



**Comments of the Center for Economic Justice**

**To the NAIC Creditor-Placed Insurance Model Act Review Working Group**

**June 8, 2017**

Following up on the working group's June 6, 2017 call, CEJ has prepared a draft creditor-placed insurance model act that addresses both LPI Auto and LPI Home. We created this draft to demonstrate that most of the provisions in the model reasonably apply to both LPI Auto and LPI Home and that any differences in the treatment between LPI Auto and LPI Home can be easily accommodated in a single model. While there are surely issues within our draft model for which there will be disagreement, we believe that a review of our draft will confirm that the working group can address both LPI Auto and LPI Home in a single model.

As mentioned in our prior comment, CEJ and other consumer and fair lending organizations are strongly opposed to a lack of action to address the current creditor-placed model. We strenuously reject the industry arguments for addressing LPI Auto. In particular, the proposed redline by Assurant is absurd – it simply deletes almost the entire draft model asserting every provision is either not applicable to LPI Home or is inconsistent with the regulatory settlement agreement. Both claims are an overreach. Further, if the RSA includes consumer protection gaps, those problems should be addressed in a revised model law. By its nature, a settlement agreement is a negotiated document with the regulators' position limited by the law existing at the time of the practices in question. A new or revised model law can address gaps in regulatory authority and limitations of the settlement agreement.

## **CEJ Draft Demonstrating Feasibility of Single Model Covering LPI Auto and LPI Home**

**June 8, 2017**

**DRAFTING NOTE to WORKING GROUP:** If there are specific issues to LPI Auto versus LPI Home, there can be separate sections – For example: A: In the event of a loss to real property under a creditor-placed insurance policy, . . . and B. In the event of a loss to a vehicle or personal property under a creditor-placed insurance policy ....

### **Section 1. Purpose**

The purposes of this Act are to:

- A. Promote the public welfare by regulating creditor-placed insurance;
- B. Create a legal framework within which creditor-placed insurance may be written in this state;
- C. Help maintain the separation between creditors and insurers;
- D. Minimize the possibilities of unfair competitive practices in the sale of creditor-placed insurance;
- E. Address the problems arising from reverse competition in creditor-placed insurance markets; and

F. Ensure that the creditor or servicer has no financial interest in the placement of creditor-placed insurance other than the protection of the property serving as collateral for the loan.

## **Section 2. Scope**

A. This Act applies to an insurer, producer, creditor or servicer transacting creditor-placed insurance as defined in this Act.

B. All creditor-placed insurance written in connection with credit transactions for real property, personal property or motor vehicles is subject to the provisions of this Act, except:

(1) Transactions involving extensions of credit primarily for business or commercial purposes;

(2) Insurance offered by the creditor and elected by the debtor at the debtor's option;

(3) Insurance for which no specific charge is made to the debtor or the debtor's account; or

C. To the extent a federal law or regulation establishes requirements on a creditor or servicer related to the requirements in this Act, the federal law or regulation shall have precedence.

## **Section 3. Definitions**

As used in this Act:

A. “Actual cash value (ACV)” means the cost of replacing damaged or destroyed property with comparable new property, minus depreciation and obsolescence.

**Drafting Note:** The definition of “actual cash value (ACV)” shall not be interpreted in any manner inconsistent with the meaning of actual cash value as used in the states’ unfair claims settlement practices laws or regulations.

B. “Affiliate” means any entity that directly or indirectly exercises control over, is controlled by or is under common control with an insurer, a servicer or a creditor.

C. “Collateral” means real or personal property that is pledged as security for the satisfaction of a debt.

D. “Credit agreement” means the written document that sets forth the terms of the credit transaction and includes the security agreement.

E. “Credit transaction” means a transaction by the terms of which the repayment of money loaned or credit commitment made, or payment of goods, services or properties sold or leased, is to be made at a future date or dates.

F. “Creditor” means the lender of money or vendor or lessor of goods, services, property, rights or privileges for which payment is arranged through a credit transaction, or any successor to the right, title or interest of a lender, vendor or lessor. For purposes of this law, a mortgagee or a servicer acting on behalf of a mortgagee is a creditor.

G. “Creditor-placed insurance” means insurance that is purchased unilaterally by the creditor, who is the named insured, subsequent to the date of the credit transaction, providing coverage against loss, expense or damage to collateralized property as a result of fire, theft, collision or other risks of loss that would either impair a creditor’s interest or adversely affect the value of collateral covered by limited dual interest insurance. It is purchased according to the terms of the credit agreement as a result of the debtor’s failure to provide required physical

damage insurance, with the cost of the coverage being charged to the debtor. It shall be dual interest insurance.

H. “Debtor” means the borrower of money or a purchaser or lessee of goods, services, property, rights or privileges, for which payment is arranged through a credit transaction. For purposes of this law, a mortgagor for a loan collateralized by real property is a debtor.

I. “Financial Interest Other Than Protection of the Property Serving as Collateral for the Loan” means any direct or indirect compensation or consideration paid by the insurer to the creditor or servicer or affiliate of the creditor or servicer including, but not limited to:

- (i) A creditor or servicer utilizing an insurer affiliated with the creditor or servicer;
- (ii) An insurer or affiliate paying any compensation to a creditor or servicer or affiliate of the creditor or servicer,;
- (iii) An insurer paying any compensation to an insurance producer or adjuster based on underwriting profitability or loss ratio;
- (iv) Any sharing of creditor-placed insurance premiums or creditor-placed insurance risk between the creditor or servicer or affiliate of the insurer;
- (v) Any payment of expenses by an insurer or affiliate to a creditor or servicer or affiliate of the creditor or servicer in connection with securing creditor-placed insurance business; and
- (vi) The provision of free or below-cost services, including ,but not limited to, insurance tracking, by an insurer or affiliate of the insurer to the creditor or servicer or affiliate of the creditor or servicer;

J. “Individual Creditor-Placed Insurance means coverage for an individual vehicle, individual real property or individual personal property evidenced by a certificate of coverage under a master creditor-placed insurance policy or a creditor-placed insurance policy for an individual vehicle, real property or personal property

K. “Insurance tracking” means only those activities related to determining whether a borrower has in place insurance that complies with the loan contract’s requirements to maintain insurance to protect the property serving as collateral for the loan, including:

- (i) Developing and maintaining a database used by lender or servicer to track required insurance on borrowers loans;
- (ii) Maintaining voluntary insurance information on behalf of a lender or servicer, including a lender’s or servicer’s loan servicing system or in a system maintained by a third party contractor for the lender or servicer;
- (iii) Inputting insurance information on new loans into an insurance tracking database or a lender’s or servicer’s loan servicing system;
- (iv) All communications by or on behalf of a lender or servicer with a borrower’s voluntary insurer or voluntary insurance producer;
- (v) All communications by or on behalf of a lender or servicer with a borrower concerning required insurance, including the written notices concerning charging borrower’s account for insurance;
- (vi) Monitoring the due date of and disbursing funds from a borrower’s escrow for voluntary insurance;
- (vii) All call center and other customer service operations related to communications described in sub paragraphs (iv),(v) and (vi) of this paragraph; and
- (viii) A lender or servicer directing an insurer to issue coverage under a creditor-placed insurance policy regardless of the degree of automation of such direction to issue coverage.

Insurance tracking” does not include issuing or canceling force-placed insurance as directed by the creditor or servicer. .

L. “Insurer” means an insurance company, association or exchange authorized to issue creditor-placed insurance policies in the state of [insert applicable state].

M. “Lapse” means that the insurance coverage required by the credit agreement is not in force.

N. “Master Creditor-Placed Insurance Policy“ means a group policy issued to a creditor or servicer providing coverage for all loans in the creditor or servicer’s loan portfolio as needed.

O. “Mortgagee” means the lender in a mortgage whom holds the mortgaged real property as security for repayment of a Mortgage Loan. For purposes of this law, a mortgagee is a creditor.

P. “Mortgagor” means the individual and/or entity obligated on a Mortgage Loan. For purposes of this law, a mortgagor is a debtor.

Q. “Producer” means a person who receives a commission for insurance placed or written or who, on behalf of an insurer or creditor, solicits, negotiates, effects, procures, delivers, renews, continues or binds policies of insurance to which this Act applies, except a regular salaried officer, employee or other representative of an insurer who devotes substantially all working time to activities other than those specified here and who receives no compensation that is directly dependent on the amount of insurance business written, and except a regular salaried officer or employee of a creditor who receives no compensation that is directly dependent on the amount of insurance effected or procured.

R. “Reverse competition” means competition among insurers that regularly takes the form of insurers vying with each other for the favor of persons who control, or may control, the placement of the insurance with insurers. Reverse competition tends to increase insurance premiums or prevent the lowering of premiums in order that greater compensation may be paid to persons for such business as a means of obtaining the placement of business. In these situations, the competitive pressure to obtain business by paying higher compensation to these persons overwhelms any downward pressures consumers may exert on the price of insurance, thus causing prices to rise or remain higher than they would otherwise.

S. “Servicer” means any entity that services a credit transaction in this state, including the responsibility to ensure that required insurance is in place.

T. “Single interest insurance” means insurance purchased by the creditor or servicer to insure solely its interest in the collateral securing a debtor’s credit transaction

**Section 4. Effective Date, Term of Coverage and Charges for Individual Creditor-Placed Insurance**

A. Individual creditor-placed insurance shall become effective on the latest of the following dates:

- (1) The effective date of the master creditor-placed insurance policy;
- (2) The date of the credit transaction;
- (3) The date prior coverage, including prior creditor-placed insurance coverage, lapsed; or
- (4) A later date provided for in the agreement between the creditor and insurer.

B. Individual creditor-placed insurance shall terminate on the earliest of the following dates:

- (1) The termination date of the master creditor-placed insurance policy;
- (2) The date other acceptable insurance becomes effective;
- (3) The date the collateralized property is repossessed, unless the property is returned to the debtor within ten (10) days of the repossession;



- (4) The date the collateralized property is determined by the insurer to be a total loss;
- (5) The date the debt is completely extinguished; or
- (6) An earlier date specified in the individual policy or certificate of insurance.

C. A creditor or servicer shall not make an insurance charge to a debtor for a term longer than the scheduled term of the creditor-placed insurance when it becomes effective, nor may an insurance charge be made to the debtor for creditor-placed insurance before the effective date of the insurance.

D. If a the creditor or servicer makes a charge to a debtor for creditor-placed insurance coverage that exceeds a term of one year, the creditor or servicer shall notify the debtor at least annually that the insurance will be canceled and a refund or credit of unearned charges made if evidence of acceptable insurance secured by the debtor is provided.

E. A creditor or servicer may assess a charge for creditor-placed insurance for coverage of the individual creditor –placed insurance that is the lesser of:

(1) the premium paid by the creditor or servicer to the insurer for the individual creditor – placed insurance coverage; or

(2) the pro-rata portion of the premium paid by the creditor or servicer to the insurer for the individual creditor-placed insurance coverage for the period 90 days before the creditor or servicer assesses a charge to the borrower through the remaining term of coverage.

F. A method of billing insurance charges to the debtor on closed-end credit transactions that creates a balloon payment at the end of the credit transaction or extends the credit transaction's maturity date is prohibited.

## **Section 5. Prohibited Coverages**

A. Creditor-placed insurance coverage shall not include:

- (1) Single-Interest Coverage
- (2) Coverage for the cost of repossession;
- (3) Skip, confiscation and conversion coverage;
- (4) Coverage for payment of mechanics' or other liens that do not arise from a covered loss occurrence;
- (5) Coverage that requires a debtor's insurance deductible to be less than \$250; or
- (6) Coverage that is broader than the insurance coverages that meet the minimum insurance requirements of the credit agreement.

B. Nothing in this section shall be deemed to prohibit the issuance of a separate policy or endorsement providing the coverages listed in Subsection A above. However, no charge shall be passed along to the debtor for the coverages.

## **Section 6. Evidence of Coverage**

- A. Individual creditor-placed insurance shall be set forth in an individual policy or certificate of insurance

B. A copy of the individual policy or certificate of insurance coverage, or other evidence of insurance coverage shall be mailed, first class mail, or delivered in person to the last known address of the debtor.

C. A cover letter shall accompany the individual policy or certificate of insurance coverage which includes the following disclosures:

- 1) That the borrower may purchase insurance of the borrower's choice;
- 2) That the force-placed insurance will be cancelled if the borrower provides evidence of insurance;
- 3) That the force-placed coverage will be cancelled if and when the borrower obtains required insurance;
- 4) That the borrower will receive a refund of the unearned portion of the LPI premium charge; and
- 5) Instructions for submitting evidence of required insurance.

D. The individual policy or certificate of insurance coverage shall include the following information:

- 1) The address and identification of the insured property;
- 2) The coverage amount or amounts if multiple coverages are provided;

- 3) The effective date of the coverage;
- 4) The term of coverage;
- 5) The premium charge for the coverage;
- 6) Contact information for filing a claim; and
- 7) A complete description of the coverage provided.

**Section 7. Filing, Approval and Withdrawal of Forms and Rates**

A. All policy forms and certificates of insurance to be delivered or issued for delivery in this state and the schedules of premium rates pertaining thereto shall be filed with the commissioner.

B. The commissioner shall within ninety (90) days after the filing of the policy forms and certificates of insurance disapprove a form that does not conform to this Act or to other applicable provisions of the insurance statutes and regulations and shall, within ninety (90) days of filing, disapprove a schedule of premium rates pertaining to the form if it does not conform to the standard set forth in Subsection E.

C. If the commissioner disapproves a form or schedule of premium rates in accordance with Subsection B, the commissioner shall promptly notify the insurer in writing of the disapproval, and it shall be unlawful for the insurer to issue or use the form or schedule. In the notice, the commissioner shall specify the reasons for disapproval and state that a hearing will be granted upon request pursuant to [insert code section for the state's administrative procedures statute or other law or regulation for hearing requests on rate and form filings].

D. Unless the commissioner disapproves the form or schedule of premium rates in accordance with Subsections B and C or gives written approval of the form or schedule within ninety (90) days after the filing, the form or schedule shall be deemed approved on the ninety-first day after the filing.

**Rate Filing Requirements to Follow – Applicable to LPI Home or Auto**

## **Section 8. Refund of Individual Creditor-Placed Insurance Charges**

A. Within fifteen (15) calendar days after the termination of individual creditor-placed insurance coverage, the creditor shall refund the pro-rata share of the charge for individual creditor-placed insurance for the unused portion of coverage for which the individual creditor-placed insurance charge to the debtor was originally made.

B. No later than the date of refund in Section 8A, the creditor or servicer shall provide to the debtor a statement of refund disclosing the effective date of coverage, the termination date of coverage, the amount being refunded and the amount charged for the coverage provided. No statement shall be required in the event that the policy terminates pursuant to Section 4B(5).

C. The entire amount of the charge for individual creditor-placed insurance, including any fees any kind shall be refunded if no coverage was provided.

## **Section 9. Claims**

**DRAFTING NOTE to WORKING GROUP:** If there are specific issues to LPI Auto versus LPI Home, there can be separate sections – A: In the event of a loss to real property under a creditor-placed insurance policy, . . . and B. In the event of a loss to a vehicle or personal property under a creditor-placed insurance policy . . . .

A. In the event of a loss under the creditor-placed insurance policy, the insurer shall pay, at a minimum, the least of the following, the value of which shall be determined as of the date of loss:

(1) The cost to repair or replace the collateral less any applicable deductible;

(2) The actual cash value of the collateral, less any applicable deductible;

B. The actual cash value amounts in Subsection A may be reduced by the value of salvage if the insurer does not take possession of the insured property.

C. In the event of a loss, no subrogation shall run against the debtor from the insurer.

D. Whenever a claim is made on a creditor-placed insurance policy, the insurer shall furnish to the named insureds a written statement of the loss explaining the settlement amount and the method of settlement.

E. A creditor or insurer may not abandon salvage to a towing or storage facility in lieu of payment of storage fees without the consent of the facility and the claimant. The insurer shall be responsible for the payment of towing and storage charges for a covered loss occurrence from the time the claim is reported to the insurer in accordance with the terms of the policy to the time the claim is paid. The insurer shall give written notice to the claimant prior to the date the claim is paid that the claimant may incur storage charges after the date the claim is paid.

## **Section 10. Rights and Obligations of the Parties**

A. In order for the creditor or servicer to place insurance on the collateral pledged by the debtor and charge the debtor for the cost of the insurance:

(1) The creditor or servicer must have a security interest in the collateral property;

(2) The credit agreement must require the debtor to maintain insurance on the collateral to protect the creditor's interest;

(3) The credit agreement must authorize the creditor to place the insurance if the debtor fails to provide evidence of the insurance; and

(4) These requirements must be clearly disclosed to the debtor at the inception of the credit transaction.

B. The debtor shall have a continuing right to provide required insurance by procuring and furnishing the required coverage through an insurer authorized to transact insurance within this state. However, a creditor may establish maximum acceptable deductibles, insurer solidity standards and other reasonable conditions with respect to the required insurance.

### **Section 11. Remittance of Premiums, Payment of Compensation, and Prohibited Practices**

A. The entire amount of the premium due from a creditor shall be remitted to the insurer or its producer in accordance with the insurer's requirements. No commissions may be paid to, or retained by, a person or entity except a licensed and appointed insurance producer.

B. The retention by the creditor of unearned premiums upon cancellation of the insurance without crediting to the debtor's account the amount of unearned insurance charges is prohibited.

C. A creditor or servicer shall not have any financial interest other than protection of the property serving as collateral for the loan in the purchase or placement of creditor-placed insurance.

D. Rebates to the creditor or servicer of a portion of the premium charged to the debtor are prohibited as are other inducements provided to the creditor by an insurer or producer. The listing of the following activities as prohibited rebates or inducements is not intended to be exhaustive. The commissioner is authorized to prohibit additional practices as an inducement through rulemaking pursuant to the [state administrative procedures act]

(1) Allowing insurers or producers to purchase certificates of deposit from the creditor or to maintain accounts with the creditor at less than the market interest rates and charges that the creditor applies to other customers for deposit accounts of similar amounts and duration;



(2) Purchasing or offering to purchase certificates of deposit from, or maintaining or offering to maintain deposit accounts or investment accounts with a creditor as part of a creditor-placed insurance solicitation;

(3) Paying a commission, directly or indirectly, to a person or entity affiliated with creditor or servicer or affiliate of the creditor or servicer;

(4) Paying a commission to a person or entity directly or indirectly that is not appropriately licensed as a producer in this state;

(5) Paying a contingent commission based on underwriting profitability or loss ratios;

(6) the creditor or servicer selling the affiliated producer agency to the LPI insurer for the amount of commissions the LPI insurer would have paid the servicer-affiliated producer over the life of the LPI contract; or

(7) the creditor or servicer selling the affiliated producer agency to a third party for an amount equal to the commissions the LPI vendor would have paid over the life of the contract coupled with an agreement by the LPI vendor to continue to pay commissions to this now-unaffiliated agency.

E. An insurer that pays commissions to producers for creditor-placed insurance shall be required to demonstrate the commissions are not unreasonably high in relation to the value of the services rendered to the debtor and creditor.

F. An insurer shall not issue creditor-placed insurance to any person or entity that is an affiliate of the insurer

G. An insurer shall not reinsure creditor-placed insurance with any insurer affiliated with creditor or servicer to whom the creditor-placed insurance is issued.

H. An insurer shall not make payments of any kind to a creditor or servicer other than premium refunds, including, but not limited, to the payment of expenses, to servicers or their affiliates for the purpose of securing creditor-placed business.

## **Section 12. Disclosures to the Debtor**

A. A creditor shall not impose a creditor-placed insurance charge or related interest and finance charges on a debtor unless the creditor or servicer

(1) has a reasonable basis to believe the debtor has failed to maintain required insurance;

(2).has sent the debtor a notice at least 45 days before charging a debtor; and

(3) has sent the debtor a second notice no earlier than 30 days after the first notice and no later than 15 days before charging a debtor.

B. A reasonable basis to believe creditor-placed insurance is necessary for a debtor is accomplished if:

(1) The creditor mails the notices required by Section 12 A by first class mail to the debtor's last known address as contained in the creditor's records; and

(2) The notices are substantially similar to the model notices in Appendix A

NOTE TO WORKING GROUP – NOTICES SHOULD TRACK THOSE IN THE CFPB  
SERVICING RULE

C. A creditor's compliance with or failure to comply with this Act shall not be construed to require the creditor to purchase insurance coverage on the collateral, and the creditor shall not be liable to the debtor or a third party as a result of its failure to purchase the insurance.

**Section 13. Enforcement**

A. The commissioner may conduct investigations or examinations of insurers and producers to ensure compliance with and enforcement of the provisions of this Act.

B. The commissioner may take any of the following actions when necessary or appropriate to enforce the provisions of this Act and any regulations promulgated under this Act:

(1) Upon finding that an insurer or producer has violated a provision of this Act or a regulation promulgated under this Act, the commissioner may issue an order directing that the insurer or producer cease and desist from committing the violations, impose a civil penalty for the violations, provide an equitable remedy for past violations, or any combination of these;

(2) Upon the issuance of an order pursuant to Paragraph (1) of this subsection, the insurer or producer shall have the right to request a hearing. At the hearing, the burden shall be on the insurer or producer to show cause why an order issued pursuant to this subsection should be annulled, modified or confirmed. The provisions of [insert citation of statute concerning the conduct of hearing before the commissioner] shall apply to all hearings;

(3) Pending the hearing and the decision by the commissioner, the commissioner shall suspend the effective date of the order;

(4) Not more than sixty (60) days following completion of the hearing, the commissioner shall enter an order of final determination which shall specify all relevant findings of fact, conclusions of law and orders;

(5) With the agreement of each affected insurer or producer, and in lieu of a hearing, the commissioner may enter into a consent agreement disposing of the matters that would be the subject of the hearing and order; and

(6) The commissioner may bring an action in [insert court] Court for an injunction or other appropriate relief to enjoin threatened or existing violations of this Act, the commissioner's orders or regulations. An action filed under this paragraph may also seek restitution on behalf of persons aggrieved by a violation of this Act or orders or regulations of the commissioner.

#### **Section 14. Regulations**

The commissioner may, after notice and hearing, promulgate reasonable regulations and orders to carry out and effectuate the provisions of this Act.

#### **Section 15. Judicial Review**

A. A person subject to an order or final determination of the commissioner under Section 8 or Section 14 may obtain a review of the order or final determination by filing in the [insert title] Court of [insert county] County, within [insert number] days from the date of the service of the order, a written petition praying that the order of the commissioner be set aside. A copy of the petition shall be served upon the commissioner, and the commissioner shall certify and file in the court a transcript of the entire record in the proceeding, including all the evidence taken and the report and order or final determination of the commissioner. Upon filing of the petition and transcript, the court shall have jurisdiction of the proceeding and of the questions determined, shall determine whether the filing of the petition shall operate as a stay of the order or final determination of the commissioner, and shall have power to make and enter upon the pleadings, evidence and proceedings set forth in the transcript a decree modifying, affirming or reversing

the order or final determination of the commissioner, in whole or in part. The findings of the commissioner as to the facts, if supported by [insert type] evidence, shall be conclusive.

**Drafting Note:** Insert appropriate language to accommodate to local procedure the effect given the commissioner's determination.

B. To the extent that the order or final determination of the commissioner is affirmed, the court shall issue its own order commanding obedience to the terms of the order or final determination of the commissioner. If either party applies to the court for leave to adduce additional evidence, and shows to the satisfaction of the court that the additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the proceeding before the commissioner, the court may order the additional evidence to be taken before the commissioner and to be adduced upon the hearing in the manner and upon the terms and conditions the court may deem proper. The commissioner may modify the findings of fact, or make new findings by reason of the additional evidence so taken, and shall file such modified or new findings that are supported by [insert type] evidence with a recommendation if any, for the modification or setting aside of the original order or final determination, with the return of the additional evidence.

**Drafting Note:** Insert appropriate language to accommodate to local procedure the effect given the commissioner's determination. In a state where final judgment, order or final determination or decree would not be subject to review by an appellate court, provision therefore should be inserted here.

C. An order issued by the commissioner under Section 14 shall become final:

(1) Upon the expiration of the time allowed for filing a petition for review if no petition has been duly filed within that time; except that the commissioner may thereafter modify or set aside the order to the extent provided in Section 14; or

(2) Upon the final decision of the court if the court directs that the order of the commissioner be affirmed or the petition for review dismissed.

D. No order of the commissioner under this Act or order of a court to enforce the same shall relieve or absolve any person affected by the order from liability under any other laws of this state.

**Drafting Note:** States may delete this section if the substance of it already exists in state law.

## **Section 16. Penalties, Private Cause of Action**

A. With the exception of violations of Section 11 of this Act, nothing in this Act shall be construed to create or imply a private cause of action for violation of this Act, and the commissioner shall have authority to bring an administrative or judicial proceeding to enforce this Act. Furthermore, nothing in this Act shall be construed to extinguish any debtor rights available under common law or other state statutes. This Act creates a private cause of action for violations of Section 11 of the Act.

B. The commissioner may, may after notice and hearing and upon order of the commissioner, may impose the following penalties:

1. A person signing a false rate filing certification in violation of Section 7(X) shall be personally subject to a civil penalty of no more than \$250,000, which maximum penalty shall increase annually based on the Consumer Price Index;

2. A person or entity, including a creditor, servicer, insurer or producer found by the commissioner in violation of Section 11 is subject to a civil penalty commensurate with the violation as determined by the commissioner;

3. For other violations of this Act, payment of a monetary penalty of not more than \$25,000 for each violation which shall increase annually based on the Consumer Price Index, unless the violation was committed flagrantly in a conscious disregard of this Act, in which case the penalty

shall not be more than \$250,000 for each violation which shall increase annually based on the Consumer Price Index; and

4. For violations committed flagrantly in a conscious disregard of this Act, suspension or revocation of the insurer's license.

#### **Section 17. Severability Provision**

If any provision of this Act, or the application of the provision to any person or circumstance is for any reason held to be invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

#### **Section 18. Effective Date**

This Act shall take effect [insert effective date].