

Date of Hearing: June 28, 2023

ASSEMBLY COMMITTEE ON INSURANCE  
Lisa Calderon, Chair  
SB 505 (Rubio) – As Amended March 20, 2023

**SENATE VOTE:** 36-0

**SUBJECT:** Property insurance

**SUMMARY:** Requires the Fair Access to Insurance Requirements (FAIR) Plan to develop and implement a clearinghouse program for commercial insurance policies. Specifically, **this bill:**

- 1) States that the FAIR Plan must create the commercial clearinghouse program, on or before, July 1, 2024.
- 2) Specifies the intent of the bill is to reduce the FAIR Plans concentration and number of commercial policies and encourage the maximum use of the normal insurance market.
- 3) Allows the FAIR Plan to include a provision allowing non-admitted insurers, if the admitted insurers have the first option.
- 4) Requires the FAIR Plan clearinghouse program to comply with specified privacy laws.

**EXISTING LAW:**

- 1) States that the FAIR Plan was established to assure stability, to assure the availability, to encourage maximum use, to provide for equitable distribution among admitted insurers of the responsibility for insuring qualified property for which basic property insurance cannot be obtained through the normal insurance market. (Insurance (Ins.) Code, Section 10090)
- 2) Specifies that rates for the FAIR Plan shall not be excessive, inadequate, or unfairly discriminatory, and shall be actuarially sound so that premiums are adequate to cover expected losses, expenses and taxes, and shall reflect investment income of the plan.” (Ins. Code, Section 10100.2)
- 3) Requires the FAIR Plan to develop and implement a residential clearinghouse program. (Ins. Code, Section 10095)

**FISCAL EFFECT:** Unknown

**COMMENTS:**

*Purpose:* According to the Author,

Currently, California only allows residential property insurance policies in the FAIR Plan to be reviewed online by the admitted market insurance companies, which has been able to facilitate the movement of some residential property insurance policies out of the FAIR Plan and back into the admitted market. Without any statutory requirement

for the FAIR Plan to provide a plan to encourage commercial policies in the admitted marketplace, this may leave commercial insurance policyholders, including farm policies, in the FAIR Plan for potential perpetuity. While coverage for farms by the admitted carriers would typically be covered by one policy, coverage for farms under the FAIR Plan will sometimes require separate policies: one residential policy covering the farmhouse, and another commercial plan for the business structures. The requirement of two separate policies creates confusion and could drive up costs and management issues for agricultural businesses. We must ensure that there is a proper structure to allow FAIR Plan policies, and others, to be moved back into the admitted market, thereby helping ease the confusion and costs for insureds. SB 505 addresses these shortfalls by expanding the FAIR Plan's existing clearinghouse program to include commercial insurance policyholders, thereby encouraging more policies to transition back to the admitted commercial market which will making insurance more affordable for consumers and businesses.

*The FAIR Plan:* The FAIR Plan is an "association" of all licensed insurance companies by the California Department of Insurance (CDI) that provides basic property insurance in California. It was created in 1968, following urban disturbances, notably the Watts Riots in Los Angeles.

*Background:* Simply stated, the purpose of the FAIR Plan is to be the "insurer of last resort" for "basic" property insurance in the event of a market failure. At inception, that was essentially urban commercial property. Ultimately, it has expanded to include homeowners' insurance anywhere in the state, provided that the insurance "cannot be obtained" in the normal manner in the market. The FAIR Plan is not intended to compete with the voluntary market.

The FAIR Plan was established to ensure that urban property owners, mostly businesses, would have "fair access" to the property insurance necessary to continue to operate in a market that insurers viewed as too risky to cover. That risk evaluation resulted in a substantial market withdrawal by insurers from the urban property market. Despite its initial creation as an urban/business "insurer of last resort," the FAIR Plan expanded to provide coverage in "designated" brush fire regions of the state. It operated fairly well in this manner until the mid-1990's, when, as a consequence of the genuine homeowners' insurance crisis that followed the Northridge earthquake in 1994, the entire state was designated as the appropriate FAIR Plan coverage region.

FAIR Plan policies are capped at \$3.3 million for residential properties and \$8.4 million for commercial properties. Both these caps were increased by the Insurance Commissioner in 2020 for residential and 2021 for commercial.

By statute, the FAIR Plan policy is not as broad as traditional homeowners' policies, it is nonetheless a fully sound and guaranteed policy that satisfies lenders' security requirements and protects the property against the primary risk factor faced by homeowners, which is fire. Other coverages are readily available in the market (typically through the purchase of a "difference-in-conditions" or "DIC" policy), which provides wraparound coverage that, coupled with a FAIR Plan policy, results in the same protection provided by a standard homeowner's policy. Because the FAIR plan's role is to provide coverage when the regular market won't, it is not the role of the FAIR Plan to provide DIC policies when there is a healthy market for those policies.

According to CDI, in 2019, there was an estimated 8,343 commercial structures insured statewide by the FAIR Plan, which jumped to 10,468 structures in 2020.

*FAIR Plan Clearinghouse:* The FAIR Plan residential clearinghouse was created in 2021. Statute places the responsibility on the FAIR Plan to develop the clearinghouse program with these goals: reduce the concentration of policies and push the use of the regular insurance market; lower the quantity of policies in the FAIR Plan; and provide the insurers the ability to take on additional business. The intent of the program is to get FAIR Plan policyholders back into the admitted market. The policies in the clearinghouse are initially limited to the admitted market for the first 30 days, at which point non-admitted insurers may also participate by offering a homeowners policy to someone in the FAIR Plan.

This bill expands this same program to commercial policies held by the FAIR Plan. This committee looks forward to monitoring the purpose of this program for both residential and commercial policies to ensure the intent is accomplished which is to move FAIR Plan policyholders back into the admitted market. Please note that the program allows for both admitted and non-admitted insurers to participate.

*Previous Legislation:* AB 3012 ((Daly/Wood) Chapter 258, Statutes of 2020)) created a residential FAIR Plan clearinghouse program with the goal of allowing admitted and non-admitted insurers an opportunity to retrieve FAIR Plan policies.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Association of Realtors  
California Department of Insurance  
California Fair Plan Association  
California Farm Bureau Federation  
Community Alliance With Family Farmers  
Independent Insurance Agents & Brokers of California, INC.  
Personal Insurance Federation of California

### **Opposition**

None on file.

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