (2) AS AN ALTERNATIVE TO SUSPENSION OR REVOCATION OF A
5 CERTIFICATE OF AUTHORITY, AS DESCRIBED IN SUBSECTION (1) OF THIS
6 SECTION, THE COMMISSIONER MAY IMPOSE A FINE ON ANY MEMBER
7 INSURER THAT FAILS TO TIMELY PAY A FEE OR TO COMPLY WITH THE PLAN
8 OF OPERATION. THE FINE MUST BE THE GREATER OF:

9 (a) THE AMOUNT OF THE FEE PLUS INTEREST AND THE
10 COMMISSIONER'S COST OF ENFORCEMENT; OR

11 (b) FIVE THOUSAND DOLLARS.

12 **10-4-1811. Appeals - judicial review.** ANY FINAL ACTION OR
13 ORDER OF THE COMMISSIONER ISSUED PURSUANT TO THIS PART 18 IS
14 SUBJECT TO JUDICIAL REVIEW BY THE COURT OF APPEALS PURSUANT TO
15 SECTION 24-4-106 (11).

16 **10-4-1812. Rules.** THE COMMISSIONER MAY PROMULGATE RULES
17 FOR THE IMPLEMENTATION OF THIS PART 18.

18 **SECTION 2. Act subject to petition - effective date.** This act
19 takes effect at 12:01 a.m. on the day following the expiration of the
20 ninety-day period after final adjournment of the general assembly; except
21 that, if a referendum petition is filed pursuant to section 1 (3) of article V
22 of the state constitution against this act or an item, section, or part of this
23 act within such period, then the act, item, section, or part will not take
24 effect unless approved by the people at the general election to be held in
25 November 2024 and, in such case, will take effect on the date of the
26 official declaration of the vote thereon by the governor.