

# The Center For Economic Justice

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By e-mail

Re: Comments on Property and Casualty Model Rate and Policy Form Model Law

Dear David:

The Center for Economic Justice offers the following comments on the most recent exposure draft of the Property and Casualty Model Rate and Policy Form Law.

### 1. Disallowed Expense Drafting Note

The discussion on this topic indicated that most, or all, regulators felt that the 5A(4)(c) language already allowed or required regulators to disallow certain expenses in insurers' rates. The intent of the drafting note was to provide states with an option for a stronger and more explicit directive to the Commissioner on the types of expenses that should not be included in insurers' rates. The introductory language of the drafting note, adopted in December 1999, however, could be interpreted to mean that *unless* the state were to adopt the drafting note language, the Commissioner should, or must, allow those expenses in insurers' rates. We therefore offer the following change to better reflect the intent of the drafting note.

Drafting Note—Disallowed Expenses in Rates: If a state desires to provide the commissioner with explicit guidance regarding certain categories of expenses that may not be included in insurers' rates, it should consider the following language instead of that provided in Section 5A(4)(c):

## **2. Section 5A(5) Rate Standards – Two or More Insurers**

This provision is in the section on Rate Standards and states: “Two (2) or more insurers operating under common underwriting management for a line or kind of insurance or subdivision of a line or kind in this state shall, for that line or kind of insurance or subdivision, be treated as a single insurer for purposes of this section in order to prevent unfair discrimination between similarly situated policyholders.”

It appears that the intent of this section is to prevent insurers from skirting rate standards by utilizing multiple companies. However, the provision, as stated, will lead to precisely the opposite result. By treating two or more insurers as one insurer for purposes of determining whether rates are just, reasonable, not excessive and not unfairly discriminatory, this section creates the potential for unfair discrimination in two or more companies – but reasonable rates in aggregate across the companies! It is unclear to us why this section is needed to prevent unfair discrimination between similarly situated policyholders. In fact, it seems that each company’s rates must be reviewed independently of other companies in the insurer group to ensure that unfair discrimination is not occurring. We oppose this section and recommend its deletion.

## **3. Section 9A(5) Waiver of Prior Approval for Policy Forms**

This section allows the commissioner to waive prior approval requirements for commercial policy forms by rule. We oppose this provision and recommend its deletion from the model law. We view this provision as an example of self-contradiction in the model. The model reflects the policy decision that policy forms be regulated under prior approval. The model then explicitly carves out exceptions for exempt commercial policyholders, i.e., deregulation for large commercial risks. Section 9A(5) then gives the Commissioner authority to waive policy form prior approval requirements for any other commercial risk. Clearly, this provision is inconsistent with the first two policy decisions – policy form prior approval and deregulation for large commercial risks.

We oppose this provision because it grants the commissioner authority to gut the basic prior approval requirements for policy forms. We oppose this provision because it will create new problems for regulators. It will not be possible for the regulator to perform his or her review of rates without knowing what coverages are being priced. Regulators will be unable to determine if a rate is reasonable without having the contract language available for review. We oppose this provision because it is possible to achieve the stated outcome – regulatory relief for certain types of policy forms – within the prior approval framework. If a regulator wants to speed the use of certain types of policy forms – say, forms with enhanced coverage – he or she already has the authority in the model to speed up the review and approval of the forms through management decisions. Simply put, there is no need to include Section 9A(5) to accomplish expedited use of certain types of policy forms.

## **4. Section 11C – Waiver of Surplus Lines Due Diligence**

Although this provision is limited to exempt commercial risks, we oppose the potential to eliminate surplus lines due diligence. This provision, if promulgated by the commissioner, will put surplus lines carriers on equal footing with admitted carriers. We oppose such an outcome.

## **5. Competitive Markets**

We continue to recommend deletion of the role of “competitive markets” in the model. The model currently requires the commissioner to determine if markets are competitive. Rate filings in competitive markets are presumed reasonable. However, the model contradicts this reliance on competitive markets by granting the Commissioner authority to challenge rate filings in competitive markets. In addition to the model law being self-contradictory, the determination of whether insurance markets are competitive or not competitive is highly subjective. Further, the requirement that a Commissioner make a determination that a particular market is competitive or not competitive restricts and slows the Commissioner’s ability to quickly and effectively deal with market problems.

We believe that a more internally consistent and straightforward approach would be to eliminate references to competitive or non-competitive markets. The result is that the model defaults to file and use for rates and prior approval for forms. If the commissioner believes that rates are excessive, he or she then has clear authority to enforce rate standards.

Thank you for the opportunity to comment on the exposure draft.

Sincerely,

Birny Birnbaum