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Draft narrative to be added as a "Part V" to a national model flood disaster relief bill by the National Council of Insurance Legislators (NCOIL) (presented on 7-12-2018)

FACILITATING PRIVATE FLOOD INSURANCE

In an effort to provide protection of lives and property from the increasing peril of flood, the legislature encourages a robust private flood insurance market to provide consumer choices to the existing NFIP.

Sec. 1. Prior Form Approval

The [State entity for regulating insurance] may ensure, through prior form approval, that an authorized insurer may issue an insurance policy, contract, or endorsement that meets or exceeds coverage available from the National Flood Insurance Program.

Sec. 2. Rates

(a) Flood coverage rates established pursuant to this paragraph are not subject to prior approval by the [state entity for regulation of insurance]. An insurer may establish and use flood insurance rates in accordance with a filed rating manual or a description of a single catastrophe model, or description of an average of models used to calculate the rates.

(b) Notwithstanding existing prohibitions regarding the use of catastrophe models in the underwriting and rating of personal property risk, the legislature finds that reliable methods for establishing rates for flood insurance are essential. The ability to accurately rate flood risks has been enhanced greatly in recent years through the use of catastrophe modeling. It is the public policy of this state to encourage the use of the most sophisticated actuarial methods to assure that consumers are charged lawful rates for flood insurance coverage.

(c) The legislature recognizes the need for expert evaluation of models and other recently developed or improved actuarial methodologies for projecting flood losses, in order to resolve conflicts among actuarial professionals, and in order to provide both immediate and continuing improvement in the sophistication of actuarial methods used to set rates charged to consumers.

(d) The [state entity for regulation of insurance] may adopt actuarial methods, principles, standards, models, or output ranges for personal lines residential flood loss no later than xx/xx/xxxx. It is the intent of the Legislature that such standards and guidelines be employed as soon as possible, and that they be subject to continuing review thereafter.

(e) The [state entity for regulation of insurance] may review any model to determine compliance with the adopted actuarial methods, principles, standards, models, or output

ranges. Catastrophe models that meet the established standards and guidelines may be approved for use in establishing personal lines residential flood rates.

(f) Rate filings that utilize that a catastrophe model that has been reviewed and approved by the [state entity for regulation of insurance] may be exempt from the certification requirement listed in (a) above.

(g) The [state entity for regulation of insurance] may engage experts to assist in the review of the catastrophe models or the [state entity for regulation of insurance] may rely in whole or in part on another state or jurisdiction's review or approval of the same model where the state or jurisdiction has adopted standards that are substantially similar to those adopted by [state entity for regulation of insurance]. The cost of any expert retained by the [state entity for regulation of insurance] may be the responsibility of the insurer, filer or modeler.

(h) An insurer may notify the [state entity for regulation of insurance] of any change to such rates within 30 days after the effective date of the change. The notice must include the name of the insurer and the average statewide percentage change in rates. Actuarial data with regard to such rates for flood coverage must be maintained by the insurer for 2 years after the effective date of such rate change...

Sec. 3. Duties of Insurer

(a) Authorized insurers must notify the [State entity for regulating insurance] at least 30 days before writing flood insurance in this state; and

(b) File a plan of operation and financial projections or revisions to such plan.

Sec. 4. Duties of an Agent

An agent must provide written evidence to be signed by the applicant acknowledging that:

(a) the agent has explained the National Flood Insurance Program and private market alternatives to flood insurance coverage;

(b) that a homeowner's property insurance policy, unless endorsed for flood insurance coverage, does not include coverage for the peril of flood; and

(c) that unless purchased, the applicant has declined flood coverage.

Sec. 5. Other Provisions

(a) With respect to the regulation of flood coverage written in this state by authorized insurers, this section supersedes any other provision in the State Insurance Code in the event of a conflict.

(b) If federal law or rule requires a certification by the [state entity for regulation of insurance] as a condition of qualifying for private flood insurance or disaster assistance, the Executive of the [state entity for regulation of insurance] may provide the certification, and such certification is not subject to review under the State's Administrative Procedures Act.

(c) An authorized insurer offering flood insurance may request the [state entity for regulation of insurance] to certify that a policy, contract, or endorsement provides coverage for the peril of flood which equals or exceeds the flood coverage offered by the National Flood Insurance Program. To be eligible for certification, such policy, contract, or endorsement must contain a provision stating that it meets the private flood insurance requirements specified in 42 U.S.C. s. 4012a(b) and may not contain any provision that is not in compliance with 42 U.S.C. s. 4012a(b).

(d) The authorized insurer or its agent may reference or include a certification under paragraph (a) in advertising or communications with an agent, a lending institution, an insured, or a potential insured only for a policy, contract, or endorsement that is certified under this subsection. The authorized insurer may include a statement that notifies an insured of the certification on the declarations page or other policy documentation related to flood coverage certified under this subsection.

(e) An insurer or agent who knowingly misrepresents that a flood policy, contract, or endorsement is certified under this subsection commits an unfair or deceptive act under State Unfair Trade Practices Act.

The [state entity for regulation of insurance] may adopt rules to implement this law.