

PROPERTY INSURANCE DECLINATION, TERMINATION AND DISCLOSURE MODEL ACT

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Preamble: The purpose of this Act is to regulate declinations, cancellations and refusals to renew certain policies of property insurance and to require specific reasons for such action.

Section 1. Scope

This Act shall apply to policies of property insurance, other than policies of inland marine insurance and policies of property insurance issued through a residual market mechanism, covering risks to property located in this state that take effect or are renewed after the effective date of this Act and that ensure any of the following contingencies:

- A. Loss of or damage to real property that consists of not more than four (4) residential units, one of which is the principal place of residence of the named insured, or
- B. Loss of or damage to personal property in which the named insured has an insurable interest where:
 - (1) The personal property is used for personal, family or household purposes; and
 - (2) The personal property is within a residential dwelling.

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

Section 2. Definitions

- A. “Declination” means either the refusal of an insurer to issue a property 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 insurance upon different terms than requested in the nonbinding application or written request for coverage shall be considered a declination.
- B. “Nonpayment of premium” means the failure of the named insured to discharge any obligation in connection with the payment of premiums on policies of property 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. “Nonpayment of premium” shall include the failure to pay dues or fees where payment of the dues or fees is a prerequisite to obtaining or continuing property insurance coverage.
- C. “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 purpose of this Act, a policy period or term of less than six (6) months shall be considered a policy period or term of six (6) months and a policy period or term of more than one year or any policy with no fixed expiration date shall be considered a policy period or term of one year.

- D. "Termination" means either a cancellation or nonrenewal of property 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 C. For purposes of this Act, the transfer of a policyholder between companies within the same insurance group shall be considered a termination, but requiring a reasonable deductible, reasonable changes in the amount of insurance or reasonable reductions in policy limits or coverage shall not be considered a termination if the requirements are directly related to the hazard involved and are made on the renewal date for the policy.

Section 3. Notification and Reasons for a Declination or Termination

- A. (1) Except as provided in Paragraph (2) of this subsection, upon declining to insure any real or personal property subject to this Act, the insurer, agent or broker making the declination shall either provide the insurance applicant with a written explanation of the specific reasons for the declination at the time of the declination or advise the applicant that a written explanation of the specific reasons for the declination will be provided within twenty-one (21) days of the time of the receipt of the applicant's written request for an explanation. An applicant's written request shall be timely under this subsection if received within ninety (90) days of the date of notice to the applicant.
- (2) In the event of the declination of the insurer of a risk submitted by an agent or broker on behalf of the applicant, the insurer shall provide the agent or broker with a written explanation of the reasons for the declination. In the event that 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 an explanation in writing to the applicant of all such declinations.
- (3) No agent, broker or 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 requires insurance coverage from the agent, broker or insurer.
- B. A notice of cancellation of property insurance coverage by an insurer shall be in writing, shall be delivered to the named insured or mailed to the named insured at the last known address of the named insured, shall state the effective date of the cancellation and shall be accompanied by a written explanation of the specific reasons for the cancellation.

Drafting Note: No time period for the effective date of a cancellation is included in this subsection because states may already have time periods specified in their insurance codes. In addition, a legislatively mandated time period for the effective date of a cancellation would encourage fraud if too long or place undue burdens on policyholders if too short. Finding an appropriate balance between these competing considerations is extremely complex. For those states that may desire a specified time period, however, the states may wish to consider that the cancellation of a property insurance policy which occurs within 60 days of the date of issuance be effective 14 days from the receipt of notice of cancellation, while the cancellation of a property insurance policy which occurs more than 60 days after the date of issuance be effective 30 days from the receipt of notice of cancellation.

- C. No insurer shall refuse to renew a property insurance policy unless at least thirty (30) days before the end of the policy period, as described in Section 2A of this Act, the insurer shall deliver or mail to the named insured, at the last known address of the named insured, 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 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 for the ensuing policy period upon payment of the appropriate premium under the same terms and conditions, 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.

Proof of mailing a notice of intention not to renew or business records of the notice of the insurer's willingness to renew shall be retained for a period of not less than one year by the insurer or agent or broker giving notice.

Section 4. Permissible Cancellations

After coverage has been in effect for more than sixty (60) days or after the effective date of a renewal policy a notice of cancellation shall not be issued unless it is based on at least one of the following reasons:

- A. Nonpayment of premium;
- B. Discovery of fraud or material misrepresentation made by or with the knowledge of the named insured in obtaining the policy, continuing the policy, or in presenting a claim under the policy;
- C. Discovery of willful or reckless acts or omissions on the part of the named insured that increase a hazard insured against;
- D. The occurrence of a change in the risk that substantially increases a hazard insured against after insurance coverage has been issued or renewed;
- E. A violation of any local fire, health, safety, building or construction regulation or ordinance with respect to an insured property or the occupancy thereof that substantially increases any hazard insured against;
- F. A determination by the commissioner of insurance that the continuation of the policy would place the insurer in violation of the insurance laws of this state;
- G. Real property taxes owing on the insured property have been delinquent for two (2) or more years and continue delinquent at the time notice of cancellation is issued.

Section 5. Termination and Declinations: Prohibited Reasons

The declination or termination of a policy of property 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, ethnic group, age, sex or marital status 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 age or location of the residence of the applicant or named insured unless that decision is for a business purpose which is not a mere pretext for unfair discrimination;
- D. 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;
- E. Based upon the fact that the applicant or named insured previously obtained insurance coverage through a residual market insurance mechanism.

Section 6. Enforcement Provisions

- A. **Complaint and Hearing.** Upon a complaint of a person filed within ninety (90) days of any 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 violation 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 other risks similarly situated;
 - (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 other risks similarly situated;
 - (2) Any 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. **Civil Liability and Actions.**
- (1) If the commissioner determines in a final order that an insurer has violated Sections 4 or 5 of this Act, the applicant or named insured aggrieved by the violation may bring an action in a court of competent jurisdiction in this state to recover from the insurer any loss, not otherwise recovered through insurance, that would have been paid under the insurance coverage that was declined or terminated in violation of this Act.
 - (2) Any amount recovered under Paragraph (1) above shall not be duplicative of any recovery obtained through the exercise of any other statutory or common law cause of action arising out of the same occurrence. No action under this section shall be brought two (2) years after the date of a final order of the commissioner finding a violation of Section 4 or 5 of this Act.
- D. **Judicial Review.** A person aggrieved by any determination or order of the commissioner under this Act may seek judicial review in the proper 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).

1979 Proc. II 31, 34-35, 525, 548-552 (adopted).

1980 Proc. I 33-34, 39, 669, 672 (amended).