Model
Insurance Act

Section 1. Regulation of Rates

(a) The rates for all classes of insurance subject to this Act shall not be excessive, inadequate, or unfairly discriminatory.

(b) Every insurer, writing the kinds of liability insurance subject to this Act, shall file with the Director all rates, rating plans, classifications, class rates, rating schedule and all other supplementary rate information and every modification of any of the foregoing, which it uses or proposes to use in this state. Such filings shall be made for every class of insurance subject to this Act. The Director shall require the insurer to furnish at its expense the information upon which it supports the filing. Every such filing shall state the proposed effective date thereof, and shall indicate the character and extent of coverage contemplated. When a filing is not accompanied by the information upon which the insurer supports such filing, and the Director does not have sufficient information to determine whether such filing meets the requirements of this act, it shall require such insurer to furnish the information upon which it supports such filing and in such event all time periods specified herein shall commence as of the date such information is furnished. The information required by the Director may include:

(1) Information as to the experience and judgment of the filer and, to the extent the filer prefers, or the Director requests, of other insurers or rating organizations;

(2) A written explanation of the filer's interpretation of any statistical data relied upon; and

(3) A written explanation and description of the methods used in making the rates.

(c) An insurer may rely upon and incorporate in the filings required by subsection (b) pooled loss data collected and compiled as developed by a licensed rating organization. The insurer shall supply all other information supporting such filings, including loss development and trend factors, loss adjustment expenses, administrative expenses, allowance for profit, and contingency factors. Nothing contained in this Act shall be construed as requiring an insurer to become a member of, or a subscriber to, any rating organization.

(d) (1) Each filing shall become effective upon the Director's approval thereof. The Director shall, within sixty (60) days of the receipt of any filing, which includes all information required by the Director of this act, approve, disapprove or modify such filing.

(2) If the Director finds that a filing does not meet the requirements of this Act, the Director shall send to the insurer which made such filing written notice specifying therein the reasons for which and the respects in which the filing fails to meet such requirements. Upon notice of disapproval or modifi-

cation, the insurer who made such filing may request a hearing on the record.

(e) (1) A rate shall be presumed to be inadequate if it is less than the pure premium. "Pure premium" is the loss cost per unit of exposure plus the loss adjustment expense directly allocated to the settlement of specific losses.

(2) A rate shall be presumed to be excessive if it results in an increase of more than 20% for that class of insurance over the previous twelve month period.

(f) In addition to the rate standards provided in paragraph (e), a rate may be found by the Department to be excessive, inadequate, or unfairly discriminatory based upon the following standards:

(1) Rates shall be deemed excessive if they are likely to produce a profit from business in the state that is unreasonably high in relation to the risk involved in the class of business or if expenses are unreasonably high in relation to services rendered;

(2) Rates shall be deemed inadequate if they are clearly insufficient, together with the investment income attributable to them, to sustain projected losses and expenses in the class of business to which they apply;

(3) A rate shall be deemed inadequate as to the premium charged to a risk or group of risks if discounts or credits are allowed which exceed a reasonable reflection of expense savings and reasonably expected loss experience from the risk or group of risks;

(4) One rate shall be deemed unfairly discriminatory in relation to another in the same class if it fails to clearly and equitably reflect the difference in expected losses and expenses;

(5) A rate shall be deemed unfairly discriminatory as to a risk or group of risks if the application of premium discounts or credits among such risks does not bear a reasonable relationship to the expected loss and expense experience among the various risks.

(g) (1) The Director shall require, to the greatest extent possible, that rates for an individual or group be based upon the individual's or group's past loss experience.

(2) Risks may be grouped by classifications for the establishment of rates and minimum premiums. Rates may be modified to produce premiums for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Such standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expenses.

(h) (1) Each insurer offering commercial casualty insurance or commercial property insurance covering risks located in this State shall develop and make available to insureds guidelines for risk management plans. Policyholders complying with the guidelines for a risk management plan shall be entitled to a discount in premiums of at lease five (5) percent. The risk management program shall include the following:

(a) Safety measures, including, as applicable, the following areas:

(i) Pollution and environmental hazards;

(ii) Disease hazards;

(iii Accidental occurrences;

(iv) Fire hazards and fire prevention and detection;

(v) Liability for acts from the course of business;

(vi) Slip and fall hazards;

(vii) Product injury; and

(viii) Hazards unique to a particular class or category of insureds.

(b) Training to insureds in safety management techniques.

(c) Safety management counseling services.

(2) There shall be no civil cause of action against any insurer, its agents, or its employees for acts or omissions in any way connected with the requirements of this subsection. This shall not limit the authority for the department to enforce the provisions of this subsection.

(i) No insurer, agent or broker shall make, issue or deliver, or knowingly permit the making, issuance or delivery of any policy of insurance which includes a premium surcharge or discount other than in accordance with a rating plan filed under subsection (g) or in accordance with the provisions of subsection

(h), except that upon the written application of the insured, stating his reasons therefor and filed with the Director, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

(j) Every insurer shall, within a reasonable time after receiving written request therefore, furnish to any policyholder or to the authorized representative of such policyholder all pertinent information as to the rate applicable to the policyholder. Every insurer shall provide, in response to a written request, reasonable means whereby any person aggrieved by the application of the insurer's rating system may be heard, in person or by his authorized representative, regarding the manner in which such rating system has been applied in connection with the insurance afforded him. Any party affected by the action of such insurer on such request may, within thirty (30) days after written notice of such action, appeal to the Director who, after a hearing held upon not less than ten (10) days written notice to the policyholder and to such insurer, may affirm or reverse such action. If the insurer fails to grant or reject such request within thirty (30) days after it is made, the applicant may proceed in the same manner as if his application had been rejected.

(k) An insurer may cease to transact insurance in this State, or discontinue the writing or renewal of one or more categories of insurance only after the submission of a plan which provides for an orderly withdrawal from the market and a minimi-

zation of the impact of the surrender or discontinuance on the public generally and on the insurers policyholders. The plan shall be approved by the Director and the insurer shall comply with the plan's provisions before the withdrawal or discontinuance takes effect.

(l) (1) The Director shall employ ______ actuaries for each ______ millions of dollars of premiums subject to filing requirements under subsection (a). Actuaries employed pursuant to this paragraph shall be members of the Society of Actuaries or the Casualty Actuarial Society. The salaries of the actuaries employed pursuant to this paragraph by the department shall be set at levels which are commensurate with salary levels paid to actuaries by the insurance industry.

(2) The Director is empowered to issue subpoena for persons to appear before him and for the production of documents as may be necessary to perform his duties under this section and any other section of this Act.

Section 2. <u>Disclosure</u>

(a) Each insurer licensed to write property or casualty insurance in this State shall submit a report on a form furnished by the Director showing its direct writings and experience, prior to reinsurance, in this State and the United States for the following categories of insurance:

(1) political subdivision liability insurance reported separately in the following categories:

(A) municipalities;

(B) school districts; and

(C) authorities;

(2) public official liability insurance;

(3) dram shop or tavern owners liability insurance;

(4) day-care center liability insurance;

(5) errors and omissions liability insurance;

(6) officers and directors liability insurance reported separately as follows:

(A) nonprofit entities; and

(B) for-profit entities;

(7) products liability insurance;

(8) medical malpractice insurance;

(9) attorney malpractice insurance;

(10) architect and engineer malpractice insurance; and

(11) motor vehicle insurance;

(12) nurse-midwife insurance;

(13) any other category of insurance deemed appropriate by the Director.

(b) (1) Such report shall include the following data, both specific to this State and also to the United States for the previous year ending on the thirty-first day of December:

(A) Direct premiums written;

(B) Direct premiums earned;

(C) Net investment income, including net realized capital gains and losses, using appropriate estimates where necessary;

(D) Incurred claims, developed as the sum of the following (the report shall include data for each of the following categories used to develop the sum of incurred claims):

(i) Dollar amount of claims closed with payment; plus

(ii) reserves for reported claims at the end of the current year; minus

(iii) reserves for reported claims at the end of the previous year; plus

(iv) reserves for incurred but not reported claims at the end of the current year; minus

(v) reserves for incurred but not reported claims at the end of the previous year; plus

(vi) loss adjustment expenses for claims closed; plus

(vii) reserves for loss adjustment expense at the end of the current year; minus

(viii) reserves for loss adjustment expense at the end of the previous year.

(E) Actual incurred expenses allocated separately to loss adjustment, commissions, other acquisition costs, advertising, general office expenses, taxes, licenses and fees, and all other expenses;

(F) Net underwriting gain or loss;

(G) Net operation gain or loss, including net investment income;

(H) The number and dollar amount of claims closed with payment by year incurred, the amount reserved for each claim, the year(s) in which the reserves were set, and the amounts set in each year;

(I) The number of claims closed without payment, the dollar amount reserved for each claim; the years in which reserves were set, and the amounts set in each; and,

(J) The number of claims pending at the end of each year, the amount of reserved for each claim, the year(s) in which the reserves were set, and the amounts set in each year.

(2) Such report shall also include the following data:

(A) For claims paid by the insurer during the calendar year, in which a verdict had at any time been rendered,

(i) the dollar amount paid by the insurance company;

(ii) the dollar amount of the original verdict.

(B) For claims paid by the insurer during the calendar year, in which a verdict had at any time been rendered,

(i) the dollar amount of the original verdict, broken out as follows:

(a) the total amount of past economic damages assessed by the trier of fact;

(b) the total amount of future economic damages assessed by the trier of fact;

(c) the total amount of compensatory non-economic damages assessed by the trier of fact;

(d) the total amount of punitive damages assessed by the trier of fact;

(ii) the dollar amount paid by all parties.

(iii) the dollar amount paid by the insurer.

(iv) the number of claims paid by the insurer.

(C) For claims paid by the insurer during the calendar year, in which a verdict had never been rendered,

(i) the total amount paid by the insurer broken out as follows:

(a) the amount of the plaintiff's past economic damages, as submitted by the plaintiff;

(b) the amount of the plaintiff's future economic damages, as estimated by the insurer;

(c) the amount paid by the insurer for other damages.

(ii) The number of claims paid by the insurer.

(D) The number of claims in which the insurer paid (i) more than $250,000 in non-economic damages; (ii) more than $500,000 in non-economic damages.

(E) For claims paid by the insurer during the calendar year, the number of claims in which

(i) punitive damages were assessed by the trier of fact;

(ii) punitive damages were paid by any party;

(iii) punitive damages were paid by the insurer.

(F) For claims paid by the insurer during the calendar year,

(i) the dollar amount of punitive damages assessed by the trier of fact;

(ii) the dollar amount of punitive damages paid by all parties;

(iii) the dollar amount of punitive damages paid by the insurer.

(G) The number and dollar amount of claims paid by the insurer during the calendar year in which parties other than the insured

(i) had at any time been found liable by the trier of fact, or

(ii) had been estimated by the insurance company to have some liability.

(H) For those claims identified in subparagraph (G), the amount by which the amount paid by the insurer exceed the amount proportional to the insured's percentage of responsibility.

(c) This report shall be due by the first of March of each year, and the first report shall be due March 1, 1987.

(d) For the first year only in which the insurer is required to file this report, the data required by subsection (b) of this section shall include the previous calendar year and each of the preceding five calendar years.

(e) It shall be the duty of the Director to annually compile, and review all such reports submitted by insurers pursuant to this Section to determine the appropriateness of premium rates for property or casualty insurance in this State. The Director's findings, the filings, and a summary of the filings shall be published and provided to the appropriate committees of the General Assembly and made available to any interested insured or citizen.

(f) (1) The Director may refuse to continue or may suspend or revoke the certificate of authority of any property or casualty insurer failing to file its supplemental report when due.

(2) Each insurer who fails to comply with the terms of this section shall pay a civil penalty of a fine of $10,000

and thereafter a fine of $200 daily until this section is complied with.

Section 3. Market Assistance

(a) The Director shall establish a Market Assistance Plan to assist in the placement of insurance risks subject to this Act. The plan shall be self-supporting. The plan is not an insurer and is not authorized to assume insurance risks.

(b) Each request for assistance shall be in writing and shall be submitted by an agent or broker licensed in the State and accompanied by a fee made payable to the market assistance plan. The Fee shall be for a reasonable amount approved by the Director.

(c) Any person seeking insurance subject to this Act may apply for marketing assistance. Each application will be reviewed and depending upon the nature of the applicant's insurance needs and problems in obtaining insurance, the Director shall:

(1) assist the applicant in placing the risk with an insurer doing business in this State;

(2) assist the applicant in joining an existing risk retention group or purchasing group formed in accordance with the federal Risk Retention Act (15 United States Code § 3901); or

(3) assist the applicant in joining with other applicants in forming under the federal Risk Retention Act a risk retention group or purchasing group;

(d) The Director shall maintain a registry of risk retention groups and persons interested in forming a risk retention group or purchasing group. The Director shall establish an advertising and continuing public education program to inform residents of the availability the marketing assistance plan.

(e) For purposes of the plan, an insurer that issues insurance coverage upon an application submitted by an agent who has not been appointed by the insurer shall pay the agent a commission in conformity with the insurer's filed rates, rating plans, or forms for the kind of insurance effected.

(f) The plan shall not be considered a party to the relationship among insured, agent, and insurer.

Section 4. Joint Underwriting Authority

(a) The Director shall, after a public hearing and consultation with tinsurers doing business in this State, adopt by rule a joint underwriting plan to equitably apportion among those insurers writing professional liability insurance or any subline of other line insurance as identified in the insurer's annual statement risks covered by such lines or sublines which are in good faith entitled to but are unable to obtain insurance coverage through the voluntary market.

(b) Upon adoption of the joint underwriting plan, all insurers which underwrite the lines or sublines of liability insurance identified in subsection (a) and which offer their product to the general public shall participate in a joint underwriting association to implement the plan.

(c) The joint underwriting association may, pursuant to the plan of operation promulgated under subsection (d):

(1) Issue, or cause to be issued, policies of insurance to applicants unable to obtain those categories of liability insurance defined in subsection (a) in the normal market subject to limits as specified in the plan of operation.

(2) Underwrite such insurance and adjust and pay losses with respect thereto, or appoint service companies or associations to perform those functions;

(3) Assume reinsurance from its members; and

(4) Cede reinsurance.

(d) (1) Within forty-five days following the creation of the association, the Board of Governors of the association shall submit to the Director for his review a proposed plan of operation. If the Director does not adopt such plan within fifteen days of such submission, he shall formulate a plan of operation consistent with this chapter. The Director shall, subsequent to the termination of the fifteen-day period, establish such plan within forty-five days.

(2) The joint underwriting plan shall provide:

(A) A means of establishing eligibility of a risk for obtaining liability insurance through the plan. A risk shall be eligible for liability insurance if:

(i) Failure to secure the insurance would impair the ability of the entity to conduct its affairs; and

(ii) The risk is not determined by the attorney-in-fact to be uninsurable.

(B) A means for the equitable apportionment of profits or losses and expenses among participating companies.

(C) Rules for the classification of risks and rates which reflect the past and prospective loss experience of the participating companies.

(D) A rating plan which reasonably reflects the prior claims experience of the insureds. Such a rating plan shall include at least two levels of rates for risks that have favorable claims experience and risks that have unfavorable claims experience.

(E) Reasonable limits to available amounts of insurance. Such limits may not be less than the amount of insurance that may be required of eligible risks by any applicable statute or regulation.

(F) Risk management requirements for insurance where such requirements are reasonable and are expected to reduce losses.

(G) Deductibles as may be necessary to meet the needs of insureds.

(e) (1) Any person engaged in commerce in this state shall, on or after the effective date of the plan of operation, be entitled to apply to the joint underwriting association for any line of liability insurance that cannot be obtained without undue hardship in the normal market. Such application may be

made on behalf of an applicant by a broker or agent authorized by the applicant.

(2) If the association determines that the applicant has presented three declinations from insurers and meets the underwriting standards of the association as prescribed in the plan of operation and there is no unpaid, uncontested premium due from the applicant for prior liability insurance, as shown by failure of the insured to have made written objection to premium charges within thirty days after billing, the association, upon receipt of the premium, or such portion thereof as is prescribed in the plan of operation, shall cause to be issued a policy of liability insurance for a term of one year.

(f) The Director shall:

(1) Appoint and maintain a Board of Governors to oversee the operations of the joint underwriting plan and of the attorney-in-fact as described in subsection (h) of this section. The Board of Governors shall be composed of 5 members appointed as follows:

(A) 2 members from the insurance industry, whose terms are for 2 years and will expire in alternate years;

(B) 2 Members from State trade associations, whose terms are for 2 years and will expire in alternate years; and;

(C) One member from the Director's staff.

(2) Approve rates, forms, rules and all other aspects of the operation of the plan.

(3) Approve the annual assessment of insurers, or the annual distribution of excess premiums.

(4) At such times as he determines, but in no event less than biannually, examine the books and records of the plan.

(5) Retain veto power over all decisions of the governing committee.

(g) The Board of Governors shall:

(1) Contract with one or more insurance carriers to act as attorney-in-fact for specific classes of insurance.

(2) Negotiate attorney-in-fact fees by class of insurance.

(3) Oversee the operations of the attorney-in-fact.

(4) Develop classes, rates, rating plans, and rules for use by the joint underwriting plan.

(5) Submit recommended classes, rates, rating plans and rules for approval by the Director.

(h) The attorney-in-fact shall administer the joint underwriting plan and shall:

(1) Accept applications for insurance coverage under the plan on forms prescribed by the Board of Governors.

(2) Evaluate applicants to ensure that underwriting criteria which are established by the governing committee and filed with and approved by the Director are met.

(3) Issue policies, collect premiums, settle claims, and in general, act as the direct insurer of applicants accepted for coverage.

(4) Communicate with, and assist applicants failing to meet underwriting criteria in a best faith effort to remove conditions preventing acceptance.

(5) Maintain accurate records of applications tendered, underwriting worksheets and decisions, billings, collections, claims notices, claim adjustment files, records of payments and other information necessary and incident to the business of insurance on forms prescribed by the Director.

(6) Furnish an audit of the books of the plan no less than annually by an independent certified public accountant qualified in insurance audits, the expense of which shall be borne by the plan.

(7) Furnish an actuarial review of the loss and loss expense reserves of the plan no less than annually by an independent actuary qualified in loss and loss expense reserves, the expense of which shall be borne by the plan.

(8) Report annually to the Director the information required under section 2 of this act.

(9) After approval by the Director, prorate the net gain or loss to all insurers participating in the joint underwriting association, by line and subline of insurance subject to this section, according to the proportion that each insurer's direct premium earned bears to the total direct premium earned in the State within each such line and subline.

(10) Prepare invoices to each insurer showing, by line and subline of insurance subject to this section, the amount of

that insurer's proportion of the gain or loss, and shall bill each insurer for the net total amount owed to the plan, or shall disburse to each insurer the net total amount owed to the insurer.

(i) Each insurer licensed to do business in the State shall, as a condition of retaining such a license, pay to the plan within 60 days of the billing date all amounts billed under the plan.

(j) Any insurer or other person aggrieved by any action or decision of the joint underwriting association, or of any insurer as a result of its participation therein, may appeal to the Board of Governors. The decision of the Board of Governors may be appealed to the Director within thirty days from the date of the action or the decision. The Director shall, after hearing held upon proper notice, issue an order, approving or disapproving the action or decision, with respect to the matter which is the subject of appeal. All final orders and decisions of the Director are subject to judicial review.

(k) There shall be no liability imposed on the part of, and no cause of action of any nature arises against, the commercial insurance joint underwriting association, its Board of Governors, agents, or employees, an insurer or its employees, any licensed agent or broker, or the Director or his authorized representatives, their members or employees for any statements made in good faith by them in any reports or communications concerning risks insured or to be insured by the association, or

at any administrative hearings conducted in connection therewith. Any reports and communications in connection therewith are not public records.

(l) The Director or any person designated by him may at any time visit and examine into the operation and experience of the association and shall have free access to all the books, records, filed, papers, and documents that relate to the operation of the association, and may summon, qualify, and examine as witnesses all persons having knowledge of such operations, including officers, agents, or employees thereof.

(m) The Director shall make an examination into the affairs of the joint underwriting association annually (or as often as he otherwise deems necessary) and report to the legislature. The expenses of every such examination shall be borne and paid by the association.

(n) The joint underwriting association is exempt from all license fees, and income, franchise, premium, and privilege taxes levied or assessed by this State or any political subdivision.

(o) An insurance policy written by, or on behalf of, the joint underwriting association may only be cancelled during the term of the policy or not renewed in accordance with the requirements of section 7 of this Act.

Section 5. State Reinsurance Fund

(a) (1) In order to further the purposes of this Act, the Director shall, subject to the provisions of this Section, make reinsurance coverage available to insurers, the joint

underwriting association authorized in Section 4 and risk retention groups chartered in this State.

(2) The Director is authorized to enter into any contract, agreement, treaty, or any other arrangement with any insurer, the joint underwriting association, or risk retention group chartered in this State for reinsurance coverage, in consideration of payment of premiums, fees or other charges by insurers or pools which the commissioner deems to be adequate to obtain aggregate reinsurance premiums and charges for deposit in the fund established under subsection (b) in excess of the estimated amount of insured losses during the period of coverage.

(3) Reinsurance offered under this Act shall reimburse an insurer, the joint underwriting association, or risk retention group for its total proved and approved claims for covered losses resulting from qualified claims during the term of the reinsurance contract, agreement, treaty, or other arrangement, over and above the amount of the insurer's, joint underwriting association's, or risk retention group's losses as provided in such reinsurance contract, agreement, treaty, or other arrangement entered into under this section.

(4) The reinsurance contracts, agreements, treaties, or other arrangements shall include any terms and conditions which the Director deems necessary to carry out the purposes of this Act.

(5) The reinsurance shall be provided upon the terms and conditions that the Director deems appropriate. No

reinsurance shall be available to any insurer, the joint underwriting association, or any risk retention group if the commissioner determines that such reinsurance does not meet sound actuarial principles.

(6) Any contract, agreement, treaty, or other arrangement for reinsurance under this section shall be for a calendar year.

(7) In calculating the rates for the various liability reinsurance coverages offered under this section, the Director shall take into consideration the nature and degree of the risks involved, the risk prevention programs employed, the extent of anticipated losses, the prevailing rates for similar coverage in adjacent or comparable states, and the economic importance of the various individual coverages and the type of risk involved.

(b) (1) To carry out the programs authorized under this act, the Director shall establish in the Treasury of the State an Omnibus Reinsurance Fund which shall be available, notwithstanding any other provision of law to the contrary, without fiscal year limitations:

(A) To pay reinsurance claims under the reinsurance coverage provided under subsection (a) of this Act; and

(B) To pay the administrative expenses that may be necessary or appropriate to carry out the purposes of this Act.

(2) The fund established under this section may be financed by:

(A) Premiums, fees, or other charges which may be collected in connection with the reinsurance coverage provided under subsection (a);

(B) Monies that may be raised by the establishment of an uniform surcharge upon premiums paid to property and casualty insurers. The commissioner is authorized to collect a surcharge of no less than .25% and no greater than 1% upon all premiums paid to property and casualty insurers to maintain the reinsurance fund created under this section in a condition adequate to meet its liabilities;

(C) Interest which may be earned on investments of the fund; and

(D) Receipts from any other source which may, from time to time, be credited to the fund.

(c) (1) All reinsurance claims for losses under this section shall be submitted by insurers, the joint underwriting association, and risk retention groups in accordance with such terms and conditions as may be established by the Director.

(2) (A) Upon disallowance of any claim under color of reinsurance made available under this section, or upon refusal of the claimant to accept the amount allowed upon any such claim, the claimant may institute an action in a court of competent jurisdiction against the Director on such claim.

(B) Any such action must be begun within one year after the date upon which the claimant received written notice of disallowance or partial disallowance of the claim.

(d) (1) In order to provide for maximum efficiency in the administration of the reinsurance and direct insurance programs under this section, and in order to facilitate the expeditious payment of any funds under such program, the Director may enter into contracts with any insurer, agent, broker, insurance adjustment organization, or other person, for the purpose of providing for the performance of any or all the following functions:

(A) estimating or determining any amounts of payments for reinsurance claims;

(B) receiving and disbursing and accounting for funds in making payments for reinsurance or direct insurance claims;

(C) auditing the records of any person receiving reinsurance under this section or other person to the extent necessary to assure that proper payments are made;

(D) establishing the basis of liability for reinsurance payments, including the total amount of proved and approved claims which may be payable to any insurer for reinsured lines of insurance; and

(E) otherwise assisting in any manner provided in the contract to further the purposes of this section.

(2) (A) Any such contract may require the insurer, agent, broker, insurance adjustment organization, or other person, or any of its officers or employees certifying payments or disbursing funds pursuant to the contract, or otherwise participating in carrying out the contract, to give surety bond to the State in such amounts as the Director may deem appropriate.

(B) In the absence of gross negligence or intent to defraud the State-

(i) no individual designated pursuant to a contract under this section to certify payments shall be liable with respect to any payment certified by him under this section; and

(ii) no officer of the state disbursing funds shall be liable with respect to any otherwise proper payment by him if it was based on a voucher signed by an individual designated pursuant to a contract under this section to certify payments.

(e) (1) The Director may bring an action in a court of competent jurisdiction to recover from any insurer, the joint underwriting association, or any risk retention group the amount of any unpaid premiums lawfully payable to the Director.

(2) An action or proceeding brought under this subsection may not be brought for any amount in excess of that lawfully payable to the Director.

(3) The action shall be brought within five years of the date the right to the payment accrued; except, that the claim shall not be deemed to have accrued until the time of discovery if false or fraudulent conduct is involved on the part of the insurer, the joint underwriting association, or risk retention group.

(4) Any recovery made pursuant to an action or proceeding under this section shall be deposited to the credit of the fund established under this Section.

(g) (1) Subject to the provisions of paragraph 2 of this subsection, reinsurance shall not be offered by the Director to an insurer or be applicable to insurance policies written in the State by an insurer-

(A) after thirty days following notification to the insurer that the Director finds that such insurer is not participating to the extent required under the laws of this State--

(i) in the joint underwriting association established in section 4 of this Act; or

(ii) in any other program found by the Director to aid in making liability insurance more readily available in the State.

(B) following a merger, acquisition, consolidation or reorganization involving one or more insurers having lines of property insurance in the State reinsured under this section and one or more insurers with or

without such reinsurance, unless the surviving company--

(i) meets the criteria of eligibility for reinsurance, other than as provided under subsection (a)(6) of this Section; and

(ii) within ten days pays any reinsurance premium due.

(2) Notwithstanding the foregoing provisions of this subsection, reinsurance may be continued for the term of the policies written prior to the date of termination or nonrenewal of reinsurance under this action, for as long as the insurer pays reinsurance premiums, annually in such amounts as are determined under subsection (a), based on the annual premiums earned on such reinsured policies, and for the purpose of this subsection, the renewal, extension, modification, or other change in a policy, for which any additional premium is charged, shall be deemed to be a policy written on the date such change was made.

Section 6. Insurance Consumers Board

(b) (1) The "Insurance Consumers Board" is established as an independent board to promote the interests of insurance consumers and to disseminate insurance information to consumers. The board consists of nine members as follows:

(A) One member appointed by the Director;

(B) Two members appointed by the Governor;

(C) Two members appointed by the Attorney General; and

(D) four members, one appointed by each of the majority and minority leaders of the House and the Senate.

No person who is or has been employed in any capacity by any group, individual, or organization that is part of or associated with the insurance industry may be appointed to the board. No person who serves on the board may accept any form of compensation or gratuity from any group, individual, or association that is part of or associated with the insurance industry during tenure on the board or for a period of three years following termination of membership on the board.

(2) (A) The initial members will be appointed as follows:

(i) The members appointed by the Director, governor, and attorney general will be appointed for a period of two years commencing January 1, 1988; and

(ii) The members appointed by legislative leaders will be appointed for a period of three years commencing January 1, 1988.

(B) On the expiration of the initial appointments, members will be appointed to two-year terms. No person may serve more than four years with the exception of the initial members appointed by legislative leaders who may serve a maximum of five years.

(3) Members shall receive no compensation for their services, but may be reimbursed for reasonable expenses incurred in performing their duties.

(c) In addition to performing duties specified elsewhere in this act, the board shall, with regard to liability insurance:

(1) collect, analyze, and disseminate consumer-related insurance information;

(2) advocate and promote the individual and collective interest of consumers in relation to the insurance industry;

(3) research and analyze the insurance system and recommend creation or modification of the insurance system to elected officials, working closely with legislative executive officials;

(4) prepare an annual report to include background information, statistics, analysis, and recommendations regarding the functioning of the insurance system in this State, both in a broad sense and as to specific categories of insurance;

(5) prepare and disseminate to the public informative brochures describing insurance matters of interest to consumers; and

(6) establish and publicize lists of sources of insurance, rated according to compliance of their business practices with specific criteria established by the board. The criteria for ratings shall be based in part on statutory requirements as well as on considerations of the consumers' best interests.

(d) In performance of its duties, the board shall be authorized to:

(1) (A) Represent and protect the interest of consumers in proceedings before and appeals from the Director involving the regulation of the services, practices, or rates of insurers.

(B) The board may initiate any such proceeding when it determines that a discontinuance or change in a required service, practice or rate is in the interest of consumers.

(2) Collect information from companies, persons, groups, individuals or organizations that are part of, or associated with, the insurance industry including, but not limited to, statistics regarding premiums written and those earned, net investment income, incurred claims, actual incurred expenses, net underwriting gain or loss, net operation gain or loss, and any other information needed by the board. The board may require this information to be broken down for specific lines.

(3) Issue a subpoena in order to assure collection of the above information when the board's request for information is unanswered or only partially answered within 90 days of receipt of the request by the company, person, group, individual, or organization requested to provide information.

(4) Hire staff necessary to carry out the board's duties, including attorneys, actuaries, accountants, consultants, and researchers.

(5) Establish rules to govern the board's procedures.

(f) The Director shall, on or before October 15 in each year, apportion the total amount of expenses incurred by the State in connection with the administration of this section among all of the companies writing the class or classes of insurance subject to this Act within this State in the proportion that the net premiums received by each of them for such insurance written or renewed on risks within this State during the calendar year immediately preceding bears to the sum total of all such net premiums received by all companies writing that insurance within the State during the year, except that no one company shall be assessed for more than 5% of the amount apportioned. The Director shall certify the sum apportioned to each company on or before November 15 next ensuing. Each company shall pay the amount so certified as apportioned to it on or before December 31 next ensuing.

Section 7: Cancellations, Non-renewals, Unfair Practices

(a) Definitions. As used in this section:

(1) "Covered policy" means, for purposes of this section, a policy for liability insurance subject to this Act.

(2) "Required policy period" means a period of one year from the date as of which a covered policy is renewed or first issued.

(3) "Nonpayment of premium" means the failure of the named insured to discharge any obligation in connection with the payment of premiums on a policy of insurance or any installment of such premium, whether the premium is payable directly to the insurer or its agent, or indirectly under any premium finance plan or extension of credit. Payment to the insurer, or to an agent or broker authorized to receive such payment, shall be timely for the purpose of this section if made within fifteen days after the mailing to the insured of a notice of cancellation for nonpayment of premium.

(4) "Renewal" or "to renew" means the issuance or offer to issue by an insurer of a policy superseding a policy previously issued and delivered by the same insurer, or another insurer within the same group of under common management, or the issuance or delivery of a certificate or notice extending the term of a policy beyond its policy period or term; provided, however, that any policy with a policy period or term of less than one year shall, for the purpose of this section, be considered as if written for a policy period or term of one year, and any policy with no fixed expiration date or with a policy period or term of more than one year shall, for the purpose of this section, be considered as if written for successive policy periods or terms of one year.

(b) During the first sixty days of covered policy is initially in effect, except for the bases for cancellation set forth in paragraphs one, two or three of subsection (c) of this

section, no cancellation shall become effective until twenty days after written notice is mailed to the first-named insured at the mailing address shown in the policy.

(c) After a covered policy has been in effect for sixty days, or upon the effective date if such policy is a renewal, no notice of cancellation shall become effective until fifteen days after notice is mailed or delivered and such cancellation is based on one or more of the following:

(1) With respect to covered policies:

(A) Nonpayment of premium;

(B) conviction of a crime arising out of acts increasing the hazard insured against;

(C) discovery of fraud or material misrepresentation in the obtaining of the policy or in the presentation of a claim thereunder;

(D) after issuance of the policy or after the last renewal date, discovery of an act or omission, or a violation of any policy condition, that substantially and materially increases the hazard insured against, and which occurred subsequent to inception of the current policy period;

(E) material physical change in the property insured, occurring after issuance or last annual renewal anniversary date of the policy, which results in the property becoming uninsurable in

accordance with the insurer's objective, uniformly applied underwriting standards in effect at the time the policy was issued or last renewed; or material change in the nature or extent of the risk, occurring after issuance or last annual renewal anniversary date of the policy, which causes the risk of loss to be substantially and materially increased beyond that contemplated at the time the policy was issued or last renewed;

(F) required pursuant to a determination by the Director that continuation of the present premium volume of the insurer would jeopardize that insurer's solvency or be hazardous to the interests of policyholders of the insurer, its creditors or the public;

(G) a determination by the Director that the continuation of the policy would violate, or would place the insurer in violation of, any provision of this chapter;

(H) where the insurer has reason to believe, in good faith and with sufficient cause, that there is a probable risk or danger that the insured will destroy, or permit to be destroyed, the insured property for the purpose of collecting the insurance proceeds, provided, however, that:

(i) a notice of cancellation on this ground shall inform the insured in plain language that the insured must act within ten days if review by the Director of the ground for cancellation is desired pursuant to item (iii) of this subparagraph; and

(ii) notice of cancellation on this ground shall be provided simultaneously by the insurer to the Director; and

(iii) upon written request of the insured made to the Director within ten days from the insured's receipt of notice of cancellation on this ground, the Director shall undertake a review of the ground for cancellation to determine whether or not the insurer has satisfied the criteria for cancellation specified in this subparagraph; if after such review the Director finds no sufficient cause for cancellation on this ground, the notice of cancellation on this ground shall be deemed null and void.

(2) With respect to professional liability insurance policies, in addition to the bases for cancellation set forth in paragraph one of this subsection, revocation or suspension of the insured's license to practice his profession or, if the insured is a

hospital, it no longer possesses a valid operating certificate.

(3) Notice of cancellation in accordance with this subsection shall be mailed or delivered to the named insured, at the address shown on the policy, and to his authorized agent or broker.

(d) (1) After a covered policy has been in effect for sixty days, or on and after the effective date if such policy has been in effect for sixty days, or on and after the effective date if such policy is a renewal, no premium increase for the term of the policy shall be made to become effective unless due to and commensurate with insured value added, subsequent to issuance or the last annual renewal anniversary date, pursuant to the policy or at the insured's request.

(2) No covered policy which provides for a policy term of less than one year may be issued, or issued for delivery, in this state, except: (i) a policy issued to an insured for a seasonal purpose; (ii) a policy issued to cover a particular project that will be performed in less than one year; or (iii) a new policy where the specific term is made to coincide with the term of an insured's already existing policy with the same insurer and with the insured's written consent.

(e) (1) A covered policy shall remain in full force and effect pursuant to the same terms, conditions and rates unless a written notice is mailed or delivered by the insurer to the named insured, at the address shown on the policy, and to his authorized agent or broker, indicating the insurer's intention:

(A) not to renew such policy;

(B) to condition its renewal upon change of limits, change in type of coverage, reduction of coverage, increased deductible or addition of exclusion, or upon increased premiums in excess of ten percent. (exclusive of any premium increase generated pursuant to subsection (d) of this section or as a result or experience rating, retrospective rating or audit); or

(C) that the policy will not be renewed or will not be renewed upon the same terms, conditions or rates; such alternative renewal notice will advise the insured that a second notice shall be mailed or delivered at a later date indicating the insurer's intention as specified in subparagraph (A) or (B) of this paragraph and that coverage shall continue on the same terms, conditions and rates as the expiring policy, until the later of the expiration date or sixty days after the second notice is mailed or delivered; such alternative renewal notice also shall advise the insured of the availability of loss information pursuant to subsection (g) of this section and, upon request, the insurer shall furnish such loss information within twenty days consistent with the provisions of such subsection.

(2) A nonrenewal notice as specified in subparagraph (A), a conditional renewal notice as specified in subparagraph

(B), and the second notice described in subparagraph (C) of paragraph one of this subsection shall contain the specific reason or reasons for nonrenewal or conditional renewal, and set forth the amount of any premium increase and nature of any other proposed changes.

(3) The notice required by paragraph one of this subsection shall be mailed or delivered at least sixty but not more than one hundred twenty days in advance of the end of the required policy period.

(4) Paragraphs one, two and three of this subsection shall not apply when the named insured, an agent or broker authorized by the named insured, or another insurer of the named insured has mailed or delivered written notice that the policy has been replaced or is no longer desired.

(5) (A) If the insurer employs an alternative renewal notice as authorized by subparagraph (C) of paragraph one of this subsection, the insurer shall provide coverage on the same terms, conditions, and rates as the expiring policy, until the later of the expiration date or sixty days after the mailing or delivery of the second notice described in such subparagraph.

(B) Prior to the expiration date of the policy, in the event that an incomplete or late conditional renewal notice or a later nonrenewal notice is provided by the insurer, coverage shall remain in effect at the same terms and conditions of the expiring policy and at the lower of the current rates or the prior period's rates until sixty days after such notice is

mailed or delivered unless the insured elects to cancel sooner; provided, however, that if the insured elects to accept the terms, conditions and rates of the conditional renewal notice and renews the policy on that basis, then such terms, conditions and rates shall govern the policy upon expiration of such sixty day period.

(C) (i) In the event that timely and substantially complete notice in compliance with paragraphs one, two and three of this subsection is not provided by the insurer prior to the expiration date, coverage shall remain in effect on the same terms and conditions of the expiring policy for another required policy period, and at the lower of the current rates or the prior period's rates.

(ii) If the insurer has established the procedures required pursuant to paragraph seven of this subsection, and the failure to comply with paragraphs one, two, and three of this subsection was a result of inadvertence or clerical mistake, then the rates applicable to the remainder of the additional required policy period shall be the insurer's current rates at the terms and conditions of the expiring policy.

(iii) Every such notice shall advise the insured of the insured's rights to coverage and the duration thereof.

(6) Paragraph five of this subsection shall not create a new annual aggregate liability limit (if any) for the covered policy, except that the annual aggregate limit of the expiring policy shall be increased in proportion to the policy

extension pursuant to such paragraph five; provided, however, that if the insured elects to accept the terms, conditions and rates of the conditional renewal notice pursuant to subparagraph (B) of paragraph four of this subsection, a new annual aggregate limitation (if any) shall become effective as of the inception date of the renewal.

(7) Each insurer subject to this section shall adopt and implement reasonable standards and procedures to ensure compliance with the provisions of subparagraphs (A), (B) and (C) of paragraph one and paragraphs two and three of this subsection. Each such insurer shall maintain a written or electronic record of any notice not in compliance with such provisions. Such record shall indicate the expiration date of the policy, the date notice should have been sent, the date upon which notice was sent, the policy number, and the name and address of the insured. Such records shall be available for inspection upon request by the Director.

(f) (1) If an insurer provides the notice described in paragraphs one, two and three of subsection (e) of this section, and thereafter the insurer extends the policy for ninety days or less, an additional notice of nonrenewal is not required with respect to the extension.

(2) Notwithstanding paragraphs two and four of subsection (a) of this section, subsection (e) shall not apply, but subsections (b), (c) and (d) of this section shall apply, to a policy issued to an insured for a seasonal purpose or to a policy issued to cover a particular project that will be performed in less than one year.

(g) (1) Upon written request, the insurer shall mail or deliver the following loss information covering a period of years specified by the Director by regulation or the period of time coverage has been provided by the insurer, whichever is less, to the first-named insured or his authorized agent or broker within twenty days or mailing or delivery of such insured's request:

(A) Information on closed claims, including date and description of occurrence, and any incurred losses;

(B) Information on open claims, including date and description of occurrence, and amounts of any payments; and,

(C) Information on notice of any occurrences, including date and description of occurrence.

(2) The insurer may charge a reasonable fee as determined by the Director only for such information provided upon the named insured's request, but not for such information (even in the absence of a request therefor) required to be provided.

(h) Every notice of cancellation issued pursuant to this section shall specify the grounds for cancellation and shall contain where applicable a reference to the paragraph or subparagraph of subsection (c) of this section. Every notice of nonrenewal issued pursuant to this section shall set forth or be accompanied by the reason for nonrenewal, and any such stated reason shall be valid and effective unless such reason violates this section or any law of this State or the United States.

Every notice of cancellation, nonrenewal or conditional renewal issued pursuant to this section shall also provide or be accompanied by a statement advising the first-named insured of the availability of loss information pursuant to subsection (g) of this section.

(i) This section shall apply to any policy issued or issued for delivery in this State covering risks with multi-state locations, where the insured is principally headquartered in this State or where the policy provides that this section, as a matter of choice of law, is to govern the policy in regard to such locations.

(j) Nothing in this section shall be construed to prohibit an insurer from providing terms more favorable to an insured or other party in interest with regard to cancellation or nonrenewal; nor shall anything herein be construed to limit the grounds for which an insurer may lawfully rescind a policy or decline to pay a claim under s policy.

Section 8: Appropriations

The hereby is appropriated $________ to the department of insurance for the purpose of performing its responsibilities under this Act.

Section 9: Definitions

(a) When used in this Act, the term--

(1) "liability insurance" means insurance covering a person's or organization's legal liability for damages because of injuries to other persons,

damage to its property, or other loss or damage arising out of its business, trade, products, services (including professional services), premises, or operations, but does not include (A) personal risk insurance; or (B) workers' compensation and employers' liability insurance; (C) title insurance; or, (D) mortgage insurance.

(2) "organization" means any association, business corporation or partnership, church, hospital, school, university, or other institution, or a state or local government (or agency of such a government);

(3) "insurer" includes (A) any insurance company or group of companies under common ownership which is authorized to engage in the insurance business under the laws of this State and (B) any risk retention group formed in accordance with Section 3902 of Title 15 of the United States Code;

(4) "person" includes any individual or group of individuals, corporation, partnership, or association, or any other organized group of persons;

(5) "personal risk insurance" means homeowners, tenant, private passenger nonfleet automobile, mobile home, and other liability and casualty insurance primarily for personal, family or household needs rather than for business or professional needs;

(6) "year" means a calendar year, fiscal year of a company, or such other period of twelve months as may be designated by the Director; and

(7) "Director means the head of the State insurance department.