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## NATIONAL COUNCIL OF INSURANCE LEGISLATORS (NCOIL)

### Experience Rating Modification Model Act

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*\*Sponsored by Rep. Matt Lehman (IN)*

*\*Draft as of October 14, 2025. To be discussed and considered during the Workers' Compensation Insurance Committee on November 13, 2025.*

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#### Section 1. Title

This Act shall be known as the [State] Experience Rating Modification Act.

#### Section 2. Definitions

As used in this Act, the following terms shall have the following meanings:

(A) "Employer" means a sole proprietor, a corporation, a partnership, a limited liability company, or another entity with one (1) or more employees.

(B) "Experience rating" is a numerical factor used to adjust workers' compensation insurance premiums based on an employer's past claims experience. ~~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.~~

(C) "~~Subrogation claim~~" ~~means a claim or an action that is filed or otherwise initiated by a company against a third party that caused a loss to an insured party to recover from the third~~

party the amount of a claim paid by the company either to the insured party or on behalf of the insured party for the loss to the insured party.

~~(D) "Successful subrogation claim" means a subrogation claim that results in payment of money by a third party to a company, even if the amount of money paid to the company by the third party is less than the amount of the claim paid by the company either to the insured party or on behalf of the insured party for the loss to the insured party.~~

### **Section 3. Experience Rating and Employer Contract Bidding**

(A) After [insert date following enactment], a party may not prohibit an employer from bidding on a contract solely on the basis of the employer's experience rating.

(B) This Section does not preclude a party from considering an employer's experience rating when awarding a contract.

(C) Nothing in this section creates a cause of action against the party.

### **Section 4. Experience Rating in ~~Subrogation Claims~~ Remedies**

If an employer, being then insured, sustains damages due to a change in workers' compensation insurance premium, whether by a failure to achieve a decrease or by a retroactive or prospective increase, as a result of the injury or death of an employee which was caused under circumstances which created a legal liability for damages on the part of a party other than the employer, the employer notwithstanding other remedies provided, may maintain action against the other party for recovery of the premiums. Damages recovered under this clause are for the benefit of the employer only. Except as provided in subsection (D) of this Section, when a company makes a successful subrogation claim, the governing rating bureau shall revise the experience rating of the insured party in the manner set forth in this section.

~~(A) After a company makes a successful subrogation claim, the governing rating bureau shall revise all of the insured party's prior experience ratings that were modified as a result of the insured party's claim for which the company made the successful subrogation claim.~~

~~(B) The governing rating bureau shall revise the prior experience ratings described under subsection (B) in a manner that accounts for the entire amount the company received as a result of the successful subrogation claim, and ensures that the insured party receives, by way of the revised experience ratings, a monetary benefit equivalent to the amount the company received as a result of the successful subrogation claim.~~

~~(C) The governing rating bureau is not required to comply with this section if, at the time of the successful subrogation claim, the insured party who submitted the claim for which the company made the subrogation claim is not the owner of the policy under which the claim was submitted,~~

~~or compliance with this section would require violation of a contract that was entered into, amended, or renewed before xxxxxxxx.~~

### **Section 5. Rules**

The Commissioner shall adopt rules to effectuate the provisions of this Act.

### **Section 6. Effective Date**

This Act shall take effect xxxxx.