

## IMPROPER TERMINATION PRACTICES MODEL ACT

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### Section 1. Purpose

The purpose of this Act is to protect policyholders from improper terminations of insurance coverage and to set forth standards for the regulation and disposition of terminations of policies or certificates of insurance. Nothing in this Act shall be construed to create or imply a private cause of action for violation of this Act except that a named insured may appeal the termination of the named insured's policy pursuant to Section 16.

### Section 2. Scope

This Act shall apply to all insurers issuing or renewing in this state any policy or certificate of insurance as defined in Section 3I.

### Section 3. Definitions

For the purposes of this Act:

- A. "Cancellation" or "canceled" means the termination of a policy by an insurer prior to the expiration date of the policy.
- B. "Concealed or misrepresented a material fact or circumstance" means falsification or omission of a material fact that, had the insurer known the truth, it would not have insured the risk; would not have issued the policy; would have charged a higher premium, other than an incidental amount, for insuring the risk; or would not have issued a policy in as large an amount or under the same terms.

**Drafting Note:** States may wish to include the words "intentionally or knowingly" in the first sentence before the word "concealed" and modify a similar provision in Section 9B(2).

- C. "Improper termination" means a termination which violates any section of this Act or regulations promulgated thereunder.
- D. "Insurer" means a person, reciprocal exchange, interinsurer, Lloyd's insurer, or other legal entity licensed to engage in the business of insurance in this state.
- E. "Lapse" means a policy which expires by its own terms on the policy expiration date unless premiums are received by the insurer for succeeding policy periods on or before the policy expiration date.

- F. “Nonpayment of premium” means failure of the named insured to discharge, when due, any obligations in connection with the payment of premium. “Premium” means the payment that is due for a policy. “Premium” includes audit premium due on the preceding policy and additional premium due on retrospectively rated policies, but does not include membership dues or other consideration required to be a member of an organization in order to be eligible for the policy.
- G. “Nonrenewal” means the termination of a policy by an insurer at the expiration date of the policy.
- H. “Policy delivered or issued for delivery in this state” shall include but not be limited to all binders of insurance, whether written or oral, and all applications bound for future delivery.
- I. “Policy” or “certificate” means a contract of insurance, except allocated and unallocated annuities, life, accident and health, fidelity, suretyship, mortgage guaranty, boiler and machinery, reinsurance, umbrella if the underlying coverages have been terminated, ocean marine policies, dealers policies written as inland marine insurance under the Nationwide Inland Marine Definition and contracts of insurance procured pursuant to the excess and surplus lines laws of this state. For purposes of this Act, “policy” or “certificate” does not include contracts issued to a commercial insured having:
  - (1) Total insured property values of \$5 million or more;
  - (2) Total annual gross revenues of \$10 million or more; or
  - (3) Total annual premiums in excess of \$25,000 written under a single policy.

**Drafting Note:** States may wish to include a provision allowing the commissioner to adjust these amounts annually by regulation to reflect changes in the Consumer Price Index (CPI).

**Drafting Note:** States that have worker’s compensation laws addressing terminations may wish to exempt worker’s compensation from this Act. States may wish to exclude other coverages from the provisions of this model, including insurance on accounts receivable.

- J. “Producer” means a person who solicits, negotiates, effects, procures, delivers, renews, continues or binds policies of insurance to which this Act applies on risks residing, located or to be performed in this state.
- K. “Renewal” or “to renew” means the issuance and delivery by an insurer of a policy for the same or similar coverage superseding at the end of the policy period a policy previously issued and delivered by the same insurer or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term. A policy shall not be considered “renewed” if the insurer imposes a substantial increase in deductibles or a substantial reduction in coverage at renewal.
- L. “Rescission” or “rescinded” means the unilateral action by an insurer to declare an insurance contract void from its inception as though it never existed.
- M. “Residual market mechanism” means an arrangement, either expressly authorized 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 the voluntary market.
- N. “Termination” or “terminated” means any practice or act by an insurer which has the effect of discontinuing an insurance policy including cancellation, nonrenewal, and rescission.

**Section 4. Termination Provisions**

- A. A policy shall not be delivered or issued for delivery in this state unless it contains provisions setting out the manner in which the policy may be terminated.
- B. If a policy or certificate is used as evidence of financial responsibility for a license or permit, and a statute or regulation requires that notice of termination of the policy or certificate be provided to the government agency that issued the license or permit, the time period for advance notice of the termination shall be the longer of the time period required by this Act or the time period required by the statute or regulation that establishes the financial responsibility requirement.

**Drafting Note:** Some states prohibit revealing the existence of arson or fraud investigations to persons who are targets of these investigations. In these states, it may be appropriate to modify the requirement that the termination notices required by this Act provide specific reasons for termination if there is information available for review by the commissioner alleging that the insured contributed to the loss by arson or fraud. The state may wish to allow a more general reason for the termination to be given in these situations.

**Drafting Note:** A state may require that the termination notices required by this Act also be provided in a language other than English where appropriate.

## **Section 5. Unfair Discrimination in Termination Provisions**

- A. An insurer shall not terminate a policy because of the insured's race, color, creed, national origin, ancestry, gender, sexual orientation or marital status.
- B. An insurer shall not terminate a policy because of the insured's age or disability, or because of the geographic location or age of the insured risk, unless the action is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience.

## **Section 6. Termination of Lines of Insurance**

An insurer shall not terminate all or substantially all of a line of the insurer's business for the purpose of withdrawing from a market in this state without notifying the commissioner of the action, as well as the reasons for the action, at least one year before the termination of any policy due to the withdrawal is effective, unless the insurer has filed a plan of action for the orderly cessation of the insurer's business within a shorter time period and received approval from the commissioner.

## **Section 7. Rescission**

Nothing in this Act limits an insurer's right to rescind a policy if an insured or an applicant for insurance has intentionally or knowingly concealed or misrepresented a material fact or circumstance concerning the risk assumed by the insurer. However, a policy or policy renewal shall not be rescinded after the policy has been in effect for 180 days or one policy period, whichever is greater.

## **Section 8. Notice of Cancellation**

- A. A notice of cancellation shall not be effective unless mailed or delivered by the insurer to the first named insured's last known address. The information contained on the notice of cancellation shall also be either mailed, delivered or electronically transmitted to the producer of record's last known address. The insurer shall maintain proof of mailing of the notice to the first named insured's last known address.
- B. All notices of cancellation of insurance shall be mailed or delivered at least thirty (30) days prior to the effective date of cancellation during the first sixty (60) days of coverage. After the coverage has been effective for sixty-one (61) days or more, or if the policy is a renewal, all notices shall be mailed or delivered at least forty-five (45) days prior to the effective date of cancellation. However, where cancellation is for one of the reasons permitted in Sections 9B or 9C, at least ten (10) days notice of cancellation shall be given. All notices shall clearly state the specific reason or reasons for cancellation.

## **Section 9. Cancellation—Reasons**

- A. After a policy has been in effect for sixty (60) days or more, or if the policy is a renewal, it may be canceled with forty-five (45) days notice, for one or more of the following reasons:
  - (1) An insured violated any terms or conditions of the policy to the detriment of the insurer;
  - (2) The risk originally accepted has increased, and, if the increased risk had been present at the time the policy was originally issued, the insurer would have increased the premium originally charged, other than an incidental amount, or declined to issue the policy;
  - (3) A determination by the commissioner that continuation of the policy would threaten the financial solvency of the insurer;
  - (4) A determination by the commissioner that the continuation of the policy could place the insurer in violation of the insurance laws of this state; or

- (5) The failure to repair or rehabilitate an insured property or relevant portion thereof within a reasonable period of time as required in Section 10.
- B. After a policy has been in effect for sixty (60) days or more, or if the policy is a renewal, it may be canceled with ten (10) days notice, for one or more of the following reasons:
- (1) Nonpayment of premium;
  - (2) The policy was obtained because an insured concealed or misrepresented a material fact or circumstance;
  - (3) With regard to a policy of automobile insurance, the driver's license of any insured or any driver who lives with the insured or who customarily uses a covered vehicle has been suspended or revoked or is under a suspension or revocation for moving violations at any time during the twelve-month period immediately preceding the notice of cancellation; or

**Drafting Note:** States with named driver exclusion laws or provisions may wish to include a similar provision in this subsection.

- (4) Fraud in the submission of a claim.

**Drafting Note:** If there are provisions in other statutes setting forth other prohibited reasons for cancellation and a state wishes to continue those other prohibited reasons, reference to those provisions should be made in this subsection so that cancellations based on these other prohibited reasons will be subject to the procedures of this Act.

- C. In addition to the reasons stated in Sections 9B(1), (2) and (4), a property insurance policy, or a policy renewal, may be canceled with ten (10) days notice if the insured property is found to have one or more of the following conditions:
- (1) Permanent repairs have not commenced within sixty (60) days after satisfactory adjustment of a loss, unless the delay is beyond the insured's control or the failure to repair does not increase the risk assumed;
  - (2) Buildings that have been unoccupied sixty (60) consecutive days, or vacant thirty (30) consecutive days, except buildings that have a seasonal occupancy, buildings that are actively advertised as "for rent," or buildings that are undergoing construction, repair or reconstruction, and are properly secured against unauthorized entry;
  - (3) Buildings on which, because of their physical condition, there is an outstanding order to vacate or an outstanding demolition order; or that have been declared unsafe in accordance with applicable law; or
  - (4) The risk originally accepted has increased to the degree that it would have increased the premium charged, other than an incidental amount, or affected the insurer's decision to issue the policy.
- D. During the first sixty (60) days of a policy, the policy shall not be canceled for the reason that the insured has made a valid claim.

#### **Section 10. Time for Repairs or Rehabilitation Prior to Cancellation**

Notwithstanding Section 9, after a property insurance policy covering property that is capable of being repaired or rehabilitated has been in effect for sixty-one (61) days or more, except in the situation of a constructive total loss, an insurer shall not give notice of cancellation based on the condition of the property without allowing the first named insured a reasonable period of time in which to repair defects in the insured property or relevant portion of the property. The repair or rehabilitative efforts shall be in compliance with applicable local building codes. The notice of need for repair or rehabilitation shall be from the insurer and shall be itemized and specific with regard to the defect to be repaired and the time period in which to complete the repairs. The notice may be sent to the first named insured at any time during the policy term.

**Section 11. Refund of Premium Upon Cancellation**

- A. A policy shall not be canceled on other than a pro-rata basis unless the policy form provides for another basis.
- B. A producer shall not recommend, suggest or advise the insured to request cancellation of any policy, if the request will cause the policy to be canceled on other than a pro-rata basis, unless the producer first advises the insured in writing of the additional cost of the cancellation.

**Section 12. Notice of Renewal or Nonrenewal**

- A. At least forty-five (45) days before the end of the policy term, an insurer shall mail or deliver to the last known address of the first named insured a renewal policy, an offer to renew the current policy or a notice of nonrenewal. The information in the renewal policy, the offer to renew or the notice of nonrenewal shall be mailed, delivered or transmitted electronically to the producer of record's last known address. Proof of mailing or delivery to the first named insured's last known address shall be maintained by the insurer.
  - (1) A notice of nonrenewal shall clearly state the specific reason or reasons for the nonrenewal.
  - (2) An offer to renew the policy shall state the renewal premium and the date the premium is due. The renewal premium shall be based on the known exposure as of the date of the offer to renew. The premium on the renewal policy may be subsequently amended to reflect any change in exposure not considered in the offer to renew.
  - (3) If the renewal premium is not received by the due date or the policy expiration date, whichever is later, the policy lapses.
- B. If an insurer fails to comply with the notice requirements of this section, the policy shall be extended on the same terms and conditions for another policy term or until the effective date of similar insurance procured by the insured, whichever is earlier. The insurer may make continued coverage contingent upon the payment of premium.
- C. Any policy with a policy period or term of less than six (6) months or any policy with no fixed expiration date shall be considered as if written for successive policy periods or terms of six (6) months for the purpose of any nonrenewal or renewal notice required by this Act.
- D. Renewal of a policy does not constitute a waiver or estoppel with respect to grounds for cancellation that existed before the effective date of the renewal.
- E. A written binder of insurance issued for a term of sixty (60) days or less, which contains on its face a specific inception and expiration date and which has been furnished to the insured, shall not be subject to the nonrenewal requirements of this Act.
- F. An insurer shall not fail to renew a policy that has been in effect for at least five (5) years unless:
  - (1) The nonrenewal is based on at least one of the reasons set forth in Section 9 of this Act; or
  - (2) A notice of nonrenewal is mailed or delivered to the last known address of the first named insured at least ninety (90) days before the end of the policy term, subject to all other provisions in this Section.

**Section 13. Liability of Insurers or Producers Regarding Statements Made in Notices or Information**

- A. For a communication giving notice of or specifying the reasons for a 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 termination under this Act, there shall be no liability on the part of and no cause of action shall arise against:
  - (1) An insurer or its authorized representatives, producers or employees;

- (2) A licensed insurance producer or broker; or
- (3) A person furnishing information to an insurer as to reasons for a termination or declination.

B. Subsection A of this section shall not apply to statements not made in good faith.

**Section 14. Notice to Insured as to Eligibility for Residual Market Mechanism Coverage**

- A. If a policy is canceled for a reason other than nonpayment of premium or is nonrenewed, and similar coverage is available through a residual market mechanism in this state, the insurer shall notify the first named insured of the insured's possible eligibility for insurance from the residual market mechanism.
- B. The notice required by Subsection A of this section shall accompany or be included in the notice of cancellation or nonrenewal.
- C. If the residual market mechanism limits its operations to a geographic area or areas within this state, the notice required by Subsection A of this section shall not be required if the risk is not located in the geographic area or areas served by the residual market mechanism.

**Section 15. Notice; Right to Appeal**

Insurers shall include a statement prominently displayed in bold-face type on all notices of termination advising the insured of the insured's right to appeal the termination to the commissioner.

**Section 16. Improper Termination—Appeal**

- A. A policy that has been canceled for one or more of the reasons permitted by Section 9A or nonrenewed may be appealed by the named insured by giving written notice to the commissioner at least twenty-five (25) days prior to the effective date of the termination. The notice shall clearly state the reason or reasons for the appeal.
- B. A policy that has been canceled for one or more of the reasons permitted by Section 9B or 9C may be appealed by the named insured by giving written notice to the commissioner prior to the effective date of the cancellation. The notice shall clearly state the reason or reasons for the appeal.
- C. If a named insured timely appeals the termination of a policy, coverage under that policy shall remain in effect until the effective date specified in the order entered by the commissioner in the matter, pursuant to Section 16E or 16F. Coverage shall only remain in effect, however, so long as the named insured pays the premium due on the policy.
- D. The commissioner may decide not to hold a hearing if the commissioner determines:
  - (1) The appeal was not made in good faith;
  - (2) There is no violation of the Act even if the facts alleged by the named insured to support the appeal are true; or
  - (3) The notice of termination, on its face, does not comply with the provisions of the Act.
- E. If the commissioner does not hold a hearing, the commissioner shall issue a written order within ten (10) days after receipt of the named insured's appeal that decides the matter.
- F. If the commissioner decides to hold a hearing, the hearing shall be held within twenty (20) days after receipt of the named insured's appeal. The commissioner shall give the parties at least ten (10) days notice of the hearing. Within twenty (20) days after the conclusion of the hearing, the commissioner shall issue a written order that decides the matter.

- G. When the commissioner issues a written order that decides an appeal, if the commissioner finds for the named insured, the commissioner shall order the insurer to rescind its notice of termination. If the commissioner finds for the insurer, the commissioner shall order that the termination be effective:
- (1) Twenty (20) days from the date of the order, when the policy was canceled for one of the reasons permitted by Section 9A or nonrenewed; or
  - (2) Ten (10) days from the date of the order when the policy was canceled for one of the reasons permitted by Sections 9B or 9C.
- H. Costs of the hearing may be assessed against the losing party but shall not exceed \$50.

**Section 17. Proof of Mailing**

- A. Unless expressly otherwise provided, a notice of termination required to be given to a person by this Act may be given by mailing notice, postage prepaid, addressed to the person to be notified, at the person's last known address.
- B. Where proof of mailing of notice to a person is required, the following constitute proof of mailing:
- (1) A true copy of the notice mailed which may be a physical duplicate of the original notice reproduced through photocopy, carbon copy or generation from electronic records;
  - (2) A declaration made under penalty of perjury (as defined in Section [insert section] of the Code) attesting to the accuracy of the copy; and
  - (3) One of the following evidencing that notice was mailed:
    - (a) A declaration made under penalty of perjury (as defined in Section [insert section] of the Code) or an affidavit (as defined in Section [insert section] of the Code) executed by the person who deposited the notice into the mail, setting forth the date notice was mailed and the name and last known address of the person to whom notice was mailed;
    - (b) A document or list of mailed letters setting forth the date notice was mailed and the name and last known address of the person to whom notice was mailed, accompanied by either a declaration made under penalty of perjury (as defined in Section [insert section] of the Code) or an affidavit (as defined in Section [insert section] of the Code) executed by the person who deposited the notice into the mail, attesting to the accuracy of the document;
    - (c) A United States Certificate of Mailing (U. S. Post Office Form 3817 or 3877) for the notice mailed;
    - (d) A United States Postal Service certified mailing receipt, signed by or on behalf of the person to whom the notice is addressed; or
    - (e) An evidence of receipt by or on behalf of the person to whom the notice is addressed from a reputable mail delivery service.

**Section 18. Improper Termination Practice—Definition; Hearing**

- A. It is an improper termination practice for any insurer to commit any acts in violation of this Act that are:
- (1) Committed flagrantly and in conscious disregard of this Act or any rules promulgated under this Act; or
  - (2) Committed with such frequency as to indicate a general business practice to engage in that type of conduct.

- B. Whenever the commissioner finds that an insurer doing business in this state is engaging in any improper termination practice as defined in Section 18A and that a hearing on the matter would be in the public interest, the commissioner shall issue and serve upon the insurer a notice of hearing, which shall contain a statement of charges, a location for the hearing, and a hearing date that shall be not less than ten (10) days nor more than twenty (20) days from the date of the notice.

**Section 19. Improper Termination Practice—Penalty**

- A. If, after a hearing pursuant to Section 18 of this Act, the commissioner finds that the insurer has engaged in an improper termination practice, the commissioner shall reduce the findings to writing and shall issue and cause to be served upon the insurer charged with the violation, a copy of the findings and an order requiring the insurer to cease and desist from engaging in the act or practice and the commissioner may, at the commissioner's discretion, order one or both of the following:

- (1) Payment of a civil penalty of not more than \$1,000 for each violation, but not to exceed an aggregate civil penalty of \$100,000, unless the violation was committed flagrantly and in conscious disregard of this Act, in which case the civil penalty shall not be more than \$25,000 for each violation not to exceed an aggregate civil penalty of \$250,000; or
- (2) Suspension or revocation of the insurer's license if the insurer knew or reasonably should have known that it was in violation of this Act.

**Section 20. Separability Provision**

If any provision of this Act, or the application of the provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of the provision to person or circumstances other than those as to which it is held invalid, shall not be affected.

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

*1995 Proc. 3rd Quarter 5, 19, 143, 155-161 (adopted).*