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## NATIONAL COUNCIL OF INSURANCE LEGISLATORS (NCOIL)

### Model Act Regarding the Use of Insurance Claims History Information in Homeowners and Personal Lines Residential Property Insurance

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*\*Sponsored by Sen. David Bates, RI; Rep. Dan Tripp, SC; and Rep. Rich Golick, GA*

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#### **Section 1. Short Title**

This Act may be called the *Model Act Regarding the Use of Insurance Claims History Information* in Homeowners and Personal Lines Residential Property Insurance.

#### **Section 2. Purpose**

The purpose of this Act is to regulate the use of claims history information for homeowners and personal lines residential property insurance and provide certain consumer protections with respect to the use of such information.

*[Drafting Note: In certain respects, this model does not address or restrict the manner in which an insurer may respond to the claims of existing policyholders. Many states already regulate the treatment of existing policyholders, and any jurisdictions that wish to address the issue will need to do so independently.]*

### **Section 3. Definitions**

- A. “Adverse Action” means a denial or cancellation of, an increase in any charge for, or a reduction or other adverse or unfavorable change in the terms of coverage or amount of any insurance, existing or applied for, in connection with the underwriting of homeowners and personal lines residential property insurance.
- B. “Claim” means a request to an insurer for payment of a benefit by an insured or third-party. A mere report of loss or a question relating to coverage shall not constitute a claim.
- C. “Claims history report” means information provided by a claims history report provider to an insurer, insurance producer, or other authorized party regarding the claims history or loss experience of natural persons or properties, including reports generated from or by the APLUS Property Database and the Comprehensive Loss Underwriting Exchange (CLUE).
- D. “Claims history report provider” means any person that regularly engages in the practice of assembling, collecting, or disseminating information regarding the individual claims history of natural persons or properties for the primary purpose of providing such information to insurers, insurance producers, or other authorized parties for underwriting or rating. Government institutions, insurers, and insurance producers shall not be considered “claims history report providers.”
- E. “Consumer” means an insured or an applicant for insurance coverage.
- F. “Inquiry” means a telephone call and other communication made to an insurer regarding the terms, conditions, or coverage afforded under an insurance contract that does not result in a claim, including questions concerning whether a policy will cover a loss or the process for filing a claim. An “inquiry” under this Act shall not be considered a “claim” for purposes of *[insert reference to State Unfair Trade Practices Act]*.
- G. “Insurer” means an insurance company authorized to do business in this state.

### **Section 4. Use of Claims History Information Generally**

- A. An insurer that uses insurance claims history or loss experience information to underwrite or rate risks shall not deny, cancel or non-renew homeowners or personal lines residential property

insurance coverage, or establish rates for such coverages, based solely on the claims history or loss experience of a previous owner of the property to be insured.

B. Failure of an insurer, within 30 days of binding coverage, to act upon the information contained in a claims history report shall preclude the insurer from declining homeowners or personal lines residential property insurance coverage or terminating a binder of such coverage based on that information. This subsection shall not apply if the insurer has commenced a further investigation, inspection, or other review of the property to be insured as a result of information contained in the report within the 30-day period and the investigation, inspection, or other review has not yet concluded. The requirements of this subsection shall also not apply to the renewal of an insurance policy.

C. When a consumer applies for homeowners or personal lines residential property insurance, an insurer may not consider or take an adverse action based upon information contained in a claims history report that is more than five (5) years old.

D. Notwithstanding subsections (A) and (B), an insurer may deny, cancel or non-renew homeowners or personal lines residential property insurance coverage, or establish rates for such coverages based on the known condition or use of the premises or due to fraudulent acts of the consumer

#### **Section 5. Use of Inquiries and Other Information**

A. An insurer shall not deny, cancel or non-renew homeowners or personal lines residential property insurance coverage, or establish insurance rates for such coverages, based in whole or in part on inquiries made by any consumer to an insurer.

B. An insurer shall not deny, cancel, or non-renew homeowners or personal lines residential property insurance coverage, or establish rates for such coverages, based in whole or in part on claims that have been closed without payment to or on behalf of an insured or third-party, unless 1) more than one such incident occurred within the previous three years or 2) the claim closed without payment affects the nature of the risk and is predictive of future loss.

C. Notwithstanding subsections (A) and (B), an insurer may deny, cancel or non-renew homeowners or personal lines residential property insurance coverage, or establish insurance rates for such coverages, based upon the known condition or use of the premises or due to fraudulent acts of the consumer.

#### **Section 6. Dispute Resolution and Error Correction**

If it is determined through the dispute resolution process set forth in the federal Fair Credit Reporting Act, 15 USC 1681i(a)(5), that the claims history information of an insured or property was incorrect or incomplete and if a homeowners and personal lines residential property insurer receives notice of such determination from either the consumer reporting agency or from the insured, the insurer shall re-underwrite and re-rate the consumer within 30 days of receiving the notice. After re-underwriting or re-rating the insured, the insurer shall make any adjustments

necessary, consistent with its underwriting and rating guidelines. If an insurer determines that the insured has overpaid premium, the insurer shall refund to the insured the amount of overpayment calculated back to the shorter of either the last 12 months of coverage or the actual policy period.

## **Section 7. Disclosure to Insurance Consumers**

A. If an insurer writing homeowners or personal lines residential property insurance uses claims history or loss experience in underwriting or rating, the insurer shall disclose, either on the insurance application or at the time the insurance application is taken, that it may obtain claims history or loss experience information in connection with such application. Such disclosure may be oral, written, or in electronic form. Such disclosure must explain the ways in which the insurer uses claims history or loss experience information, whether the claims history of the applicant and/or property to be insured will be reviewed, and whether future claims incurred by the applicant will be reported to a claims history report provider.

B. If a homeowners or personal lines residential property insurer takes an adverse action based upon the claims history report of a consumer or property, the insurer must meet the notice requirements of this subsection. Such insurer shall:

1. Provide notification to the consumer that an adverse action has been taken, in accordance with the requirements of the federal Fair Credit Reporting Act, if applicable.

2. Provide notification, upon request, to the consumer identifying the claim information that resulted in the adverse action. An insurer may comply with this paragraph by providing the requisite disclosure and claims information in any declination, nonrenewal, premium increase or surcharge, adverse action, or other notice required under other applicable law.

## **Section 8. Treatment of Certain Information**

A. A homeowners or personal lines residential property insurer shall not disclose or submit to any claims history report provider or any other consumer reporting agency that an inquiry was made to the insurer by a consumer.

B. A claims history report provider shall not knowingly provide an insurer, insurance producer, or any other person with a claims history report that discloses that an inquiry was made to an insurer by a consumer.

## **Section 9. Disclosures by Claims History Report Providers**

A claims history report provider must disclose the codes, classifications, and guidelines utilized in its claims history reports to the Department of Insurance, upon request.

## **Section 10. Severability**

If any section, paragraph, sentence, clause, phrase, or any part of this Act passed is declared invalid, the remaining sections, paragraphs, sentences, clauses, phrases, or parts thereof shall be in no manner affected and shall remain in full force and effect.

**Section 11. Effective Date**

This Act shall take effect on [*insert date*], applying to homeowners and personal lines residential property insurance policies either written to be effective or renewed on or after 9 months from the effective date of the bill.

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