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TATE OF CALIFORNIA
DEPARTMENT OF INSURANCE
 45 Fremont Street, 21st Floor
 San Francisco, California 94105

RH06050472 December 8, 2006

TEXT OF PROPOSED REGULATION

Adopt Title 10, California Code of Regulations, Chapter 5, Subchapter 4.75, Article 1, Section 2636 to read as follows:
SUBCHAPTER 4.75. Homeowners Insurance Rates and Underwriting.

Article 1. Experience Rating in Residential Property Homeowners Lines of Insurance

§ 2636.1 Purpose and Scope

(a) Section 790.03(b) of the California Insurance Code prohibits the making of any assertion, representation or statement which is untrue, deceptive or misleading.

(1) The purpose of this regulation is to make clear specific standards for determining where an assertion, representation or statement is untrue, deceptive or misleading within the meaning of CIC § 790.03(b).

(b) Section 1861.05(a) of the California Insurance Code provides that no rate shall remain in effect which is excessive, inadequate, unfairly discriminatory or otherwise in violation of the law.

(1) The purpose of this regulation is to prohibit rate increases without corresponding increases in projected loss experience because such rate increases are not actuarially sound and /or are unfairly discriminatory.

(2) The purpose of this regulation is to provide guidance with respect to the conditions under which insurers providing homeowners insurance and using experience rating can impose surcharges on rates, deny premium discounts and place policy holders in higher-rated tiers on a premium for residential homeowners insurance policies.

(3) The purpose of this regulation is to provide guidance to insurers providing homeowners insurance and using experience rating with respect to loss data that may or may not be permitted to form the basis of surcharged rates, premium discount rates, or rating tiers for homeowners insurance.

(c) This regulation applies only to homeowners insurance.

Authority: Cal. Ins. Code sections 1861.05; and 790.10.; 20th Century Ins. Co. v. Garamendi (1994) 8 Cal.4th 216, 245, Cal. Rptr. 2d 807;

[& butType=3& butStat=2& butNum=15& butInline=1& butInfo=& fmtstr=FULL& docnum=16& startdoc=11& wchp=dGLbVlb-zSkAz& md5=c23520ce8338bc8db09dc96c9726d4c1" target="_top">Calfarm Ins. Co. v. Deukmejian \(1989\) 48 Cal. 3d 805, 258 Cal. Rptr. 161](#); Cal. Ins. Code section 790; 790.03(a); 790.03(b); 790.10; *Spray, Gould & Bowers v. Associated Internat. Ins. Co.*, (1999) 71 Cal. App. 4th 1260, 84 Cal. Rptr. 2d 552. Reference: Cal. Ins. Code sections 1861.05; 790; 790.03(a); 790.03(b); 790.10; 330; 332; 780; 20th Century Ins. Co. v. Garamendi (1994) 8 Cal.4th 216, 245, Cal. Rptr. 2d 807;

[& butType=3& butStat=2& butNum=15& butInline=1& butInfo=& fmtstr=FULL& docnum=16& startdoc=11& wchp=dGLbVlb-zSkAz& md5=c23520ce8338bc8db09dc96c9726d4c1" target="_top">Calfarm Ins. Co. v. Deukmejian \(1989\) 48 Cal. 3d 805, 258 Cal. Rptr. 161](#); Cal. Ins. Code sections 790; 790.03(a); 790.03(b); 790.10; *Spray, Gould & Bowers v. Associated Internat. Ins. Co.*, (1999) 71 Cal. App. 4th 1260, 84 Cal. Rptr. 2d 552.

§ 2636.2 Definitions

The following definitions apply for purposes of this regulation:

- (a) "Minor claim" means any claim where the payment by the insurer does not exceed the applicable deductible for the particular claim upon which benefits are paid including any adjustments for successful subrogation.
- (b) "Paid claim" means any actual payment by an insurer as a result of a claim for benefits that exceed the applicable deductible for the particular claim.
- (c) "Unpaid claim" means a claim upon which the insurer has not yet made a payment or has not yet provided a benefit or a closed no-pay claim. A claim is unpaid if an insurer obtains a total reimbursement by reason of subrogation.

(d) "Natural phenomena related event" means damage caused by weather or natural phenomena, whether or not classified as an emergency by any federal or state authority.

~~"Base rate" means the numerical rate against which discounts and surcharges are applied.~~

(e) "Underwriting" means the process which (1) *limits* the conditions under which a policy will be issued or (2) *impacts* the rates that will be charged for that policy.

(f) "Surcharge" means an increase in premium based on the insured's previous claims or loss experience.

(g) "Premium Discount" means a decrease in premium based the insured's previous claims or loss experience.

(h) "Tiered rating" means the underwriting or rating process whereby the insurer has the option of placing the policyholder in any of a number of rating tiers based on, among other things, the policyholder's loss experience. The term "tiered rating" applies to companies within an insurer group where the insurer has the option of placing the policyholder in the higher rated company within the group, based on, among other things, the policyholder's loss experience. In these cases the higher rated company would be the higher rated tier.

(i) "Unfairly Discriminatory" means the application of different rates on similarly situated risks where there is no difference in expected future costs.

(j) Homeowners insurance means any policy of Homeowners Multiple Peril Insurance as defined in the NAIC reporting requirements.

Authority: Cal. Ins. Code sections 1861.05; and 790.10.; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 245, Cal. Rptr. 2d 807;

[& butType=3& butStat=2& butNum=15& butInline=1& butInfo=& fmtstr=FULL&docnum=16& startdoc=11&wchp=dGLbVlb-zSkAz& md5=c23520ce8338bc8db09dc96c9726d4c1" target=" top">Calfarm Ins. Co. v. Deukmejian](#) (1989) 48 Cal. 3d 805, 258 Cal. Rptr. 161; Cal. Ins. Code section 790; 790.03(a); 790.03(b); 790.10; *Spray, Gould & Bowers v. Associated Internat. Ins. Co.*, (1999) 71 Cal. App. 4th 1260, 84 Cal. Rptr. 2d 552. Reference: Cal. Ins. Code sections 1861.05; 790; 790.03(a); 790.03(b); 790.10; 330; 332; 780; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 245, Cal. Rptr. 2d 807;

[& butType=3& butStat=2& butNum=15& butInline=1& butInfo=& fmtstr=FULL&docnum=16& startdoc=11&wchp=dGLbVlb-zSkAz& md5=c23520ce8338bc8db09dc96c9726d4c1" target=" top">Calfarm Ins. Co. v. Deukmejian](#) (1989) 48 Cal. 3d 805, 258 Cal. Rptr. 161; Cal. Ins. Code sections ~~790, 790.03(a), 790.03(b), 790.10~~; *Spray, Gould & Bowers v. Associated Internat. Ins. Co.*, (1999) 71 Cal. App. 4th 1260, 84 Cal. Rptr. 2d 552. *Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 726, 113 Cal. Rptr. 2d 399.

§ 2636.3 Limitations on the Application of Surcharges, Premium Discounts and Tiered Rating

(a) ~~No insurer providing homeowners insurance and using experience rating authorized to do business in this State shall impose a surcharge, deny a premium discount or place a risk in a higher rated tier, at the inception of a homeowners or dwelling fire insurance policy or upon renewal thereof because of claims or losses due to natural phenomena related damage or a third-party act committed by someone who is not a resident of the insured dwelling.~~

(b) ~~A surcharge may be imposed, a premium discount may be denied and the policyholder may be placed in a higher rated tier, if a claim or loss identifies or confirms that a substantial relationship to loss exposure continues to exist, there is a material change in the risk assumed or a breach of contractual duties that results in there being a substantial relationship to risk of loss, and/or there are conditions or warranties that substantially increase the potential for risk of loss and the surcharge does not result in unfairly discriminatory application of rates.~~

(c) ~~No insurer providing homeowners insurance and using experience rating authorized to do business in this State shall consider minor claims, unpaid claims, or coverage inquiries as the basis for a rate surcharge, denial of a premium discount or in placing a risk into a higher rated tier.~~

(d) ~~Where the claim or loss is directly attributable to policyholder negligence, even where the claims or losses due to natural phenomena, a surcharge may be imposed, a premium discount may be denied and the policyholder may be placed in a higher rated tier, if a claim or loss identifies or confirms that a substantial relationship to loss exposure continues to exist, there is a material~~

change in the risk assumed or a breach of contractual duties that results in there being a substantial relationship to risk of loss, and/or there are conditions or warranties that substantially increase the potential for risk of loss and the surcharge does not result in unfairly discriminatory application of rates.

Authority: Cal. Ins. Code sections 1861.05; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 245, Cal. Rptr. 2d 807; [& butType=3& butStat=2& butNum=15& butInline=1& butInfo=& fmtstr=FULL& docnum=16& startdoc=11& wchp=dGLbVlb-zSkAz& md5=c23520ce8338bc8db09dc96c9726d4c1" target=" top">Calfarm Ins. Co. v. Deukmejian](#) (1989) 48 Cal. 3d 805, 258 Cal. Rptr. 161; Reference: Cal. Ins. Code sections 1861.05; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 245, Cal. Rptr. 2d 807.

§ 2636.4 Limitations on Loss Data in Ratemaking

(a) No insurer providing homeowners insurance and using experience rating authorized to do business in this State shall use data related to claims to calculate rates ~~relating to~~ for premium surcharges, premium discounts, or for rating tiers, ~~on policies of homeowners insurance~~ where that data relates to claims or losses due to natural phenomena related damage ~~or a third-party act committed by someone who is not a resident of the insured dwelling.~~

(b) Data related to claims may be used to calculate rates related to a premium surcharge, premium discounts and rating tiers, if the data related to claims or losses identifies or confirms that a substantial relationship to loss exposure continues to exist, there is a material change in the risk assumed or a breach of contractual duties that results in there being a substantial relationship to risk of loss, and/or there are conditions or warranties that substantially increase the potential for risk of loss.

(c) No insurer providing homeowners insurance and using experience rating authorized to do business in this State shall calculate rates related to premium surcharges, premium discounts or rating tiers ~~on policies of homeowners insurance where that based upon loss data that includes unpaid claims, minor claims or a losses caused by a natural phenomena, related event as the basis for the premium surcharge or upon~~ Rates related to premium surcharges, premium discounts or rating tiers shall not be based upon coverage inquiries.

~~Loss data used in the development of homeowner or dwelling fire claim rate surcharges must be specific to each identified surcharge and the loss data must be separate and not redundant to loss data already used in the development of base rates or any other rate that applies to this insurance. The loss data used for rate surcharges shall be restricted to data derived from losses eligible for surcharge consideration.~~

(d) The maximum permitted earned premium calculation in section 2644.2 and the minimum permitted earned premium calculation in section 2644.3 shall be adjusted to reflect the average discounts and surcharges.

(e) An insurer providing homeowners insurance and using experience rating authorized to do business in this State may use data related to claims to calculate premium surcharges, premium discounts, or rating tiers, where that data relates to claims or losses due to natural phenomena related damage, where the claim or loss is directly attributable to policyholder negligence, even where the claims or losses due to natural phenomena, a premium discount may be denied and the policyholder may be placed in a higher rated tier, if a claim or loss identifies or confirms that a substantial relationship to loss exposure continues to exist, there is a material change in the risk assumed or a breach of contractual duties that results in there being a substantial relationship to risk of loss, and/or there are conditions or warranties that substantially increase the potential for risk of loss and the surcharge does not result in unfairly discriminatory application of rates.

Authority: Cal. Ins. Code section 1861.05; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 245, Cal. Rptr. 2d 807; [& butType=3& butStat=2& butNum=15& butInline=1& butInfo=& fmtstr=FULL& docnum=16& startdoc=11& wchp=dGLbVlb-zSkAz& md5=c23520ce8338bc8db09dc96c9726d4c1" target=" top">Calfarm Ins. Co. v. Deukmejian](#) (1989) 48 Cal. 3d 805, 258 Cal. Rptr. 161. *Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 726, 113 Cal. Rptr. 2d 399. Reference: Cal. Ins. Code section 1861.05; *20th Century Ins. Co. v. Garamendi* (1994) 8 Cal.4th 216, 245, Cal. Rptr. 2d 807; [& butType=3& butStat=2& butNum=15& butInline=1& butInfo=& fmtstr=FULL& docnum=16& startdoc=11& wchp=dGLbVlb-zSkAz& md5=c23520ce8338bc8db09dc96c9726d4c1" target=" top">Calfarm Ins. Co. v. Deukmejian](#) (1989) 48 Cal. 3d 805, 258 Cal. Rptr. 161. *Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 726, 113 Cal. Rptr. 2d 399.

§ 2636.5 Disclosure

(a) Every insurer providing homeowners insurance and using experience rating shall provide at the point of sale, to the potential insured, a description as to how, in underwriting and / or rating the policy, the insurer considers claims history in determining whether to nonrenew, ~~or~~ surcharge, deny a discount or apply rating tiers on a homeowners insurance policy, ~~as well as the maximum amount that the insurer could apply as a surcharge. Such notice must be in writing.~~

(b) Every insurer providing homeowners insurance and using experience rating shall provide an advance annual notice to its insureds describing how, in underwriting and / or rating the policy, the insurer considers claims history in determining whether to nonrenew, ~~or~~

deny a discount or apply rating tiers on on a policy, ~~as well as the maximum amount that the insurer could apply as a surcharge.~~ Such notice may be on the declarations page or as a notice that is sent to the insured separately or with the policy.

Authority: Cal. Ins. Code sections ~~790; 790.03(a); 790.03(b);~~ 790.10; *Spray, Gould & Bowers v. Associated Internat. Ins. Co.*, (1999) 71 Cal. App. 4th 1260, 84 Cal. Rptr. 2d 552. Reference: Cal. Ins. Code sections 790; 790.03(a); 790.03(b); ~~790.10; 330; 332; 780;~~ *Spray, Gould & Bowers v. Associated Internat. Ins. Co.*, (1999) 71 Cal. App. 4th 1260, 84 Cal. Rptr. 2d 552; *Smith v. State Farm Mutual Automobile Ins. Co.* (2001) 93 Cal.App.4th 700, 726 113 Cal. Rptr. 2d 399.

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