

ALEC EXPOSED

"ALEC" has long been a secretive collaboration between Big Business and "conservative" politicians. Behind closed doors, they ghostwrite "model" bills to be introduced in state capitols across the country. This agenda—underwritten by global corporations—includes major tax loopholes for big industries and the super rich, proposals to offshore U.S. jobs and gut minimum wage, and efforts to weaken public health, safety, and environmental protections. Although many of these bills have become law, until now, their origin has been largely unknown. With **ALEC EXPOSED**, the Center for Media and Democracy hopes more Americans will study the bills to understand the depth and breadth of how big corporations are changing the legal rules and undermining democracy across the nation.

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Home → [Model Legislation](#) → Commerce, Insurance, and Economic Development

Property/Casualty Insurance Modernization Act

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 environment in the property/casualty insurance 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.

Model Legislation

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 promote price competition among insurers;
- B. To protect policyholders and the public against adverse effects of excessive, inadequate or unfairly discriminatory rates;
- C. To prohibit unlawful price fixing agreements by or among insurers;
- D. 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; and
- E. To provide necessary regulatory authority in the absence of a competitive marketplace.

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 unrelated members and which assists insurers as authorized by section 11. It does not include joint underwriting organizations, actuarial or legal consultants, single insurer, 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 of Insurance of this state.
- E. For the purpose of this Act, "Competitive market" means any market except those that 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

Did you know that global corporation Kraft Foods served as corporate co-chair in 2011?

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:

Drafting Note: The criteria for the definition of large commercial policyholder should be set so as to identify truly sophisticated policyholders. Criteria suggested include (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.

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 interaction between buyers and sellers consisting of a product market component and a geographic component. A product market component consists of identical or readily substitutable products including but not limited to consideration of coverage, policy terms, rate classifications, and underwriting. A geographic market component is a geographical area in which buyers have a reasonable degree of access to insurance sales outlets. Determination of a geographic market component shall consider existing market patterns.

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 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.

R. 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 that may be afforded applicants who are unable to obtain insurance through ordinary methods.

S. 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.

T. 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.

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

V. 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. This Act applies to all 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; and
6. Reinsurance.

Section 5. {Competitive Market}

A. A competitive market 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. 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. The commissioner shall consider all relevant structural factors in determining the competitiveness of the market, including: the number of insurers actively engaged in providing coverage; market shares; changes in market shares; and ease of entry.

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 actively engaged in providing coverage;
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 disparity among insurance rates and classifications to the extent that such classifications result in rate differentials.
7. The availability of insurance coverage to consumers.
8. The opportunities available to consumers in the market to acquire pricing and other consumer information.
9. Other relevant factors.

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. For the purpose of this Act, "Unfairly discriminatory" refers to rates that cannot be actuarially justified. It does not refer to rates that produce differences in premiums for policyholders with like loss exposures but different expenses, or like expenses but different 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. No rate in a competitive market shall be considered unfairly discriminatory unless it violates the provisions of section 6(B) in that they classify, or are based, in whole or in part on the basis of race, color, creed or national origin.

B. Risks may be classified in any way except that no risk may be classified in whole or in

part on the basis of race, color, creed or national origin.

C. 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 that establish standards for measuring probable variations in hazards or expenses, or both.

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

4. Contingencies and Profits. The rates may contain a provision for contingencies and a provision for a reasonable underwriting profit, and may 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 sections 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.

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. 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 or unfairly discriminatory.

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.

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 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 9(C) disapproving such rate. The Hearing notice shall be sent to every insurer and advisory organization, which 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 expiration of the period set forth in said order. However, a policyholder shall have the privilege to cancel the policy containing the disapproved rates without penalty (i.e., obtain return premium calculated according to company pro-rata schedules or waiver of minimum premium earned stipulations).

3. If, at any time, the commissioner finds that a rate applicable to insurance sold in a competitive market is inadequate or unfairly discriminatory, 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 expiration period set forth in said order. However, a policyholder shall have the privilege to cancel the policy containing the disapproval rates without penalty (i.e., obtain return premium calculated according to company pro-rata schedules or waiver of minimum premium earned stipulations).

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. However, a policyholder shall have the privilege to cancel the policy containing the disapproval rates without penalty (i.e., obtain return premium calculated according to company pro-rata schedules or waiver of minimum premium earned stipulations).

D. Appeal of Orders; Establishment of Reserves. If an order of disapproval is appealed pursuant to section 19, 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 acknowledgement 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 {Optional}. 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. {Operation and Control of Advisory Organizations}

A. License Required. No advisory organization shall provide any service relating to the rates of any insurance subject to this Act, and no insurer shall utilize the services of such organization for such purposes, unless the organization obtained a license under this section.

B. Availability of Services. No advisory organization shall refuse to supply any services for which it is licensed in this state to any insurer authorized to do business in this state and offering to pay the fair and usual compensation for the services.

C. Licensing.

1. Application. An advisory organization applying for a license shall include with its application:

a. A copy of its constitution, charter, articles of association or incorporation, bylaws and any other rules or regulations governing the conduct of its business;

b. A list of its members and subscribers;

c. The name and address of one or more residents of this state whom notices, process affecting it or orders of the commissioner may be served;

d. A statement showing its technical qualifications for acting in the capacity for which it seeks a license;

e. A biography of the ownership and management of the organization; and

f. Any other relevant information and documents that the commissioner may require.

2. Change in Circumstances. Every organization, which has applied for a license, shall promptly notify the commissioner of every material change in the facts or in the documents on which its application was based.

3. Granting of License. If the commissioner finds that the applicant and the natural persons through which it acts are competent, trustworthy and technically qualified to provide the services proposed, and that all requirements of law are met, the commissioner shall issue a license specifying the authorized activity of the applicant.

4. Duration. Licenses issued pursuant to this section shall remain in effect until the licensee withdraws from the state or until the license is suspended or revoked. The commissioner may at any time, after a hearing, revoke or suspend the license of an advisory organization that does not comply with the requirements and standards of this Act.

Section 12. {Advisory Organizations: Permitted Activity}

A. Any advisory organization in addition to other activities not prohibited, is authorized, on behalf of its members and subscribers, to:

1. Develop statistical plans including but not limited to territorial and class definitions,

2. Collect statistical data from members, subscribers or any other sources;

3. Prepare and distribute prospective loss costs that may include provisions for special assessments and taxes;

4. Prepare and distribute factors, calculations or formulas pertaining to classification, territory, increased limits and other variables;

5. Prepare and distribute manuals of rating rules and rating schedules that do not include final rates, expense provisions, profit provisions or minimum premiums;

6. Distribute information that is required or directed to be filed with the commissioner;

7. Conduct research and on-site inspections in order to prepare classifications of public fire defenses and other exposures;

8. Consult with public officials regarding public fire protection as it would affect members, subscribers and others;

9. Conduct research and collect statistics in order to discover, identify and classify information relating to causes or prevention of losses;

10. Conduct research and collect information relating to the impact of statutory changes upon prospective loss costs and special assessments;

11. Prepare, file and distribute policy forms and endorsements and consult with members, subscribers and others relative to their use and application;

12. Conduct research and on-site inspections for the purpose of providing risk information relating to individual risks;

13. Conduct on-site inspections to determine rating classifications for individuals;

14. Collect, compile and distribute past and current prices of individual insurers and publish such information provided such information is also made available to the general public for a reasonable price;

15. Collect and compile exposure and loss experience for the purpose of individual risk experience ratings.

16. File final rates, at the direction of the commissioner, for residual market mechanisms;

17. Furnish any other services, as approved or directed by the commissioner, related to those enumerated in this section.

Section 13. {Advisory Organizations: Prohibited Activity}

A. Except as specifically permitted under this act, no advisory organization shall compile or distribute recommendations relating to rates that include expenses (other than loss

adjustment expenses) or profit.

B. No insurer or advisory organization shall attempt to monopolize or combine or conspire with any other person to monopolize an insurance market in this state. No insurers or advisory organization shall engage in a boycott, on a concerted basis, of an insurance market.

C. Except as otherwise provided in this Act, no insurer shall agree with any other insurer, or with an advisory organization, to adhere to or use any rate, supplementary rate information, policy, surveys, inspections or similar material except as needed to develop statistical plans or facilitate the reporting of statistics pursuant to this act.

D. The fact that two or more insurers, whether or not members or subscribers of any advisory organization, use consistently or intermittently the same rates, supplementary rate information policy or bond forms, surveys, inspections or similar materials is not sufficient in itself to support a finding that an illegal agreement exists and may be used only for the purpose of supplementing or explaining other direct evidence of the existence of any such agreement.

E. Two or more insurers having a common ownership or operating in this state under common management or control may act in concert between or among themselves with respect to any matters pertaining to activities authorized in this Act as if they constituted a single insurer.

Section 14. {Records and Reports; Exchange of Information}

A. 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. Except for subsection (C) of this section, 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 information and experience data with insurance regulatory officials, insurers, and advisory organization in this and other states and may consult with them with respect to the collection of statistical data and the application of rating systems.

C. Each workers' compensation insurer shall adhere to the uniform classification system and uniform experience rating plan as submitted to the commissioner by the advisory organization. An insurer may develop subclassifications of the uniform classification system, upon which a rate may be made; provided, however, that such subclassifications must be filed on an informational basis only with the commissioner 30 days prior to their use. The commissioner shall disapprove subclassifications only if the insurer fails to demonstrate that the data thereby produced can be reported consistent with the uniform statistical plan and classification system. Each workers' compensation insurer shall report its experience in accordance with the statistical plans and other reporting requirements in use by the advisory organization designated by the commissioner. The advisory organization shall develop and file rules reasonably related to the recording and reporting of data pursuant to the uniform statistical plan, uniform experience rating plan, and the uniform classification system.

Section 15. {Joint Underwriting, Pool and Residual Market Activities}

A. Acting in Concert. Notwithstanding the provisions of section 12, 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, the furnishing of loss and expense statistics or other information and 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 or 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 that 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 16. {Assigned Risks}

A. Agreements may be made among insurers with respect to the equitable apportionment among them of insurance which 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.

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

Section 17. {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 18. {Exemptions}

A. 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 19. {Dividends}

A. 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 20. {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 that fails to comply with an order of the commissioner within the time prescribed by such order, or any extension thereof that 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 21. {Judicial Review}

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

Section 22. {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 23. {Severability} If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of the Act,

and the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Section 24. {Effective Date} The provisions of this Act become effective _____ months after the enactment.

Adopted by the CIED Task Force at the States and Nation Policy Summit in December, 2000. Approved by the ALEC Board of Directors January, 2001.

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