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National Council of Insurance Legislators (NCOIL)

Private Primary Residential Flood Insurance Model Act

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

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**To be considered during the meeting of the NCOIL Special Committee on Natural Disaster Recovery on September 24, 2020*

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Section 1. Title

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

Section 2. Purpose

To provide protection of lives and property from the peril of flood, this legislation is designed to encourage a robust private primary residential 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.

(c) “Primary residential flood insurance” means an insurance policy covering losses from flood to residential property, other than commercial property, written in this State by any insurer authorized to do business that is not written to apply coverage in excess of the coverage provided under another flood insurance policy, whether issued by a private insurer or the National Flood Insurance Program.

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’s ~~rates~~ must attest that the rates are ~~be~~ 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 shall file with the [State entity for regulation of insurance] all rates and any change to such rates within 30 days after the effective date. The notice of a rate change 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.

Drafting Note: A “use and file” rate filing is used in this section. A State may choose to apply a “file and use” standard instead.

Section 5. Forms

The [State entity for regulating insurance] may require, through the application of the State's existing regulatory system:

- (a) that an insurer file the forms for primary residential flood insurance coverage;
- (b) that an authorized insurer may issue an insurance policy, contract, or endorsement; and,
- (c) for residential properties required to have flood insurance that are in a Special Flood Hazard Area designated by the Federal Emergency Management Agency, that the coverage at least meets the private flood insurance requirements as specified in 42 U.S.C. § 4012a(b) and applicable federal regulations in document 84 FR 4953, effective July 1, 2019.

Drafting Note: In the interest of facilitating the growth of the private flood market, the intent of this section is to ensure that States do not impose greater filing requirements for private flood insurance form filings than the State requires for other property lines of insurance. ~~Further~~ However, States may also wish to consider further streamlining the filing requirements for ~~personal and~~ commercial flood insurance to enhance insurers' ability to develop private flood policies and endorsements that would provide consumers with choices when compared to the protection provided by the National Flood Insurance Program.

Section 6. Duties of Insurer to Provide Regulatory Notice of Intent to Transact Residential Primary Flood Insurance

- (a) Authorized insurers must notify the [State entity for regulating insurance] of plans to sell primary residential flood insurance products in accordance with the State's rate filing laws but at least 30 days before writing such flood insurance in this State; and
- (b) File a plan of operation and financial projections or material revisions to such plan.

Section 7. Notice to Consumers

(a) If ~~an~~ a consumer currently has no coverage under the ~~National Flood Insurance Program~~, before placing the consumer applicant with private flood insurance, the consumer must be informed of the existence of the NFIP.

(b) All consumers covered by subsection 7(a) as well as consumers who currently have that the coverage under the National Flood Insurance Program must be informed that the coverage under the NFIP may be provided at a subsidized rate and that the full-risk rate for flood insurance may apply to the property if the applicant later seeks to reinstate coverage under the program. The insurance producer, surplus lines broker, or the insurer upon its election or if there is no producer or broker must provide such notice.

(c**b**) This section (7) only applies if the applicant lives in a Special Flood Hazard Area. This section automatically sunsets if federal legislation is enacted allowing the insured to switch between private flood insurance and NFIP coverage without risk of penalty.

Section 8. Cancellation and Nonrenewal Notice

(a) Notice of cancellation or nonrenewal, other than for nonpayment of premium, as allowed by State statute, shall be made and provided in compliance with [applicable State law] but at least 45 days before the cancellation or nonrenewal of private flood insurance coverage to the insured.

(b) Notwithstanding (a) above, notice of cancellation for nonpayment of premium, or fraud or misrepresentation in the application, shall be made and provided in compliance with [applicable State law].

Drafting Note – The notice described must meet the delivery and other requirements established under [insert reference to the provisions of the State code addressing cancellation and nonrenewal notice requirements]. This section is intended for States that have cancellation and nonrenewal notice requirements, for other than nonpayment of premiums, that mandate the delivery of such notices fewer than 45 days before cancellation or nonrenewal of a policy but is not necessary in other States.

Section 9. Surplus Lines Placements

[Applicable State diligent effort law] shall not apply to flood coverage under an insurance policy issued by an eligible surplus lines insurer unless and until the Commissioner certifies in a bulletin or order that the admitted private flood insurance market is adequate.

Drafting Note – States may wish to consider sunseting this section after a specified period of time.

Section 10. Other Provisions.

- (a) [Residual Market Mechanism] Participation. Writing private flood insurance does not constitute participation in the property insurance market for purposes of determining participation in the [insert name of State residual market program] under [insert citations of State law requiring insurers writing property insurance in the State to participate in the residual risk pool].

Drafting Note: Appropriate reference should be made to FAIR plans, wind and beach pools, and related entities.

- (b) Filings Open to Inspection. All rates, supplementary rate information, and any supporting information filed under this Act shall be open to public

inspection upon disposition, except information marked and accepted by the Commissioner as confidential, Trade Secret, or proprietary by the insurer or filer in accordance with (statutory reference for confidentiality requirements). Copies may be obtained from the commissioner upon request and upon payment of a reasonable fee.

(c) 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.

(d) An insurer may certify that the insurance policy meets the definition of “private flood insurance,” as specified in 42 U.S.C. § 4012a(b)(7) and applicable federal regulations.

(e) It is the intent of the legislature that nothing in this law is intended to restrict the use of existing filings by an insurer or limit ability of private insurers to provide flood insurance coverage of any type not addressed herein.

~~NAMIC Requested Drafting Note: Because the peril of flood is both parcel specific and frequently catastrophic, policymakers should consider the following additional flexibility provision: Notwithstanding any other law or regulation, and consistent with the purpose of encouraging a robust private flood insurance market, private flood insurer may consider, without restriction, claim history or loss experience, including weather related loss or catastrophe losses, of a policyholder or of a previous property owner.~~

Section 11. Rules

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

Section 12. Effective Date

This Act shall take effect _____.