

## **PROPERTY AND CASUALTY COMMERCIAL RATE AND POLICY FORM MODEL LAW (Condensed)**

**Drafting Note:** This model law is not intended to be a stand-alone model. Its provisions are intended to replace comparable provisions in current state rate and policy form regulatory laws. Regulatory laws relating to definitions, rate and form standards, disapprovals, advisory organizations, etc. are to be preserved.

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### **Section 1. Scope of Act**

This Act applies to all forms of casualty insurance, including fidelity, surety and guaranty bond, to all forms of fire, marine and inland marine insurance, and to any combination of any of the foregoing, on commercial risks or operations located in this state. Inland marine insurance shall be deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the commissioner, or as established by general custom of the business, as inland marine insurance. In determining whether new types of inland marine insurance fall under this exemption, the commissioner shall consider the similarity of the new insurance to existing types of insurance and classes of risk and whether it would be reasonably practical to create and file rating systems prior to use.

This Act shall not apply to:

- A. Reinsurance, other than statutorily authorized joint reinsurance mechanisms to the extent stated in (insert specific state law);
- B. Accident and health insurance;
- C. Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, excluding inland marine insurance as determined by the commissioner;
- D. Insurance of hulls of aircraft, including their accessories an equipment, or against liability arising out of the ownership, maintenance, or use of aircraft.
- E. Insurance on personal risks.
- F. Insurance

**Drafting Note—Types of Insurance:** Here should be listed (a) other kinds of insurance, if any, and (b) particular types of insurers, if any, to which this Act is not to apply in the state or jurisdiction adopting the Act.

### **Section 2. Competitive Market**

A competitive market is presumed to exist unless the commissioner, after hearing, determines that a reasonable degree of competition does not exist in the market and the commissioner issues a ruling to that effect. Such a rule shall expire no later than one year after issue unless the commissioner renews the rule after hearings and a finding as to the continued lack of a reasonable degree of competition. In determining whether a reasonable degree of competition exists, the commissioner shall consider relevant tests of workable competition pertaining to market structure, market performance and market conduct and the practical opportunities available to consumers in the market to acquire pricing and other consumer information and to compare and obtain insurance from competing insurers.

### **Section 3. Rate and Policy Form Filings**

- A. Section 3 shall not apply to:

- (1) Financial Guaranty;
  - (2) Employment Practices Liability;
  - (3) Commercial Inland Marine that is not written according to manual rates or rating plans;
  - (4) Directors and Officers Liability;
  - (5) Boiler and Machinery;
  - (6) Nuclear Insurance Products; or
  - (7) Commercial Credit Insurance Products.
- B.
- (1) Every insurer shall file with the commissioner every policy form, endorsement, and other contract language and related attachment rules, manual, minimum premium, class rate, rating schedule or rating plan and every other rating rule, and every modification of any of the foregoing that it proposes to use. The filing shall include underwriting rules to the extent necessary to determine the applicable rate. An insurer may file its rates by either filing its final rates or by filing a multiplier and, if applicable, an expense constant adjustment to be applied to prospective loss costs that have been filed by an advisory organization on behalf of the insurer as permitted by [insert section of state law]. The filing shall state the effective date, and shall indicate the character and extent of the coverage contemplated.
  - (2) Insurers utilizing the services of an advisory organization shall provide with their rate filing, at the request of the commissioner, a description of the rationale for such use, including its own information and method of utilization of the advisory organization's information.
  - (3) In a competitive market except as provided in Paragraph (4) of this subsection, the rates and supplementary rating information that will be used in this state shall be filed within thirty (30) days of the effective date. In a competitive market, if the commissioner finds, after a hearing, that an insurer's rates require closer supervision because of the insurer's financial condition or unfairly discriminatory rating practices, the insurer shall file with the commissioner at least [insert number of days] before the effective date, all rates and supplementary rating information and supporting information as prescribed by the commissioner. Upon application by the filer, the commissioner may authorize an earlier effective date.

**Drafting Note:** Some states may wish to regulate workers' compensation rates under a file and use system based on a number of public policy considerations.

- (4) In a competitive market, every insurer and advisory organizations shall file commercial policy forms, endorsements and other contract language and related attachment rules and for mortgage guaranty insurance and advisory organizations the rates and supplementary rating information [insert number of days] before the effective date. In a competitive market, if the commissioner finds, after a hearing, that an insurer's rates and policy forms require closer supervision because of the insurer's financial condition or unfairly discriminatory practices, the insurer shall file with the commissioner at least [insert number of days] before the effective date, all such rates and supplementary rating information and supporting information and policy forms as prescribed by the commissioner. Upon application by the filer, the commissioner may authorize an earlier effective date.

**Drafting Note:** The number of days inserted should be no more than thirty calendar days.

**Drafting Note:** Some states may wish to regulate workers' compensation forms and mortgage guaranty and advisory organization rates and forms under a prior approval system.

- (5) An insurer may authorize an advisory organization to file policy forms, endorsements and other contract language and related attachment rules on its behalf.

- (6) In a competitive market, Paragraphs (3) and (4) notwithstanding, the commissioner may, after a hearing, determine that the filing for review of rates and supplementary and supporting information by insurers is not necessary for all or for portions of one or more commercial lines of insurance. In these cases, the commissioner instead may require, on a purely advisory or informational basis, the filing of rates and such other information as he or she needs to monitor competition and to provide consumer information. Any determination by the commissioner to waive filing requirements may be revoked at any time and the commissioner may order that rates in effect at the time of revocation shall be filed within a reasonable period of time as specified in the order.
- C. (1) In a noncompetitive market, and for title insurance, subject to the exception specified in Subsection H of this section, commercial policy forms, endorsements and other contract language and related attachment rules, rates, supplementary rating information and supporting information shall be on file for a waiting period of thirty (30) days before it becomes effective, which period may be extended by the commissioner or the insurer or advisory organization for an additional period not to exceed thirty (30) days if written or electronic notice is given within the waiting period that additional time is needed for the consideration of the filing. Upon written or electronic application by the insurer, the commissioner may authorize a filing that has been reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing shall be deemed to meet the requirements of this Act unless disapproved by the commissioner within the waiting period or any extension thereof. Failure of the insurer or advisory organization to provide the requested information within the waiting period or the extension thereof shall be deemed a request to withdraw the filing from further consideration. Failure of the commissioner to act within the waiting period or the extension thereof shall result in the filing being deemed to meet the requirements of the Act. Neither the insurer nor the commissioner may waive the timeliness requirements of the deemer provisions in this section.
- (2) In a noncompetitive market, notwithstanding Paragraph (1), the commissioner may, subject to Section 2, determine that commercial policy forms, endorsements and other contract language and related attachment rules, rates, supplementary rating information and supporting information be filed in accordance with Subsection B(4) of this section.
- D. (1) Every insurer and advisory organization making filings specified in Subsection B(4) and C(1) of this section shall file or incorporate by reference to material that has been filed with or approved by the commissioner, at the same time as the filing of the rate, all supplementary rating and supporting information to be used in support of or in conjunction with a rate. The information furnished in support of a filing may include or consist of a reference to:
- (a) The experience or judgment of the insurer or information filed by the advisory organization on behalf of the insurer as permitted by [insert section of state law];
  - (b) Its interpretation of any statistical data it relies upon;
  - (c) The experience of other insurers or advisory organizations; or
  - (d) Any other relevant factors.
- (2) When a filing is not accompanied by the information upon which the insurer supports the filing, the commissioner may require the insurer to furnish the information upon which it supports the filing.
- (3) After reviewing an insurer's filing, the commissioner may require that the insurer's rates be based upon the insurer's own loss, special assessment and expense information. If the insurer's loss or allocated loss adjustment expense information is not actuarially credible, as determined by the commissioner, the insurer may use or supplement its experience with information filed with the commissioner by an advisory organization or statistical agent.
- E. The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this Act.

- F. A filing and any supporting information shall be open to public inspection upon receipt of the filing.
- G. Under such rules and regulations as may be adopted, the commissioner may, by written or electronic order, suspend or modify the requirement of filing as to any kind of insurance, subdivision or combination thereof, or as to classes of risks, for which the rates, rating systems or policy forms cannot practicably be filed before they are used. The commissioner may make such examination as deemed advisable to ascertain whether any rates affected by such order meet the standards set forth in [insert rates standards sections of state law] and any forms affected by the order meet the standards set forth in [insert form standards sections of state law].
- H. A rate in excess of that provided by a filing otherwise applicable or a rate with respect to any individual or special risks whose size, classification, degree of exposure to loss, previous loss experience or other relevant factors call for the exercise of sound underwriting judgment in the promulgation of rates may be used on any specific risk and shall be exempt from filing. The commissioner may examine the books and records of the insurer to determine if a pattern or practice of business exists that would indicate that the insurer is avoiding the filing requirements of this Act by extensive use of this section to issue its policies.
- I. Policy forms, endorsements and other contract language unique in character and designed for and used with regard to a particular risk shall be exempt from filing, except that the commissioner may by regulation or order make specific restrictions relating to this exemption. In making a determination, the commissioner shall consider whether the policy forms, endorsements and other contract language otherwise exempt would be likely to meet the requirements of [insert form standards sections of state law] and the extent to which it would be practical to file the forms prior to their use for specific risks.
- J. The commissioner may, by regulation, allow commercial policy forms, endorsements and other contract language that is more expansive, and in no respect more restrictive, than that provided by a filing otherwise applicable, to be used without being filed prior to its use. Any such commercial policy forms, endorsements, and other contract language shall, by regulation, be filed within thirty (30) days of its effective date.
- K. Policy forms, endorsements and other contract language that is identical to another insurers' filing in this state may be used and shall be filed within thirty (30) days of the effective date. The filing shall be accompanied by a certification that the policy form, endorsement and other contract language is identical to the referenced insurers filing. If the filing is not identical or is not accompanied by the certification, the provisions of the policy forms, endorsements and other contract language of the referenced insurers' filing is automatically incorporated.
- L. No insurer shall make or issue a contract or policy except in accordance with the filings that are in effect for the insurer as provided in this Act.
- M. A rate for a residual market in which insurers are mandated by law to participate shall not become effective until approved by the commissioner.

#### **Section 4. Form Approval Requirements Applying to Multistate Commercial Risks**

The commissioner shall adopt reasonable regulations to provide that this state's policy form requirements shall apply only to insurance written for individual commercial risks that are primarily located in this state.

- A. In the development of practical requirements for insurers to use in determining whether a risk is primarily located in this state, the commissioner shall consider whether the headquarters of the risk is located in this state and whether contracts of insurance are purchased by officers or employees that are primarily located in this state. For purposes of this section, the location of the headquarters shall be primarily determined by the location where the officers and senior management are physically located.
- B. The regulations shall provide that the requirements of [insert appropriate statutory references] shall not apply when in conflict with a policy written for a commercial risk primarily located in another state.

- C. Regulations adopted pursuant to this section may not allow the alteration of mandatory coverage provisions in workers' compensation policies [or mandatory coverage provisions required by the state's automobile insurance law].

**Section 5. Monitoring Competition**

- A. In determining whether or not a competitive market exists pursuant to Section 2, the commissioner shall hold a public hearing and issue a tentative report detailing the state of competition in for the following property or casualty lines of insurance [insert reference to applicable lines of insurance]. The report shall be based on relevant economic tests, including but not limited to those in Subsection C of this section. The findings in the report shall not be based on any single measure of competition, but appropriate weight shall be given to all measures of competition. The report shall include a certification of whether or not competition exists in each form of insurance.
- B. Not later than [insert date] and every other year thereafter, the commissioner shall issue a final report that shall include a final certification of whether or not competition exists in each form of insurance. The final report and certification shall be supported by substantial evidence.
- C. All of the following may be considered by the commissioner for purposes of Subsections A and B:
  - (1) The extent to which the largest insurer groups control the insurance marketplace. A specific insurance market shall be considered competitive, from the standpoint of market concentration, so long as, measured by premium volume, the cumulative share of the market controlled by the four (4) largest insurer groups in the specific market does not exceed fifty percent (50%). If the fifty percent (50%) threshold is surpassed, other measures of concentration, such as the Herfindahl-Hirshman Concentration Index, should also be considered, on the basis of both premium volume and policy counts, in determining the extent to which market concentration may be limiting market competition;
  - (2) Whether the total number of companies writing the form of insurance in this state is sufficient to provide multiple options to the public;
  - (3) The extent to which insurer entries and exits, considered over several years, suggest the presence or lack of entry or exit barriers or both;
  - (4) The degree to which the insurance products offered to consumers are homogenous in nature and, thus, comparable;
  - (5) The availability of insurance coverage in all geographic areas. A review of changes in residual market shares, if applicable, may be used as an indication of availability;
  - (6) The overall rate level which is not excessive, inadequate or unfairly discriminatory;
  - (7) The profitability of each form of insurance over a period of several years;
  - (8) The level of knowledge of market participants and the extent to which comparative pricing information has been made readily available to consumers;
  - (9) The extent to which the market for each type of insurance is growing;
  - (10) The presence of conditions indicating reverse competition; and
  - (11) Any other factors the commissioner considers relevant.
- D. The reports and certifications required under Subsections A and B shall be forwarded to the governor and all relevant members of the state legislature and shall be available to the public.

- E. It is rebuttably presumed that competitive markets exist. However, if the commissioner certifies that a reasonable degree of competition does not exist with respect to a form of insurance on a statewide basis or any geographic areas, or that insurance is unavailable to a segment of the market who are, in good faith, entitled to obtain insurance through ordinary means, the commissioner shall take steps to enhance competition or availability where it does not exist. A plan for enhancing competition or availability adopted pursuant to this section shall be included in a final certification of noncompetition. The plan shall only relate to those geographic areas, classifications or kinds of risks where adequate competition has been certified not to exist. The plan may include methods designed to enhance competition or availability that the commissioner considers necessary, and may provide for the commissioner to do one or more of the following:
- (1) Authorize, by order, joint underwriting activities in a manner specified in the commissioner's order; and
  - (2) Modify the rate approval process in a manner to increase competition or availability, while at the same time providing for reasonably timely rate approvals, including reverting to prior approval of all filings.

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*Chronological Summary of Actions (all references are to the Proceedings of the NAIC).*

*2001 Proc. 4th Quarter 6, 14-15, 78, 87-91 (adopted).*