

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

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Section 1. Purposes of Act

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 estimates and those which are anticipated to provide actual ultimate loss (including loss adjustment expense) payments.
- G. "Expenses" means that portion of a rate attributable to acquisition, field supervision, collection expenses, general expenses, taxes, licenses and fees.
- H. "Experience rating" means a rating procedure utilizing past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit or unity modification.
- I. "Joint underwriting" means a voluntary arrangement established to provide insurance coverage for a risk pursuant to which two (2) or more insurers jointly contract with the insured at a price and under policy terms agreed upon between the insurers.
- J. "Loss adjustment expense" means the expenses incurred by the insurer in the course of settling claims.

- 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 on-going 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.

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. 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. Title insurance;
- E. Insurance;

Drafting Note: 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. The specific exemption of aircraft hull and liability insurance contained in the 1946 NAIC Model Bills is omitted from Section 3 of this Act. A number of states have, since 1946, provided for regulation of aircraft hull and liability insurance rates.

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 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.

Drafting Note: Any state desiring an alternative section incorporating specific examples of tests of workable competition may wish to use the following:

[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 hearing 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. Such tests may include, but are not limited to, the following: size and number of firms actively engaged in the market; market shares and changes in market shares of firms; ease of entry and exit from a given market; underwriting restrictions; whether profitability for companies generally in the market segment is unreasonably high; availability of consumer information concerning the product and sales outlets or other sales mechanisms; and efforts of insurers to provide consumer information. The determination of competition involves the interaction of the various tests and the weight given to specific tests depends upon the particular situation and pattern of test results.]

Section 5. Rate Standards

Rates shall be made in accordance with the following provisions:

- A. Rates shall not be excessive, inadequate or unfairly discriminatory.
 - (1) Excessive Rates.
 - (a) Competitive market. A rate in a competitive market is not excessive.
 - (b) Noncompetitive market. A rate in a noncompetitive market is excessive if it is likely to produce a profit that is unreasonably high for the insurance provided or if expenses are unreasonably high in relation to services rendered.
 - (2) Inadequate Rates. A rate is not inadequate unless such rate is clearly insufficient to sustain projected losses, expenses and special assessments in the class of business to which it applies and the use of such rate has or, if continued, will have the effect of substantially lessening competition or the tendency to create monopoly in any market.

Drafting Note: The following paragraph may modify Section 5A(2). It is presented for those states that wish to supplement the financial regulatory laws:

[A rate is not inadequate unless: (a) the rate is unreasonably low for the insurance provided and the continued use of the rate endangers the solvency of the insurer using it; or unless (b) the rate is unreasonably low for the insurance provided and the use of the rate by the insurer has, or if continued will have, the effect of destroying competition or creating a monopoly.]

- (3) Unfairly Discriminatory Rates. Unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory if it is averaged broadly among persons insured under a group, franchise or blanket policy or a mass marketed plan. As used in this paragraph, a mass marketed plan means a method of selling property-liability insurance wherein:
- (a) The insurance is offered to employees of particular employers or to members of particular associations or organizations or to persons grouped in other ways, except groupings formed principally for the purpose of obtaining such insurance; and
 - (b) The employer, association or other organization, if any, has agreed to, or otherwise affiliated itself with, the sale of such insurance to its employees or members.
- (4) Rating Methods. In determining whether rates comply with the excessiveness standard in a noncompetitive market under Paragraph (1)(b), the inadequacy standards under Paragraph (2) and the unfair discrimination standard under Paragraph (3), the following criteria shall apply:
- (a) Basic factors in rates. Due consideration shall be given to past and prospective loss experience within and outside this State; to the conflagration and catastrophe hazards; to a reasonable margin for profit and contingencies; to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members or subscribers; to past and prospective expenses both countrywide and those specially applicable to this State; and to provisions for special assessments and to all other relevant factors within and outside this State.
 - (b) Classification. Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses. No risk classification, however, may be based upon race, creed, national origin or the religion of the insured.
 - (c) Expenses. The expense provisions included in the rates to be used by an insurer shall reflect the operating methods of the insurer and its anticipated expenses.

- (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 to inland marine risks which are not written according to manual rates or rating plans, every manual, minimum premium, class rate, rating schedule or rating plan and every other rating rule, and every modification of any of the foregoing which it proposes to use. 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 Section 14. Every such filing shall state the effective date, and shall indicate the character and extent of the coverage contemplated.
- (2) Every insurer shall file or incorporate by reference to material which 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 Section 14;
 - (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.

A filing and any supporting information shall be open to public inspection upon receipt of the filing.

- (3) When a filing is not accompanied by the information upon which the insurer supports such filing, the commissioner may require such insurer to furnish the information upon which it supports such filing and in that event the waiting period shall commence as of the date such information is furnished. Until the requested information is provided, the filing shall not be deemed complete or filed nor available for use by the insurer. If the requested information is not provided within a reasonable time period, the filing may be returned to the insurer as not filed and not available for use.
- (4) 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.

- (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.

- H. A rate for a residual market in which insurers are mandated by law to participate shall not become effective until approved by the commissioner.

Drafting Note: To accommodate the transition from a prior rating law to this model, consideration should be given to inclusion of “transitional language” such as:

“Nothing in this Act shall be construed to require an advisory organization or its members or its subscribers to immediately refile final rates or premium charges previously approved by the commissioner. Members or subscribers of an advisory organization are authorized to continue to use insurance rates or premium charges approved before the effective date of this act or decreases from those rates or premium charges filed by the advisory organization and subsequently approved after the effective date of this section.”

Section 7. Disapproval of Filings

- A. For filings made in a noncompetitive market and residual market filings, if within the waiting period or any extension thereof as provided in Section 6D, the commissioner finds that a filing does not meet the requirements of this Act, written notice of disapproval shall be sent to the insurer or advisory organization which made the filing, specifying therein in what respects the filing fails to meet the requirements of this Act and stating that such filing shall not become effective. If a filing is disapproved by the commissioner, the insurer or advisory organization may request a hearing on the disapproval within thirty (30) days and the commissioner shall schedule that hearing within thirty (30) days of the receipt of the request. The insurer or advisory organization bears the burden of proving compliance with the standards established by this Act.
- B. If at any time after a rate has been approved and for filings made in a competitive market, the commissioner finds that the rate no longer meets the requirements of this Act, the commissioner may order the discontinuance of use of the rate. The order of discontinuance may be issued after a hearing with at least ten (10) days’ prior notice for all insurers affected by the order. The order must be in writing and state the grounds for the order. It shall also state when, within a reasonable time thereafter, the filing will be deemed no longer effective. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order. The commissioner’s order may include a provision for a premium adjustment for contracts or policies made or issued after the effective date of the order.
- C. Any insured aggrieved with respect to any filing which is in effect may make written application to the commissioner for a hearing thereon. The application shall specify the grounds to be relied upon by the applicant. If the commissioner shall find that the application is made in good faith, that the applicant would be so aggrieved if his grounds are established, and that such grounds otherwise justify holding such a hearing, a hearing shall be held within thirty (30) days after receipt of such application upon not less than ten (10) days’ written notice to the applicant and to every insurer and advisory organization which made such filing.

If, after such hearing, the commissioner finds that the filing does not meet the requirements of this Act, an order shall issue specifying in what respects such filing fails to meet the requirements of this Act, and stating when, within a reasonable period thereafter, such filing shall no longer be deemed to be in effect. Copies of the order shall be sent to the applicant and to every such insurer and advisory organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

- D. Whenever an insurer has no legally effective rates as a result of the commissioner's disapproval of rates or other act, the commissioner shall on request of the insurer specify interim rates for the insurer that are high enough to protect the interest of all parties and may order that a specified portion of the premiums be placed in an escrow account approved by the commissioner. When the new rates become legally effective, the commissioner shall order the escrowed funds or any overcharge in the interim rates to be distributed appropriately, except that refunds to policyholders that are *de minimis* shall not be required.

Section 8. Monitoring Competition

In determining whether or not a competitive market exists pursuant to Section 4, the commissioner shall monitor the degree of competition in this State. In doing so, the commissioner shall utilize existing relevant information, analytical systems and other sources; cause or participate in the development of new relevant information, analytical systems and other sources; or rely on some combination thereof. Such activities may be conducted internally within the insurance department, in cooperation with other state insurance departments, through outside contractors and/or in any other appropriate manner.

Section 9. Information to be Furnished Insureds: Hearings and Appeals of Insureds

- A. Every advisory organization and every insurer shall, within a reasonable time after receiving written request, furnish to any insured affected by a rate made by the insurer, or to the authorized representative of the insured, all pertinent information as to such rate. Every advisory organization and every insurer shall provide within this State reasonable means whereby the insured aggrieved by the application of its rating system may be heard, in person or by his or her authorized representative, on written request to review the manner in which such rating system has been applied in connection with the insurance afforded the insured. If the advisory organization or insurer fails to grant or reject such request within thirty (30) days after it is made, the applicant may proceed in the same manner as if the application had been rejected. The insured affected by the action of the advisory organization or insurer on such request may, within thirty (30) days after written notice of such action, appeal to the commissioner, who, after a hearing held upon not less than ten (10) days' written notice to the appellant and to the advisory organization or insurer, may affirm or reverse such action.

Drafting Note: Language could be inserted here which would allow an insurer or advisory organization to charge a reasonable fee to cover the expense of providing any information requested under this section, but charges should not be permitted when the information relates to the specific application of an experience rating modification or a schedule rating modification.

- B. If, after a hearing held under this section, it is determined that the rates charged by an insurer are in excess of the otherwise appropriate rate, such overcharge shall be refunded to the insured.

Section 10. Consumer Information

The commissioner shall utilize, develop or cause to be developed a consumer information system(s) which will provide and disseminate price and other relevant information on a readily available basis to purchasers of homeowners, private passenger nonfleet automobile, or property insurance for personal, family or household needs. The commissioner may utilize, develop or cause to be developed a consumer information system(s) which will provide and disseminate price and other relevant information on a readily available basis to purchasers of insurance for commercial risks and personal risks not otherwise specified herein. Such activity may be conducted internally within the insurance department, in cooperation with other state insurance

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:

The cost of complying with this section shall be assessed against insurers subject to this Act and authorized to write types of business subject to a consumer information system. The assessments shall be made on an equitable and practicable basis established, after hearing, in a rule promulgated by the commissioner. This activity shall be conducted in a reasonably economical manner consistent with the purposes of this Act.

Section 11. Licensing Advisory Organizations and Statistical Agents

- A. No advisory organization or statistical agent shall provide any service relating to statistical collection or the rates of any insurance subject to this Act, and no insurer shall utilize the services of such organization for such purposes unless the organization has obtained a license under Subsection C.
- B. No advisory organization or statistical agent shall refuse to supply any services for which it is licensed in this State to any insurer authorized to do business in this State and offering to pay the fair and usual compensation for the services.
- C. Licensing.
 - (1) An advisory organization or statistical agent applying for a license shall include with its application:
 - (a) A copy of its constitution, charter, articles of organization, agreement, association or incorporation, and a copy of its bylaws, plan of operation and any other rules or regulations governing the conduct of its business;
 - (b) A list of its members and subscribers;
 - (c) The name and address of one or more residents of this State upon whom notices, process affecting it, or orders of the commissioner may be served;
 - (d) A statement showing its technical qualifications for acting in the capacity for which it seeks a license;
 - (e) A biography of the ownership and management of the organization; and
 - (f) Any other relevant information and documents that the commissioner may require.
 - (2) Every organization which has applied for a license shall notify the commissioner of every material change in the facts or in the documents on which its application was based. Any amendment to a document filed under this section shall be filed at least thirty (30) days before it becomes effective.

- (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 Organizations: Prohibited Activity

- A. No insurer or advisory organization shall:
 - (1) Attempt to monopolize, or combine or conspire with any other person to monopolize an insurance market.
 - (2) Engage in a boycott, on a concerted basis, of an insurance market.
- B. (1) No insurer shall agree with any other insurer or with an advisory organization to mandate adherence to or to mandate use of any rate, prospective loss cost, rating plan, rating schedule, rating rule, policy or bond form, rate classification, rate territory, underwriting rule, survey, inspection or similar material, except as needed to facilitate the reporting of statistics to advisory organizations, statistical agents or the commissioner.

The fact that two (2) or more insurers, whether or not members or subscribers of an advisory organization, use consistently or intermittently the same rates, prospective loss cost, rating plans, rating schedules, rating rules, policy or bond forms, rate classifications, rate territories, underwriting rules, surveys or inspections or similar materials is not sufficient in itself to support a finding that an agreement exists.

 - (2) Two (2) or more insurers having a common ownership or operating in this State under common management or control may act in concert between or among themselves with respect to any matters pertaining to those activities authorized in this Act as if they constituted a single insurer.
- C. No insurer or advisory organization shall make any arrangement with any other insurer, advisory organization, or other person which has the purpose or effect of unreasonably restraining trade or unreasonably lessening competition in the business of insurance.

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;
- D. Prepare, file and distribute factors, calculations or formulas pertaining to classification, territory, increased limits and other variables;
- E. Prepare, file and distribute manuals of rating rules, rating schedules and other supplementary rating information that do not include final rates, expense provisions, profit provisions or minimum premiums;
- F. Distribute information that is required or directed to be filed with the commissioner;
- G. Conduct research and on-site inspections in order to prepare classifications of public fire defenses;
- H. Consult with public officials regarding public fire protection as it would affect members, subscribers and others;
- I. Conduct research in order to discover, identify and classify information relating to causes or prevention of losses;
- J. Conduct research relating to the impact of statutory changes upon prospective loss costs and special assessments;
- K. Prepare, file and distribute policy forms and endorsements and consult with members, subscribers and others relative to their use and application;
- L. Conduct research and on-site inspections for the purpose of providing risk information relating to individual structures;
- M. Conduct on-site inspections to determine rating classifications for individual insureds;
- N. For workers' compensation insurance, establish a committee which may include insurance company representatives to review the determination of the rating classification for individual insureds and suggest modifications to the classification system.

- O. Collect, compile and publish past and current prices of individual insurers, provided such information is also made available to the general public at a reasonable cost;
- P. Collect and compile exposure and loss experience for the purpose of individual risk experience ratings;
- Q. File final rates, at the direction of the commissioner, for residual market mechanisms;
- R. Furnish any other services, as approved or directed by the commissioner, related to those enumerated in this section.

Section 15. Statistical Agents: Permitted Activity

In addition to other activities not prohibited, any statistical agent 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. Distribute information that is required or directed to be filed with the commissioner;
- D. Collect, compile and distribute past and current prices of individual insurers and publish such information;
- E. Collect and compile exposure and loss experience for the purpose of individual risk experience ratings, and
- F. Furnish any other services, as approved or directed by the commissioner, related to those enumerated in this section.

Section 16. Advisory Organizations: Filing Requirements

Every advisory organization shall file with the commissioner for approval every statistical plan, all prospective loss costs, provisions for special assessments and all supplementary rating information and every change or amendment or modification of any of the foregoing proposed for use in this State. Such filings shall be subject to the provisions of Sections 6 and 7 and other provisions of this Act relating to filings made by insurers.

Section 17. Joint Underwriting, Joint Reinsurance Pool and Residual Market Activities

- A. Notwithstanding Section 12B(1), insurers participating in joint underwriting, joint reinsurance pools or residual market mechanisms may in connection with such activity act in cooperation with each other in the making of rates, rating systems, policy forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss and expense statistics or other information, or carrying on research. Joint underwriting, joint reinsurance pools and residual market mechanisms shall not be deemed advisory organizations.
- B. Except to the extent modified by this section, insurers, joint underwriting, joint reinsurance pool and residual market mechanism activities are subject to the other provisions of this Act.

- C. If, after hearing, the commissioner finds that any activity or practice of an insurer participating in joint underwriting or a pool is unfair, is unreasonable, will tend to lessen competition in any market or is otherwise inconsistent with the provisions or purposes of this Act, the commissioner may issue a written order and require the discontinuance of such activity or practice.
- D. Every pool shall file with the commissioner a copy of its constitution; its articles of incorporation, agreement or association; its bylaws, rules and regulations governing its activities; its members; the name and address of a resident of this State upon whom notices or orders of the commissioner or process may be served; and any changes in amendments or changes in the foregoing.
- E. Any residual market mechanism, plan or agreement to implement such a mechanism, and any changes or amendments thereto, shall be submitted in writing to the commissioner for consideration and approval, together with such information as may be reasonably required. The commissioner shall approve only such agreements as are found to contemplate: (i) the use of rates which meet the standards prescribed by this Act, and (ii) activities and practices that are not unfair, unreasonable or otherwise inconsistent with the provisions of this Act. At any time after such agreements are in effect, the commissioner may review the practices and activities of the adherents to such agreements and if, after a hearing, the commissioner finds that any such practice or activity is unfair or unreasonable, or is otherwise inconsistent with the provisions of this Act, the commissioner may issue a written order to the parties and either require the discontinuance of such acts or revoke approval of any such agreement.

Section 18. Examinations

The commissioner may, as often as he or she may deem it expedient, make or cause to be made an examination of each advisory organization or statistical agent referred to in Section 11 and of each group, association or other organization referred to in Section 17, provided that each statistical agent and advisory organization licensed in this state shall be examined at least once every five (5) years. The reasonable costs of any such examination shall be paid by the advisory organization, statistical agent or group, association or other organization examined. The officers, manager, agents and employees of such advisory organization, statistical agent, or group, association or other organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents or agreements governing its method of operation. In lieu of any such examination, the commissioner may accept the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of that state.

Drafting Note: Under the laws of several of the states, reports on examination are not made public until the organization examined has had an opportunity to review the proposed report and to have a hearing with reference thereto, after which the report is filed for public inspection and becomes admissible in evidence as a public record. In any state that has no such law, it is suggested that provisions to this effect be adopted. Examinations of statistical agents and advisory organizations require specialized expertise; commonly require the hiring of contractors, and can be expensive. States adopting mandatory examination provisions should plan for personnel to be able to undertake or oversee these examinations, and check whether the costs for examinations, even though charged to the organization being examined, must go through the insurance department's budget.

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 designated by the commissioner.
- B. Every workers' compensation insurer shall report its experience in accordance with the statistical plans and other reporting requirements in use by an advisory organization designated by the commissioner.
- C. A workers' compensation insurer may develop subclassifications of the uniform classification system upon which rates may be made. Such subclassifications and their filing shall be subject to the provisions of this Act applicable to filings generally.
- D. A workers' compensation insurer may develop rating plans which identify loss experience as a factor to be used. Such rating plans and their filing shall be subject to the provisions of the Act applicable to filings generally.
- E. The commissioner shall disapprove subclassifications, rating plans, or other variations from manual rules filed by a workers' compensation insurer if the insurer fails to demonstrate that the data thereby produced can be reported consistent with the uniform classification system and experience rating system and in such a fashion so as to allow for the application of experience rating filed by the advisory organization.

Section 20. Statistical and Rate Administration

- A. The commissioner may adopt reasonable rules for use by companies to record and report to the commissioner their rates and other information determined by the commissioner to be necessary or appropriate for the administration of this Act and the effectuation of its purposes.
- B. The commissioner may promulgate reasonable rules to assure that the experience of all insurers is made available at least annually in such form and detail as is necessary to aid in effecting the purposes of this Act. The commissioner may designate one or more advisory organizations or statistical agents to assist in gathering such experience and making compilations thereof. The scope of such rules may include the data which must be reported by insurers, definitions of data elements, the timing and frequency of statistical reporting by insurers, data quality standards, data edit and audit requirements, data retention requirements, reports to be generated by advisory organizations or statistical agents to fulfill the requirements of this section, and the timing of such reports.

Drafting Note: States that want the commissioner to be required to promulgate rules for the collection of statistical experience can replace the "may" in the first line of Subsection B with "shall".

- C. The following provisions apply only to the disclosure of data and reports provided to the commissioner pursuant to this section and of reports produced by the commissioner from data and reports provided to the commissioner pursuant to this section:
 - (1) Data shall not be disclosed when it is likely to identify individual policyholders or claimants, or where there is reason to suspect that individual open claim reserves may be identified with individual policyholders or claimants.

Drafting Note: Paragraph (1) should be amended for states that wish to provide for the release of the names of individual policyholders without their permission for the purpose of assigned risk depopulation programs. The amendment should allow the commissioner to release such names on a basis designed to protect policyholder privacy by restricting distribution to producers and insurers interested in writing this business on a voluntary basis.

- (2) The commissioner may agree in advance to withhold data from public disclosure when confidentiality is requested by the insurer, advisory organization or statistical agent providing the data to the commissioner, but only if the data include data elements that the commissioner had not required, prior to their writing or occurrence, to be recorded by insurers.
 - (3) Unless exempted by Paragraph (1) or (2), reports from a statistical agent or advisory organization in which the information is summed and presented on a combined basis for the insurers reporting to that statistical agent or advisory organization shall be open to disclosure.
- D. Reasonable rules and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans.
 - E. In order to assist in the performance of the commissioner's duties under this Act, the commissioner may share documents, materials and other information, including confidential and privileged documents, materials or information with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information.

Section 21. Rules and Regulations

The commissioner may make reasonable rules and regulations necessary, including definitions of the rate standards contained in Section 5, to effect the purposes of this Act.

Section 22. False or Misleading Information

No person or organization shall willfully withhold information which will affect the rates or premiums chargeable under this Act from, or knowingly give false or misleading information to the commissioner, any statistical agent, any advisory organization or any insurer. A violation of this section shall subject the one guilty of such violation to the penalties provided in Section 25 of this Act.

Section 23. Assigned Risks

Agreements may be made among insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to, but who are unable to procure such insurance through ordinary methods, and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance, such agreements and rate modifications to be subject to the approval of the commissioner.

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 24. Exemptions

The commissioner may by his or her own initiative or upon request of any person, by rule exempt any market from any or all of the provisions of this Act, if and to the extent that the exemption is necessary to achieve the purposes of this chapter.

Section 25. Penalties

The commissioner may, upon a finding that any person or organization has violated any provision of this Act, impose a penalty of not more than \$10,000 for each such violation, but if the violation is found to be willful, a penalty of not more than \$25,000 may be imposed for each violation. Such penalties may be in addition to any other penalty provided by law.

For purposes of this section, any insurer using a rate for which the insurer has failed to file the rate, supplementary rate information, underwriting rules or guides, or supporting information as required by this Act, shall have committed a separate violation for each day such failure continues.

The commissioner may suspend or revoke the license of any advisory organization, statistical agent or insurer which fails to comply with an order of the commissioner within the time limited by such order, or any extension thereof which the commissioner may grant.

The commissioner may determine when a suspension of license shall become effective and it shall remain in effect for the period fixed by him or her, unless the commissioner modifies or rescinds such suspension, or until the order upon which such suspension is based is modified, rescinded or reversed.

No penalty shall be imposed and no license shall be suspended or revoked except upon a written order of the commissioner stating his or her findings, made after hearing.

Drafting Note: States may wish to insert a section here regarding hearing procedure and judicial review which references the state's administrative procedures act.

Section 26. Laws Repealed

Sections [insert applicable sections] of the statutes of this state are hereby repealed. All other laws or parts of laws inconsistent with the provisions of this Act are hereby repealed.

Section 27. Severability

If any section, subsection, subdivision, paragraph, sentence or clause of this Act is held invalid or unconstitutional, such decision shall not affect the remaining portions of this Act.

Section 28. Effective Date

This Act shall take effect [insert effective date].

Drafting Note: The effective date of this Act should be set to allow state insurance departments, insurance companies and advisory organizations to prepare themselves to carry out the purposes of the Act. One year is recommended.

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

1981 Proc. I 47, 51, 255-256, 340-341, 342-352 (adopted).

1981 Proc. II 27, 35, 428, 474, 478-488 (amended).

1983 Proc. I 6, 35 (amended).

1993 Proc. 1st Quarter 3, 33, 315, 321-332 (amended and reprinted).

1997 Proc. 2nd Quarter 25-26, 838, 1047-1048, 1053-1065 (amended and reprinted).

2002 Proc. 1st Quarter 241-244 (language adopted later is printed here).

2002 Proc. 4th Quarter 8, 27 (amended).

2009 Proc. 2nd Quarter, Vol. I 118, 380, 595 (converted to guideline).