

PROPERTY AND CASUALTY MODEL RATING LAW
(FILE AND USE VERSION)

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The purposes of this Act are:

- A. To prohibit price fixing agreements and other anticompetitive behavior by insurers;
- B. To protect policyholders and the public against the adverse effects of excessive, inadequate or unfairly discriminatory rates;
- C. To promote price competition among insurers so as to provide rates that are responsive to competitive market conditions;
- D. To provide regulatory procedures for the maintenance of appropriate data reporting systems;
- E. To provide regulatory controls in the absence of competition;

- F. To improve availability, fairness and reliability of insurance;
- G. To authorize essential cooperative action among insurers in the ratemaking process and to regulate such activity to prevent practices that tend to substantially lessen competition or create a monopoly;
- H. To encourage the most efficient and economical marketing practices; and
- I. To cause the provision of price and other information to enable consumers to purchase insurance suitable for their needs and to foster competitive insurance markets.

Section 2. Definitions

- A. "Advisory organization" means any entity, including its affiliates or subsidiaries, which either has two (2) or more member insurers or is controlled either directly or indirectly by two (2) or more insurers, and which assists insurers in ratemaking related activities such as enumerated in Sections 10 and 11. Two (2) or more insurers having a common ownership or operating in this State under common management or control constitute a single insurer for purposes of this definition.
 - B. "Classification system" or "classification" means the process of grouping risks with similar risk characteristics so that differences in costs may be recognized.
 - C. "Commercial risk" means any kind of risk which is not a personal risk.
 - D. "Commissioner" means the Commissioner of Insurance of this state.
 - E. "Competitive market" means a market which has not been found to be noncompetitive pursuant to Section 4.
 - F. "Developed losses" means losses (including loss adjustment expenses) adjusted, using standard actuarial techniques, to eliminate the effect of differences between current payment or reserve
- F.

- K. "Trending" means any procedure for projecting losses to the average date of loss, or premiums or exposures to the average date of writing, for the period during which the policies are to be effective.
- L. "Market" means the interaction between buyers and sellers consisting of a product component and a geographic component. A product component consists of identical or readily substitutable products including but not limited to consideration of coverage, policy terms, rate classifications and underwriting. A geographic component is a geographical area in which buyers seek access to the insurance product through sales outlets and other distribution mechanisms. Determination of a geographic component shall consider existing distribution patterns.
- M. "Noncompetitive market" means a market for which there is a ruling in effect pursuant to Section 4 that a reasonable degree of competition does not exist.
- N. "Personal risk" means homeowners, tenants, private passenger nonfleet automobiles, mobile homes and other property and casualty insurance for personal, family or household needs.
- O. "Pool" means a voluntary arrangement, established on an ongoing basis, pursuant to which two or more insurers participate in the sharing of risks on a predetermined basis. The pool may operate through an association, syndicate or other pooling agreement.
- P. "Prospective loss costs" means that portion of a rate that does not include provisions for expenses (other than loss adjustment expenses) or profit, and are based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.
- Q. "Rate" means that cost of insurance per exposure unit whether expressed as a single number or as a prospective loss cost with an adjustment to account for the treatment of expenses, profit, and individual insurer variation in loss experience, prior to any application of individual risk variations based on loss or expense considerations, and does not include minimum premium.
- R. "Residual market mechanism" means an arrangement, either voluntary or mandated by law, involving participation by insurers in the equitable apportionment among them of insurance which may be afforded applicants who are unable to obtain insurance through ordinary methods.
- S. "Special assessments" means guaranty fund assessments, Second Injury Fund assessments, Vocational Rehabilitation Fund Assessments, and other similar assessments. Special assessments shall not be considered as either expenses or losses.

Drafting Note: A state may wish to add "assessments for residual market mechanisms" or other assessments as one of the listed special assessments.

- T. "Statistical agent" means an entity that has been licensed by the commissioner to collect statistics from insurers and provide reports developed from these statistics to the commissioner for the purpose of fulfilling the statistical reporting obligations of those insurers under this Act.
- U. "Supplementary rating information" includes any manual or plan of rates, classification, rating schedule, minimum premium, policy fee, rating rule, underwriting rule and any other similar information needed to determine the applicable rate in effect or to be in effect.

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Drafting Note: A "plan of rates" filed by an insurer would contain final rates including provisions for expenses and profit. A "plan of rates" filed by an advisory organization would contain only prospective loss costs which would exclude provisions for expenses (other than loss adjustment expenses) and profit.

V. "Supporting information" means:

- (1) The experience and judgment of the filer and the experience or data of other insurers or advisory organizations relied upon by the filer;
- (2) The interpretation of any other data relied upon by the filer;
- (3) Descriptions of methods used in making the rates; and
- (4) Any other information required by the commissioner to be filed.

Section 3. 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 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.

Drafting Note: The kinds of insurance are named herein in their generally accepted trade sense unless otherwise defined by statute or regulation. The wording of the section should be fitted to any laws of the state which classify insurance.

This Act shall not apply to:

- A. Reinsurance, other than statutorily authorized joint reinsurance mechanisms to the extent stated in Section 13;
- B. Accident and health insurance;
- C.

Section 4. 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

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- (d) Profits. The rates may contain provision for contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of the profit, consideration shall be given to all investment income attributable to the line of insurance.

Section 6. Rate Filings

- A. (1) Every insurer shall file with the commissioner, except as 1 (t)-2t1BC nce oe o detsr, mw-3 5

- (5) Insurers utilizing the services of an advisory organization must 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.

Drafting Note: States may desire to move Paragraphs (2), (3) and (4) to Section 6D. If these paragraphs are moved to Section 6D, then the following language should be added to Section 6B: "The commissioner may require an insurer to furnish any additional information."

- B. 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.
- C. In a competitive market, every insurer shall file with the commissioner the information specified in Subsection A of this section that it will use in this state. The rates and supplementary rating information shall be filed on or before 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 such 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.
- D. In a noncompetitive market, subject to the exception specified in Subsection E of this section, each filing shall be on file for a waiting period of [insert number of days] days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed [insert number of days] days if written notice is given within such waiting period to the insurer or advisory organization which made the filing that additional time is needed for the consideration of the filing. Upon written application by the insurer, the commissioner may authorize a filing which 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.

Drafting Note: The waiting period specified in current state statutes ranges from 15 to 90 days.

- E. Under such rules and regulations as may be adopted, the commissioner may, by written 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 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 Section 5.
- F. Upon the written application of the insurer and insured, stating its reasons therefore, filed with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.
- G. No insurer shall make or issue a contract or policy except in accordance with the filings which have been approved and are in effect for said insurer as provided in this Act or in accordance with Subsections E or F of this section. This subsection shall not apply to contracts or policies for inland marine risks as to which filings are not required.

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departments, through outside contractors and/or in any other appropriate manner. To the extent deemed necessary and appropriate by the commissioner, insurers, advisory organizations, statistical agents and other persons or organizations involved in conducting the business of insurance in this State, to which this section applies, shall cooperate in the development and utilization of a consumer information system(s).

Drafting Note: For jurisdictions that need a separate and distinct means of funding a consumer information system the following provision may be added to Section 10:

- (3) If the commissioner finds that the applicant and the natural persons through whom it acts are competent, trustworthy and technically qualified to provide the services proposed, and that all requirements of the law are met; he or she shall issue a license specifying the authorized activity of the applicant. The commissioner shall not issue a license if the proposed activity would tend to create a monopoly or to substantially lessen the competition in any market.
- (4) Licenses issued pursuant to this section shall remain in effect for one year unless the license is suspended or revoked. The commissioner may at any time, after hearing, revoke or suspend the license of an advisory organization or statistical agent which does not comply with the requirements and standards of this Act.
- (5) Advisory organizations wishing to operate as statistical agents may be so authorized under their license as an advisory organization. A separate license is not required.

Note: States may wish to insert language here providing for an annual license fee for advisory organizations and statistical agents.

Section 12. Insurers and Advisory Organization Prohibited Activity

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Section 13. Advisory Organizations and Statistical Agents: Prohibited Activity

In addition to the other prohibitions contained in this Act, except as specifically permitted under Section 14, no advisory organization or statistical agent shall compile or distribute recommendations relating to rates that include expenses (other than loss adjustment expenses) or profit.

Section 14. Advisory Organizations: Permitted Activity

Any advisory organization in addition to other activities not prohibited, is authorized, on behalf of its members and subscribers, to:

- A. Develop statistical plans including territorial and class definitions;
- B. Collect statistical data from members, subscribers or any other source;
- C. Prepare, file and distribute prospective loss costs which may include provisions for special assessments;

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Section 19. Workers' Compensation

- A. Every workers' compensation insurer shall adhere to a uniform classification system and uniform experience rating system filed with the commissioner by an advisory organization

Drafting Note: Paragraph (1) should be amended for states that wish to provide for the release of the names of individual policyholders

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Drafting Note: This section is taken from the Casualty and Surety Model Bill approved in 1946 by the NAIC. Since then a number of states have enacted assigned risk provisions of more limited scope. There is no intent here to recommend extension of assigned risk provisions in present state statutes.

This section does not purport to deal with the questions as to whether Assigned Risk Plans should be voluntary or statutory, nor as to what features, including judicial review, should be contained in such plans. If these questions are to be dealt with by statutory provision, such provision should preferably be in another statute.

Section 28. Effective Date

This Act shall take effect [insert effective date].

Drafting Note: