

Comments of the Center for Economic Justice
March 9, 2018

REAL PROPERTY LENDER-PLACED INSURANCE MODEL ACT

Table of Contents

Section 1.	Purpose
Section 2.	Scope
Section 3.	Definitions
Section 4.	Term of Insurance Policy
Section 5.	Calculation of Coverage and Payment of Premiums
Section 6.	Prohibited Practices
Section 7.	Non-Circumvention
Section 8.	Evidence of Coverage
Section 9.	<u>Disclosure to the Mortgagor</u>
<u>Section 10.</u>	Filing, Approval and Withdrawal of Forms and Rates
Section 11 0.	Enforcement
Section 12 1.	Regulatory Authority
Section 13 2.	Judicial Review
Section 14 3.	Penalties, <u>Private Cause of Action</u>
Section 15 4.	Severability Provisions
Section 16 5.	Effective Date

Section 1. Purpose

The purposes of this Act are to:

- A. Promote the public welfare by regulating lender-placed insurance on real property;
- B. Create a legal framework within which lender-placed insurance on real property may be written in this state;
- C. Help maintain the separation between (i) lenders/servicers, and (ii) insurers/insurance producers; and
- D. Minimize the possibilities of unfair competitive practices in the sale, placement, solicitation, and negotiation of lender-placed insurance.
- E. Address the problems arising from reverse competition in lender-placed insurance markets; and
- F. Ensure that the lender or servicer has no financial interest in the placement of lender-placed insurance other than the protection of the property serving as collateral for the loan.

Discussion: The problems with LPI are well documented – inflated charges by lenders/servicers to borrowers because of inflated premium charges by LPI insurers to lenders/servicers because of kickbacks and considerations unrelated to the provision of LPI included in LPI rates. These kickbacks have taken a variety of forms – some unique to LPI and some common to other insurance

sold in reverse competitive markets – including, for example, phony “commissions” to servicer-affiliated agents, pre-paying ‘commissions” by purchasing the servicer-affiliated agency, the provision of free- or below-cost servicers unrelated to the provision of LPI and/or activities that are servicer responsibilities, captive reinsurance, servicer/lender-owned LPI insurance, “reimbursement” of “implementation costs” and more. Despite specific prohibitions against kickbacks LPI insurers and managing general agents continue to invent new ways to provide kickbacks to lenders/servicers as the means to acquire or maintain the LPI business. Under the LPI industry model, these kickbacks are paid for through inflated LPI premium charges to lenders/servicers who, in turn, pass along these same charges and misrepresent them as LPI charges, when the charges that are passed along are far greater than the cost of providing LPI because the charges include kickbacks. The result is that a small percentage of borrowers pay for kickbacks to lenders/servicer and/or pay to subsidize lender/servicer activities the cost of which should be borne by all borrowers in the lender/servicer portfolio.

Establishing specific prohibitions with carve-outs for various activities that LPI insurers falsely claim are legitimate LPI expenses has simply led to new types of kickback mechanisms or relabeling of activities. We saw this when LPI insurers gamed the original NY DFS regulation, prompting the NY DFS to revise the regulation to achieve the goal of stopping kickbacks. We saw this after LPI insurers agreed in class action settlements to stop paying commissions and LPI insurers then simply pre-paid the commissions by purchasing the servicer-affiliated agency.

The fundamental consumer protection and the only way to ensure fair and competitive markets is to explicitly recognize and address the reverse-competitive market structure of LPI. Proposed purpose E explicitly recognizes the the reverse competitive market structure of LPI while proposed purpose F addresses the fundamental problem.

Section 2. Scope

- A. This Act applies to insurers and insurance producers engaged in any transaction involving lender-placed insurance as defined in this Act.
- B. All lender-placed insurance written in connection with mortgaged real property, including manufactured and mobile homes, is subject to the provisions of this Act, except:
 - (1) Transactions involving extensions of credit primarily for business, commercial or agricultural purposes;
 - (2) Insurance offered by the lender or servicer and elected by the mortgagor at the mortgagor’s option;
 - (3) Insurance purchased by a lender or servicer on real estate owned property; and
 - (4) Insurance for which no specific charge is made to the mortgagor or the mortgagor’s account.

~~**Drafting Note:** Nothing in this Act shall be construed to create or imply a private cause of action for violation of this Act, and the commissioner shall have authority to enforce this Act subject to the laws of this state. Furthermore, nothing in this Act shall be construed to extinguish any mortgagor rights available under common law or other state statutes.~~

Discussion: Certain violations of this act – those involving kickbacks or unfair claims settlement practices, for example, should be subject to the states unfair and deceptive practices act and should provide for a private cause of action. The track record of, with a few notable exceptions, state

insurance regulators failing to identify or address abuses in LPI demonstrates the need and reasonableness for a private cause of action. As with other types of insurance, challenges to rate or form approval are precluded through the filed rate doctrine.

Section 3. Definitions

As used in this Act:

A. “Affiliate” shall mean a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the person specified.

B. “Dual-Interest Insurance” means coverage that protects both the lender/servicer’s and mortgagor’s interests and gives both the right to file a claim for benefits under the policy.

Discussion: LPI should always be dual interest coverage to ensure that the homeowner’s interest as well as the lender/servicer’s interest is protected. Dual interest coverage is essential because the interest of the homeowner and the lender/servicer are not always the same.. The attached article and court opinion is graphic evidence why dual interest coverage must be required.

~~B.C.~~ “Implementation expenses” mean those expenses that are demonstrably and directly related to the implementation of the insurer’s or insurance producer’s lender-placed insurance program including but not limited to:

- (1) Identifying servicer and insurer processes and system requirements;
- (2) Allocating and assigning resources to be dedicated to the conversion/implementation to an insurer;
- (3) Developing project documentation;
- (4) Developing the project schedule and controls to manage against the schedule;
- (5) Designing, testing and implementation of information technology systems and interfaces needed for the effectiveness of insurer’s lender-placed insurance program;
- (6) Diverting mail, telephone, facsimile, and web based communications;
- (7) Testing accuracy and quality of project deliverables;
- (8) Training staff on the insurer’s product and processes;
- (9) Establishing specific controls to monitor the insurer’s service to ensure it meets documented requirements; and
- (10) Any similar activity related to the implementation of the insurer’s lender-placed insurance program at program inception.

D. “Individual Lender-Placed Insurance means coverage for an individual vehicle, individual real property or individual personal property evidenced by a certificate

of coverage under a master lender-placed insurance policy or a lender-placed insurance policy for an individual vehicle, real property or personal property

Discussion: There is a need to distinguish individual coverage from a master policy. Some of the proposed provisions are intended to be and are applicable to individual coverage – whether by certificate or individual policy – but which are not applicable for the master policy issued to the lender or servicer. By distinguishing between individual coverage and the master policy (with definitions for both), problems with a number of provisions in the model are removed.

E.C. “Insurance Producer” means a person or entity (or its Affiliates) required to be licensed under the laws of this state to sell, solicit or negotiate insurance.

F. “Insurance tracking” means only those activities related to determining whether a borrower has in place insurance that complies with the loan contract’s requirements to maintain insurance to protect the property serving as collateral for the loan, including:

- (i) Developing and maintaining a database used by lender or servicer to track required insurance on borrowers loans;
- (ii) Maintaining voluntary insurance information on behalf of a lender or servicer, including a lender’s or servicer’s loan servicing system or in a system maintained by a third party contractor for the lender or servicer;
- (iii) Inputting insurance information on new loans into an insurance tracking database or a lender’s or servicer’s loan servicing system;
- (iv) All communications by or on behalf of a lender or servicer with a borrower’s voluntary insurer or voluntary insurance producer;
- (v) All communications by or on behalf of a lender or servicer with a borrower concerning required insurance, including the written notices concerning charging borrower’s account for insurance;
- (vi) Monitoring the due date of and disbursing funds from a borrower’s escrow for voluntary insurance;
- (vii) All call center and other customer service operations related to communications described in sub paragraphs (iv),(v) and (vi) of this paragraph; and
- (viii) A lender or servicer directing an insurer to issue coverage under a lender-placed insurance policy regardless of the degree of automation of such direction to issue coverage.

Insurance tracking” does not include issuing or canceling force-placed insurance as directed by the lender or servicer.

Discussion: Insurance tracking is a servicer responsibility for a number of reasons discussed in prior CEJ comments. Insurance tracking is also a significant expense for the servicer – for which the servicer is paid by the lender or investor. Free- or below-cost insurance tracking has been one of the most substantial kickbacks provided by LPI insurers to lenders and

servicers, with the result that a small percentage of borrowers pay for a portfolio-wide servicer expense. Defining and prohibiting the inclusion of insurance tracking expenses in both LPI rates and servicer's LPI charges to borrowers is one of, if not the most, important consumer protection to be included in this model.

GD. “Insurer” means an insurance company, association or exchange authorized to issue lender-placed insurance in the state of [insert applicable state] (or its Affiliates).

HE. “Investor” means a person or entity (and its Affiliates) holding a beneficial interest in loans secured by real property.

IF. “Lapse” means the moment in time in which a mortgagor has failed to secure or maintain valid and/or sufficient insurance upon mortgaged real property as required by a mortgage agreement.

JG. “Lender” means a person or entity (and its Affiliates) making loans secured by an interest in real property.

KH. ~~“Lender placed insurance” means insurance obtained by a lender or servicer when a mortgagor does not maintain valid and/or sufficient insurance upon mortgaged real property as required by the terms of the mortgage agreement.~~ “Lender-placed insurance” means insurance that is purchased unilaterally by the lender or servicer, who is the named insured, subsequent to the date of the credit transaction, providing coverage against loss, expense or damage to collateralized property as a result of fire, theft, collision or other risks of loss that would either impair a lender’s, servicer’s or investor’s interest or adversely affect the value of collateral covered by limited dual interest insurance. It is purchased according to the terms of the mortgage agreement as a result of the mortgagor’s failure to provide evidence of required insurance. It shall be dual interest insurance.

LI. “Loss ratio” means the ratio of incurred losses to earned premium.

M. “Master Lender-Placed Insurance Policy“ means a group policy issued to a lender or servicer providing coverage for all loans in the lender or servicer’s loan portfolio as needed.

NJ. “Mortgage agreement” means the written document that sets forth an obligation or a liability of any kind secured by a lien on real property and due from, owing or incurred by a mortgagor to a lender on account of a mortgage loan, including the security agreement, Deed of Trust and any other document of similar effect, and any other documents incorporated by reference.

OK. “Mortgage loan” means a loan, advance, guarantee or other extension of credit from a lender to a mortgagor.

PL. “Mortgage transaction” means a transaction by the terms of which the repayment of money loaned or payment of real property sold, is to be made at a future date or dates.

- QM. “Mortgagee” means the person who holds mortgaged real property as security for repayment of a mortgage agreement.
- RN. “Mortgagor” means the person who is obligated on a mortgage loan pursuant to a mortgage agreement.
- SO. “Real Estate Owned Property” means property owned or held by a lender or servicer following foreclosure under the related Mortgage agreement or the acceptance of a deed in lieu of foreclosure.
- TP. “Replacement Cost Value (RCV)” is the estimated cost to replace covered property at the time of loss or damage without deduction for depreciation. RCV is not market value, but is instead the cost to replace covered property to its pre-loss condition.
- U. 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 may control, the placement of the insurance with insurers. Reverse competition tends to increase insurance premiums or prevent the lowering of premiums in order that greater compensation may be paid to persons for such business as a means of obtaining the placement of business. In these situations, the competitive pressure to obtain business by paying higher compensation to these persons overwhelms any downward pressures consumers may exert on the price of insurance, thus causing prices to rise or remain higher than they would otherwise.
- VQ. “Servicer” means a person or entity (and its Affiliates) contractually obligated to service one or more mortgage loans for a Lender or Investor. The term “Servicer” includes entities involved in subservicing arrangements.

Section 4. Term of Insurance Policy

~~A. Lender-placed insurance shall become effective no earlier than the date of lapse of insurance upon mortgaged real property subject to the terms of a mortgage agreement and/or any other state or federal law requiring the same.~~

A. Individual lender-placed insurance shall become effective on the latest of the following dates:

- (1) The effective date of the master lender-placed insurance policy;
- (2) The date of the credit transaction;
- (3) The date prior coverage, including prior lender-placed insurance coverage, lapsed; or
- (4) A later date provided for in the agreement between the lender and insurer.

B. Individual Hender-placed insurance shall terminate on the earliest of the following dates:

- (1) The date insurance that is acceptable under the mortgage agreement becomes effective, ~~subject to the mortgagor providing sufficient evidence of such acceptable insurance;~~
- (2) The date the applicable real property no longer serves as collateral for a mortgage loan pursuant to a mortgage agreement;
- (3) Such other date as specified by the individual policy or certificate of insurance; or
- (4) Such other date as specified by the lender or servicer, or
- (5) The termination date of the master lender-placed insurance policy.

C. ~~An insurance charge shall not be made to a mortgagor for lender placed insurance for a term longer than the scheduled term of the lender placed insurance, nor may an insurance charge be made to the mortgagor for lender placed insurance before the effective date of the lender placed insurance. A lender or servicer may assess a charge to the mortgagor to recoup the premium paid by the lender or servicer to an insurer for individual lender-placed insurance. Such charge shall be the lesser of~~

- (1) the premium paid by the lender or servicer to the insurer for the individual lender-placed insurance coverage; or
- (2) the pro-rata portion of the premium paid by the lender or servicer to the insurer for the individual lender-placed insurance coverage for the period 90 days before the lender or servicer assesses a charge to the borrower through the remaining term of coverage.

~~Discussion: LPI charges to borrowers are by the lender/servicer, not by the LPI insurer. Unlike consumer credit insurance, the LPI charge by a lender/servicer to a borrower is not a pass through. This distinction should be explicit and unambiguous. In addition, since a servicer is responsible for insurance tracking, it is unreasonable to allow a servicer to retroactively charge a borrower for a year or years of coverage because the servicer failed to effectively track insurance. In addition, excessive retroactive charges defeats the purpose of notice requirements to mortgagors because, when excessive retroactive charging occurs, it means that the mortgagor is being charged for coverage for a period prior to the point in time that he or she received notice of a problem with his or her insurance coverage.~~

~~D. Lender-placed insurance shall be dual interest insurance. Single-interest lender-placed insurance is prohibited.~~

Section 5. Calculation of Coverage and Payment of Premiums

A. Any lender-placed insurance coverage, and subsequent calculation of premium, should be based upon the replacement cost value of the property as best determined as follows:

(1) The dwelling coverage amount set forth in the most recent evidence of insurance coverage provided by the mortgagee (“last known coverage amount” or “LKCA”), if known to the lender or servicer available; ~~or~~

~~(2) If the LKCA is unknown, the replacement cost of the property serving as collateral, unless the use of replacement cost is for this purpose is prohibited by other state or federal law; and~~

~~(2)(3) If LKCA is unknown and if the replacement cost is not available or its use prohibited~~~~not available~~, the unpaid principle balance of the mortgage loan.

B. An insurer shall not write lender-placed insurance for which the premium rate differs from that determined by the schedules of the insurer on file with the commissioner as of the effective date of any such policy.

Section 6. Prohibited Practices

A. A lender or servicer shall have no financial interest, directly or indirectly, other than protection of the property serving as collateral for the loan in the purchase or placement of lender-placed insurance.

B. An insurer shall not make any payment or consideration, directly or indirectly, to a lender or servicer other than the provision of lender-placed insurance to secure or maintain or service the lender-placed insurance business of a lender or servicer. This prohibition against kickbacks includes, but is not limited to, the following practices.

(1). An insurer or insurance producer shall not issue lender-placed insurance on mortgaged property that is: (i) owned by or (ii) where servicing is done or (iii) servicing rights are owned by the insurer or insurance producer or an Affiliate of the insurer or insurance producer.

(2) An insurer or insurance producer will not compensate a lender, insurer, investor or servicer (including through the payment of commissions) on lender-placed property insurance policies issued by the insurer. ~~This provision shall not preclude an insurer or insurance producer from reimbursing Implementation Expenses incurred by a lender/servicer. The term “compensate” specifically includes providing anything of any value at or below reasonable market rate/value including but not limited to financing arrangements, real estate, technology and access to systems.~~

(3) An insurer or insurance producer shall not share lender-placed insurance premium or risk with the lender, investor, or servicer that obtained the lender-placed insurance.

~~a.~~ (4) An insurer or insurance producer shall not offer contingent commissions, profit sharing, or other payments dependent on profitability or loss ratios to any person affiliated with a servicer or the insurer in connection with lender-placed insurance.

~~(5)~~ (5) . An insurer shall not provide free or below-cost outsourced services to lenders, investors, or servicers, including, but not limited to, insurance tracking, implementation expenses and loss drafts,—and will not outsource its own

functions to lenders, insurance producers, investors, or servicers on an above-cost basis.

~~(6) An insurer or insurance producer shall not make any payments, including but not limited to the payment of expenses, to a lender, insurer, investor, or servicer for the purpose of securing lender-placed insurance business or related outsourced services. The prohibitions and requirements set forth in this paragraph shall not preclude an insurer or insurance producer from reimbursing implementation expenses incurred by a lender/servicer. Implementation expenses that are reimbursed shall be supported by documentary or other physical or electronic evidence (including but not limited to invoices and work orders) of their expenditure by the lender/ servicer. Such expenses must bear a direct relationship to the implementation of the insurer's or insurance producer's lender placed insurance program at program inception.~~

(7) An insurer shall not purchase or acquire, directly or indirectly, a producer affiliated with a lender or servicer.

Section 7. Non-Circumvention

Nothing in this Act shall be construed to allow an insurance producer or an insurer solely underwriting lender-placed insurance to circumvent the requirements set forth within this Act. Any such part of any requirements, limitations, or exclusions provided herein apply in any part to any insurer or insurance producer involved in lender-placed insurance.

Section 8. Evidence of Coverage

~~A. Lender placed insurance shall be set forth in an individual policy or certificate of insurance. A copy of the individual policy, certificate of insurance, or other evidence of insurance coverage shall be mailed, first class mail, or delivered in person to the last known address of the mortgagor. The policy, certificate or other evidence of insurance coverage must specify, at a minimum, the property covered and coverage amount, the effective date of the coverage, the premium, information as how to terminate the coverage, information necessary to view the complete coverage details, and contact information in the case of a claim. Individual lender-placed insurance shall be set forth in an individual policy or certificate of insurance~~

B. A copy of the individual policy or certificate of insurance coverage, or other evidence of insurance coverage shall be mailed, first class mail, or delivered in person to the last known address of the mortgagor.

C. A cover letter shall accompany the individual policy or certificate of insurance coverage which includes the following disclosures:

1) That the borrower may purchase insurance of the borrower's choice;

2) That the force-placed insurance will be cancelled if the borrower provides evidence of insurance;

- 3) That the force-placed coverage will be cancelled if and when the borrower obtains required insurance;
- 4) That the borrower will receive a refund of the unearned portion of the LPI premium charge; and
- 5) Instructions for submitting evidence of required insurance.

D. The individual policy or certificate of insurance coverage shall include the following information:

- 1) The address and identification of the insured property;
- 2) The coverage amount or amounts if multiple coverages are provided;
- 3) The effective date of the coverage;
- 4) The term of coverage;
- 5) The premium charge for the coverage;
- 6) Contact information for filing a claim; and
- 7) A complete description of the coverage provided.

Section 9. Disclosures to the Mortgagor

- A. A lender or servicer shall not impose a lender-placed insurance charge or related interest and finance charges on a mortgagor unless the lender or servicer
- (1) has a reasonable basis to believe the mortgagor has failed to maintain required insurance;
 - (2).has sent the mortgagor a notice at least 45 days before charging a mortgagor; and
 - (3) has sent the mortgagor a second notice no earlier than 30 days after the first notice and no later than 15 days before charging a mortgagor.
- B. A reasonable basis to believe lender-placed insurance is necessary for a mortgagor is accomplished if:

- (1) The lender mails the notices required by Section 12 A by first class mail to the mortgagor's last known address as contained in the lender's or servicer's records; and
- (2) The notices are substantially similar to the model notices in [track the notices promulgated by the CFPB]

Section 109. Filing, Approval and Withdrawal of Forms and Rates

- A. All policy forms and certificates of insurance to be delivered or issued for delivery in this state and the schedules of premium rates pertaining thereto shall be filed with and approved by the Commissioner prior to use.

Discussion: Given the reverse-competitive nature of LPI markets and the extensive track record of consumer abuses, it is clear that market forces – “competition” – alone cannot protect consumers. The consumers who eventually end up paying for LPI have no market power to discipline LPI insurers or lenders and servicers. Consequently, it is an essential consumer protection to require prior approval of LPI rates and forms.

- B. All insurers shall re-file lender-placed property insurance rates at least once every ~~two~~four (24) years.

Discussion: Four years is far too long a period to review rates for excessiveness. Given the history of LPI insurers inflating rates with expenses for kickbacks to lenders and servicers, consumer protection requires more frequent rate filing than once every four years.

- C. All insurers writing lender-placed insurance shall have separate rates for lender-placed insurance and voluntary insurance obtained by a mortgage servicer on real estate owned property.
- D. Upon the introduction of a new lender-placed insurance program, the insurer shall reference its experience in existing programs in the associated filings. Nothing in this Act shall limit an insurer's discretion, as actuarially appropriate, to distinguish different terms, conditions, exclusions, eligibility criteria or other unique or different characteristics. Moreover, an insurer may, where actuarially acceptable, rely upon models or, in the case of flood filings where applicable experience is not credible, on Federal Emergency Management Agency National Flood Insurance Program data.

- E. No later than April 1st of each year, each insurer shall report to the Commissioner the following information for the prior calendar year:

- (i) Actual loss ratio;
- (ii) Earned premium;
- (iii) Any aggregate schedule rating debit/credit to earned premium;
- (iv) Itemized expenses;
- (v) Paid losses;
- (vi) Loss reserves;
- (vii) Case reserves; and,
- (viii) Incurred but not reported losses.

This report shall be separately produced for each lender-placed policy form, broken out by hazard, wind-only and flood coverages~~program~~ and presented on both an individual-jurisdiction and countrywide basis.

- F. Except in the case of lender-placed flood insurance, to which this paragraph does not apply, if an insurer experiences an annual loss ratio of less than ~~60~~⁶⁵% in any line of lender-placed property insurance for two consecutive years, it shall submit a rate filing (either adjusting its rates or supporting their continuance) to the Commissioner no more than 90 days after the submission of the data required in E. above

Discussion: LPI insurance should have a significantly higher expected and permissible loss ratio than voluntary residential property insurance for several reasons. First, it is a group policy from which individual coverage is issued as needed and as directed by the lender or servicer. Once the agreement with the servicer or lender is in place, there is zero acquisition cost for coverage of loan portfolios that may cover hundreds of thousands or millions of loans and generate LPI coverage for thousands or tens of thousands of borrowers. Second, there is no individual property underwriting for LPI resulting in far lower underwriting costs for LPI than for residential property insurance. LPI underwriting is done at the loan portfolio level based on aggregate characteristics of the loan portfolio. This fact is evidenced by the schedule rating factors utilized by LPI insurers that explicitly consider aggregate loan portfolio characteristics. Given these important distinctions between LPI and residential property insurance, the expected and permissible loss ratio should be at least 80%, which is the basis for our recommendation to change the value in F., above, to 60%. The fact that LPI loss ratios have been half of residential property loss ratios is completely a function of excessive LPI rates caused by inclusion of inappropriate expenses to cover LPI insurer kickbacks to lenders and servicers. Consumer protection requires wringing these inappropriate expenses out of LPI rates by only permitting reasonable and necessary expenses in LPI rates. When only reasonable and necessary expenses are included, an expected and permissible loss ratio of 80% is reasonable and necessary.

- G. Except as specifically set forth in this Section, rate and form filing requirements shall be subject to the insurance laws of this state.

Section 110. Enforcement

- A. The Commissioner shall have all rights and powers to enforce the provisions of this Act as provided by section(s) [insert section(s) number] of the Insurance Code of this state.
- B. The Commissioner shall also have the right and power to enforce those provisions of this Act related to responsibilities and obligations of lenders and servicers under this Act. In enforcing the provisions of this Act related to responsibilities and obligation of lenders and servicers under this Act, the Commissioner shall communicate and coordinate with other regulatory agencies with oversight of the lenders and servicers.

Section 121. Regulatory Authority

The commissioner may, after notice and hearing, promulgate reasonable regulations and orders to carry out and effectuate the provisions of this Act.

Section 132. Judicial Review

- A. A person subject to an order or final determination of the commissioner under Section 8 or Section 13 may obtain a review of the order or final determination by filing in the [insert title] Court of [insert county] County, within [insert number] days from the date of the service of the order, a written petition praying that the order of the commissioner be set aside. A copy of the petition shall be served upon the commissioner, and the commissioner shall certify and file in the court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order or final determination of the commissioner. Upon filing of the petition and transcript, the court shall have jurisdiction of the proceeding and of the questions determined, shall determine whether the filing of the petition shall operate as a stay of the order or final determination of the commissioner, and shall have power to make and enter upon the pleadings, evidence and proceedings set forth in the transcript a decree modifying, affirming or reversing the order or final determination of the commissioner, in whole or in part. The findings of the commissioner as to the facts, if supported by [insert type] evidence, shall be conclusive.

Drafting Note: Insert appropriate language to accommodate to local procedure the effect given the commissioner's determination.

- B. To the extent that the order or final determination of the commissioner is affirmed, the court shall issue its own order commanding obedience to the terms of the order or final determination of the commissioner. If either party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commissioner, the court may order the additional evidence to be taken before the commissioner and to be adduced upon the hearing in the manner and upon the terms and conditions the court may deem proper. The commissioner may modify the findings of fact, or make new findings by reason of the additional evidence so taken, and shall file such modified or new findings that are supported by [insert type] evidence with a recommendation if any, for the modification or setting aside of the original order or final determination, with the return of the additional evidence.

Drafting Note: Insert appropriate language to accommodate to local procedure the effect given the commissioner's determination. In a state where final judgment, order or final determination or decree would not be subject to review by an appellate court, provision therefore should be inserted here.

- C. An order issued by the commissioner under Section 13 shall become final:
- (1) Upon the expiration of the time allowed for filing a petition for review if no petition has been duly filed within that time; except that the commissioner may thereafter modify or set aside the order to the extent provided in Section 13; or
 - (2) Upon the final decision of the court if the court directs that the order of the commissioner be affirmed or the petition for review dismissed.
- D. No order of the commissioner under this Act or order of a court to enforce the same shall relieve or absolve any person affected by the order from liability under any other laws of this state.

Drafting Note: States may delete this section if the substance of it already exists in state law.

| **Section 143. Penalties, Private Cause of Action**

A. With the exception of violations of Sections 4, 5, 6, 8 and 9 of this Act, nothing in this Act shall be construed to create or imply a private cause of action for violation of this Act, and the commissioner shall have authority to bring an administrative or judicial proceeding to enforce this Act. Furthermore, nothing in this Act shall be construed to extinguish any mortgagor rights available under common law or other state statutes. This Act creates a private cause of action for violations of Sections 4, 5, 6, 8 and 11 of the Act.

B. An insurer that violates an order of the commissioner while the order is in effect, may after notice and hearing and upon order of the commissioner, be subject at the discretion of the commissioner to either or both of the following:

1. A person signing a false rate filing certification in violation of Section 10 shall be personally subject to a civil penalty of no more than \$250,000, which maximum penalty shall increase annually based on the Consumer Price Index;

2. A person or entity, including a lender, servicer, insurer or producer found by the commissioner in violation of Section 6(A) or 6(B) is subject to a civil penalty commensurate with the violation as determined by the commissioner;

3. For other violations of this Act, payment of a monetary penalty of not more than \$25,000 for each violation which shall increase annually based on the Consumer Price Index, unless the violation was committed flagrantly in a conscious disregard of this Act, in which case the penalty shall not be more than \$250,000 for each violation which shall increase annually based on the Consumer Price Index; and

4. For violations committed flagrantly in a conscious disregard of this Act, suspension or revocation of the insurer's license.

~~A. Payment of a monetary penalty of not more than \$1,000 for each violation, but not to exceed an aggregate penalty of \$100,000, unless the violation was committed flagrantly in a conscious disregard of this Act, in which case the penalty shall not be more than \$25,000 for each violation not to exceed an aggregate penalty of \$250,000; or~~

~~B. Suspension or revocation of the insurer's license.~~

Drafting Note: States may delete or modify this section if the substance of it already exists in state law.

Section 154. Severability Provision

If any provision of this Act, or the application of the provision to any person or circumstance is for any reason held to be invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

| **Section 165. Effective Date**

This Act shall take effect [insert effective date].
