



House of Representatives

General Assembly

File No. 70

January Session, 2003

House Bill No. 6375

House of Representatives, March 25, 2003

The Committee on Insurance and Real Estate reported through REP. OREFICE of the 37th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

AN ACT CONCERNING COMMERCIAL INSURANCE RATES AND FORMS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 38a-676 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2003*):

3 (a) (1) With respect to rates pertaining to commercial risk insurance,
4 and subject to the provisions of subdivision (2) of this subsection with
5 respect to all commercial risk insurance and subsection (b) of this
6 section with respect to workers' compensation and employers' liability
7 insurance, on or before the effective date [thereof] of the rate, every
8 admitted insurer shall submit to the Insurance Commissioner for the
9 commissioner's information, except as to inland marine risks which by
10 general custom of the business are not written according to manual
11 rates or rating plans, every manual of classifications, rules and rates,
12 and every minimum, class rate, rating plan, rating schedule and rating
13 system and any modification of the foregoing which it uses. Such

14 submission by a licensed rating organization of which an insurer is a
15 member or subscriber shall be sufficient compliance with this section
16 for any insurer maintaining membership or subscribership in such
17 organization, to the extent that the insurer uses the manuals,
18 minimums, class rates, rating plans, rating schedules, rating systems,
19 policy or bond forms of such organization. The information shall be
20 open to public inspection after its submission. (2) In a competitive
21 market, as determined by the commissioner pursuant to section 2 of
22 this act, such submission shall be made for informational purposes
23 only and shall not be subject to review by the Insurance
24 Commissioner.

25 (b) Each filing [as] described in subsection (a) of this section for
26 workers' compensation or employers' liability insurance shall be on file
27 with the Insurance Commissioner for a waiting period of thirty days
28 before it becomes effective, which period may be extended by the
29 commissioner for an additional period not to exceed thirty days if the
30 commissioner gives written notice within such waiting period to the
31 insurer or rating organization which made the filing that the
32 commissioner needs such additional time for the consideration of such
33 filing. Upon written application by such insurer or rating organization,
34 the commissioner may authorize a filing which the commissioner has
35 reviewed to become effective before the expiration of the waiting
36 period or any extension thereof. A filing shall be deemed to meet the
37 requirements of sections 38a-663 to 38a-696, inclusive, unless
38 disapproved by the commissioner within the waiting period or any
39 extension thereof. If, within the waiting period or any extension
40 thereof, the commissioner finds that a filing does not meet the
41 requirements of said sections, the commissioner shall send to the
42 insurer or rating organization which made such filing written notice of
43 disapproval of such filing, specifying therein in what respects the
44 commissioner finds such filing fails to meet the requirements of said
45 sections and stating that such filing shall not become effective. Such
46 finding of the commissioner shall be subject to review as provided in
47 section 38a-19.

48 (c) [The] Except as provided in subsection (d) of this section, the
49 form of any insurance policy or contract the rates for which are subject
50 to the provisions of sections 38a-663 to 38a-696, inclusive, other than
51 fidelity, surety or guaranty bonds, and the form of any endorsement
52 modifying such insurance policy or contract, shall be filed with the
53 Insurance Commissioner prior to its issuance. The commissioner shall
54 adopt regulations, in accordance with the provisions of chapter 54,
55 establishing a procedure for review of such policy or contract. If at any
56 time the commissioner finds that any such policy, contract or
57 endorsement is not in accordance with such provisions or any other
58 provision of law, the commissioner shall issue an order disapproving
59 the issuance of such form and stating the reasons for disapproval. The
60 provisions of section 38a-19 shall apply to any such order issued by the
61 commissioner.

62 (d) The form of any commercial insurance policy, other than
63 workers' compensation insurance, and the form of any endorsement
64 modifying such insurance policy, shall be filed with the Insurance
65 Commissioner prior to its issuance. The commissioner may disapprove
66 the filing not later than thirty days after the commissioner receives it.
67 The commissioner may extend the review period for an additional
68 time not to exceed fifteen days if the commissioner gives written notice
69 to the insurer that additional time is required for the commissioner to
70 consider the filing. A filing shall be deemed approved unless
71 disapproved by the commissioner within the filing or extension
72 period, as the case may be. Any such disapproval may only be made if
73 the commissioner finds that the filing violates the requirements of one
74 or more (1) statutes, (2) regulations adopted in accordance with
75 chapter 54, (3) court orders, or (4) other provisions of law. The
76 commissioner shall provide the insurer with written notice of the basis
77 of any such disapproval which notice shall cite the specific statutes,
78 regulations, court orders or other provision of law that formed the
79 basis of disapproval.

80 Sec. 2. (NEW) (*Effective October 1, 2003*) (a) With respect to
81 commercial risk insurance, a competitive market is presumed to exist

82 unless the commissioner, after a hearing, determines that a reasonable
83 degree of competition does not exist in a market and issues a ruling to
84 that effect. Any such ruling shall expire one year after the date of issue.
85 After such ruling has been in effect for a period of one year the
86 commissioner may hold a hearing in order to determine whether a
87 reasonable degree of competition continues not to exist. The
88 commissioner shall provide written notice of the time and place of any
89 such hearing to all insurance companies affected by the ruling at least
90 fifteen days in advance of such hearing. The commissioner shall issue a
91 decision not later than thirty days after such hearing.

92 (b) In determining whether a reasonable degree of competition
93 exists in a market, the commissioner may define that market in terms
94 of a line or lines of business, as depicted on page fifteen of the National
95 Association of Insurance Commissioners' annual statement. The
96 commissioner may consider relevant tests of workable competition
97 pertaining to market structure, performance and conduct and the
98 practical opportunities available to consumers in the market to acquire
99 pricing and other consumer information and to compare and obtain
100 insurance from competing insurers. Such tests may include, but are not
101 limited to: (1) Size and number of firms actively engaged in the
102 market, (2) market shares and changes in market shares of firms, (3)
103 ease of entry and exit from a given market, (4) underwriting
104 restrictions or results, (5) investment income earned or realized by
105 insurers from both their unearned premium and loss reserve funds for
106 that market, (6) availability of consumer information concerning the
107 product and sales outlets or other sales mechanisms, and (7) efforts of
108 insurers to provide consumer information. The determination of
109 competition by the commissioner shall involve the interaction of the
110 various tests and the weight given to specific tests shall depend upon
111 the particular situation and pattern of test results.

112 (c) In determining whether a competitive market exists, the
113 commissioner shall monitor the degree of competition in this state. In
114 doing so, the commissioner shall utilize existing relevant information,
115 analytical systems and other sources, participate in or cause the

116 development of new relevant information, analytical systems and
117 other sources or rely on some combination thereof. Such activities may
118 be conducted internally within the Insurance Department, in
119 cooperation with other state insurance departments, through outside
120 contractors or in any other manner deemed appropriate by the
121 commissioner. For purposes of judicial review pursuant to section 4-
122 183 of the general statutes, the determination of whether a competitive
123 market exists shall be deemed to be a question of fact.

124 (d) For the purpose of determining whether a competitive market
125 exists, the commissioner, in the commissioner's discretion, may make
126 such public or private investigations within or outside the state as the
127 commissioner deems necessary.

128 (e) For the purpose of any hearing or investigation under this
129 section, the commissioner or any officer designated by the
130 commissioner may administer oaths and affirmations, subpoena
131 witnesses, compel their attendance, receive oral and documentary
132 evidence and require the production of any books, papers,
133 correspondence, memoranda, agreements or other documents or
134 records which the commissioner deems relevant or material to the
135 inquiry.

136 (f) In case of a refusal of any person to comply with any subpoena
137 issued under this section or to testify with respect to any matter
138 concerning which the person may be lawfully interrogated, the
139 superior court for the judicial district of Hartford, upon application by
140 the commissioner, may issue an order requiring such person to comply
141 with such subpoena or to testify. Failure to obey the order of the court
142 may be punished by the court as a contempt of court.

143 (g) No person may be excused from attending and testifying or from
144 producing any document or record before the commissioner, or in
145 obedience to the subpoena of the commissioner or any officer
146 designated by the commissioner, or in any proceeding instituted by the
147 commissioner, on the grounds that the testimony or evidence,
148 documentary or otherwise, required of the person may tend to

149 incriminate the person or subject the person to a penalty of forfeiture,
150 provided no person may be prosecuted or subjected to any penalty or
151 forfeiture for or on account of any transaction, matter, or thing
152 concerning which the person is compelled, after claiming the privilege
153 against self-incrimination, to testify or produce evidence, documentary
154 or otherwise, except that the person testifying is not exempt from
155 prosecution and punishment for perjury or contempt committed in
156 testifying.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>

INS *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Type	FY 04 \$	FY 05 \$
Insurance Dept.	IF - Cost	up to 330,000	up to 425,000
Judicial Dept.	GF - None	None	None

Note: IF=Insurance Fund; GF=General Fund

Municipal Impact: None

Explanation

The bill would result in: 1) an annual cost of \$250,000 for staffing and expenses related to the bill’s requirements concerning the establishment of a 30 day timeframe for approval of commercial form filings, 2) an annual cost of up to \$175,000 for staffing and expenses related to the review of a competitive commercial risk insurance market, and 3) no cost to the Judicial Department to handle judicial reviews under the bill.

Form Filings Review

The Property Casualty Division of the Connecticut Insurance Department is responsible for reviewing commercial insurance form filings. Currently, there are two full time associate examiners that review these filings. It currently takes about five months on average for a commercial form filing to be reviewed and approved. The bill would require the review process to be completed within thirty days, with a possible fifteen-day extension of the review period if written notice is given to the insurer.

In order to meet the reduced timeframes, an additional three examiners would be required at a cost of \$57,546 each plus fringe

benefits, expenses and equipment.

Competitive Commercial Risk Insurance Market Requirements

The bill mandates that the Commissioner of Insurance monitor the existence of a competitive marketplace for all lines of commercial risk insurance. If a reasonable degree of competition does not exist in the market, a hearing must be conducted. This would require the need for additional contractual resources of \$50,000 to handle the market analysis, review and processing. However, depending on the level of investigation and judicial review that may occur, a need for an Examiner (salary of \$57,546) and an Attorney (salary of \$63,447) plus fringe benefits and expenses could result.

The bill permits the commissioner to ask the Hartford Superior Court to enforce compliance with any subpoena or request for testimony issued by him pursuant to a hearing or investigation under the bill. The workload increase to the Judicial Department associated with this change is anticipated to be negligible, and could be handled without the need for additional appropriations.

Insurance Department Funding Mechanism

The Department of Insurance (DOI) is funded by annual assessments on insurance companies. The cumulative amount of these assessments on all insurance companies is budgeted to equal the amount of DOI's funding needs for the year. When the amount that is ultimately spent by DOI is less than the assessed amount, credit is given toward the insurance companies' coming year assessments. Therefore, any costs or savings in DOI's operations are passed on to insurance companies.

OLR Bill Analysis

HB 6375

AN ACT CONCERNING COMMERCIAL INSURANCE RATES AND FORMS**SUMMARY:**

The bill eliminates the insurance commissioner's authority to review and disapprove commercial risk insurance rates when she determines that a competitive commercial risk insurance market exists. It establishes a hearing and other procedures for determining whether a market is competitive and requires in a competitive market that commercial rate filings be for informational purposes only and not subject to review.

Under current law, commercial insurance rates must be filed with the commissioner for a 30-day waiting period (or an additional 30-day extension period) and may be used after the waiting or extension period unless disapproved by written notice specifying in what respects the filing failed to meet statutory requirements.

The bill places in statute, rather than regulation, the review and approval process for commercial insurance policy contract forms and endorsements. Policy forms and endorsements must be filed with the commissioner before they are used and are deemed approved unless disapproved within 30 days of receipt or an additional 15-day extension period. The bill requires the commissioner to give written notice of the disapproval citing the grounds for it.

The bill requires the commissioner's disapproval of any policy form or endorsement to be based on violation of one or more of the following requirements: (1) statutes, (2) regulations, (3) court orders, or (4) other provisions of law.

EFFECTIVE DATE: October 1, 2003

COMPETITIVE MARKET DETERMINATION

The bill specifies that a competitive commercial risk insurance market is presumed to exist unless the commissioner, after notice and hearing,

determines that a reasonable degree of competition does not exist and issues a ruling to that effect. A written 15-day advance notice of hearing, stating its time and place must be delivered to all insurers affected by the ruling. The commissioner must make a decision within 30 days of the hearing. A decision that the market is not competitive lasts for one year. The commissioner may hold another hearing to determine whether a reasonable degree of competition still does not exist.

Defining the Market and Using Relevant Tests

In determining whether a reasonable degree of competition exists in a market, the bill authorizes the commissioner to: define the market by line of insurance or lines of business, as depicted in the National Association of Insurance Commissioner's annual statement. It also authorizes her to consider relevant tests of workable competition pertaining to (1) market structure, (2) performance and conduct, (3) and opportunities for consumers to (a) acquire pricing and other consumer information and (b) compare and obtain insurance from competing insurers.

Relevant tests may include (1) size and number of firms in the market, (2) market shares and changes in market shares of firms, (3) ease of entry and exit from the market, (4) underwriting restrictions or results, (5) investment income earned or realized by insurers from unearned premium and loss reserves, (6) availability of consumer information concerning product and sales outlets or other sales mechanisms, and (7) efforts by insurers to provide consumer information. The determination of competition involve the interaction of these tests must and the weight given to specific tests depend upon the particular situation and pattern of test results.

Monitoring the Market

In determining whether a competitive market exists, the commissioner must also monitor the degree of competition in the state. To do this, the commissioner must use (1) existing relevant information, analytical systems and other sources, (2) participate in or cause the development of new relevant information, analytical systems, and other sources or (3) rely on some combination of these. Such activities may be conducted internally within the Insurance Department, in cooperation with other state insurance departments, through outside contractors,

or in any other manner deemed appropriate by the commissioner. The bill specifies that whether a competitive market exists is a question of fact for purposes of judicial review.

Conducting Investigations

The bill authorizes the commissioner to conduct a public or private investigation within or outside of the state in determining whether a competitive market exists. In conducting a hearing or investigation, the bill authorizes the commissioner or her designee to administer oaths and affirmations, subpoena witnesses, compel attendance, receive oral and documentary evidence, and require the production of books, papers, correspondence, memoranda, agreements or other documents or records the commissioner deems material to the inquiry.

The bill authorizes the commissioner to make application to the superior court for the judicial district of Hartford for an order requiring any person who refuses to comply with a subpoena or to testify. Failure to obey the order may be punished by the court as a contempt of court.

Privilege Against Self-Incrimination

The bill prohibits any person from using the privilege against self-incrimination to avoid testifying or producing documents in response to a subpoena. But it provides the individual will not be subject to any penalty or forfeiture for, or on account of, any transaction or other thing where they are compelled to testify or produce documents (except the person testifying may be prosecuted for perjury or contempt).

COMMITTEE ACTION

Insurance and Real Estate Committee

Joint Favorable Report

Yea 9 Nay 5