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INSURANCE CODE - INS

DIVISION 2. CLASSES OF INSURANCE [1880 - 12880.8] (Division 2 enacted by Stats. 1935, Ch. 145.)

PART 3. LIABILITY, WORKERS' COMPENSATION, AND COMMON CARRIER LIABILITY INSURANCE [11550 - 11895] (

Heading of Part 3 amended by Stats. 1979, Ch. 373.)

CHAPTER 3. Regulation of Business of Workers' Compensation Insurance [11690 - 11761] (Heading of Chapter 3 amended by Stats. 1979, Ch. 373.)

ARTICLE 2. State Rate Supervision [11730 - 11742] (Article 2 repealed and added by Stats. 1993, Ch. 228, Sec. 2.)

11730. The following definitions govern the construction and meaning of the terms used in this article:

- (a) "Classification system" or "classification" means a plan, system, or arrangement for recognizing differences in exposure to hazards among industries, occupations, or operations of insurance policyholders.
- (b) "Expenses" means that portion of any rate attributable to acquisition, field supervision, collection expenses, general expenses, taxes, licenses, and fees.
- (c) "Experience rating" means a rating procedure utilizing past insurance experience of the individual policyholder to forecast future losses by measuring the policyholder's loss experience against the loss experience of policyholders in the same classification to produce a prospective premium credit, debit, or unity modification.
- (d) "Loss trending" means any procedure for projecting developed losses to the average date of loss for the period during which the policies are to be effective.
- (e) "Market" means the interaction between buyers and sellers of workers' compensation insurance within this state pursuant to the provisions of this article.
- (f) "Pure premium rate" means that portion of the rate which represents the loss cost per unit of exposure, including loss adjustment expense.
- (g) "Rate" means the cost of insurance per exposure base unit, prior to any application of individual risk variations based on loss or expenses considerations and does not include minimum premiums.
- (h) "Rating organization" means an entity licensed by the commissioner pursuant to Section 11751.1.
- (i) "Statistical plan" means the plan, system, or arrangement used in collecting data.
- (j) "Supplementary rate information" means any manual or plan of rates, classification system, rating schedule, minimum premium, policy fee, rating rule, rating plan, and any other similar information needed to determine the applicable premium for an insured.
- (k) "Supporting information" means the experience and judgment of the filer and the experience or data of other insurers or organizations relied on by the filer, the interpretation of any statistical data relied on by the filer, descriptions of methods used in making the rates, and any other similar information required to be filed by the commissioner.

(Amended (as added by Stats. 1993, Ch. 228) by Stats. 1993, Ch. 1242, Sec. 3. Effective January 1, 1994. Addition and amendment operative January 1, 1995, pursuant to Stats. 1993, Ch. 228, Sec. 7, as amended by Sec. 43 of Ch. 1242.)

11731. This article applies to workers' compensation insurance and employers' liability insurance written in connection therewith.

(Repealed and added by Stats. 1993, Ch. 228, Sec. 2. Effective January 1, 1994. Operative January 1, 1995, by Sec. 7 of Ch. 228, as amended by Stats. 1993, Ch. 1242.)

11732. Rates shall be adequate to cover an insurer's losses and expenses. Rates shall not tend to create a monopoly in the market. For the purpose of this section, the rates of any individual insurer, other than the State Compensation Insurance Fund, are presumed to create a monopoly in the market if the insurer has a market share, based on a percentage of statewide workers' compensation

premium, equivalent to 20 percent or more of the premium written by all insurers other than the State Compensation Insurance Fund.

(Amended by Stats. 2002, Ch. 873, Sec. 2. Effective January 1, 2003.)

11732.5. Rates shall not be unfairly discriminatory. Rates are unfairly discriminatory if, after allowing for practical limitations, price differentials fail to reflect equitably the difference in expected losses and expenses. A rate of an insurer shall not be deemed unfairly discriminatory because different premiums result for policyholders with like loss exposures but different expenses, or like expenses but different loss exposures, as long as the rate reflects the differences with reasonable accuracy.

(Added by Stats. 1994, Ch. 732, Sec. 1. Effective January 1, 1995.)

11733. In determining whether rates comply with Section 11732, the following criteria shall apply:

(a) Due consideration may be given to past and prospective loss and expenses experience within this state, to catastrophe hazards and contingencies, to events or trends within this state, to loadings for leveling premium rates over time or for dividends or savings to be allowed or returned by insurers to their policyholders, members or subscribers, and to all other relevant factors, including judgment.

(b) The expense provisions included in the rates to be used by an insurer shall reflect the operating methods of the insurer and, so far as is credible, its own actual and anticipated expense experience.

(c) The rates may contain a provision for contingencies and an allowance permitting a reasonable profit. In determining the reasonableness of profit, consideration shall be given to all investment income attributable to premiums and the reserves associated with those premiums.

(Amended by Stats. 2002, Ch. 873, Sec. 3. Effective January 1, 2003.)

11734. (a) Every workers' compensation insurer shall adhere to a uniform experience rating plan filed with the commissioner by a rating organization designated by the commissioner and subject to his or her disapproval.

(b) The commissioner shall designate a rating organization to assist him or her in gathering, compiling, and reporting relevant statistical information, and to develop a classification system. An insurer may develop its own classification system upon which a rate may be made or adopt the classification system developed by the designated rating organization; provided, however, that any classification system developed by an insurer must be filed with the commissioner 30 days prior to its use. The commissioner shall disapprove a classification system filed by an insurer pursuant to this section if the insurer fails to demonstrate that the data thereby produced can be reported consistent with the uniform statistical plan or the classification system developed by the rating organization. Every workers' compensation insurer shall record and report its workers' compensation experience to the designated rating organization as set forth in the uniform statistical plan approved by the commissioner.

(c) The designated rating organization shall develop and file manual rules, subject to the approval of the commissioner, reasonably related to the recording and reporting of data pursuant to the uniform statistical plan, uniform experience rating plan, and any classification systems that may be in effect. Every workers' compensation insurer shall adhere to the approved manual rules and experience rating plan in writing and reporting its business. No insurer shall agree with any other insurer or with a rating organization to adhere to manual rules that are not reasonably related to the recording and reporting of data pursuant to the uniform statistical plan or classification system developed by the rating organization.

(d) The designated rating organization shall also develop and file with the commissioner a weekly premium per employee for each classification used or proposed for use by that organization. The weekly premium shall be developed by applying the proposed rate for each classification to the state average weekly wage. For the purpose of this section, "state average weekly wage" means the average weekly wage paid by employers to employees covered by unemployment insurance as reported by the United States Department of Labor for California for the 12 months ending March 31 of the calendar year preceding the year in which the injury occurred.

(Amended by Stats. 2002, Ch. 6, Sec. 5. Effective January 1, 2003.)

11735. (a) Every insurer shall file with the commissioner all rates and supplementary rate information that are to be used in this state. The rates and supplementary rate information shall be filed not later than 30 days prior to the effective date. Upon application by the filer, the commissioner may authorize an earlier effective date. To the extent possible, rates and supplementary rate information shall be based upon supporting information derived from the experience or data of the insurer, rating organization, advisory organization, or other insurers. For the purposes of this subdivision, "rating organization" shall have the same meaning as set forth in subdivision (b) of Section 11750.1, and "advisory organization" shall have the same meaning as set forth in subdivision (e) of that section.

(b) Rates filed pursuant to this section shall be filed in the form and manner prescribed by the commissioner. All rates, supplementary rate information, and any supporting information for rates filed under this article, as soon as filed, shall be open to

public inspection at any reasonable time. Copies may be obtained by any person upon request and the payment of a reasonable charge.

(c) Upon the written application of the insurer and insured, stating its reasons therefor, filed with the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.

(d) Notwithstanding Section 679.70, no rating organization may issue, nor may any insurer use, any classification system or rate, as applied or used, that violates Section 679.71 or 679.72 or that violates the Unruh Civil Rights Act.

(e) Notwithstanding Sections 11657 to 11660, inclusive, supplementary rate information filed with the commissioner for purposes of offering deductibles to policyholders for all or part of benefits payable under the policy shall be deemed complete if the filing contains all of the following:

(1) A copy of the deductible endorsement that is to be attached to the policy to effectuate deductible coverage.

(2) Endorsement language that protects the rights of injured workers and ensures that benefits are paid by the insurer without regard to any deductible. The endorsement shall specify that the nonpayment of deductible amounts by the policyholder shall not relieve the insurer from the payment of compensation for injuries sustained by the employee during the period of time the endorsed policy was in effect. The endorsement shall provide that deductible policies for workers' compensation insurance coverage shall not be terminated retroactively for the nonpayment of deductible amounts.

(3) The endorsement shall provide that notwithstanding the deductible, the insurer shall pay all of the obligations of the employer for workers' compensation benefits for injuries occurring during the policy period. Payment by the insurer of any amounts within the deductible shall be treated as an advancement of funds by the insurer to the employer and shall create a legal obligation for reimbursements, and may be secured by appropriate security.

(4) The endorsement shall specify whether loss adjustment expenses are to be treated as advancements within the deductible to be reimbursed by the employer.

(5) An explanation of premium reductions reflecting the type and level of the deductible shall be clearly set forth for the policyholder.

(6) The filing shall provide that premium reductions for deductibles are determined before application of any experience modification, premium surcharge, or premium discount, and the premium reductions reflect the type and level of deductible consistent with accepted actuarial standards.

(7) The filing shall provide that the nonpayment of deductible amounts by the insured employer to its insurer, or the failure to comply with any security-related terms of the policy, shall be treated under the policy in the same manner as the payment or nonpayment of the premium pursuant to paragraph (1) of subdivision (b) of Section 676.8.

(f) The insurer shall report and record losses subject to the deductible as losses for purposes of ratemaking and application of an experience rating plan on the same basis as losses under policies providing first dollar coverage.

(Amended by Stats. 2002, Ch. 873, Sec. 4. Effective January 1, 2003.)

11736. An experience rating plan shall contain reasonable eligibility standards, provide adequate incentives for loss prevention, and shall provide for sufficient premium differentials so as to encourage safety.

(Amended by Stats. 1997, Ch. 748, Sec. 2. Effective January 1, 1998.)

11736.5. (a) The commissioner shall establish, by regulation, those forms of collateral or security that an insurer may designate to secure the deductible amount of any policy of workers' compensation insurance and the establishment of reserves and recognition of receivables for insurers writing workers' compensation deductible policies.

The commissioner, by order, exempt from the requirements of the Administrative Procedure Act, shall establish those forms of security or collateral that the insurer may designate to secure the deductible amount of any policy of workers' compensation insurance that provides for a deductible and the establishment of reserves and recognition of receivables for insurers writing workers' compensation deductible policies. This authority shall expire if regulations required by subdivision (a) are not drafted and filed with the Office of Administrative Law by December 31, 1995; if the regulations are filed with the Office of Administrative Law by December 31, 1995, this authority shall expire December 31, 1996, or upon filing of the regulations with the Secretary of State, whichever is earlier.

(Added by Stats. 1994, Ch. 1131, Sec. 2. Effective January 1, 1995.)

11737. (a) The commissioner may disapprove a rate if the insurer fails to comply with the filing requirements under Section 11735.

(b) The commissioner may disapprove rates if the commissioner determines that premiums charged, in the aggregate, resulting from the use of the rates or the rates as modified by any supplementary rate information, would be inadequate to cover an insurer's losses and expenses, unfairly discriminatory, or tend to create a monopoly in the market pursuant to Section 11732, 11732.5, or 11733.

(c) The commissioner shall disapprove rates if the commissioner determines that premiums charged, in the aggregate, resulting from the use of the rates or the rates as modified by any supplementary rate information would, if continued in use, tend to impair or threaten the solvency of an insurer. In determining whether the premium charged in the aggregate would, if continued in use, tend to impair or threaten the solvency of the insurer, the commissioner shall consider the insurer's experience in other states.

(d) If the commissioner intends to disapprove rates pursuant to subdivision (a) or (b), the commissioner shall serve notice on the insurer of the intent to disapprove and shall schedule a hearing to commence within 60 days of the date of the notice.

(e) If the commissioner disapproves rates pursuant to subdivision (c), the commissioner shall immediately serve notice on the insurer of the disapproval. An insurer whose rates have been disapproved pursuant to that subdivision may, within 20 days of the date of the notice of disapproval, request a hearing, and the commissioner shall hold a hearing within 60 days of the date of the notice of disapproval.

(f) Every insurer or rating organization shall provide within this state reasonable means whereby any person aggrieved by the application of its filings may be heard by the insurer or rating organization on written request to review the manner in which the rating system has been applied in connection with the insurance afforded or offered. If the insurer or rating organization fails to grant or reject the request within 30 days, the applicant may proceed in the same manner as if the application had been rejected. Any party affected by the action of the insurer or rating organization on the request may appeal, within 30 days after written notice of the action, to the commissioner who, after a hearing held within 60 days from the date on which the party requests the appeal, or longer upon agreement of the parties and not less than 10 days' written notice to the appellant and to the insurer or rating organization, may affirm, modify, or reverse that action. If the commissioner has information on the subject from which the appeal is taken and believes that a reasonable basis for the appeal does not exist or that the appeal is not made in good faith, the commissioner may deny the appeal without a hearing. The denial shall be in writing, set forth the basis for the denial, and be served on all parties.

(g) If the commissioner disapproves a rate, the commissioner shall issue an order specifying in what respects the rate fails to meet the requirements of this article and stating when, within a reasonable period thereafter, that rate shall be discontinued for any policy issued or renewed after a date specified in the order. The order shall be issued within 20 days after the notice prescribed in subdivision (e) is served. If a hearing is held pursuant to subdivision (d) or (e), the order shall be issued, instead, within 30 days after the close of the hearing. The order may include a provision for premium adjustment for the period after the effective date of the order for policies in effect on that date.

(h) Whenever an insurer has no legally effective rates as a result of the commissioner's disapproval of rates or other act, the commissioner shall specify interim rates for the insurer that protect the interests of all parties and may order that a specified portion of the premiums be placed in an escrow account approved by the commissioner. When new rates become legally effective, the commissioner shall order the escrowed funds or any overcharge in the interim rates to be distributed appropriately, except that refunds of less than ten dollars (\$10) per policyholder shall not be required. However, if the commissioner has disapproved rates pursuant to subdivision (c), the commissioner shall order the insurer in the interim to use, at a minimum, the approved advisory pure premium rates pursuant to subdivision (b) of Section 11750, as modified by the uniform experience rating plan established pursuant to subdivision (c) of Section 11734, without any deviations on account of any supplementary rate information and reflecting the actual expenses of the insurer, until the time that a final determination of rates is adjudicated and ordered through a hearing.

(i) Notwithstanding any other provision of law, an insurer may increase rates on policies with inception dates prior to January 1, 2003, in an amount no greater than the pure premium rate increase approved by the commissioner reflecting the cost of the change in benefit levels authorized by the act adding this subdivision.

(Amended (as amended by Stats. 2002, Ch. 6) by Stats. 2002, Ch. 873, Sec. 5. Effective January 1, 2003.)

11738. A classification shall take no account of any physical impairment of employees or the extent to which employees may have persons dependent upon them for support.

(Repealed and added by Stats. 1993, Ch. 228, Sec. 2. Effective January 1, 1994. Operative January 1, 1995, by Sec. 7 of Ch. 228, as amended by Stats. 1993, Ch. 1242.)

11739. (a) An insurer shall not use any plan for the payment of dividends to policyholders by reason of a participating provision in a workers' compensation insurance policy which is unfairly discriminatory.

(b) Every insurer issuing workers' compensation insurance policies under the laws of this state shall file annually with the rating organization designated by the commissioner information relating to dividend payments made to its policyholders. Information filed shall be in sufficient detail to permit the rating organization to prepare for the commissioner's review and approval, a report showing in the aggregate for all companies premiums earned, losses incurred, and dividends paid the preceding calendar year under policies

containing a participating provision, separately by premium size and loss ratio categories, as may reasonably be prescribed by the commissioner.

(c) Information submitted by individual companies pursuant to this section shall be confidential and not subject to public disclosure under any law of this state.

(Repealed and added by Stats. 1993, Ch. 228, Sec. 2. Effective January 1, 1994. Operative January 1, 1995, by Sec. 7 of Ch. 228, as amended by Stats. 1993, Ch. 1242.)

11740. Rates and supplementary rate information filed for use in this state pursuant to this article and Article 3 (commencing with Section 11750), as added and amended by Chapter 228 of the Statutes of 1993, shall not be effective prior to the first normal anniversary rating date of a policy on or after January 1, 1995. Rates, any rating plan or plans, and policy forms issued or approved prior to January 1, 1995, shall remain in effect only until the first normal anniversary rating date on or after January 1, 1995, as determined by a licensed rating organization pursuant to rules issued or approved by the commissioner in effect on July 16, 1993. Prior to January 1, 1995, no policy may be issued or renewed for a term of less than one year for the purpose of changing the normal anniversary date of the policy or the preceding policy. No policy may be canceled, amended, or rewritten for the purpose of avoiding this section.

Notwithstanding Section 7 of Chapter 228 of the Statutes of 1993, this section shall become operative January 1, 1994.

(Added by Stats. 1993, Ch. 1242, Sec. 7.5. Effective January 1, 1994. Operative January 1, 1994, by its own provisions, notwithstanding the January 1, 1995, operative date of Article 2 (commencing with Section 11730), as added by Stats. 1993, Ch. 228.)

11742. (a) The Legislature finds and declares that the insolvencies of more than a dozen workers' compensation insurance carriers have seriously constricted the market and led to a dangerous increase in business at the State Compensation Insurance Fund. Yet more than 200 insurance companies are still licensed to offer workers' compensation insurance in California. Unfortunately, many employers do not know which carriers are offering coverage, and it is both difficult and time consuming to try to get information on rates and coverages from competing insurance companies. A central information source would help employers find the required coverage at the best competitive rate.

(b) On or before July 1, 2004, the commissioner shall establish and maintain, on the Internet Web site maintained by the department, an online rate comparison guide showing workers' compensation insurance rates for the 50 insurance companies writing the highest volume of business in this line during the two preceding years.

(c) The online comparison shall display rates for each class set forth in the classification system adopted by the commissioner pursuant to Section 11734, shall include the effective date of each rate, and shall list the rates for each class from the lowest to the highest rate.

(d) The rating organization designated by the commissioner as his or her statistical agent pursuant to Section 11751.5 shall determine the cost savings achieved in the 2003 workers' compensation reform legislation. Each insurer shall certify, in the form and manner determined by the commissioner, that its rates reflect those cost savings. The certifications shall be made available to the public on the Internet Web site maintained by the department.

(Added by Stats. 2003, Ch. 635, Sec. 11. Effective January 1, 2004.)