

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) (updated June 2019)

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 and alternatives to the existing National Flood Insurance Program.

Sec. 1. Prior Form Approval

The [State entity for regulating insurance] may require, through prior form approval, that an authorized insurer issues an insurance policy, contract, or endorsement that meets the private flood insurance requirements as 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).

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 must ensure that the rates are based on actuarial data, methodologies, standards and guidelines relating personal lines residential flood that are not excessive, inadequate, or unfairly discriminatory. The [state entity for regulation of insurance] may audit an insurers personal lines residential flood rates to validate adherence and may require corrective measures.

(b) An insurer shall 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

In an effort to reduce policyholder confusion and ensure adoption and acceptance of a consumer's actual flood risk, an agent must maintain in their records, written or electronic 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, including how rates may affect the applicant if they choose a private insurance market alternative to their existing NFIP policy;

(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.

There is no specific, prescribed format for the agent documentation. This section is to ensure that the interaction between the insurance agent and customer occurred and that the consumer's choice about flood insurance is documented with full transparency.

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.