

NAIC AUTOMOBILE INSURANCE DECLINATION, TERMINATION, AND DISCLOSURE MODEL ACT

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PREAMBLE: The purpose of this Act shall be to regulate declinations, cancellations and refusals to renew certain policies of automobile insurance and to require specific reasons for such actions.

Section 1. Scope

This Act shall apply to applications for and to automobile insurance policies delivered, issued for delivery or renewed in this state after the effective date of this Act. This Act shall not apply to:

- A. Policies of automobile insurance issued under the [insert state] Automobile Insurance Plan; or
- B. A policy insuring more than four (4) motor vehicles; or
- C. A policy covering garage, automobile sales agency, repair shop, service station or public parking place operation hazards.

Drafting Note: Automobile policies issued under a state Automobile Insurance Plan (AIP) or other residual market mechanism are excluded from this Act because of the special underwriting considerations and regulatory treatment afforded such policies under state law. While the application of many of the substantive principles of this Act to such policies would be desirable and should be encouraged, the mechanism for implementing these principles should be the plan of operation of the AIP or residual market mechanism, not a state law governing automobile insurance declinations and terminations in the voluntary market.

Section 2. Definitions

- A. “Automobile insurance policy” means a policy delivered or issued for delivery in this state, insuring a natural person as named insured, or one or more related individuals resident of the same household, and under which the insured vehicles therein designated are of the following types only:
 - (1) A four-wheel private passenger motor vehicle that is not used as a public or livery conveyance for passengers, nor rented to others; or
 - (2) Any other four-wheel motor vehicle with a load capacity of 1500 pounds or less that is not rated by the insurer as a commercial motor vehicle whether or not used in the occupation, profession or business of the insured.
- B. “Declination” means either the refusal of an insurer to issue an automobile insurance policy upon receipt of a written nonbinding application or written request for coverage from its agent or an applicant, or the refusal of an agent or broker to transmit to an insurer a written nonbinding application or written request for coverage received from an applicant. For the purposes of this Act, the offering of insurance coverage with a company within an insurance group that is different from the company requested on the nonbinding application or written request for coverage, or the offering of policy coverage or rates substantially less favorable than requested in the nonbinding application or written request for coverage, shall be considered a declination.

- C. “Nonpayment of premium” means the failure of the named insured to discharge an obligation in connection with the payment of premiums on policies of automobile insurance subject to this Act, whether the payments are directly payable to the insurer or its agent or indirectly payable under a premium finance plan or extension of credit.
- D. “Renewal” or “to renew” means the issuance and delivery by an insurer at the end of a policy period of a policy superseding a policy previously issued and delivered by the same insurer, or the issuance and delivery of a certificate or notice extending the term of an existing policy beyond its policy period or term. For the purposes of this Act, any policy written for a period or term of less than six (6) months or any policy with no fixed expiration date shall be considered as if written for a policy period or term of six (6) months.
- E. “Termination” means either a cancellation or nonrenewal of automobile insurance coverage in whole or in part. A cancellation occurs during the policy term. A nonrenewal occurs at the end of the policy term as set forth in Subsection A. An insurer’s substitution of insurance upon renewal which results in substantially equivalent coverage shall not be considered a termination.

Drafting Note: Depending on whether the term “insurer” is normally understood to mean an individual licensed company or an affiliated group of companies, states may wish to add the following sentence in order to permit certain transfers of policyholders between companies in the same group without requiring a formal notice of nonrenewal accompanied by an offer to issue a substantially similar policy in another company in the group: “For purposes of this Act, the transfer of a policyholder between companies within the same insurance group shall be considered a termination only if the transfer results in policy coverage or rates substantially less favorable to the insured.”

Section 3. Notifications and Reasons for a Declination or Termination

- A.
 - (1) Except as provided in Paragraph (2) of this subsection, upon declining an application or written request for an automobile insurance policy subject to this Act, the insurer, agent or broker making the declination shall either provide the insurance applicant with the specific reasons in writing for the declination at the time of the declination or advise the applicant in writing that specific written reasons for the declination will be provided within twenty-one (21) days of the timely receipt by the insurer, agent or broker making the declination of the applicant’s written request for the reasons. An applicant’s written request shall be timely under this subsection if received within ninety (90) days of the date of that notice to the applicant.
 - (2) In the event of a declination by an insurer of a risk submitted by an agent or broker on behalf of the applicant, the insurer shall provide the agent or broker with specific written reasons for the declination. In the event the agent or broker is unable to effect insurance for the applicant through an admitted insurer other than a residual market mechanism, the agent or broker shall submit specific written reasons to the applicant for all such declinations.
 - (3) No agent or broker, or an insurer not represented by an agent or broker, shall refuse to provide an insurance application form or other means of making a written request for insurance to a prospective applicant who requests insurance coverage from the agent, broker or insurer.
- B. No insurer shall cancel an automobile insurance policy unless a written notice of cancellation is mailed or delivered to the last known mailing address of the named insured as shown in the records of the insurer at least twenty (20) days prior to the effective date of cancellation, except that when cancellation is for nonpayment of premium, notice shall be mailed or delivered to the named insured at the last known mailing address as shown in the records of the insurer at least ten (10) days prior to the effective date of cancellation. Such notice shall be accompanied by a written explanation of the specific reasons for the cancellation.

- C. No insurer shall refuse to renew an automobile insurance policy unless at least thirty (30) days before the end of a policy period, as described in Section 2D of this Act, the insurer shall deliver or mail to the named insured, at the last known mailing address of the named insured as shown in the records of the insurer, written notice of the insurer's intention not to renew the policy upon expiration of the current policy period. The notice of intention not to renew shall include or be accompanied by a written explanation of the insurer's specific reason or reasons for the nonrenewal. No notice of intention not to renew shall be required where the named insured is given written notice of the insurer's willingness to renew the policy by the mailing or delivering of a renewal notice, bill, certificate or policy. If notice as required by this subsection is not provided, coverage shall be deemed to be renewed under the same terms and conditions for the ensuing policy period, for which the appropriate premium shall be payable, and subject to the provisions of Section 4 of this Act, until the named insured has accepted replacement coverage with another insurer or until the named insured has agreed to the nonrenewal.
- D. Proof of mailing a notice of cancellation or a notice of an intention not to renew, or business records of the notice of the insurer's willingness to renew, shall be retained for a period of one year by the insurer or agent or broker giving notice.

Section 4. Permissible Cancellation

- A. No notice of cancellation of a policy of automobile insurance shall be effective unless it is based upon at least one of the following reasons:
 - (1) Nonpayment of premium;
 - (2) Fraud or material misrepresentation made by or with the knowledge of an insured in obtaining the policy, continuing the policy, or in presenting a claim under the policy;
 - (3) The failure of the named insured, or any operator who resides in the same household or customarily operates an automobile insured under the policy, to make available upon written request from the insurer the insured's driving experience record for the preceding thirty-six (36) months;
 - (4) The named insured or an operator who resides in the same household or customarily operates an automobile insured under the policy has within the policy term or, if the policy is a renewal, during its term or the 180 days immediately preceding its effective date:
 - (a) Had his or her driver's license suspended or revoked; or
 - (b) Has been convicted of or forfeited bail for any action arising out of or in connection with the operation of a motor vehicle, conviction for which is a ground for suspension or revocation of license.

Drafting Note: Insurers should not be required to provide coverage for an operator whose driver's license has been suspended or revoked during the policy term or within six (6) months immediately preceding the effective date of the policy. In some states, insurers are permitted to offer a named driver exclusion which excludes coverage when the insured vehicle is operated by the problem driver but keeps the coverage in effect for other drivers in the household. As a matter of public policy, other states prohibit the use of named driver exclusions, and still other states require the exclusion to be offered whenever an insurer's decision is based on the driving record of some, but not all, of the drivers in a household. The drafting of this permitted reason for cancellation should be consistent with the individual state's policy position concerning named driver exclusions.

- (5) The insured motor vehicle is:
 - (a) So mechanically defective that its operation might endanger public safety;
 - (b) Used in carrying passengers for hire or compensation; however, the use of an automobile for a car pool shall not be considered use of an automobile for hire or compensation;
 - (c) Used in the transportation of flammables or explosives or for an illegal purpose;
 - (d) An authorized emergency vehicle; or

- (e) Altered by an insured during the policy period so as to substantially increase the risk;
 - (6) The named insured moves to a state where the insurer is not licensed to do business;
 - (7) Failure to pay dues or fees where payment of dues or fees is a prerequisite to obtaining or continuing automobile insurance coverage;
 - (8) A determination by the commissioner of insurance that the continuation of the policy would place the insurer in violation of the law or would be hazardous to the interests of policyholders, creditors or the public.
- B. This section shall not apply to a policy of automobile insurance that has been in effect less than sixty (60) days at the time notice of cancellation is mailed or delivered by the insurer unless the policy has been renewed.

Section 5. Terminations/Declinations: Prohibited Reasons

The declination of an application for, or the termination of, a policy of automobile insurance subject to this Act by an insurer, agent or broker is prohibited if the declination or termination is:

- A. Based upon the race, religion, nationality or ethnic group of the applicant or named insured;
- B. Based solely upon the lawful occupation or profession of the applicant or named insured, except that this provision shall not apply to an insurer, agent or broker that limits its market to one lawful occupation or profession or to several related lawful occupations or professions;
- C. Based upon the principal location of the insured motor vehicle unless the decision is for a business purpose that is not a mere pretext for unfair discrimination;
- D. Based upon the age, sex or marital status of an applicant or an insured, except that this subsection shall not prohibit rating differentials based on age, sex or marital status;
- E. Based upon the fact that the applicant or named insured previously obtained insurance coverage through a residual market insurance mechanism; or
- F. Based upon the fact that another insurer previously declined to insure the applicant or terminated an existing policy in which the applicant was the named insured.

Drafting Note: While insurers shall not decline an application or terminate a policy simply because of a previous adverse underwriting decision by another insurer, insurers should not be prohibited from inquiring as to the existence of any previous adverse underwriting decision so long as they also inquire as to the reasons given for these decisions. An insurer may decline an application or terminate a policy based on further information as to the reasons for the previous declination, termination or placement in a residual market mechanism.

Section 6. Enforcement Provisions

- A. **Complaint and Hearing.** Upon a complaint of a person filed within ninety (90) days of a violation of this Act, the commissioner shall determine whether the complaint is reasonably founded. If the commissioner determines that the complaint is reasonably founded, or if the commissioner otherwise has reason to believe that an insurer, agent or broker has engaged in practices that violate this Act and that a proceeding in respect thereto would be in the public interest, the commissioner shall set a date for a public hearing to determine whether a violation of this Act has in fact occurred. The hearing shall be held upon no less than ten (10) days' notice to the person charged and the complainant, if any. The notice shall set forth the specific grounds upon which the complaint is based. If a hearing is based upon a complaint, the hearing shall be set no later than thirty (30) days from the date the complaint was filed. The hearing shall take place before a hearing examiner who shall make a record of the evidence and set forth findings and conclusions.

Once a prima facie violation of this Act has been established, the person charged in the complaint shall have the burden of showing that the termination was based on a reason not prohibited by this Act. The findings of fact determined by the hearing examiner shall be reviewed by the commissioner who shall issue a final order. A petition for rehearing may be filed within thirty (30) days of the final order of the commissioner.

- B. Sanctions. If the commissioner determines in a final order that:
- (1) An insurer has violated Sections 4 or 5 of this Act, the commissioner may require the insurer to:
 - (a) Accept the application or written request for insurance coverage at a rate and on the same terms and conditions as are available to its other risks with similar characteristics;
 - (b) Reinstate insurance coverage to the end of the policy period; or
 - (c) Continue insurance coverage at a rate and on the same terms and conditions as are available to its other risks with similar characteristics.
 - (2) A person has violated any provisions of this Act, the commissioner may:
 - (a) Issue a cease and desist order to restrain the person from engaging in practices that violate this Act;
 - (b) Assess a penalty against the person of up to \$500 for each violation of this Act; or
 - (c) Assess a penalty against the person of up to \$5,000 for each willful and knowing violation of this Act.
- C. Judicial Review. Any person aggrieved by a determination or order of the commissioner under this Act may seek judicial review in the [insert applicable court] Court. Failure of the commissioner to act upon a complaint under this Act within thirty (30) days of the filing of the complaint shall constitute a determination that the complaint was not reasonably founded.

Section 7. Immunity

- A. There shall be no liability on the part of and no cause of action shall arise against:
- (1) The commissioner of insurance;
 - (2) An insurer or its authorized representatives, agents or employees;
 - (3) A licensed insurance agent or broker; or
 - (4) Any person furnishing information to an insurer as to reasons for a termination or declination, for any communication giving notice of or specifying the reasons for a declination or termination or for any statement made in connection with an attempt to discover or verify the existence of conditions that would be a reason for a declination or termination under this Act.
- B. Subsection A above shall not apply to statements made in bad faith with malice in fact.

Section 8. Effective Date

This Act shall take effect on [insert date].

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

1980 Proc. II 22, 26, 908, 918-924 (adopted).