INSURANCE CODE - INS

DIVISION 2. CLASSES OF INSURANCE [1880 - 12880.8] *(Division 2 enacted by Stats. 1935, Ch. 145.)*

PART 1. FIRE AND MARINE INSURANCE [1880 - 10108.1] *(Part 1 enacted by Stats. 1935, Ch. 145.)*

CHAPTER 9. Basic Property Insurance Inspection and Placement Plan [10090 - 10100.2] *(Chapter 9 added by Stats. 1968, Ch. 574.)*

10090. The purposes of this chapter are to do all of the following:

(a) To assure stability in the property insurance market for property located in the State of California.

(b) To assure the availability of basic property insurance as defined by this chapter.

(c) To encourage maximum use, in obtaining basic property insurance, of the normal insurance market provided by admitted insurers and licensed surplus line brokers.

(d) To provide for the 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 by the establishment of a FAIR Plan (fair access to insurance requirements), an industry placement facility and a joint reinsurance association.

(Amended by Stats. 1969, Ch. 649.)

10091. Unless the provision or context otherwise requires, the following definitions govern the construction of this chapter:

(a) “Association,” “industry placement facility,” or “facility,” means a joint reinsurance association, the California FAIR Plan Association, formed by insurers licensed to write and engaged in writing basic property insurance within this state to assist persons in securing basic property insurance and to formulate and administer a program for the equitable apportionment among insurers of basic property insurance.

(b) “Commissioner” means the Insurance Commissioner of this state.

(c) (1) “Basic property insurance” means insurance against direct loss to real or tangible personal property at a fixed location in those geographic or urban areas, as designated by the commissioner, from perils insured under the standard fire policy and extended coverage endorsement, from vandalism and malicious mischief, and includes other insurance coverages as may be added with respect to that property by the industry placement facility with the approval of the commissioner or by the commissioner, but shall not include insurance on automobile risks, commercial agricultural commodities or livestock, or equipment used to cultivate or transport agricultural commodities or livestock.

(2) For the purposes of earthquake coverage that is provided as a component of basic property insurance, the association shall sell only the policy described in Section 10089. In force policies of basic property insurance that include earthquake coverage shall be renewed with the coverage specified in Section 10089, and the association shall comply with the notice requirements of paragraph (2) of subdivision (a) of Section 10086.

(d) “Inspection bureau” means the organization or organizations designated by the association with the approval of the commissioner to make inspections to determine the condition of the properties for which basic property insurance is sought and to perform other duties as may be authorized by the association.

(e) “Premiums written” means gross direct premiums charged with respect to property in this state on all policies of basic property insurance and the basic property insurance premium components of all multiperil policies, less return premiums, dividends paid or credited to policyholders, or the unused or unabsorbed portions of premium deposits.

(f) “Insurer” means a person who undertakes to indemnify another against loss, damage, or liability arising from a contingent or unknown event, and shall include reciprocals and interinsurance exchanges.

(Amended by Stats. 2021, Ch. 128, Sec. 1. (SB 11) Effective July 23, 2021.)

10092. This chapter shall not apply to county mutual fire insurers nor to fraternal fire insurers.

(Added by Stats. 1968, Ch. 574.)

10093. (a) Any person having an insurable interest in real or tangible personal property who, after diligent effort, has been unable to obtain basic property insurance through normal channels from an admitted insurer or a licensed surplus line broker, shall be entitled upon application to the facility to an inspection of the property by representatives of the inspection bureau. Such inability to obtain such insurance after diligent effort through normal channels may, in the discretion of the association, be demonstrated by a signed general statement to that effect on a form prescribed by the association.

(b) The manner and scope of the inspection and the form of the inspection report shall be prescribed by the facility with the approval of the commissioner. The inspection shall include, but need not be limited to, pertinent structural and occupancy features as well as the general condition of the building and surrounding structures. A representative photograph of the property may be taken as part of the inspection.

(c) Promptly after the request for inspection is received, an inspection shall be made and an inspection report filed with the company or companies designated by the facility. A copy of the completed inspection report shall be sent to the facility and to the applicant upon request.

(Amended by Stats. 1970, Ch. 633.)

10094. (a) Within 30 days after the effective date of this chapter, with the approval of the commissioner, all insurers licensed to write and engaged in writing in this state, on a direct basis, basic property insurance or any component of basic property insurance in multiperil policies, shall establish an industry placement facility, the California FAIR Plan Association, to formulate and administer a program for the equitable apportionment among insurers of basic property insurance that may be afforded to persons having an interest in real or tangible personal property who, after diligent effort, as specified in subdivision (a) of Section 10093, are unable to procure insurance through normal channels from an admitted insurer or a surplus line broker. Each insurer, as a condition of its authority to transact those kinds of insurance in this state, shall participate in an industry placement facility program in accordance with rules to be established by a governing committee, composed of nine insurers annually elected in the manner to be provided in the program. The governing committee shall also have as nonvoting members one representative of insurance agents, one representative of insurance brokers, one representative of surplus line brokers, and one representative of the public, each to be appointed by the Governor.

(b) The governing committee may establish separate classifications of written premiums for the purpose of equitable distribution, but shall not include premiums from automobile risks, commercial agricultural commodities or livestock, or equipment used to cultivate or transport agricultural commodities or livestock.

(c) The program may provide, with the approval of the commissioner, for assessment of all members in amounts sufficient to operate the facility, and may establish maximum limits of liability to be placed through the program, reasonable underwriting standards for determining insurability of a risk, and commission to be paid to the licensed producer designated by the applicant.

(Amended by Stats. 2021, Ch. 128, Sec. 2. (SB 11) Effective July 23, 2021.)

10094.2. (a) Notwithstanding subdivision (c) of Section 10095, the facility shall, pursuant to regulations adopted by the commissioner, provide for a method whereby insurers who voluntarily write basic property insurance on risks located in areas designated at the beginning of the policy period as brush hazard areas by the Insurance Services Office (ISO) or designated at the beginning of the policy period as high or very high fire hazard severity zones as determined and mapped by the Department of Forestry and Fire Protection, or very high fire hazard severity zones as determined and mapped by the Department of Forestry and Fire Protection pursuant to Section 51178 of the Government Code will, to that extent, be proportionately relieved of the liability to participate in a plan adopted pursuant to this chapter. The facility shall, pursuant to regulations adopted by the commissioner, provide for a method whereby insurers who voluntarily write basic property insurance or business owners package insurance on risks located in areas designated as inner-city areas by the commissioner will, to that extent, be proportionately relieved of the liability to participate in a plan adopted pursuant to this chapter. This chapter does not preclude adoption of a plan or plans to allow proportionate credit for voluntary writings in other areas or for other classes of insurance.

(b) (1) The facility shall prepare and submit a report to the Governor, the commissioner, and the committees of the Senate and the Assembly having jurisdiction over insurance, identifying the credit for voluntary writings submitted by licensees in the high and very high fire hazard severity zones as determined and mapped by the Department of Forestry and Fire Protection, and the very high fire hazard severity zones as determined and mapped by the Department of Forestry and Fire Protection pursuant to Section 51178 of the Government Code, in order to determine whether or not the designations are sufficient to effectuate the purposes of this section.

(2) The facility shall prepare and submit the report required by this subdivision three times, with the first report due on or before July 1, 2023, the second report due on or before July 1, 2025, and the third report due on or before July 1, 2027.

(Amended by Stats. 2019, Ch. 833, Sec. 3. (AB 1816) Effective October 12, 2019.)

10094.5. Within 90 days following the effective date of this section, the association shall file a new or amended rate application with the commissioner consistent with paragraph (1) of subdivision (c) of Section 10091.

(Added by Stats. 2021, Ch. 128, Sec. 3. (SB 11) Effective July 23, 2021.)

10095. (a) Within 30 days following the effective date of this chapter, the association shall submit to the commissioner, for the commissioner's review, a proposed plan of operation, consistent with this chapter, creating an association consisting of all insurers licensed to write and engaged in writing in this state, on a direct basis, basic property insurance or any component of basic property insurance in homeowners or other dwelling multiperil policies. An insurer described in this subdivision shall be a member of the association and shall remain a member as a condition of its authority to transact those kinds of insurance in this state.

(b) The proposed plan shall authorize the association to assume and cede reinsurance on risks written by insurers in conformity with the program.

(c) Under the plan, an insurer shall participate in the writings, expenses, profits, and losses of the association in the proportion that its premiums written during the second preceding calendar year bear to the aggregate premiums written by all insurers in the program, excluding that portion of the premiums written attributable to the operation of the association. Premiums written on a policy of basic residential earthquake insurance issued by the California Earthquake Authority pursuant to Section 10089.6 shall be attributed to the insurer that writes the underlying policy of residential property insurance.

(d) The plan shall provide for administration by a governing committee under rules to be adopted by the governing committee with the approval of the commissioner. Voting on administrative questions of the association and facility shall be weighted in accordance with each insurer's premiums written during the second preceding calendar year as disclosed in the reports filed by the insurer with the commissioner.

(e) The plan shall provide for a plan to encourage persons to secure basic property insurance through normal channels from an admitted insurer or a licensed surplus line broker by informing those persons what steps they must take in order to secure the insurance through normal channels.

(f) The plan shall be subject to the approval of the commissioner and shall go into effect upon the tentative approval of the commissioner. The commissioner may, at any time, withdraw tentative approval or the commissioner may, at any time after giving final approval, revoke that approval if the commissioner feels it is necessary to carry out the purposes of the chapter. The withdrawal or revocation of that approval shall not affect the validity of any policies executed before the date of the withdrawal. If the commissioner disapproves or withdraws or revokes their approval to all or any part of the plan of operation, the association shall, within 30 days, submit for review an appropriately revised plan or part of a revised plan, and, if the association fails to do so, or if the revised plan is unacceptable, the commissioner shall promulgate a plan of operation or part of a plan as the commissioner may deem necessary to carry out this chapter.

(g) The association may, on its own initiative or at the request of the commissioner, amend the plan of operation, subject to approval by the commissioner, who shall have supervision of the inspection bureau, the facility, and the association. The commissioner, or any person designated by the commissioner, shall have the power of visitation of and examination into the operation and free access to all the books, records, files, papers, and documents that relate to operation of the facility and association, and may summon, qualify, and examine as witnesses all persons having knowledge of those operations, including officers, agents, or employees thereof.

(h) An insurer member of the plan shall provide to an applicant who is denied coverage, or a policyholder whose policy is canceled or not renewed, the internet website address and statewide toll-free telephone number for the plan established pursuant to Section 10095.5 for the purpose of obtaining information and assistance in obtaining basic property insurance.

(i) To reduce the association's concentration and number of policies, and to encourage maximum use of the normal insurance market consistent with subdivision (c) of Section 10090, the association shall develop and implement a clearinghouse program on or before July 1, 2021, to help reduce the number of existing FAIR Plan policies and provide the opportunity for admitted insurers to offer homeowners' insurance policies to FAIR Plan policyholders. An insurer that participates in the clearinghouse program shall sign an agreement with the association that sets forth the terms and conditions for the insurer to offer homeowners insurance through the policy's listed agent or broker of record, if any. The clearinghouse program may include a provision to include nonadmitted insurers if admitted insurers have the first option.

(j) To reduce the association's concentration and number of commercial policies, and to encourage maximum use of the normal insurance market consistent with subdivision (c) of Section 10090, the association shall develop and implement a commercial insurance policy clearinghouse program on or before July 1, 2024, to help reduce the number of existing FAIR Plan commercial policies and provide the opportunity for admitted insurers to offer commercial insurance policies to FAIR Plan policyholders. An insurer that participates in the commercial policy clearinghouse program shall sign an agreement with the association that sets forth the terms and conditions for the insurer to offer commercial insurance through the policy's listed agent or broker of record, if any. The commercial policy clearinghouse program may include a provision to include nonadmitted insurers if admitted insurers have the first option.

(k) (1) With respect to the clearinghouse programs referenced in subdivisions (i) and (j), the association shall comply with the Insurance Information and Privacy Protection Act (Article 6.6 (commencing with Section 791) of Chapter 1 of Part 2 of Division 1) and regulations on the Privacy of Nonpublic Personal Information (Subchapter 5.9 (commencing with Section 2689.1) of Chapter 5 of Title 10 of the California Code of Regulations).

(2) The association shall provide all policyholders with notice of each of the following:

(A) The manner in which the association shall share policyholders' personal information to facilitate offers of private insurance through the clearinghouse programs.

(B) A method to opt out of the sharing of policyholders' personal information in connection with the clearinghouse programs.

(Amended by Stats. 2023, Ch. 180, Sec. 1. (SB 505) Effective January 1, 2024.)

10095.5. (a) The association shall establish and maintain an Internet Web site and a statewide toll-free telephone number through which a person may receive information and assistance in applying for insurance through the plan. The association shall cause the toll-free telephone number to be published in all general distribution telephone directories in the state and shall include the toll-free telephone number and Internet Web site address on all communications with an applicant or insured.

(b) An insurance agent or broker transacting basic property insurance shall assist a person seeking his or her help in obtaining basic property insurance coverage by any one of the following methods:

(1) Making an application for insurance through the plan by submitting an application at the person's request.

(2) Providing the person with the California FAIR Plan's Internet Web site address and the toll-free telephone number.

(3) Making an application for insurance, at the person's request, and placing that person with or through an insurer that offers, or a surplus line broker that procures, basic property insurance coverage.

(Amended by Stats. 2016, Ch. 543, Sec. 3. (SB 1302) Effective September 23, 2016.)

10095.7. (a) The commissioner shall establish the California Home Insurance Finder on the department's Internet Web site. The purpose of the finder is to connect homeowners in need of insurance assistance to an insurance agent or broker to assist in finding residential property insurance.

(1) The department shall annually survey licensed insurance agents, licensed insurance brokers, and admitted insurers in California regarding inclusion on the finder.

(2) On or before July 1, 2020, and at least annually thereafter, the department shall update the finder with the names, addresses, phone numbers, and Internet Web site links, if the licensee has an Internet Web site address, of the licensed insurance agents and brokers and admitted insurers for inclusion in the finder. The information shall be aggregated by ZIP Code within which the insurance agent, broker, or insurer maintains an office or sells policies, as well as by the languages in which the insurance agent, broker, or insurer may transact insurance.

(3) The department shall use social media and other appropriate tools to make consumers aware of the California Home Insurance Finder. The department shall develop materials in the most common languages used in the state to facilitate access to the finder for non-English-speaking consumers.

(b) On and after July 1, 2020, an insurer shall provide to an applicant who is denied coverage, or to a policyholder whose policy is canceled or not renewed, information regarding the department's California Home Insurance Finder. This disclosure may be provided jointly with the disclosure required by subdivision (h) of Section 10095.

(Added by Stats. 2018, Ch. 629, Sec. 1. (AB 1875) Effective January 1, 2019.)

10096.

(1) Any applicant or affected insurer shall have the right of appeal from any act or decision of either the facility or the association to the governing committee. A decision of the committee may be appealed to the commissioner within 30 days after such decision. Upon such appeal the commissioner may make any order to implement the purposes of the chapter and the plan.

(2) All orders or decisions of the commissioner made pursuant to this chapter shall be subject to judicial review.

(Added by Stats. 1968, Ch. 574.)

10097. There shall be no liability on the part of, and no cause of action of any nature shall arise against the insurers, the inspection bureau, the facility, the association, the governing committee, their agents or employees, or the commissioner or his authorized representatives, with respect to any inspections required to be undertaken by this chapter or for any acts or omissions in connection therewith, or for any statements made in any reports and communications concerning the insurability of the property, or in the findings required by the provisions of this chapter, or at the hearings conducted in connection therewith. The reports and communications of the inspection bureau, the facility, the association, and the records of the governing committee shall not be considered public documents.

(Added by Stats. 1968, Ch. 574.)

10098. Acceptance of risks assigned under this chapter and performance of any act required by this chapter is a condition of the right to continue to hold a certificate of authority to transact insurance business in this state. All insurers, on and after the effective date of this chapter, by continuing to hold a certificate of authority to transact insurance business shall be deemed to have consented to the responsibilities imposed by this chapter.

(Added by Stats. 1968, Ch. 574.)

10099. In addition to any powers conferred upon him by this or any other law, the commissioner is authorized to do all things necessary to enable the State of California and any insurer participating in any program approved by the commissioner to fully participate in any federal program of reinsurance which may be hereafter enacted for purposes similar to the purposes of this chapter.

(Added by Stats. 1968, Ch. 574.)

10100. The commissioner may require such reports from insurers concerning risks insured under any program approved pursuant to this chapter as he shall deem necessary to effect the purposes of this chapter.

(Added by Stats. 1968, Ch. 574.)

10100.1. The facility, subject to the approval of the Insurance Commissioner, may provide for the equitable distribution of risks provided for in this chapter by means of assignment to individual members of such facility or by a pool or association of insurers participating in such facility.

(Added by Stats. 1968, Ch. 574.)

10100.2. (a) (1) 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. If the plan returns premiums to members annually, the rates shall not include any component relating to surplus enhancements.

(2) If the FAIR Plan policy of a property owner would be subject to a brush surcharge solely because of an adjacent property owner’s failure to comply with applicable laws, ordinances, and regulations regarding brush clearance requirements, the surcharge shall instead be imposed on the policy of the adjacent property owner if the adjacent property is also insured through the FAIR Plan.

(b) Rates for a policy of earthquake property insurance issued by the association shall be established based on the best available scientific information for assessing the risk of earthquake loss. Factors that the association shall consider in adopting rates include, but are not limited to, the following:

(1) Location of the insured property and its proximity to earthquake faults and to other geological factors affecting the risk of earthquake.

(2) The soil type upon which the insured dwelling is built.

(3) Construction type of the insured dwelling.

(4) The presence of earthquake hazard reduction factors as defined in Section 10089.2.

(c) Notwithstanding Section 10097, all information considered by the association in establishing rates shall be public records.

(d) The classification system established by the association for policies of earthquake property insurance shall not be adjusted or tempered in any manner to provide rates lower than are justified for classifications presenting a high risk of loss, or higher than are justified for classifications presenting a low risk of loss.

(Amended by Stats. 2000, Ch. 323, Sec. 2. Effective January 1, 2001.)