

## PROPERTY AND CASUALTY MODEL RATE AND POLICY FORM LAW GUIDELINE

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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 beneficially competitive markets and to protect insurance consumers from the absence of beneficially competitive markets;
- D. To provide regulatory procedures for the maintenance of appropriate data reporting systems;
- E. To improve availability, fairness and reliability of insurance;
- F. 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;

- G. To promote loss prevention through rating and policy forms;
- H. 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; and
- I. To regulate insurance contracts to the end that they not be contrary to the laws of the state, misleading, illusory, ambiguous, deceptive, contrary to public policy, unreasonably restrictive, or likely to mislead or deceive the policyholder, or contain inconsistent provisions.

**Section 2. Definitions**

- A. “Advisory organization” means an entity, including its affiliates or subsidiaries, that either has two (2) or more member insurers or is controlled either directly or indirectly by two (2) or more insurers, and that assists insurers in promulgation of forms and ratemaking-related activities such as enumerated in Sections 17, 18 and 19. 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 that is not a personal risk.
- D. “Commissioner” means the Commissioner of Insurance of this state.
- E. “Common underwriting management” means an arrangement by which insurers, whether financially related or not, share underwriting facilities.
- F. “Competitive market” means a market that has not been found to be noncompetitive pursuant to Section 4.
- G. “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 that are anticipated to provide actual ultimate loss (including loss adjustment expense) payments.
- H. “Exempt commercial policyholder” means an entity to which specified aspects of rate or form regulation do not apply or have been relaxed in accordance with regulations adopted pursuant to Section 11 of this Act.
- I. “Expenses” means that portion of a rate attributable to acquisition, field supervision, collection expenses, general expenses, taxes, licenses and fees but shall not include loss-adjustment expenses.
- J. “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.
- K. “Insurer” means an insurer as defined in [refer to the general cite for the definition of insurer], except that two (2) or more insurers that are managed by the same persons or entity for the underwriting of individual risks, for the pricing of individual risks, or for the appointment of agents shall, for purposes of this Act, be considered as a single insurer.
- L. “Joint underwriting” means a voluntary arrangement established on an individual-risk basis by which two (2) or more insurers jointly contract to provide insurance coverage for insureds whose property values to be covered or limits of liability to be provided exceed those that a single insurer is able and willing to provide.
- M. “Loss adjustment expense” means the expenses incurred by the insurer in the course of settling claims.
- N. “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.

- O. “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.
- P. “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.
- Q. “Personal risk” means homeowners, tenants, private passenger nonfleet automobiles, mobile homes and other property and casualty insurance for personal, family or household needs.
- R. “Policy form” means the insurance contract language, including the declaration or information page, any endorsements or other contract language that constitute the contractual agreement between an insurer and its policyholder.
- S. “Pool” means a voluntary arrangement, established on an on-going basis, pursuant to which two (2) 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.
- T. “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.
- U. “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.
- V. “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.
- W. “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—Residual Market Assessments:** A state may wish to add “assessments for residual market mechanisms” or other assessments as one of the listed special assessments.

- X. “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.
- Y. “Supplementary rating information” includes any manual or plan of rates, classification, rating schedule, minimum premium, policy fees, rating rules or any other similar information needed to determine the applicable rate or premium. This shall include underwriting rules, but only to the extent necessary to determine the rate or premium that will be applicable to a risk should the insurer decide to provide coverage. This does not include guidelines that relate to the selection of those risks that are acceptable to an insurer.

**Drafting Note—Plan of Rates:** 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.

- Z. “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.

**Drafting Note—Commercial Service Contract Definition:** States exempting commercial service contracts from this Act (see drafting note under Section 3) may wish to add the following definition:

- AA. “Commercial service contract” means a service contract or other similar agreement for a separately stated consideration to indemnify or provide for the repair, replacement or similar service of goods, equipment, machinery or other property normally used for commercial or business purposes for the operational or structural failure due to a defect in materials or workmanship or normal wear and tear, with or without additional provision for incidental expenses, provided that the obligor under the service contract or other similar agreement (a) has procured an insurance policy issued by an insurer authorized to transact insurance in this state or issued pursuant to [insert code section permitting surplus lines business] that provides reimbursement coverage or coverage to the obligee in the event the obligor becomes insolvent, ceases to transact business, or fails to perform the obligations and liabilities under the terms of the commercial service contract; or (b) has provided another form of financial responsibility approved by the commissioner.”

### **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. 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.

**Drafting Note—Kinds of Insurance:** 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.

**Drafting Note—Commercial Service Contracts:** States that consider commercial service contracts to be insurance may wish to exempt all such contracts, or those contracts exceeding thresholds relating to size or consumer sophistication, or both, from the Act.

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. Financial guaranty insurance;
- 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. 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.

**Prefatory Drafting Note Regarding Rate Regulation—Reliance on Competition:** The NAIC long ago concluded that competition could be an effective regulator of property/casualty insurance rates. Recent consideration of commercial lines rate regulation has led to the conclusion that commercial insurance consumers will generally be better served by less restrictive regulatory schemes, i.e., by greater reliance on competition. Consistent with these two conclusions, the rate-regulatory provisions that follow reflect a file and use rate-regulatory scheme. It should be noted, however, that the NAIC has not taken a position respecting any particular line of insurance in any particular state. While this model law “defaults” to file and use, it is expected that each state will consider whether other approaches are more appropriate for specific lines or all lines. Drafting notes following the main body of sections 4 through 7 contemplate several alternative approaches, providing for greater or lesser degrees of reliance on competition, which a state may determine to be preferable.

The movement of states away from prior approval of rates has been more pronounced in connection with commercial lines than personal lines. It has occurred less rapidly in connection with workers’ compensation insurance than with most other commercial lines. Although many states have adopted competitive rating approaches for medical professional liability insurance, each state will want to consider the extent to which that state’s marketplace for such insurance is, in fact, structured in such a way that reliance upon competition is a viable approach. Each state will also want to consider the extent to which the reverse-competitive market structures of credit property insurance, credit involuntary unemployment insurance and mortgage guaranty insurance either suggest or demand a more guarded regulatory approach than is used for other lines of insurance.

“Reverse competition” means competition among insurers that regularly takes the form of insurers vying with each other for the favor of persons who control, or who may control, the placement of the insurance with insurers. Reverse competition tends to increase insurance premiums or to prevent lowering of premiums in order that greater commissions or other allowances may be paid to persons for such business as a means of obtaining the placement of business controlled by the person with the insurers paying the highest commissions. In such situations, the competitive pressure to obtain business by paying high commissions or providing other compensation or services to these persons overwhelms any downward pressures consumers may exert on the price of insurance, thus causing prices to rise.

#### **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—Competitive Market Alternative:** 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) A rate 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.
    - (b) A rate in a competitive market is presumed not to be excessive.

- (2) **Inadequate Rates.** A rate is not inadequate unless: (a) its continued use would endanger the solvency of the insurer, or (b) the 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 the rate has or, if continued, will have the effect of substantially lessening competition or the tendency to create monopoly in any market.
- (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 under Paragraph (1)(a), 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.
- (5) **Two (2) or more insurers operating under common underwriting management for a line or kind of insurance or subdivision of a line or kind in this state shall, for that line or kind of insurance or subdivision, be treated as a single insurer for purposes of this section in order to prevent unfair discrimination between similarly situated policyholders.**

**Drafting Note—Disallowed Expenses in Rates:** If a state desires to provide the commissioner with explicit guidance regarding certain categories of expenses that may not be included in insurers' rates, it should consider the following language instead of that provided in Section 5A(4)(c): "Expenses. The expense provisions included in the rates to be used by an insurer shall reflect the reasonable operating methods of the insurer and its reasonable anticipated expenses. Insurers' rates shall not include provisions for disallowed expenses. Disallowed expenses include [insert specific expenses, if any] and any unreasonably incurred expenses as determined by the commissioner." Such expenses may include lobbying expenses; amounts paid by an insurer as damages in a suit against the insurer for bad faith or as fines or penalties for violations of the law; contributions to organizations engaged in legislative advocacy; fees and penalties imposed upon the insurer for civil or criminal violations of the law; fees or penalties paid by the insurer to settle administrative enforcement actions; and contributions to social, religious, political or fraternal organizations.

**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. 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 Section 18. The filing shall contain sufficient information to allow the commissioner to meet his or her obligation to provide consumer information under Sections 13 and 14. The 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 18;
  - (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 the filing, the commissioner may require the insurer to furnish the information upon which it supports the filing and in that event the waiting period shall commence as of the date the 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—Filing Review:** 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. (1) 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.
- (2) In a competitive market, Section 6C(1) notwithstanding, the commissioner may, after a hearing, determine that the filing for review of rates and/or 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.

**Drafting Note—Rate Filing Waiver Authority:** Section 6C(2) may be deleted, and Section 6C(1) renumbered to be Section 6C, if states do not wish to grant the commissioner authority to waive rate filing requirements. Section 6C(2) could also be modified so as to limit waiver authority to supplementary and/or supporting information alone, rather than to actual rate filings. Alternatively, the word “commercial” could be deleted from Section 6C(2) if a state wishes to extend the commissioner's waiver authority to include personal lines coverages.

- D. In a noncompetitive market, for advisory organization filings and for the following lines of insurance [insert prior approval lines, if any], subject to the exception specified in Subsection E of this section, each filing shall be on file for a waiting period of thirty (30) days before it becomes effective, which period may be extended by the commissioner for an additional period not to exceed thirty (30) days if written or electronic notice is given within the waiting period to the insurer or advisory organization that made the filing 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. The operation of the deemer provision shall be suspended during a period of not more than sixty (60) days upon written or electronic notice to the insurer or advisory organization that made the filing that additional information is needed to complete the review of the filing. Failure of the insurer or advisory organization to provide the requested information within sixty (60) days shall be deemed a request to withdraw the filing from further consideration. The commissioner shall either approve or disapprove the filing within thirty (30) days of receipt of the requested additional information. Failure of the commissioner to act within the thirty-(30)-day period 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.
- E. 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 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 or electronic 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. The commissioner may, by rule, waive the requirement that excess rates be filed for approval. 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.
- G. No insurer shall make or issue a contract or policy except in accordance with the filings that have been approved and are in effect for the 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.

**Section 7. Disapproval of Rate Filings**

- A. For filings made in a noncompetitive market, for advisory organization filings the following lines of insurance [insert prior approval lines, if any] 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 or electronic 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 shall be in writing or electronically transmitted 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 that is in effect may make application to the commissioner for a hearing. The application shall be written or transmitted in a manner designated by the commissioner. 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 the grounds otherwise justify holding a hearing, a hearing shall be held within thirty (30) days after receipt of the application upon not less than ten (10) days' written or electronic notice to the applicant and to every insurer and advisory organization that made a filing.

If, after the hearing, the commissioner finds that the filing does not meet the requirements of this Act, an order shall issue specifying in what respects the filing fails to meet the requirements of this Act, and stating when, within a reasonable period thereafter, the filing shall no longer be deemed to be in effect. Copies of the order shall be sent or electronically transmitted 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. Policy Form Standards**

- A. Policy forms shall not:
  - (1) Contain provisions, exceptions or conditions that are misleading, illusory, inconsistent, ambiguous, deceptive, contrary to public policy, that unreasonably affect the risk purported to be assumed in the general coverage of the policy, or that encourage misrepresentation of the coverage; or
  - (2) Violate or fail to comply with any provision of the insurance code or the laws of this state.

- B. The insurer shall include the following elements in its policy either by placing them in the main policy form or by attaching an endorsement or other contract language to the policy form:
- (1) A statement that specifies when a policy may be cancelled or nonrenewed and provides at least the following minimum notice in the event of cancellation or nonrenewal of the policy:
    - (a) Ten (10) days advance notice for cancellation because of fraud, misrepresentation or because the insured has failed to pay premium when due. Premium includes any amounts due from the insured in accordance with policy provisions;
    - (b) Thirty (30) days advance notice for all other cancellations for cause that are allowed under the insurance code; and
    - (c) Forty-five (45) days advance notice when the insurer decides that it will not offer to renew the policy for another term; and
  - (2) For personal lines, a statement that any return premium due the insured will be tendered by the insurer within ten (10) days of the effective date of cancellation regardless of whether the cancellation is initiated by the insurer or the insured. For cancellation at the request of the insured, the policy may provide for the application of less than a full pro rata return of premium, provided that insurer shall not demand a penalty greater than ten percent (10%) of the unearned premium for the remaining term of the policy. The terms and conditions of any penalty for early cancellation by the insured shall be clearly stated in the policy form or an endorsement;

**Drafting Note:** States may wish to consider adding one or more of these specific requirements for policy forms to the list of requirements in Section 8:

- (1) A declaration or information page that shows the individuals or entities insured and the property to which the insurance applies, if applicable, shows the limit of the insurer's liability for each coverage provided, shows the effective date and time for policy inception and expiration and shows the premium consideration;
- (2) An insuring agreement that clearly states who and what is covered under the policy;
- (3) The conditions under which the coverage will apply;
- (4) Any exclusion where coverage is not applicable;
- (5) Any definitions needed to clarify the intent of the coverage provided in the policy;
- (6) A statement that the bankruptcy or insolvency of the insured shall not relieve the insurer of its obligations under the policy;
- (7) A statement concerning procedures for resolution of policy disputes. Insurers may choose to provide for mediation, arbitration, appraisal or other methods of dispute resolution that are acceptable to the commissioner that encourage policyholders to informally resolve policy disputes without the need to request a formal hearing; and
- (8) A statement that the policy form, any endorsements and other contract language shall constitute the entire contract.

## **Section 9. Policy Form Filings**

- A. Policy forms, endorsements and other contract language and related attachment rules shall comply with the following provisions:
- (1) Except as provided in Subsections A(3) and B(2) of this section, an insurer shall file all policy forms, endorsements and other contract language and any related attachment rules with the commissioner prior to use. The filing shall state its proposed effective date and shall explain the intended use of the forms.

- (2) An insurer may authorize an advisory organization to file policy forms, endorsements and other contract language and related attachment rules on its behalf.
  - (3) 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 Section 8 and the extent to which it would be practical to file the forms prior to their use for specific risks. Insurers shall not use this provision to avoid the consent-to-form provisions of Subsection A(4) of this section.
  - (4) Policy forms, endorsements and other contract language providing coverage that is more restrictive than that provided by a filing otherwise applicable may be used on specific risk upon the prior written or electronic application of the insured, stating reasons therefore, filed with and approved by the commissioner. The application and any correspondence relating thereto shall be considered a confidential communication and shall not be made public by the commissioner except as may be compiled by the department in summaries of activity.
  - (5) 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 an approved filing otherwise applicable, to be used without prior approval by the commissioner. Any such commercial policy forms, endorsements, and other contract language shall, by regulation, be filed prior to use either (a) in all cases, or (b) to the extent needed to meet regulatory purposes.
- B. Filings of policy forms, endorsements and other contract language shall comply with the following provisions:
- (1) Each filing shall be on file for a waiting period of thirty (30) days before it becomes effective except as provided in Paragraph (2). The waiting period may be extended for an additional period not to exceed thirty (30) days if the commissioner gives written notice within the waiting period to the insurer or advisory organization that made the filing that additional time is needed for the consideration of the filing. Upon written or electronic application by the insurer or advisory organization, the commissioner may authorize a filing to become effective before the expiration of a waiting period. A filing shall be deemed to meet the requirements of the Act unless disapproved by the commissioner within the waiting period or any extension thereof. The operation of the deemer provision shall be suspended during a period of not more than sixty (60) days upon written or electronic notice to the insurer or advisory organization that made the filing that additional information is needed to complete the review of the filing. Failure of the insurer or advisory organization to provide the requested information within sixty (60) days shall be deemed a request to withdraw the filing from further consideration. A filing and any supporting information shall be open to public inspection upon receipt of the filing.
  - (2) The commissioner may by regulation or order suspend or modify the filing requirements of Subsection A or B of this section as to any line or kind of insurance or subdivision or combination of such line or kind of insurance or as to classes of risks for which rating systems or forms cannot practicably be filed before they are used. The commissioner may make an examination if he or she deems it necessary to ascertain whether any policy forms, endorsements and other contract language affected by the regulation or order meet the requirements of Section 8.
  - (3) An insurer shall not issue a contract or policy except in accordance with the filings that have been approved and are in effect for the insurer as provided in this Act or in accordance with Subsection A(4) of this section. This subdivision shall not apply to forms or rating systems to the extent that they are exempt or have been exempted by Subsection A(3) or B(2) of this section.

- (4) Upon the written or electronic application of the insurer and insured, stating its reasons therefore, filed with and approved by the commissioner, a policy form that differs from any provided by a filing otherwise applicable to the insurer may be used on any specific risk. This section applies only to manuscript forms or other policies that are unique to a specific risk. The commissioner may, by rule, waive the requirement that these unique manuscript forms be filed for approval. 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.

**Section 10. Disapproval of Policy Form Filings**

- A. If, within the waiting period provided by Section 9 or any extension thereof, the commissioner finds that a filing does not meet the requirements of the Act, he or she shall send written or electronic notice of disapproval to the insurer or advisory organization that made the filing specifying in what respects the filing fails to meet the requirements of the Act and stating that the 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 approval, the commissioner finds that a policy form, an endorsement and other contract language or attachment rule relating thereto, does not meet or no longer meets the requirements of the Act, the commissioner shall hold a hearing in accordance with Section 29.
- C. Any insured aggrieved with respect to any filing that is in effect may make written or electronic application to the commissioner for a hearing thereon. The application shall specify the grounds to be relied upon by the applicant. If the commissioner finds that the application is made in good faith, that the applicant would be so aggrieved if his or her grounds are established, or that such grounds otherwise justify holding a hearing, then a hearing shall be held in accordance with Section 29.
- D. If after a hearing pursuant to subsection B or C of this section, the commissioner finds that a filing does not meet the requirements of the Act, he or she shall issue an order stating in what respects the filing fails to meet the requirements and when, within a reasonable period thereafter, the policy form, endorsement or other contract language or related attachment rule, shall no longer be used. Copies of the order shall be sent to the applicant, if applicable, and to every affected 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.

**Section 11. Exemption from the Requirement for Insurers to Use Filed Rates and Forms for Certain Commercial Policyholders**

- A. The commissioner shall, by regulation, establish a class of large commercial policyholders, to be known as exempt commercial policyholders (ECPs), which shall be exempt from all rate and form requirements established by this Act, except for form provisions relating to [insert description of any form provisions that ECPs must adhere to, if any. An example of such provisions might be workers' compensation mandatory coverage provisions.].
- B. In the promulgation of this regulation, the commissioner shall consider the following factors in determining the definition of an ECP:
  - (1) The characteristics of insureds that are likely to study and understand the details of their business risks, insurance coverages and exclusions;
  - (2) The characteristics of insureds that are likely to avail themselves of regular price comparisons between competing insurers and are likely to study and understand the differences and details of pricing proposals that they receive;
  - (3) The characteristics of insureds that are likely to require individually written policies, as contrasted to insureds that can customarily have their coverage needs met through a compilation of forms with applicability to other insureds as well;

- (4) The characteristics of insureds for which filed rates and rating plans are less likely to provide the lowest premiums otherwise consistent with the provisions of this Act;
  - (5) The favorable or adverse experiences with exemptions from regulatory requirements, especially the experience in this state;
  - (6) The extent to which commercial insureds primarily located in another jurisdiction are subject to similar exemptions or waivers in that jurisdiction; and
  - (7) Any other relevant factor.
- C. The commissioner may, by regulation, waive some or all of the diligent search requirements related to placement of risks in the approved surplus lines market for some or all ECPs.

**Drafting Note—Restriction of Exemption Powers:** States wishing to restrict the commissioner from exempting specific lines of commercial lines insurance may use the language that follows. The inclusion of this drafting note should not be construed as a recommendation that these provisions be inapplicable to any commercial line of insurance. Rather, it is inserted to recognize that some states may wish to provide such restrictions.

- D. The regulation adopted pursuant to this section may not alter [insert description, including whether the restriction applies to rates, forms or both].

**Drafting Note—Legislative Determination of Qualification Requirements For Exempt Commercial Policyholders:** Legislatures wishing to establish dollar amounts and other specific qualification requirements for exempt commercial policyholders, instead of directing the commissioner to make this determination, may wish to use the criteria listed in Subsection B of this section in making their determinations. The NAIC's white paper, Regulatory Re-engineering of Commercial Lines Insurance, contained the following definition of an ECP:

An "ECP" is an entity that meets any two of the following criteria:

- Net worth of over \$50 million;
- Net revenues or sales of over \$100 million;
- More than 500 employees per individual company or 1,000 per holding company aggregate;
- Procures its insurance through use of a risk manager, employed or retained;
- Aggregate premiums of over \$500,000;
- Is a not for profit, or public entity with an annual budget or assets of at least \$45 million, or
- Is a municipality with a population of over 50,000.

It should be noted that in legislative sessions subsequent to the white paper, some states adopted ECP definitions similar to or the same as those in the white paper, while other states opted to enact much lower ECP definitions, in some cases with exemptions applying only to filing requirements and not rate and policy form standards.

## **Section 12. Form Approval Requirements Applying to Multistate Commercial Risks**

The commissioner shall adopt reasonable regulations to provide that this state's form approval 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] will 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 13. 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. The activities may be conducted internally within the insurance department, in cooperation with other state insurance departments, through outside contractors or in any other appropriate manner.

**Drafting Note:** The following language provides a more definitive alternative way for states to monitor competition. (See drafting note at the end of the model law).

### **Section 14. 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 or electronic 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 the rating system has been applied in connection with the insurance afforded the insured. If the advisory organization or insurer fails to grant or reject the 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 the request may, within thirty (30) days after written or electronic notice of 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 the 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 15. Consumer Information**

The commissioner shall utilize, develop or cause to be developed a consumer information system that 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 that 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 in this Act. The 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.

**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 14:

“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 16. 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 an organization for these 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. An 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 that 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 17. 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 that has the purpose or effect of unreasonably restraining trade or unreasonably lessening competition in the business of insurance.

**Section 18. Advisory Organizations and Statistical Agents: Prohibited Activity**

In addition to the other prohibitions contained in this Act, except as specifically permitted under Section 19, 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 19 Advisory Organizations: Permitted Activity**

An 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, building codes and other loss prevention or mitigation measures 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; and
- R. Furnish any other services, as approved or directed by the commissioner, related to those enumerated in this section.

**Section 20. Statistical Agents: Permitted Activity**

In addition to other activities not prohibited, a 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 21. 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, all policy forms, endorsements and other contractual language and every change or amendment or modification of any of the foregoing proposed for use in this state. The filings shall be subject to the provisions of Sections 6, 7, 9 and 10 and other provisions of this Act relating to filings made by insurers.

**Section 22. Joint Underwriting, Joint Reinsurance Pool and Residual Market Activities**

- A. Notwithstanding Section 16B(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, endorsements and other contractual language, 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 or electronic order and require the discontinuance of the 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. A residual market mechanism, plan or agreement to implement such a mechanism, and any changes or amendments thereto, shall be submitted in writing or electronically transmitted to the commissioner for consideration and approval, together with such information as may be reasonably required. The commissioner shall approve only agreements found to contemplate: (i) the use of rates and forms that 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 the agreements are in effect, the commissioner may review the practices and activities of the adherents to the agreements and if, after a hearing, the commissioner finds that a 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 the acts or revoke approval of the agreement.

### **Section 23. 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 15 and of each group, association or other organization referred to in Section 21, 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 the examination shall be paid by the advisory organization, statistical agent or group, association or other organization examined. The officers, managers, agents and employees of the 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 an 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 24. 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 sub-classifications of the uniform classification system upon which rates may be made. Such sub-classifications 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. The rating plans and their filing shall be subject to the provisions of the Act applicable to filings generally.

- E. The commissioner shall disapprove sub-classifications, 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 25. Statistical and Rate Administration**

- A. The commissioner may adopt reasonable regulations 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 adopt reasonable regulations 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 determining whether rating systems comply with the standards set forth in Section 5. The commissioner may designate one or more advisory organizations or statistical agents to assist in gathering the experience and making compilations thereof, and the compilations shall be public documents. The scope of the regulations may include the data to 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 the 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. Reasonable regulations and plans may be promulgated by the commissioner for the interchange of data necessary for the application of rating plans.
- D. In order to further uniform administration of rate regulatory laws, the commissioner and every insurer, advisory organization and statistical agent may exchange information and experience data with insurance supervisory officials, insurers and advisory organizations in other states and may consult with them with respect to the application of rating systems and the collection of statistical data.

**Section 26. Regulations**

The commissioner may make reasonable regulations necessary to effect the purposes of this Act.

**Section 27. False or Misleading Information**

No person or organization shall willfully withhold information that 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 32 of this Act.

**Section 28. 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, the provision should preferably be in another statute.

**Section 29. Hearing; Request**

An insurer, insurer engaged in joint underwriting, joint-reinsurance pool, or advisory organization aggrieved by any order or decision of the commissioner made without a hearing may, within thirty (30) days after notice of the order, make written or electronic request to the commissioner for a hearing thereon in accordance with Section 29. Pending hearing and decision, the commissioner may suspend the effective date of his or her action.

**Section 30. Hearing; Procedure**

If a hearing is being held at the request of a party other than the commissioner, unless mutually agreed upon by the commissioner and all interested parties, notice of hearing shall be provided within thirty (30) days of the commissioner's receipt of a written or electronic request for a hearing. Notice of the hearing shall be given to all interested parties and shall state the time, place and purpose of the hearing. Unless mutually agreed upon by the commissioner and all interested parties, the hearing shall be held not less than (10) days after notice is served. In addition, unless mutually agreed upon by the commissioner and all interested parties or unless the hearing is being held at the request of the commissioner, the hearing shall be held not more than thirty (30) days after notice is served.

**Section 31. Appeals**

An order or decision of the commissioner made pursuant to the Act may be appealed by any party in interest. The appeal shall be in accordance with the [insert reference to the state Administrative Procedures Act].

**Section 32. Exemptions**

The commissioner may by his or her own initiative or upon request of any person, by regulation 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 Act.

**Section 33. Penalties**

- A. 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 violation, but if the violation is found to be willful, a penalty of not more than \$25,000 may be imposed for each violation. These penalties may be in addition to any other penalty provided by law.
- B. For purposes of this section, any insurer using a rate or insurance contract for which the insurer has failed to file the rate, supplementary rate information, policy form, endorsement or other contractual language, shall, if this Act requires such materials to be filed, have committed a separate violation for each day such failure continues.
- C. The commissioner may suspend or revoke the license of any advisory organization, statistical agent or insurer that fails to comply with an order of the commissioner within the time limited by the order, or any extension thereof which the commissioner may grant.
- D. 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 the suspension, or until the order upon which the suspension is based is modified, rescinded or reversed.
- E. No penalty shall be imposed and no license shall be suspended or revoked except upon a written or electronically transmitted 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 34. 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 35. 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 36. Effective Date

This Act shall take effect [insert effective date].

## DRAFTING NOTES

**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.

**Flexible Rating Drafting Note:** For states that are not completely comfortable with a competitive rating environment, flexible rating allows the combination of the features of a file and use law with those of a prior approval law. For rate filings within a legislatively determined range of values, a file and use system is allowed to operate. For rate filings that exceed or go below the threshold, prior approval of the filings is required. The following language will allow a state to adopt a flexible rating system for a specified line of coverage.

- A. Except as provided in Subsection B of this section, overall average (for all coverages combined) rate level increases or decreases of [insert desired percentage range] percent above or below the insurer's rates in effect may take effect without prior approval with respect to rates for policies covering [insert lines of insurance to which flexible rating applies].
- B. Notwithstanding any other provisions of this Act, for any policies governed by this section, filings that produce rate level changes within the limitation specified in Subsection A of this section shall become effective without prior approval pursuant to [insert appropriate statutory reference]. However:
  - (1) No more than one rate increase within the limitation specified in Subsection A of this section may be implemented during any twelve-month (12) period; and
  - (2) No rate increase within the limitation specified in Subsection A of this section may be implemented until the onset of the new policy period and unless the insurer, at least thirty (30) but not more than sixty (60) days in advance of the end of the policy period, mails or delivers to the named insured, at the address shown in the policy, a written or electronic notice of its intention to change the rate. The specific reason or reasons for the rate change shall be stated in or shall accompany the notice.
- C. The commissioner shall promulgate rules and regulations implementing the provisions of this section.
- D. On or before [date] the commissioner shall report to the legislature on the effectiveness of the flexible rating. The report shall analyze the impact of flexible rating on the extent and nature of competition; size and significance of coverage; level and range of rates and rate changes among insurers; extent of consumer complaints to the insurance department; volume of cancellations and non-renewals; changes in the number of policies, by territory, and by class in each territory, written under a plan or plans approved by the commissioner; and the number of new insureds, non-renewed insureds and business written by each insurer.

A variation of the flexible rating approach involves the establishment by the regulator of benchmark rates by coverage, rating class, and rating territory, which, in conjunction with a flexibility band, or range of rate variation, creates a rate range within which insurers may file and use rates without prior approval. Rates outside the range must be approved prior to use. This system may be useful if a state wishes to provide guidance on risk classifications.

**Prior Approval Drafting Note:** For states not at all comfortable with a competitive rating environment for selected lines of insurance, prior approval of rates may be deemed more appropriate than either file and use or flexible rating. To designate certain lines of business as prior approval lines, they should be listed in Sections 6D and 7A in the first sentence as indicated by the brackets.

**Use & File Drafting Note:** For states wishing to use a use and file system to regulate rates, the following changes could be made to Sections 6C to implement a use and file system in place of the file and use system specified in the model. The principle advantage of a use and file system is that insurers will be able to bring new products to market and make rate adjustments in a more timely fashion. The principle disadvantage is that rates that do not meet statutory standards may be charged to consumers prior to review by insurance regulators and marketing materials containing those noncomplying rates may be distributed to the public in advance of receipt of a filing hindering the regulator's ability to assist consumers with their insurance purchases or deal with questions and problems.

**Use & File Alternative to Section 6. Rate Filings**

- 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 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:** For states wishing to use a file and use system to regulate policy forms endorsements and other contract language, the following changes could be made to Sections 9B and 10 to implement that type of change. The principle advantage of a file and use system is that insurers will be able to bring new products and amendments to market in a more timely fashion. The principle disadvantage is that forms not meeting statutory standards may be sold to consumers prior to review by insurance regulators and marketing materials may be distributed to the public in advance of receipt of a filing hindering the regulator's ability to assist consumers with their insurance purchases.

**Alternative Section 9. Policy Form Filings**

- B. Filings of policy forms, endorsements and other contract language shall comply with the following provisions:
- (1) Each filing shall be filed on or before the date it becomes effective except as provided in Subsection B(2). A filing and any supporting information shall be open to public inspection upon receipt of the filing;
  - (2) The commissioner may by regulation or order suspend or modify the filing requirements of Subsection A or B of this section as to any line or kind of insurance or subdivision or combination of such line or kind of insurance or as to classes of risks for which rating systems or forms cannot practicably be filed before they are used. The commissioner may make an examination as he or she deems necessary to ascertain whether any policy forms, endorsements and other contract language affected by the regulation or order meet the requirements of Section 8; and
  - (3) No insurer shall issue a contract or policy except in accordance with the filings that have been filed and are in effect for the insurer as provided in the Act or in accordance with Subsection A(4) of this section. This subdivision shall not apply to forms or rating systems to the extent that they are exempt or have been exempted by Subsection A(3) or B(2) of this section.

**Alternative Section 10. Disapproval of Policy Form Filings**

- A. If the commissioner finds that a filing does not meet the requirements of the Act, he or she shall send written or electronic notice of disapproval to the insurer or advisory organization that made the filing specifying in what respects the filing fails to meet the requirements of the Act and stating when the filing shall no longer be 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. Any insured aggrieved with respect to any filing that is in effect may make written or electronic application to the commissioner for a hearing. The application shall specify the grounds to be relied upon by the applicant. If the commissioner finds that the application is made in good faith, that the applicant would be so aggrieved if his or her grounds are established, or that the grounds otherwise justify holding a hearing, then a hearing shall be held in accordance with Section 29.

- C. If after a hearing pursuant to Subsection B of this section, the commissioner finds that a filing does not meet the requirements of the Act, he or she shall issue an order stating in what respects the filing fails to meet the requirements and when, within a reasonable period thereafter, the policy form, endorsement or other contract language or attachment rule relating thereto, shall no longer be used. Copies of the order shall be sent to the applicant, if applicable, and to every affected 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.

**Drafting Note:** For states wishing to use a use and file system to regulate policy forms endorsements and other contract language, the following changes could be made to Sections 9B and 10 to implement that type of change. The principle advantage of a use and file system is that insurers will be able to bring new products and amendments to market in a more timely fashion. The principle disadvantage is that that forms not meeting statutory standards may be sold to consumers prior to review by insurance regulators and marketing materials may be distributed to the public and products may actually be sold in advance of receipt of a filing hindering the regulator’s ability to assist consumers with their insurance purchases or deal with questions and problems.

**Alternative Section 9. Policy Form Filings**

- B. Filings of policy forms, endorsements and other contract language shall comply with the following provisions:
  - (1) Each filing shall be filed within thirty (30) days after it becomes effective except as provided in Subsection B(2). A filing and any supporting information shall be open to public inspection upon receipt of the filing;
  - (2) The commissioner may by rule or order suspend or modify the filing requirements of Subsection A or B of this section as to any line or kind of insurance or subdivision or combination of such line or kind of insurance or as to classes of risks for which rating systems or forms cannot practicably be filed before they are used. The commissioner may make an examination as he or she deems necessary to ascertain whether any policy forms, endorsements and other contract language affected by such rule or order meet the requirements of Section 8; and
  - (2) No insurer shall issue a contract or policy except in accordance with the filings that have been filed and are in effect for the insurer as provided in the Act or in accordance with Subsection A(4) of this section. This subdivision shall not apply to forms or rating systems to the extent that they are exempt or have been exempted by Subsection A(3) or B(2) of this section.

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- B. Any insured aggrieved with respect to any filing that is in effect may make written or electronic application to the commissioner for a hearing. The application shall specify the grounds to be relied upon by the applicant. If the commissioner finds that the application is made in good faith, that the applicant would be so aggrieved if his or her grounds are established, or that the grounds otherwise justify holding a hearing, then a hearing shall be held in accordance with Section 29.
- C. If after a hearing pursuant to Subsection B of this section, the commissioner finds that a filing does not meet the requirements of the Act, he or she shall issue an order stating in what respects the filing fails to meet the requirements and when, within a reasonable period thereafter, the policy form, endorsement or other contract language or attachment rule relating thereto, shall no longer be used. Copies of the order shall be sent to the applicant, if applicable, and to every affected 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.

**Drafting Note—Alternative System for Monitoring Competition**

For states wishing to implement a more structured methodology for monitoring competition within a given market, the following alternative Section 12 may be considered. The advantage of the more structured approach is that state legislatures may have a greater comfort level that a hands-off rate-regulatory approach is working if there is some periodic scheduled oversight of the inner workings of the market. This alternative section provides states with that structure and encourages legislators to select the method that they believe will work best given the market realities faced in each state, for each line of business. For example, the alternative Section 12 might be applied to auto insurance, homeowners, medical malpractice and workers' compensation, while the less structured Section 12 might be applied to other property/ casualty lines. A definition of "reverse competition" would need to be added.

**Section 2. Definitions**

Add:

"Reverse competition" means competition among insurers that regularly takes the form of insurers vying with each other for the favor of persons who control, or who may control, the placement of the insurance with insurers. Reverse competition tends to increase insurance premiums or to prevent lowering of premiums in order that greater commissions or other allowances may be paid to persons for such business as a means of obtaining the placement of business controlled by the person with the insurers paying the highest commissions. In such situations, the competitive pressure to obtain business by paying high commissions or providing other compensation or services to these persons overwhelms any downward pressures consumers may exert on the price of insurance, thus causing prices to rise.

**Section 12. Monitoring Competition**

- A. In determining whether or not a competitive market exists pursuant to Section 4, 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. 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 [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 Action (all references are to the Proceedings of the NAIC)*

*2010 Proc. 2<sup>nd</sup> Quarter, Vol. I 103, 124, 129-130, 360-388, 391-395 (adopted).*