



COLORADO GENERAL ASSEMBLY PASSES FAIR PLAN BILL INTENDED TO ADDRESS PROPERTY INSURANCE COVERAGE AVAILABILITY

Due to a variety of factors, including the prevalence of natural disasters in Colorado such as wildfires and severe hailstorms, property owners are finding it more difficult to obtain insurance coverage for their homes and properties.

In response to this challenge, the insurance industry worked with House Speaker Julie McCluskie (D), Rep. Judy Amabile (D), Sen. Dylan Roberts (D), and Insurance Commissioner Michael Conway (“the Commissioner”) on [HB 1288, the Fair Access to Insurance Requirements \(FAIR\) Plan Act](#). The bill establishes a nonprofit, unincorporated, public FAIR Plan Association, made up of all admitted property insurers transacting insurance business in Colorado. The purpose of the FAIR Plan Association is to provide property insurance coverage, including commercial property insurance, when that coverage is not available through the admitted market. Specifically, the FAIR Plan Association must establish, offer, and maintain the FAIR Plan, a property insurance and commercial property insurance policy.

The FAIR Plan must satisfy the following requirements:

- Offer rates that are not excessive, inadequate, or unfairly discriminatory;
- Offer rates that are actuarially sound so that revenue generated from premiums is adequate to pay for expected losses, expenses, and taxes;
- Offer rates that also reflect the investment income of the Plan and the cost of reinsurance or other capital risk transfer markets; and
- Comply with rate filing and review requirements.

The FAIR Plan Association will be governed by a nine-member board of directors appointed by the Governor as follows:

- Two members representing admitted mutual insurers writing property insurance in Colorado;
- Two members representing admitted stock insurers writing

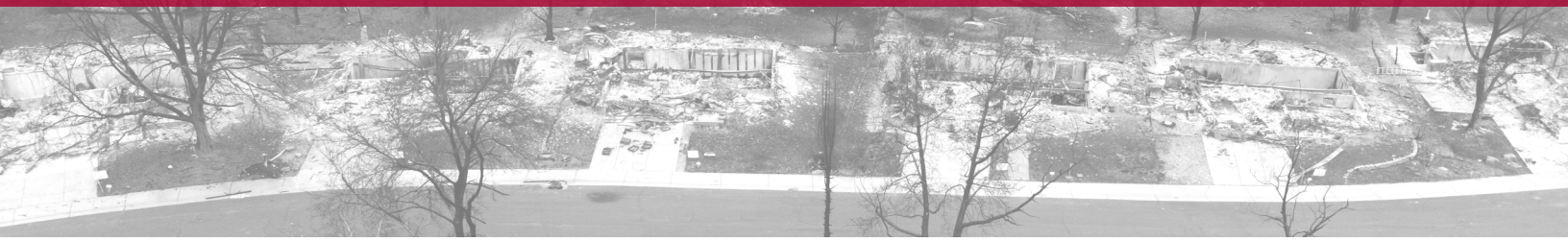
property insurance in Colorado;

- One member representing a Colorado-based insurance trade organization that represents various property insurers;
- One member representing a Colorado-based insurance trade association that represents independent insurance agents licensed to write property and casualty insurance in Colorado;
- One member who is an insurance producer licensed to write property and casualty insurance in Colorado; and
- Two members representing the interests of consumers and, to the extent practicable, representing consumer advocacy organizations and diverse geographic areas of the state.

By April 1, 2025, and annually thereafter, the board must submit to the Commissioner a report concerning the FAIR Plan during the preceding calendar year, including information about its finances, the number of policies and coverage available, the number and types of claims made, and a description of the sufficiency of coverage.

By July 1, 2024, the board must submit a plan of operation for the FAIR Plan to the Commissioner, which must provide for:

- The lines of insurance to be written;
- Coverage limits not to exceed \$750,000 for residential property and \$5,000,000 for commercial property;
- The policy forms to be used;
- The perils to be covered;
- The establishment of reasonable underwriting standards to determine the eligibility of a risk, including mitigation requirements and property inspections;
- The compensation and commissions to be paid to licensed producers offering the FAIR Plan;



- The time frames for fees to be collected from member insurers;
- Assessments against member insurers in the proportion that the premiums received on property and commercial property insurance lines in this state by each assessed member insurer for the three most recent calendar years for which information is available bears to premiums received on property and commercial property insurance lines in Colorado by all assessed member insurers;
- The administration of the plan of operation by the board, including any servicing agreements the board may enter to support the operations of the FAIR Plan Association; and
- Any other matter necessary or convenient for the purpose of assuring fair access to the FAIR Plan.

The bill gives the Commissioner the authority to adopt rules to effectuate the FAIR Plan if the board does not meet the July 1, 2024 deadline, or to revoke approval of the board's plan if the Commissioner determines the plan is insufficient. If the board subsequently submits a plan that satisfies the statutory requirements, that plan will supersede the Commissioner's changes.

Under the law, the FAIR Plan Association may not sell FAIR Plan policies - only a licensed producer may sell a FAIR Plan policy. As part of the application process, the licensed producer must show evidence of at least three declinations of coverage for the property. This requirement will ensure the FAIR Plan is only used as a policy of last resort for those who cannot find coverage through the admitted market.

The FAIR Plan Association will assess and share all expenses, income, and losses among member insurers "on a fair and equitable basis," based on each member insurer's written premium for property and commercial property insurance in Colorado.

The new law allows the FAIR Plan Association to collect fees from member insurers to generate sufficient revenue to start up the Association. This fee is not considered a premium for any purpose. Member insurers may recoup their fees directly from their policyholders but are prohibited from increasing premiums based on this assessed fee.

The FAIR Plan Association may also collect fees for the Association to meet its financial obligations. In this instance, member insurers may recoup the fee directly from policyholders as a surcharge, but not as a premium.

If at any time the Commissioner determines that the FAIR Plan Association is or may become unable to meet its financial obligations, the Commissioner must direct the board to collect fees. The Association may abate or defer all or part of a fee assessed to a member if payment of the fee would endanger the member insurer's solvency. In this case, the abated or deferred amount may be assessed against the other member insurers.

If any member insurer fails to timely pay a fee or comply with the plan of operation, the Commissioner may revoke its certificate of authority. Alternatively, the member insurer may be fined the greater of the amount of the fee plus interest and the Division of Insurance's cost of enforcement, or \$5,000.

Finally, the Commissioner's actions are subject to judicial review by the Colorado Court of Appeals.

The bill was signed by Governor Polis on May 12, 2023 and will take effect on August 7, 2023.

Interplay between HB 1174 and HB 1288

It remains to be seen how the two major insurance bills (HB 1174 and HB 1288) the Colorado General Assembly passed during the 2023 legislative session will operate with each other. [HB 1174 is concerned about the problem of underinsurance](#) -- when a policyholder loses his or her home and realizes only in hindsight that he or she did not purchase enough insurance to rebuild after suffering the total loss. However, policies sold under HB 1288 (the FAIR Plan) are meant to be a last-resort option and will offer minimum coverage. Therefore, in the event that FAIR Plan policyholders who cannot find property insurance on the admitted market become victims of a total loss after a wildfire or other natural disaster, those policyholders may find themselves underinsured. Such an unintended consequence is something insurance carriers should monitor in the years to come.

For additional information regarding HB 23-1288, please contact [Daniel Furman](#) or [Erin Snow](#).