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National Council of Insurance Legislators (NCOIL)

Private Flood Insurance Model Act

**Sponsored by Rep. David Santiago (FL) and Sen. Vickie Sawyer (NC)*

**Discussion Draft as of April 8th, 2020. To be discussed during the Special Committee on Natural Disaster Recovery Interim Conference Call on May 1st, 2020.*

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Section 1. Title

This Act shall be known as the Private Flood Insurance Model Act.

Section 2. Purpose

In an effort to provide protection of lives and property from the peril of flood, this legislation is designed to encourage a robust private flood insurance market to provide consumer choices and alternatives to the existing National Flood Insurance Program (NFIP).

Section 3. Definitions

For purposes of this Act:

- (a) “Authorized Insurer” means an insurer that is authorized by the [State entity for regulating insurance] to write insurance under a certificate of authority issued by the [State entity for regulating insurance] to transact insurance in this state.
- (b) “National Flood Insurance Program” means the program of flood insurance coverage and floodplain management administered under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et. seq) and applicable federal regulations promulgated in Title 44 of the Code of Federal Regulations.

Section 4. Rates

- (a) Rates for flood insurance coverage established pursuant to this paragraph are not subject to prior approval by the [state entity for regulation of insurance]. An insurer must attest that the rates are based on actuarial data, methodologies, standards and guidelines relating to flood that are not excessive, inadequate, or unfairly discriminatory. The [state entity for regulation of insurance] may audit an insurer’s flood rates to ensure compliance with state laws and regulations.
- (b) An insurer may file and/or notify the [state entity for regulation of insurance] of any change to such rates within 30 days after the effective date of the change. The notice must include the name of the insurer and the average statewide percentage change in rates. Actuarial data with regard to such rates for flood coverage must be maintained by the insurer for 2 years after the effective date of such rate change.

Section 5. Forms

The [State entity for regulating insurance] may require, through the application of the State’s existing regulatory system, that an insurer file the forms for this coverage and that an authorized insurer may issue an insurance policy, contract, or endorsement that at least meets the private flood insurance requirements as specified in 42 U.S.C. s. 4012a(b).

Section 6. Duties of Insurer

- (a) Authorized insurers must notify the [State entity for regulating insurance] of plans to sell private flood insurance products in accordance with the state’s rate filing laws at least 30 days before writing flood insurance in this state; and

(b) File a plan of operation and financial projections or revisions to such plan.

Section 7. Duties of Producer

A producer must:

(a) notify the applicant of the existence of the NFIP and private market alternatives for flood insurance coverage;

(b) inform the applicant that a homeowner's property insurance policy, unless endorsed for flood insurance coverage, does not include coverage for the peril of flood; and

(c) inform the applicant that unless flood insurance is purchased, the applicant has declined flood coverage.

A surplus lines broker may place a policy or endorsement providing flood insurance coverage to an eligible surplus lines insurer in accordance with [insert applicable state statute authorizing a surplus lines licensee to place coverage].

It shall be a best practice for producers to maintain in their records, written or electronic evidence, to be signed by the applicant, acknowledging (a) through (c) above. There is no specific, prescribed format for the producer documentation. This section is to ensure that the interaction between the insurance producer and customer occurred and that producer documentation of the consumer's flood insurance choice is documented.

Section 8. Other Provisions

(a) With respect to the regulation of flood coverage written in this state by authorized insurers, this section supersedes any other provision in the State Insurance Code in the event of a conflict.

(b) If federal law or rule requires a certification of a private flood insurance policy by the [state entity for regulation of insurance] as a condition of qualifying for federal disaster assistance, the Executive of the [state entity for regulation of insurance] may provide the certification, and such certification is not subject to review under the State's Administrative Procedures Act.

(c) An authorized insurer offering flood insurance may request the [state entity for regulation of insurance] certify that a policy, contract, or endorsement provides coverage for the peril of flood which equals or exceeds the flood coverage offered by the NFIP.

(d) The authorized insurer or its producer may reference or include a certification under paragraph (c) in advertising or communications with an producer, a lending institution, an

insured, or a potential insured only for a policy, contract, or endorsement that is certified under this subsection. The authorized insurer may include a statement that notifies an insured of the certification on the declarations page or other policy documentation related to flood coverage certified under this subsection.

(e) An insurer or producer who knowingly misrepresents that a flood policy, contract, or endorsement is certified under this subsection commits an unfair or deceptive act under State Unfair Trade Practices Act.

Section 9. Rules

The [state entity for regulation of insurance] may adopt rules to implement this law.

Section 10. Effective Date

This Act shall take effect _____.