

Title 8: Banking And Insurance

Chapter 128: Property And Casualty Insurance Rate Regulation

§ 4681. Purposes

The purposes of this chapter are:

- (1) to prohibit price fixing agreements and other anticompetitive behavior by or among insurers;
- (2) to protect policyholders and the public against the adverse effects of excessive, inadequate or unfairly discriminatory rates;
- (3) to promote price competition among insurers so as to provide rates that are responsive to competitive market conditions;
- (4) to provide regulatory controls in the absence of competition;
- (5) to promote availability, fairness, and reliability of insurance;
- (6) to authorize cooperative action among insurers in ratemaking and to regulate such activity to prevent practices that tend to substantially lessen competition or create a monopoly; and
- (7) to cause the availability of price and other information to enable the public to purchase insurance suitable for their needs and to foster competitive insurance markets. (Added 1983, No. 238 (Adj. Sess.), § 1.)

Subchapter 1: Insurance Rates And Statistics

§ 4682. Scope

This chapter 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) reinsurance; and
- (6) aircraft liability and aircraft hull insurance. (Added 1983, No. 238 (Adj. Sess.), § 1.)

§ 4683. Definitions

As used in this chapter:

- (1) "Advisory or service organization" means any person or organization which assists insurers as authorized by section 4690 of this title, but such an organization shall not include joint underwriting organizations, actuarial or legal consultants, a single insurer, any employees of an insurer, or insurers under common control or management or their employees or managers.
- (2) "Classification system" or "classification" means a plan, system, or arrangement for recognizing differences in exposure to hazard among risks.
- (3) "Commercial risk insurance" means insurance within the scope of this chapter which is not:
 - (A) personal risk insurance; or
 - (B) workers' compensation and employers' liability insurance.
- (4) "Competitive market" means a market which has not been found to be noncompetitive pursuant to section 4684 of this title.

(5) "Expenses" means that portion of any rate attributable to acquisition, field supervision and collection expenses, general expenses, and taxes, licenses, and fees.

(6) "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 to produce a prospective premium credit, debit, or unity modification.

(7) "Joint underwriting" means a voluntary arrangement established on an ad hoc basis to provide insurance coverage pursuant to which two or more insurers separately contract with the insured at a price and under policy terms agreed upon between the insurers.

(8) "Loss cost" means the actuarially developed portion of the rate needed to cover future losses and claims. The loss cost does not include: commission expenses, other acquisition expenses, general expenses, taxes, profit, and other contingencies.

(9) "Loss trending" means any procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective.

(10) "Market" means the statewide interaction between buyers and sellers of a particular line of insurance or product market component.

(11) "Noncompetitive market" means a market for which there is a ruling in effect pursuant to section 4684 of this title that a reasonable degree of competition does not exist.

(12) "Personal risk insurance," other than workers' compensation and employers' liability insurance, means homeowners, tenants, private passenger nonfleet automobile, mobile home, and other property and casualty insurance primarily for personal, family, or household needs rather than for business or professional needs.

(13) "Pool" means a voluntary arrangement other than a residual market mechanism, established on an ongoing basis, pursuant to which two or more insurers participate in the sharing of risks on a predetermined basis. The pool may operate through an association, syndicate, or other pooling agreement.

(14) "Pure premium rate" means that portion of the rate which represents the loss cost per unit of exposure or loss cost per unit of insurance.

(15) "Rate" means the cost of insurance per exposure base unit, or cost per unit of insurance, prior to the application of individual risk variations based upon loss or expense considerations, and does not include minimum premiums.

(16) "Residual market mechanism" means an arrangement, either voluntary or mandated by law or regulation of the Commissioner, involving participation by insurers in the equitable apportionment among them of insurance which may be afforded applicants who are unable to obtain insurance through ordinary methods.

(17) "Statistical plan" means a plan, system, or arrangement used in collecting insurance or related data.

(18) "Supplementary rate information" includes any manual, schedule, or plan of rates, classification system, rating schedule, minimum premium, policy fee, rating rule, rating plan, or any other similar information needed or used to determine the applicable premium in effect or to be in effect for an insured.

(19) "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) the description of methods used in making the rates; and

(D) any other similar information relied upon by the filer. (Added 1983, No. 238 (Adj. Sess.), § 1; amended 1989, No. 128 (Adj. Sess.), § 1.)

§ 4684. Competitive market

(a) A competitive market in a type of insurance subject to this chapter is presumed to exist unless:

(1) the Commissioner, after notice and hearing, determines and orders that a reasonable degree of competition does not exist in the market;

(2) the average annual increase in premiums or rates in the market is 25 percent or more as determined and noticed by the Commissioner; or

(3) an insurer uses a claims made liability insurance policy form or endorsement.

(b) The Commissioner shall conduct hearings to determine whether a reasonable degree of competition exists whenever, in any market over any 12-month period, the average rates or premiums increase at least 15 percent, but less than 25 percent, over the average rate or premiums for the immediately preceding 12-month period for that market. The Commissioner shall not be obligated to hold hearings under this subsection if, based on the information available to him or her under subsection 4688(a) of this title and other sources, the Commissioner determines that a competitive market continues to exist.

(c) Upon a determination of an increase in rates or premiums of 25 percent or more under subdivision (a)(2) of this section, the Commissioner may issue a notice that a reasonable degree of competition does not exist. Insurers may use their currently filed rates for only 120 calendar days after such notice, unless the Commissioner determines that it is in the consumer's best interest to extend this time period.

(d) A competitive market does not exist if an insurer uses a claims made liability insurance policy form or endorsement. Insurers writing insurance on a claims made basis are subject to the prefiling requirements of subdivision 4688(c)(1) of this title.

(e) The rates or premiums in a noncompetitive market shall be subject to the prefiling requirements set forth in subdivision 4688(c)(1) of this title.

(f) An order or notice that a noncompetitive market exists under subdivisions (a)(1) and (2) of this section shall expire no later than two years after the order or notice issues unless the

Commissioner earlier rescinds the order or notice, or continues the order or notice upon a further determination that a reasonable degree of competition does not exist. Such further determination shall be preceded by public notice, but may be made without a hearing unless requested by an interested party.

(g) In determining whether a reasonable degree of competition exists under subdivision (a)(1) of this section, the Commissioner shall consider relevant structural and functional factors in determining the competitiveness of the market, including: the number of insurers actively engaged in providing coverage; market shares; and ease of entry. (Added 1983, No. 238 (Adj. Sess.), § 1; 1985, No. 265 (Adj. Sess.), § 1, eff. June 4, 1986; 1987, No. 185 (Adj. Sess.), § 1, eff. May 5, 1988; 1989, No. 128 (Adj. Sess.), § 2.)

§ 4685. Rate standards

(a) General. Rates shall not be excessive, inadequate, or unfairly discriminatory.

(b) Excessiveness.

(1) Competitive market. A rate in a competitive market is not excessive.

(2) Noncompetitive market. Rates in a noncompetitive market are excessive if they are producing or are likely to produce unreasonably high profits for the insurance provided or if expenses are unreasonably high in relation to services rendered.

(c) Inadequacy. Rates are not inadequate unless insufficient to sustain projected losses and expenses in the class or classes of business to which they apply or the use of such rates has or, if continued, will have the effect of substantially lessening competition or the tendency to create a monopoly in any market.

(d) Unfair discrimination. Unfair discrimination exists if, after allowing for practical limitations, price differentials fail to reflect equitably the differences in expected losses and expenses. A rate is not unfairly discriminatory because different premiums result for a class of policyholders with like loss exposures but different expenses, or like expenses but different loss exposures, provided that the rate equitably reflects the differences with reasonable accuracy. A rate is not

unfairly discriminatory if it is averaged broadly among persons insured under a group, franchise, or blanket policy or a mass marketed plan. (Added 1983, No. 238 (Adj. Sess.), § 1; amended 2017, No. 134 (Adj. Sess.), § 6.)

§ 4686. Rating methods or criteria

In determining whether rates comply with the excessiveness standard in a noncompetitive market under subdivision 4685(b)(2) of this title, the inadequacy standard under subsection 4685(c) of this title and the unfair discrimination standard under subsection 4685(d) of this title, the following criteria shall apply:

(1) Basic factors in rates. Due consideration shall be given to past and prospective loss and expense experience within, and as reasonable and necessary outside this State; to catastrophe hazards; to residual market loss redistributions and other similar obligations, if any; to a reasonable provision for underwriting profit; to contingencies, if any; to trends within and outside this State; to loadings for leveling premium rates over time or for dividends or savings to be allowed or returned by insurers to their policyholders, members, or subscribers; and to all other relevant factors.

(2) Classification. Risks may be classified in any lawful and reasonable way for the collection of statistics and establishment of rates. Rates may be modified for individual risks in accordance with rating plans or schedules which provide for recognition of probable variations in hazards, expenses, or both.

(3) Expenses. The expense provisions included in the rates to be used by an insurer shall reflect the operating methods of the insurer, and, so far as is determinable and reasonable, its own actual and anticipated expense experience for the kind of insurance involved, or any subdivision thereof.

(4) Profits. The rates shall contain an allowance providing for a reasonable profit. In determining the reasonableness of profit, consideration shall be given to all relevant investment income and a provision for contingencies may be included. (Added 1983, No. 238 (Adj. Sess.), § 1; 1987, No. 185 (Adj. Sess.), § 2, eff. May 5, 1988.)

