

LEGISLATIVE BILL 77

Approved by the Governor March 17, 2021

Introduced by Gragert, 40.

A BILL FOR AN ACT relating to the Property and Casualty Insurance Rate and Form Act; to amend sections 44-7508, 44-7509, and 44-7510, Reissue Revised Statutes of Nebraska; to prohibit risk classifications and rate adjustments that are based solely on the fact that an insured is deployed in the military for a period of six months or greater; and to repeal the original sections.

Be it enacted by the people of the State of Nebraska,

Section 1. Section 44-7508, Reissue Revised Statutes of Nebraska, is amended to read:

44-7508 (1) Each insurer to which this section applies as provided in section 44-7506 shall file with the director every rating system and every modification of such rating system that it chooses to use. No insurer shall issue a contract or policy except in accordance with the filings that are in effect for such insurer as provided in the Property and Casualty Insurance Rate and Form Act, except:

(a) As provided in subsections (6) and (7) of this section;

(b) As provided by rules and regulations adopted and promulgated pursuant to section 44-7515; or

(c) For types of inland marine risks that have, by custom of the industry, not been written according to manual rates or rating plans. For types of inland marine risks for which the custom of the industry has not been established, the director shall consider the similarity of the new insurance to existing types of insurance and classes of risk and whether it would be reasonably practical to create and file rating systems prior to use.

(2) Every filing shall state its effective date, which shall not be prior to the date that the director receives the filing.

(3) Every filing shall provide an objective description of the risks and the coverages to which the rating system will apply. If the insurer has another rating system on file that applies to some or all of these same risks, the filing shall disclose this and shall objectively identify those risks to which each rating system will apply. Filings shall include a list of manual pages and other rating system elements that will be replaced when the approval of a filing will result in the replacement or alteration of previously filed rating systems. In addition, insurers shall maintain listings of manual pages and other rating system elements that have been filed with the director so that such listings can be provided upon request.

(4) Each insurer shall file or incorporate by reference to material filed with the director all supporting information relating to a rating system. If a filing is not accompanied by such information or if additional information is required to complete review of the filing, the director may require such insurer to furnish the information, and in that event the review period in subsection (10) of this section shall commence on the date such information is received by the director. If an insurer fails to furnish the required information within sixty days, the director may disapprove the filing based on the insurer's failure to provide the requested information. Disapproval shall be by written notice sent to the insurer ordering discontinuance of the filing within thirty days after the date of notice.

(5) An insurer may authorize the director to accept rating system filings and prospective loss cost filings made on its behalf by an advisory organization. The insurer shall file additional information as is necessary to complete its rating systems on file with the director.

(6) A rate or premium in excess of that provided by a filing otherwise applicable may be used on any specific risk upon the prior written consent of the insured that describes the insured's unusual or extrahazardous exposures that are not otherwise contemplated by the rates on file for that class of risk. Such signed consent shall be filed with the director no later than thirty days after the effective date of the insurance to which it applies. Insurers may not use the procedure set forth in this subsection as a regular means to gain more rate flexibility than is otherwise allowed by the Property and Casualty Insurance Rate and Form Act. The director shall monitor such rate applications to assure compliance with this subsection. The director may, after a hearing, require by order that such applications for an insurer that has demonstrated a pattern of using this rating device for risks that do not possess unusual or extrahazardous exposures or that otherwise fails to comply with this subsection shall be subject to prior approval pursuant to subdivision (6)(a) of section 44-7511. Upon application by an insurer affected by such order, demonstrating that its filings made subsequent to the order have been in compliance with this subsection, the director shall vacate such order. The director shall consider any such application within thirty days after its receipt for any order that has been in effect for more than nine months since its inception or since it was last reviewed by the director pursuant to an application by the insurer.

(7) The director may by rules and regulations or by order suspend or modify the filing requirements of this section as to any type of insurance or class of risk for which rating systems cannot practicably be filed before they are used. In making this finding, the director shall ascertain whether a system of rating classifications and exposure bases that would equitably reflect the differences in expense requirements and expected losses between individual risks has been developed or appears reasonably capable of being developed. The director may examine insurers as is necessary to ascertain whether any rating systems affected by such rules and regulations meet the standards contained in this section and in section 44-7510.

(8) No filing or any supporting information provided pursuant to this section shall be open to public inspection pursuant to sections 84-712 to 84-712.09 before the date on which the director completes review of the filing unless publicly disclosed in an open court, open administrative proceeding, or open meeting or disclosed by the director pursuant to statute. Correspondence specifically relating to individual risks shall be confidential and may not be made public by the director except as may be compiled in summaries of such activity.

(9) The director shall review filings as soon as reasonably possible after they have been submitted. The director shall disapprove a filing if:

(a) The filing proposes a rating system that would produce inadequate premiums. A premium level is inadequate if it would endanger the solvency of the insurer. A premium level that would not be expected to generate a profit on a direct basis and that would be likely to have the effect of diminishing competition is also inadequate. A premium level that does not endanger the solvency of the insurer and is not likely to have the effect of diminishing competition is not inadequate;

(b) The insurer has more than one rating system applicable to the line or type of insurance and the insurer fails to specify objective differences between risks to determine the risks and the coverages to which the rating system will apply;

(c) The filing proposes to discriminate between risks based on optional commission differences for agents;

(d) The filing proposes to discriminate between risks based on race, creed, national origin, or religion of the insured;

(e) The filing would violate the Unfair Discrimination Against Subjects of Abuse in Insurance Act; ~~or~~

(f) The filing discriminates between risks based on subjective factors, except that an experience rating plan may use loss reserves without being considered as subjective; ~~or~~

(g) The filing proposes to discriminate between risks based solely on the fact that the insured is deployed in the military on Title 10 orders that require the insured to be mobilized outside of the United States, United States territories, and the District of Columbia for a period of six months or greater.

(10) Within thirty days after receipt, the director shall disapprove a filing that requires disapproval pursuant to subsection (9) of this section, except that this review period may be extended for an additional period not to exceed thirty days if the director gives written notice within the original review period to the insurer. A filing shall be deemed to meet the requirements of this section unless disapproved by the director within the review period or any extension thereof.

(11) If, within the review period provided by subsection (10) of this section or any extension thereof, the director finds that a filing does not meet the requirements of subsection (9) of this section, a written disapproval notice shall be sent to the insurer. Such notice shall specify in what respects the filing fails to meet these requirements and order discontinuance of the filing within thirty days after the date of notice.

(12) An insurer whose filing is disapproved may, within thirty days after receipt of a disapproval notice, request a hearing in accordance with section 44-7532.

(13) If, at any time after the expiration of the review period provided by subsection (10) of this section or any extension thereof, the director finds that a rating system or modification thereof does not meet or no longer meets the requirements of subsection (9) of this section, the director shall hold a hearing in accordance with section 44-7532.

(14) Any insured aggrieved with respect to any filing may make written application to the director for a hearing on such filing. The hearing application shall specify the grounds to be relied upon by the applicant. If the director finds that the hearing application is made in good faith, that a remedy would be available if the grounds are established, or that such grounds otherwise justify holding a hearing, the director shall hold a hearing in accordance with section 44-7532.

(15) If, after a hearing held pursuant to subsection (13) or (14) of this section, the director finds that a filing does not meet the requirements of subsection (9) of this section, the director shall issue an order stating in what respects such filing fails to meet the requirements and when, within a reasonable period thereafter, such rating system or aspect of a rating system shall no longer be used. Copies of the order shall be sent to the applicant, if applicable, and to every affected insurer and advisory organization. The order shall not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.

Sec. 2. Section 44-7509, Reissue Revised Statutes of Nebraska, is amended

to read:

44-7509 (1) For medical professional liability insurance and for insurance subject to section 44-7508, insurers may increase or decrease premiums on an individual risk basis up to forty percent based on any factor except:

(a) The rate adjustment cannot be based upon the race, creed, national origin, or religion of the insured;

(b) The rate adjustment cannot violate the Unfair Discrimination Against Subjects of Abuse in Insurance Act; ~~and~~

(c) The rate adjustment cannot apply to (i) insurance covering risks of a personal nature, including insurance for homeowners, tenants, private passenger nonfleet automobiles, mobile homes, and other property and casualty insurance for personal, family, or household needs or (ii) insurance covering farms and ranches, including crop insurance; ~~and~~ -

(d) The rate adjustment cannot be based solely upon the fact that the insured is deployed in the military on Title 10 orders that require the insured to be mobilized outside of the United States, United States territories, and the District of Columbia for a period of six months or greater.

(2) If the director finds after a hearing that (a) the utilization of this section by the insurance industry has produced a significant number of rate modifications at or near the upper limit and at the lower limit of the allowable range of modification and (b) the modifiers at and near the upper and lower limits of the allowable range of modification appear to be predominantly correlated with individual risk factors that relate to expected losses and expenses, the director may, by rules and regulations, broaden the range of plus or minus forty percent for any line or type of insurance subject to section 44-7508.

(3) If the director finds after a hearing that modifiers at or near the upper or lower limits of the allowable range of modification are not predominantly correlated with individual risk factors that relate to expected losses and expenses, the director may, by rules and regulations, reduce the range of plus or minus forty percent for any line or type of insurance subject to section 44-7508, but such reduction shall not be to less than plus or minus twenty-five percent.

Sec. 3. Section 44-7510, Reissue Revised Statutes of Nebraska, is amended to read:

44-7510 (1) Rating systems shall not produce premiums that are excessive. A premium level is excessive if it is likely to produce a profit that is unreasonably high for the insurance provided or if expenses are unreasonably high in relation to services rendered. In the evaluation of a premium level, due consideration shall be given to loss experience within and outside this state; reasonably anticipated trends; investment income; special assessments, conflagration, and catastrophe hazards; a reasonable margin for profit; dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to policyholders, members, or subscribers; expense experience both countrywide and specially applicable to this state; and other relevant factors.

(2) Rating systems shall not produce premiums that are inadequate. A premium level is inadequate only if (a) it would endanger the solvency of the insurer or (b) it would not be expected to generate a profit on a direct basis and would be likely to have the effect of diminishing competition.

(3)(a) Rating systems shall not produce premiums that are unfairly discriminatory. Premiums are unfairly discriminatory if, after allowing for practical limitations, price differentials fail to equitably reflect differences in expense requirements or expected losses.

(b) Risks may be grouped by classification groupings that identify objective risk differences for the establishment of rates and prospective loss costs and for the use of rating systems.

(c) Rates and premiums may be modified for individual risks or groups of risks in accordance with objective standards for measuring differences among risks or groups of risks that can be demonstrated to have a probable effect upon losses or expenses. The fact that experience rating plans use loss reserves shall not be interpreted as making experience rating plans subjective.

(d) Notwithstanding subdivisions (3)(b) and (c) of this section, fire insurance rating plans applying to commercial risks for the sole use by advisory organizations that contain reasonable subjective rating factors, but that otherwise meet the standards contained in the Property and Casualty Insurance Rate and Form Act, shall be approved.

(e) 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. Mass marketed plan means a method of selling property liability insurance wherein:

(i) The insurance is offered to employees of particular employers, members of particular associations or organizations, or stockholders of publicly held corporations or to persons grouped in other ways, except groupings formed principally for the purpose of obtaining such insurance; and

(ii) The employer or other organization has agreed to, or otherwise affiliated itself with, the sale of such insurance to its employees or other groupings of persons affiliated with it.

(f) An insurer may have different rate levels for otherwise similar insureds based on expense differences between coverage sold:

(i) Through direct sales using employees of the insurer;

(ii) Through direct sales by the insurer using the Internet; and

(iii) Through agents that are not employees of the insurer.

(g) No risk classification or grouping may be based upon the race, creed,

national origin, or religion of the insured.

(h) No rating system may violate the Unfair Discrimination Against Subjects of Abuse in Insurance Act.

(i) No risk classification or grouping may be based solely upon the fact that the insured is deployed in the military on Title 10 orders that require the insured to be mobilized outside of the United States, United States territories, and the District of Columbia for a period of six months or greater.

(4) Prospective loss costs shall be as near as is practical to the expected cost of future losses, including loss adjustment expenses. Anticipated special assessments may be included with prospective loss costs.

Sec. 4. Original sections 44-7508, 44-7509, and 44-7510, Reissue Revised Statutes of Nebraska, are repealed.