

LEGISLATURE OF NEBRASKA  
ONE HUNDRED FOURTH LEGISLATURE  
SECOND SESSION

**LEGISLATIVE BILL 1041**

Introduced by Cook, 13.

Read first time January 20, 2016

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 section 44-7508, Reissue Revised Statutes of
- 3 Nebraska; to provide for disapproval of certain rate filings if they
- 4 use price optimization; and to repeal the original section.
- 5 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 proposes to discriminate between risks based on price  
17 optimization. For purposes of this subdivision, price optimization means  
18 the use of factors to help determine or adjust an insured's premium that  
19 are not specifically related to the insured's risk or hazard, including,  
20 but not limited to, an insured's propensity to shop for insurance, ask  
21 questions, or file complaints in response to an increase in such  
22 insured's premiums; or

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

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

1 director within the review period or any extension thereof.

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

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

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

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

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

1 any contract or policy made or issued prior to the expiration of the  
2 period set forth in the order.

3 Sec. 2. Original section 44-7508, Reissue Revised Statutes of  
4 Nebraska, is repealed.