

LEGISLATURE OF NEBRASKA
ONE HUNDRED SEVENTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 77

FINAL READING

Introduced by Gragert, 40.

Read first time January 07, 2021

Committee: Banking, Commerce and Insurance

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

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

3 44-7508 (1) Each insurer to which this section applies as provided
4 in section 44-7506 shall file with the director every rating system and
5 every modification of such rating system that it chooses to use. No
6 insurer shall issue a contract or policy except in accordance with the
7 filings that are in effect for such insurer as provided in the Property
8 and Casualty Insurance Rate and Form Act, except:

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

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

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

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

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

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

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

17 (6) A rate or premium in excess of that provided by a filing
18 otherwise applicable may be used on any specific risk upon the prior
19 written consent of the insured that describes the insured's unusual or
20 extrahazardous exposures that are not otherwise contemplated by the rates
21 on file for that class of risk. Such signed consent shall be filed with
22 the director no later than thirty days after the effective date of the
23 insurance to which it applies. Insurers may not use the procedure set
24 forth in this subsection as a regular means to gain more rate flexibility
25 than is otherwise allowed by the Property and Casualty Insurance Rate and
26 Form Act. The director shall monitor such rate applications to assure
27 compliance with this subsection. The director may, after a hearing,
28 require by order that such applications for an insurer that has
29 demonstrated a pattern of using this rating device for risks that do not
30 possess unusual or extrahazardous exposures or that otherwise fails to
31 comply with this subsection shall be subject to prior approval pursuant

1 to subdivision (6)(a) of section 44-7511. Upon application by an insurer
2 affected by such order, demonstrating that its filings made subsequent to
3 the order have been in compliance with this subsection, the director
4 shall vacate such order. The director shall consider any such application
5 within thirty days after its receipt for any order that has been in
6 effect for more than nine months since its inception or since it was last
7 reviewed by the director pursuant to an application by the insurer.

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

19 (8) No filing or any supporting information provided pursuant to
20 this section shall be open to public inspection pursuant to sections
21 84-712 to 84-712.09 before the date on which the director completes
22 review of the filing unless publicly disclosed in an open court, open
23 administrative proceeding, or open meeting or disclosed by the director
24 pursuant to statute. Correspondence specifically relating to individual
25 risks shall be confidential and may not be made public by the director
26 except as may be compiled in summaries of such activity.

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

30 (a) The filing proposes a rating system that would produce
31 inadequate premiums. A premium level is inadequate if it would endanger

1 the solvency of the insurer. A premium level that would not be expected
2 to generate a profit on a direct basis and that would be likely to have
3 the effect of diminishing competition is also inadequate. A premium level
4 that does not endanger the solvency of the insurer and is not likely to
5 have the effect of diminishing competition is not inadequate;

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

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

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

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

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

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

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

31 (11) If, within the review period provided by subsection (10) of

1 this section or any extension thereof, the director finds that a filing
2 does not meet the requirements of subsection (9) of this section, a
3 written disapproval notice shall be sent to the insurer. Such notice
4 shall specify in what respects the filing fails to meet these
5 requirements and order discontinuance of the filing within thirty days
6 after the date of notice.

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

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

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

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

1 Sec. 2. Section 44-7509, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 44-7509 (1) For medical professional liability insurance and for
4 insurance subject to section 44-7508, insurers may increase or decrease
5 premiums on an individual risk basis up to forty percent based on any
6 factor except:

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

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

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

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

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

30 (3) If the director finds after a hearing that modifiers at or near
31 the upper or lower limits of the allowable range of modification are not

1 predominantly correlated with individual risk factors that relate to
2 expected losses and expenses, the director may, by rules and regulations,
3 reduce the range of plus or minus forty percent for any line or type of
4 insurance subject to section 44-7508, but such reduction shall not be to
5 less than plus or minus twenty-five percent.

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

8 44-7510 (1) Rating systems shall not produce premiums that are
9 excessive. A premium level is excessive if it is likely to produce a
10 profit that is unreasonably high for the insurance provided or if
11 expenses are unreasonably high in relation to services rendered. In the
12 evaluation of a premium level, due consideration shall be given to loss
13 experience within and outside this state; reasonably anticipated trends;
14 investment income; special assessments, conflagration, and catastrophe
15 hazards; a reasonable margin for profit; dividends, savings, or
16 unabsorbed premium deposits allowed or returned by insurers to
17 policyholders, members, or subscribers; expense experience both
18 countrywide and specially applicable to this state; and other relevant
19 factors.

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

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

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

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

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

12 (e) A rate is not unfairly discriminatory if it is averaged broadly
13 among persons insured under a group, franchise, or blanket policy or a
14 mass marketed plan. Mass marketed plan means a method of selling property
15 liability insurance wherein:

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

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

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

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

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

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

29 (g) No risk classification or grouping may be based upon the race,
30 creed, national origin, or religion of the insured.

31 (h) No rating system may violate the Unfair Discrimination Against

1 Subjects of Abuse in Insurance Act.

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

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

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