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NCOIL SPECIAL COMMITTEE ON RACE IN INSURANCE UNDERWRITING HOLDS VIRTUAL INTERIM MEETING: ADOPTED DEFINITION OF “PROXY DISCRIMINATION”

*Also Discussed Next Steps for Committee’s April Meeting where Discussions Will Continue on Specific
Rating Factors and Disparate Impact within the Insurance Industry.*

Manasquan, NJ – The National Council of Insurance Legislators (NCOIL) Special Committee on Race in Insurance Underwriting (Committee) held an interim virtual meeting on Friday, March 5. New York Senator Neil Breslin chairs the Committee. The Committee adopted a definition of “proxy discrimination” which can be found below as amendments to the existing NCOIL Property/Casualty Insurance Modernization Model Act. Senator Breslin sponsored the amendments along with Indiana Representative Matt Lehman, NCOIL President. The definition will be considered by the NCOIL Executive Committee for final adoption at the NCOIL Spring Meeting in April.

Senator Breslin said, “Knowing how important this issue is, I am thrilled with both the attendance for the interim meeting and the fact that we were able to adopt the definition in order to provide states critical guidance. State legislation has already been introduced containing the term proxy discrimination but it is not defined. Leaving terms in statutes undefined creates problems for the legislators that enacted the law, regulators that enforce the law, courts that are called upon to interpret the law, and those governed by the law. We began important discussions in Tampa during the NCOIL Annual Meeting and were able to build upon those discussions during the interim meeting. As is always the case throughout NCOIL deliberations, hearing different viewpoints on the issues being considered is extremely beneficial and is going to give us a lot to discuss at the Spring Meeting as the Committee continues its work on other related issues.”

Representative Lehman remarked, “I am proud to co-sponsor this Model with Senator Breslin. I think that we can all agree that these conversations are not easy to have, but it’s important that



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we continue to have them. As an organization dedicated to producing sound public policy and serving as an educational forum for public policy makers, we can't sit idly by while these issues have the potential to have such a large impact on our constituents. I am pleased that we are able to provide a platform for these discussions to occur, whether it be at one of NCOIL's National Meetings or on an equally important interim call."

There were over 100 participants for the interim virtual meeting which included 14 legislators from nine states. In addition to the extensive comments and discussion from legislators, NCOIL heard perspectives on these issues from a wide array of interested parties at both the December and interim meetings including: the American Property Casualty Insurance Association (APCIA); the Center for Economic Justice (CEJ); Professor Anya Prince of the University of Iowa College of Law; the American Council of Life Insurers; and the Honorable Nat Shapo, former Director of the Illinois Department of Insurance.

"The virtual meeting was excellent, a really wonderful, respectful exchange of views on a critical topic," stated NCOIL CEO, Commissioner Tom Considine. "The definition of proxy discrimination adopted by the Committee was very carefully crafted to prohibit and preclude discrimination against protected classes by proxy, as the word proxy is defined already in the English languages," he continued.

"Some of the opponents to the definition sought to equate proxy discrimination with disparate impact, but that is impossible without ignoring the plain existing meaning of the word proxy. The Committee will now examine disparate impact closely through the individual factors used in the underwriting process," Considine concluded.

The video recording from the meeting will be posted on the NCOIL website soon.

All material discussed during the meeting can be viewed [here](#).

A copy of the NCOIL Property and Casualty Insurance Modernization Act adopted by the Committee appears below:

**NATIONAL COUNCIL OF INSURANCE LEGISLATORS
PROPERTY/CASUALTY INSURANCE MODERNIZATION ACT**

Adopted by the NCOIL Executive Committee on July 13, 2001.

Amended by the NCOIL Executive Committee on November 16, 2001, and March 1, 2002.

Reviewed and amended by the NCOIL Executive Committee on November 21, 2003.

Readopted by the NCOIL Executive Committee on July 22, 2006.

Re-adopted by the NCOIL Property & Casualty Insurance Committee on July 12, 2018 and the NCOIL Executive Committee on July 15, 2018

Amendments sponsored by Sen. Neil Breslin (NY) and Rep. Matt Lehman (IN), NCOIL President, adopted by the Special Committee on Race in Insurance Underwriting on March 5, 2021. To be considered by the Executive Committee on April 18, 2021.

Amendments are indicated in bold/italics/underline

Summary

This model bill establishes a use-and-file rate regulatory system for personal lines of insurance, a no-file system for commercial lines, and allows policies sold to large, sophisticated commercial insurance providers to be exempt from rate and regulatory requirements. This creates a more competitive and less onerous regulatory industry. This model is intended for consideration in insurance regulatory jurisdictions with a more restrictive rate filing and review system than outlined in the bill. **Additionally, this model defines proxy discrimination and makes clear that proxy discrimination is unfairly discriminatory in all kinds of insurance.**

Section 1. {Short Title}

This act shall be known as the Property/Casualty Insurance Modernization Act.

Section 2. {Legislative Declaration}

This legislature finds and declares that a modernized and competitive procedure be employed

- A. To recognize and enhance the role well-informed consumers play in the competitive marketplace
- B. To promote price competition among insurers
- C. To protect policyholders and the public against adverse effects of excessive, inadequate, or unfairly discriminatory rates
- D. To prohibit unlawful price fixing agreements by or among insurers
- E. To authorize essential cooperative activities among insurers in the ratemaking process and to regulate such activities to prohibit practices that tend to substantially lessen competition or create monopolies
- F. To provide necessary regulatory authority in the absence of a competitive

Marketplace

G. To prevent unfair discrimination, including proxy discrimination.

Drafting Note: This model is intended for consideration in insurance regulatory jurisdictions with a more restrictive rate filing and review system than outlined in this bill. States may also wish to consider implementing a competitive rating law that eliminates the regulatory rate filing process for all lines of insurance that are competitive.

Section 3. {Definitions}

A. For the purpose of this Act, "Advisory organization" means any person or organization, which has five (5) unrelated members and which assists insurers as authorized by Section 11. It does not include joint underwriting organizations, actuarial or legal consultants, single insurers, any employees of an insurer, or insurers under common control or management of their employees or managers.

B. For the purpose of this Act, "Classification system" or "classification" means the process of grouping risks with similar risk characteristics so that differences in costs may be recognized.

C. For the purpose of this Act, "Commercial risk" means any kind of risk, which is not a personal risk.

D. For the purpose of this Act, "Commissioner" means the Commissioner or Director or Superintendent of Insurance of this state.

E. For the purpose of this Act, "Competitive market" means any market except those which have been found to be non-competitive pursuant to Section 5.

F. For the purpose of this Act, "Developed losses" means losses (including loss adjustment expenses) adjusted, using standard actuarial techniques, to eliminate the effect of differences between current payment or reserve estimates and those which are anticipated to provide actual ultimate loss (including loss adjustment expense) payments.

G. For the purpose of this Act, "Expenses" means that portion of a rate attributable to acquisition, field supervision, collection expenses, general expenses, taxes, licenses, and fees.

H. For the purpose of this Act, "Experience rating" means a rating procedure utilizing past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit, or unity modification.

I. For the purpose of this Act, "Joint underwriting" means an arrangement established to provide insurance coverage for a risk, pursuant to which two or more insurers contract with the insured for a price and policy terms agreed upon between or among the insurers.

J. For the purpose of this Act, “Large Commercial Policyholder” is a commercial policyholder with the size, sophistication, and insurance-buying expertise to negotiate with insurers in a largely unregulated environment and which meets at least two of the following criteria: (1) aggregate premium on commercial policies held by the insured, including workers’ compensation, (2) number of employees, (3) annual net revenues or sales, (4) net worth, (5) annual budgeted expenditures for not-for profit organizations or a public body or agencies, or (6) population for municipalities.

Drafting Note: Specific criteria may require a large commercial policyholder to generate annual net revenues or sales in excess of \$50,000,000; employ more than 50 employees; procure insurance through a full-time risk manager or retained qualified insurance consultant; possess net worth in excess of \$25,000,000; or, if a nonprofit organization or public body/agency, generate annual budgeted expenditures of at least \$25,000,000.

K. For the purpose of this Act, “Loss adjustment expense” means the expenses incurred by the insurer in the course of settling claims.

L. For the purpose of this Act, “Market” is the statewide interaction between buyers and sellers in the procurement of a line of insurance coverage pursuant to the provisions of this Act.

Drafting Note: A state may wish to consider a geographic area smaller than the statewide market to be tested, keeping in mind the state’s particular insurance market environment.

M. For the purpose of this Act, “Non-competitive market” means a market, which is subject to a ruling pursuant to Section 5 that a reasonable degree of competition does not exist, and, for the purposes of this Act, residual markets, and pools are non-competitive markets.

N. For the purpose of this Act, “Personal risk” means homeowners, tenants, nonfleet private passenger automobiles, mobile homes, and other property and casualty insurance for person, family, or household needs. This includes any property and casualty insurance that is otherwise intended for non-commercial coverage.

O. For the purpose of this Act, “Pool” means an arrangement pursuant to which two or more insurers participate in the sharing of risks on a predetermined basis. A pool may operate as an association, syndicate, or in any other generally recognized manner.

P. For the purpose of this Act, “Prospective loss cost” means that portion of a rate that does not include provisions for expenses (other than loss adjustment expenses) or profit, and are based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.

Q. For purposes of this Act, as well as for the purpose of any regulatory material adopted by this State, or incorporated by reference into the laws or regulations of this State, or regulatory guidance documents used by any official in or of this State, “Proxy Discrimination” means the intentional substitution of a neutral factor for a factor based on race, color, creed, national origin, or sexual orientation for the purpose of discriminating against a consumer to prevent that

consumer from obtaining insurance or obtaining a preferred or more advantageous rate due to that consumer's race, color, creed, national origin, or sexual orientation.

QR. For the purpose of this Act, "Rate" means that cost of insurance per exposure unit whether expressed as a single number or as a prospective loss cost with an adjustment to account for the treatment of expenses, profit, and individual insurer variation in loss experience, prior to any application of individual risk variations based on loss or expense considerations, and does not include minimum premiums.

RS. For the purpose of this Act, "Residual market mechanism" means an arrangement, either voluntary or mandated by law, involving participation by insurers in the equitable apportionment of risks among insurers for insurance which may be afforded applicants who are unable to obtain insurance through ordinary methods.

ST. For the purpose of this Act, "Special assessments" means guaranty fund assessments, Special Indemnity Fund assessments, Vocational Rehabilitation Fund assessments, and other similar assessments. Special assessments shall not be considered as either expenses or losses.

TU. For the purpose of this Act, "Supplementary rate information" means any manual or plan of rates, classification, rating schedule, minimum premium, policy fee, rating rule, and any other similar information needed to determine an applicable rate in effect or to be in effect.

UV. For the purpose of this Act, "Supporting information" means (1) the experience and judgment of the filer and the experience or data of other insurers or organizations relied upon by the filer, (2) the interpretation of any statistical data relied upon by the filer, (3) a description of methods used in making the rates, and (4) other similar information relied upon by the filer.

VW. For the purpose of this Act, "Trending" means any procedure for projecting losses to the average date of loss, or premiums or exposures to the average date of writing, for the period during which the policies are to be effective.

Section 4. {Scope}

A. Section 6(A)(3)(a) of this Act applies to all kinds of insurance written on risks in this state by any insurer authorized to do business in this state.

B. All remaining sections of this Act apply to all such kinds of insurance written on risks in this state by any insurer authorized to do business in this state except:

1. Life insurance
2. Annuities
3. Accident and health insurance
4. Ocean marine insurance
5. Aircraft liability and aircraft hull insurance
6. Reinsurance

- 7. Surplus Lines
- 8. Workers Compensation Insurance

Section 5. {Competitive Market}

A. A competitive market for a line of insurance is presumed to exist unless the commissioner, after notice and hearing, determines that a reasonable degree of competition does not exist within a market and issues a ruling to that effect. The burden of proof in any hearing shall be placed on the party or parties advocating the position that competition does not exist. Any ruling that a market is not competitive shall identify the factors causing the market not to be competitive. Such ruling shall expire one year after issue unless rescinded earlier by the commissioner or unless the commissioner renews the ruling after a hearing and a finding as to the continued lack of a reasonable degree of competition. Any ruling that renews the finding that competition does not exist shall also identify the factors that cause the market to continue not to be competitive.

B. The following factors shall be considered by the commissioner for purposes of determining if a reasonable degree of competition does not exist in a particular line of insurance:

1. The number of insurers or groups of affiliated insurers providing coverage in the market
2. Measures of market concentration and changes of market concentration over time
3. Ease of entry and the existence of financial or economic barriers that could prevent new firms from entering the market
4. The extent to which any insurer or group of affiliated insurers controls all or a portion of the market
5. Whether the total number of companies writing the line of insurance in this state is sufficient to provide multiple options
6. The availability of insurance coverage to consumers in the markets
7. The opportunities available to consumers in the market to acquire pricing and other consumer information

C. The commissioner shall monitor the degree and continued existence of competition in this State on an on-going basis. In doing so, the commissioner may utilize existing relevant information, analytical systems, and other sources; or rely on some combination thereof. Such activities may be conducted internally within the insurance department, in cooperation with other state insurance departments, through outside contractors, and/or in any other appropriate manner.

Section 6. {Rating Standards and Methods}

A. Rates shall not be excessive, inadequate, or unfairly discriminatory.

1. For the purpose of this Act, "Excessive" means a rate that is likely to produce a long-term profit that is unreasonably high for the insurance provided. No rate in a competitive market shall be considered excessive.

Drafting Note: Reflecting the well-accepted economic principle that costs and prices are driven downward by competition, insurance laws in seventeen (17) states do not allow a finding of excessiveness in a competitive market. Those seventeen (17) states are: Arkansas, Connecticut, Delaware, Georgia, Idaho, Illinois, Indiana, Kentucky, Michigan, Missouri,

Montana, Nevada, Oklahoma, Oregon, Vermont, Virginia, and Wyoming. Insurance laws in five (5) other states say that rates are “presumed” not to be excessive if there is a reasonable degree of competition. Those five (5) states are: Arizona, Kansas, Minnesota, New Mexico, and Wisconsin.

2. For the purpose of this Act, “Inadequate” means a rate which is unreasonably low for the insurance provided and

- a. the continued use of which endangers the solvency of the insurers using it, or
- b. will have the effect of substantially lessening competition or creating a monopoly in any market

3. a. For the purpose of this Act, “Unfairly discriminatory” refers **either** to rates that cannot be actuarially justified, **or to rates that can be actuarially justified but are based on proxy discrimination.** It does not refer to rates that produce differences in premiums for policyholders with like loss exposures, so long as the rate reflects such differences with reasonable accuracy. A rate is not unfairly discriminatory if it averages broadly among persons insured under a group, franchise or blanket policy, or a mass marketing plan.

b. No rate in a competitive market shall be considered unfairly discriminatory unless it violates the provisions of section 6(B) in that it classifies risk, on the basis of race, color creed, or national origin. Risks may be classified in any way except that no risk may be classified on the basis of race, color, creed, or national origin.

B. In determining whether rates in a non-competitive market are excessive, inadequate, or unfairly discriminatory, consideration may be given to the following elements:

1. Basic Rate Factors. Due consideration shall be given to past and prospective loss and expense experience within and outside of this state; to catastrophe hazards and contingencies; to events or trends within and outside of this state; to dividends or savings to policyholders, members, or subscribers; and to all other factors and judgments deemed relevant by the insurer.

2. Classification. Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified for individual risks in accordance with rating plans or schedules which establish standards for measuring probable variations in hazards or expenses, or both.

3. Expenses. The expense provision shall reflect the operating methods of the insurer and its own past expense experience and anticipated future expenses.

4. Contingencies and Profits. The rates shall contain a provision for contingencies and a provision for a reasonable underwriting profit, and reflect investment income directly attributable to unearned premium and loss reserves.

5. Other relevant factors. Any other factors available at the time of hearing.

Section 7. {Rate Regulation in a Market Determined to be Non-Competitive}

A. If the commissioner determines that competition does not exist in a market and issues a ruling to that effect pursuant to Section 5, the rates applicable to insurance sold in that market shall be regulated in accordance with the provisions of Section 6 through 9 applicable to non-competitive markets.

B. Any rate filing in effect at the time the commissioner determines that competition does not exist pursuant to Section 5 shall be deemed to be in compliance with the laws of this state unless disapproved pursuant to the procedures and rating standards contained in Section 6 through 9 applicable to non-competitive markets.

C. Any insurer having a rate filing in effect at the time the commissioner determines that competition does not exist pursuant to Section 5 may be required to furnish supporting information within 30 days of a written request by the commissioner.

Section 8. {Filing of Rates, Supplementary Rate Information, and Supporting Information}

A. Filings in Competitive Markets. For personal lines, every insurer shall file with the commissioner all rates and supplementary rate information to be used in this state no later than 30 days after the effective date; provided, that such rates and supplementary rate information need not be filed for inland marine risks, which by general custom are not written according to manual rules or rating plans. Rates in a competitive market for commercial insurance need not be filed.

B. Filings in Non-Competitive Markets.

1. Every insurer shall file with the commissioner all rates, supplementary rate information, and supporting information for non-competitive markets at least 30 days before the proposed effective date. The commissioner may give written notice, within 30 days of the receipt of the filing, that the commissioner needs additional time, not to exceed 30 days from the date of such notice to consider the filing. Upon written application of the insurer, the commissioner may authorize rates to be effective before the expiration of the waiting period or an extension thereof. A filing shall be deemed to meet the requirements of this Act and to become effective unless disapproved pursuant to Section 9 by the commissioner before the expiration of the waiting period or an extension thereof. Residual market mechanisms or advisory organizations may file residual market rates.

2. The filing shall be deemed in compliance with the filing provisions of this section unless the commissioner informs the insurer within 10 days after receipt of the filing as to what supplementary rate information or supporting information is required to complete the filing.

C. Reference Filings. An insurer may file its rates by either filing its final rates or by filing a multiplier and, if applicable, an expense constant adjustment to be applied to prospective loss costs that have been filed by an advisory organization on behalf of the insurer as permitted by Section 11.

D. Filings Open to Inspection. All rates, supplementary rate information, and any supporting information filed under this Act shall be open to public inspection once they have been filed, except information marked confidential, Trade Secret, or proprietary by the insurer or filer. Copies may be obtained from the commissioner upon request and upon payment of a reasonable fee.

E. Consent to Rate. Notwithstanding any other provisions of this section, upon written application of the insured, stating the reason therefore, a rate in excess of or below that otherwise applicable may be used on any specific risk.

Section 9. (Disapproval of Rates)

A. Bases for Disapproval

1. The commissioner shall disapprove a rate in a competitive market only if the commissioner finds pursuant to subsection (B) of this section that the rate is inadequate under Section (6)(A)(2) or unfairly discriminatory under Section 6(A)(3)(b).
2. The commissioner may disapprove a rate for use in a non-competitive market only if the commissioner finds pursuant to subsection (B) of this section that the rate is excessive, inadequate, or unfairly discriminatory under Section 6A.

B. Procedures for Disapproval

1. Prior to the expiration of the waiting period or an extension thereof of a filing made pursuant to Section 8, subsection (B), the commissioner may disapprove by written order rates filed pursuant to Section 8, subsection (B), without a hearing. The order shall specify in what respects such filing fails to meet the requirements of this Act. Any insurer whose rates are disapproved under this section shall be given a hearing upon written request made within 30 days of disapproval.
2. If, at any time, the commissioner finds that a rate applicable to insurance sold in a non-competitive market does not comply with the standards set forth in Section 6, the commissioner may, after a hearing held upon not less than 20 days written notice, issue an order pursuant to subsection 9I disapproving such rate. The Hearing notice shall be sent to every insurer and advisory organization that adopted the rate and shall specify the matters to be considered at the hearing. The disapproval order shall not affect any contract or policy made or issued prior to the effective date set forth in said order.
3. If, at any time, the commissioner finds that a rate applicable to insurance sold in a competitive market is inadequate under Section 6(A)(3)(a) or unfairly discriminatory under Section 6(A)(3)(b), the commissioner may issue an order pursuant to subsection 9(C) disapproving the rate. Said order shall not affect any contract or policy made or issued prior to the effective date set forth in said order.

C. Order of Disapproval. If the commissioner disapproves a rate pursuant to subsection (B) of this section, the commissioner shall issue an order within 30 days of the close of the hearing specifying in what respects such rate fails to meet the requirements of this Act. The order shall state an effective date no sooner than 30 business days after the date of the order when the use of such rate shall be discontinued. This order shall not affect any policy made before the effective date of the order.

D. Appeal of Orders; Establishment of Reserves. If an order of disapproval is appealed pursuant to Section 20 the insurer may implement the disapproved rate upon notification to the court, in which case any excess of the disapproved rate over a rate previously in effect shall be placed in a reserve established by the insurer. The court shall have control over the disbursement of funds from such reserve. Such funds shall be distributed as determined by the court in its final order except that de minimus refunds to policyholders shall not be required.

Section 10. {Large Commercial Policyholder}

A. A policy of insurance sold to a "Large Commercial Policyholder," as defined in Section 3(J), shall not be subject to the requirements of this chapter, including but not limited to, Sections 5, 6, 7, 8, and 9. The forms and endorsements for any policy sold to a "Large Commercial Policyholder" shall not be subject to filing and approval requirements of (reference form filing and approval provisions plus other applicable provisions).

B. All policies issued pursuant to the provisions of this section shall contain a conspicuous disclaimer printed in at least ten-point, bold-faced type that states that the policy applied for (including the rates, rating plans, resulting premiums, and the policy forms) is not subject to the rate and form requirements of this state and other provisions of the insurance law that apply to other commercial products and may contain significant differences from a policy that is subject to all provisions of the insurance law. Such notice shall set forth possible differences in policy conditions, forms, and endorsements, as compared to a policy that is subject to all of the provisions of the insurance law. The format and provisions of such notice shall be prescribed by the commissioner. The disclosure notice will also include a policyholder's acknowledgment statement, to be signed and dated prior to the effective date of the coverage, and shall remain on file with the insurer.

C. In procuring insurance, a "Large Commercial Policyholder" shall certify on a form approved by the department of insurance that it meets the eligibility requirements set out in Section 10(A) and specify the requirements that the policyholder has met. This certification is to be completed annually and remain on file with the insurer.

D. A surplus lines broker seeking to obtain or provide insurance for a "Large Commercial Policyholder" is authorized to purchase insurance from any eligible unauthorized insurer without making a diligent search of authorized insurers as required by (applicable surplus lines law).

Section 11. {Records and Reports: Exchange of Information}

A. In only those markets found to be non-competitive pursuant to Section 5, insurers and advisory organizations shall file with the commissioner, and the commissioner shall review, reasonable rules and plans for recording and reporting of loss and expense experience. The commissioner may designate one or more advisory organizations to assist in gathering such experience and making compilations thereof. No insurer shall be required to record or report its experience in a manner inconsistent with its own rating system.

B. The commissioner and every insurer and advisory organization may exchange rates and rate information and experience data with insurance regulatory officials, insurers, and advisory organizations in this and other states and may consult with them with respect to the collection of statistical data and the application of rating systems.

Section 12. {Joint Underwriting, Pools, and Residual Market Activities}

A. Acting in Concert. Notwithstanding the provisions of Section 13, insurers participating in joint underwriting, pools, or residual market mechanisms may act in cooperation with each other in the making of rates, rating systems, supplementary rate information, policy or bond forms, underwriting rules, surveys, inspections and investigations; in the furnishing of loss and expense statistics or other information; and in conducting research. Joint underwriting, pools, and residual market mechanisms shall not be deemed advisory organizations.

B. Regulation

1. If, after notice and hearing, the commissioner finds that any activity or practice of an insurer participating in a joint underwriting or pooling mechanism is unfair, unreasonable, will tend to substantially lessen competition in any market, or is otherwise inconsistent with the provisions or purposes of this Act and all other applicable statutes, the commissioner may issue a written order specifying in what respects such activity or practice is unfair, unreasonable, anti-competitive, or otherwise inconsistent with the provisions of this Act and all other applicable statutes, and require the discontinuance of such activity or practice.

2. Every pool shall file with the commissioner a copy of its constitution, articles of incorporation, agreement, or association bylaws; rules and regulations governing activities; its members; the name and address of a resident of this state upon whom notices, process, and orders of the commissioner may be served; and any changes or modifications thereof.

3. Any residual market mechanism, plan, or agreement to implement such a mechanism, and any changes or amendments thereto, shall be submitted in writing to the commissioner for approval, together with such information as may be reasonably required. The commissioner shall approve such agreements if they foster (i) the use of rates which meet the standards prescribed by this Act and all other applicable statutes and (ii) activities and practices not inconsistent with the provisions of this Act and all other applicable statutes.

4. The commissioner may review the operations of all residual market mechanisms to determine compliance with the provisions of this Act and all other applicable statutes. If after a notice of hearing, the commissioner finds that such mechanisms are violating the provisions of this Act and all other applicable statutes, the commissioner may issue a written order to the parties involved specifying in what respects such operations violate the provisions of this Act and all other applicable statutes. The commissioner may further order the discontinuance or elimination of any such operation.

Section 13. {Assigned Risks}

A. Agreements may be made among insurers with respect to the equitable apportionment among them of insurance that may be afforded applicants who are in good faith entitled to, but who are unable to, procure such insurance through ordinary methods, and such insurers may agree among themselves on the use of reasonable rate modifications for such insurance, such agreements, and rate modifications to be subject to the approval of the commissioner.

Drafting Note: This section is to be included if the current provision authorizing agreements for the assigned risk or other residual market is repealed as part of the current rating law. You may wish to pick up current state provisions.

Section 14. {Examinations}

A. The commissioner may examine any insurer, pool, advisory organization, or residual market mechanism to ascertain compliance with this Act.

B. Every insurer, pool, advisory organization, and residual market mechanism shall maintain adequate records from which commissioner may determine compliance with the provisions of this Act. Such records shall contain the experience, data, statistics, and other information collected or used and shall be available to the commissioner for examination or inspection upon reasonable notice.

C. The reasonable cost of an examination made pursuant to this section shall be paid by the examined party upon presentation to it of a detailed account of such costs.

D. The commissioner may accept the report of an examination made by the insurance supervisory official of another state in lieu of an examination under this section.

Section 15. {Exemptions}

The commissioner may, after public notice and hearing, exempt any line of insurance from any or all of the provisions of this Act for the purpose of relieving such line of insurance from filing or any otherwise applicable provisions of this Act.

Section 16. {Consumer Information}

The Commissioner shall utilize, develop, or cause to be developed a consumer information system(s) which will provide and disseminate price and other relevant information on a readily available basis to purchasers of homeowners, private passenger non-fleet automobile, or property insurance for personal, family, or household needs. The commissioner may utilize, develop, or cause to be developed a consumer information system(s) which will provide and disseminate price and other relevant information on a readily available basis to purchasers of insurance for commercial risks and personal risks not otherwise specified herein. Such activity may be conducted internally within the insurance department, in cooperation with other state insurance departments, through outside contractors, and/or in any other appropriate manner. To the extent deemed necessary and appropriate by the commissioner, insurers, advisory organizations, statistical agents, and other persons or organizations involved in conducting the business of insurance in this State, to which this section applies, shall cooperate in the development and utilization of a consumer information system(s).

Drafting Note: For jurisdictions that need a separate and distinct means of funding a consumer information system the following provision may be added to Section 16:

The cost of complying with this section shall be assessed against insurers subject to this Act and authorized to write types of business subject to a consumer information system. The assessments shall be made on an equitable and practicable basis established, after hearing, in a rule promulgated by the commissioner. This activity shall be conducted in a reasonably economical manner consistent with the purposes of this Act.

Section 17. {Dividends}

Nothing in this Act shall be construed to prohibit or regulate the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers. A plan for the payment of dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers shall not be deemed a rating plan or system.

Section 18. {Penalties}

A. The commissioner may impose after notice and hearing a penalty determined in accordance with (refer to appropriate penalties provision).

B. Technical violations arising from systems or computer errors of the same type shall be treated as a single violation. In the event of an overcharge, if the insurer makes restitution including payment of interest, no penalty shall be imposed.

C. The commissioner may suspend or revoke the license of any insurer, advisory organization, or statistical agent which fails to comply with an order of the commissioner within the time prescribed by such order, or any extension thereof which the commissioner may grant.

D. The commissioner may determine when a suspension of license shall become effective and the period of such suspension, which the commissioner may modify or rescind in any reasonable manner.

E. No penalty shall be imposed and no license shall be suspended or revoked except upon a written order of the commissioner stating his or her findings, made after notice and hearing.

Section 19. {Judicial Review}

A. Any order, ruling, finding, decision, or other act of the commissioner made pursuant to this Act shall be subject to judicial review in accordance with (cite applicable provisions of state civil practice act).

Section 20. {Notice and Hearing}

A. Notice Requirements. All notices rendered pursuant to the provisions of this Act shall be in writing and shall state clearly the nature and purpose of the hearing. All relevant facts, statutes, and rules shall be specified so that respondent(s) are fully informed of the scope of the hearing, including specific allegations, if any. If a hearing is required, all notices shall designate a hearing date at least 14 days from the date of the notice, unless such minimum notice period is waived by respondents.

B. Hearings. All hearings pursuant to the provisions of this Act shall be conducted in accordance with (cite applicable provisions of Administrative Procedures Act) to the extent such provisions are consistent with the procedural requirements contained in this Act.

Section 21. {Severability}

If any provision or item of this Act, or the application thereof, is held invalid, such invalidity shall not affect other provisions, items, or applications of the Act that can be given effect without the invalid provision, item, or application.

Section 22. {Effective Date}

The provisions of this Act become effective _____ months after the enactment.

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NCOIL is a national legislative organization with the nation's 50 states as members, represented principally by legislators serving on their states' insurance and financial institutions committees. NCOIL writes Model Laws in insurance and financial services, works to preserve the State jurisdiction over insurance as established by the McCarran-Ferguson Act seventy-six years ago, and to serve as an educational forum for public policymakers and interested parties. Founded in 1969, NCOIL works to assert the prerogative of legislators in making State policy when it comes to insurance and educate State legislators on current and longstanding insurance issues.