CHAPTER 26.1-25
FIRE, PROPERTY, AND CASUALTY INSURANCE RATES

26.1-25-01. Purpose of chapter - Construction.

The purpose of this chapter is to promote the public welfare by regulating insurance rates so that they are not excessive, inadequate, or unfairly discriminatory, and to authorize and regulate limited cooperative action among insurers in ratemaking-related activities and in other matters within the scope of this chapter. Nothing in this chapter is intended to prohibit or discourage reasonable competition, or to prohibit, or encourage except to the extent necessary to accomplish the aforementioned purpose, uniformity in rating systems, rating plans, or practices. This chapter must be liberally interpreted to carry into effect this section.

26.1-25-02. Scope of chapter.

1. This chapter applies to fire, marine, inland marine, hail, windstorm, cyclone, tornado, explosion, water damage, and all other forms of insurance on property, and the loss of use and occupancy thereof, and to casualty insurance, including fidelity, surety, and guaranty bonds, and all other forms of motor vehicle insurance, as defined and set forth in subsections 1, 2, 4, 5, 6, and 7 of section 26.1-12-11 and in subsections 1, 2, 5, 6, and 7 of section 26.1-05-02, except as hereinafter excluded. Inland marine insurance is deemed to include insurance now or hereafter defined by statute, or by interpretation thereof, or if not so defined or interpreted, by ruling of the commissioner or as established by general custom of the business, as inland marine insurance. This chapter does not apply to:
   a. Reinsurance other than joint reinsurance to the extent stated in section 26.1-25-10.5.
   b. Accident and health insurance.
   c. Insurance of vessels or craft, their cargoes, marine builders' risks, marine protection and indemnity, or other risks commonly insured under marine, as distinguished from inland marine, insurance policies.
   d. Insurance against loss or damage to aircraft or against liability, other than workforce safety and insurance and employers' liability, arising out of ownership, maintenance, or use of aircraft.
2. This chapter applies to every insurer, including every stock or mutual company, reciprocal or interinsurance exchange, authorized by any provision of the laws of this state to transact any of the kinds of insurance. However, except with respect to policies issued pursuant to section 26.1-13-15 in any incorporated city with a population over ten thousand, this chapter does not apply to county mutual insurance companies organized under chapter 26.1-13.
3. If any kind of insurance, subdivision, or combination thereof, or type of coverage, subject to this chapter, is also subject to regulation by another rate regulatory act of this state, an insurer to which both acts are otherwise applicable shall file with the commissioner a designation as to which rate regulatory act is applicable to it with respect to the kind of insurance, subdivision, or combination thereof, or type of coverage.

26.1-25-02.1. Definitions.

1. "Advisory organization" means any entity, including its affiliates or subsidiaries, which either has two or more member insurers or is controlled either directly or indirectly by two or more insurers, and which assists insurers in ratemaking-related activities as enumerated in this chapter. Two or more insurers having a common ownership or operating in this state under common management or control constitute a single insurer for purposes of this definition.
2. "Commercial risk" means any kind of risk which is not a personal risk.
3. "Competitive market" means a commercial risk market that has not been found to be noncompetitive as provided for in section 26.1-25-04. All commercial risk markets

except crop hail, farmowners, and medical malpractice insurance are presumed to be competitive.

4. "Developed losses" means losses including loss adjustment expenses, adjusted, using standard actuarial techniques, to eliminate the effect of differences between current payment or reserve estimates and those needed to provide actual ultimate loss including loss adjustment expense payments.
5. "Expenses" means that portion of a rate attributable to acquisition, field supervision, collection expenses, general expenses, taxes, licenses, and fees.
6. "Joint underwriting" means a voluntary arrangement established to provide insurance coverage for a commercial risk pursuant to which two or more insurers jointly contract with the insured at a price and under policy terms agreed upon between the insurers.
7. "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.
8. "Noncompetitive market" means the crop hail, farmowners, and medical malpractice insurance markets together with any other line of commercial risk insurance that has not been found by the commissioner to have a reasonable degree of competitiveness within the market considering:
    a. Market concentration and changes in market concentration determined through the use of the Herfindahl-Hirschman index and the United States department of justice merger guidelines for an unconcentrated market;
    b. The existence of financial and other barriers that prevent a company from entering the market;
    c. The number of insurers or groups of affiliated insurers providing coverage in the market;
    d. The extent to which any insurer or group of affiliated insurers controls the market;
    e. Whether the total number of companies writing the line of insurance in this state is sufficient to provide multiple insurance options in the market;
    f. The availability of insurance coverage to consumers in the markets by specific geographic area, by line of insurance, and by class of risk; and
    g. The opportunities available in the market to acquire pricing and other consumer information.

    A determination that a market is noncompetitive may not be based solely on the consideration of any one factor.
9. "Personal risk" means homeowners, tenants, private passenger nonfleet automobiles, mobile homes, and other property and casualty insurance for personal, family, or household needs.
10. "Pool" means a voluntary arrangement, established on an ongoing basis, pursuant to which two or more insurers participate in the sharing of risks on a predetermined basis. The pool may operate through an association, syndicate, or other pooling agreement.
11. "Prospective loss costs" means that portion of a rate that does not include provisions for expenses other than loss adjustment expenses, or profit, and are based on historical aggregate losses and loss adjustment expenses adjusted through development to their ultimate value and projected through trending to a future point in time.
12. "Rate" means that cost of insurance per exposure unit whether expressed as a single member or as a prospective loss cost with an adjustment to account for the treatment of expenses, profit, and individual insurer variation in loss experience, prior to any application of individual risk variations based on loss or expense considerations, and does not include minimum premium.
13. "Residual market mechanism" means an arrangement, either voluntary or mandated by law, involving participation by insurers in the equitable apportionment among them of insurance which may be afforded applicants who are unable to obtain insurance through ordinary methods.
14. "Supplementary rating information" includes any manual or plan of rates, classification, rating schedule, minimum premium, policy fee, rating rule, underwriting rule, statistical

plan, and any other similar information needed to determine the applicable rate in effect or to be in effect.

15. "Supporting information" means:
    a. The experience and judgment of the filer and the experience or date of other insurers or advisory organizations relied upon by the filer;
    b. The interpretation of any other data relied upon by the filer; and
    c. Descriptions of methods used in making the rates and any other information required by the commissioner to be filed.

26.1-25-03. Making of rates.

1. Rates must be made in accordance with the following provisions:
    a. Due consideration must be given to past and prospective loss experience within this state and outside this state to the extent that the consideration is given to areas the commissioner determines are representative of this state, to any conflagration and catastrophe hazards, to a reasonable margin for profit and contingencies, to dividends, savings, or unabsorbed premium deposits allowed or returned by insurers to their policyholders, members, or subscribers, to past and prospective expenses both countrywide, as determined by the commissioner, and those specially applicable to this state, and to all other relevant factors within and outside this state. In the case of fire insurance rates, consideration must be given to the experience of the fire insurance business during a period of not less than the most recent five-year period for which the experience is available. In determining the reasonableness of the profit, consideration may be given to investment income.
    b. The systems of expense provisions included in the rates for use by any insurer or group of insurers may differ from those of other insurers or group of insurers to reflect the requirements of the operating methods of any such insurer or group with respect to any kind of insurance, or with respect to any subdivision or combination thereof for which subdivision or combination separate expense provisions are applicable.
    c. Risks may be grouped by classifications for the establishment of rates and minimum premiums. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. The standards may measure any differences among risks that can be demonstrated to have a probable effect upon losses or expense. No risk classification, however, may be based upon race, creed, national origin, or the religion of the insured.
    d. Rates may not be excessive, inadequate, or unfairly discriminatory.
2. Except to the extent necessary to meet subdivision d of subsection 1, uniformity among insurers in any matters within the scope of this section is neither required nor prohibited.
3. Rates made in accordance with this section may be used subject to this chapter.

26.1-25-04. Rate filings.

1. Every insurer shall file with the commissioner, except as to inland marine risks which by general custom of the business are not written according to manual rates or rating plans, every manual, minimum class rate, rating schedule or rating plan, and every other rating rule, and every modification of any of the foregoing which it proposes to use. Every filing must state the proposed effective date thereof and must indicate the character and extent of the coverage contemplated. When a filing is not accompanied by the information upon which the insurer supports the filing, and the commissioner does not have sufficient information to determine whether the filing meets the requirements of this chapter, the commissioner shall require the insurer to furnish the information upon which it supports the filing and the waiting period commences as of the date the information is furnished. Every insurer shall file or incorporate by reference to material which has been approved by the commissioner, at the same time

as the filing of the rate, all supplementary rating and supporting information to be used in support of or in conjunction with a rate. The information furnished in support of a filing may include:

a. The experience or judgment of the insurer or advisory organization making the filing.
b. Its interpretation of any statistical data upon which it relies.
c. The experience of other insurers or advisory organizations.
d. Any other relevant factors.

A filing and any supporting information is open to public inspection after the filing becomes effective. Specific inland marine rates on risks specially rated, made by an advisory organization, must be filed with the commissioner.

2. After reviewing an insurer's filing, the commissioner may require that the insurer's rates be based upon the insurer's own loss and expense information. If the insurer's loss or allocated loss adjustment expense information is not actuarially credible, as determined by the commissioner, the insurer may use or supplement its experience with information filed with the commissioner by an advisory organization. Insurers utilizing the services of an advisory organization must provide with their rate filing, at the request of the commissioner, a description of the rationale for such use, including its own information and method of utilization of the advisory organization's information. This chapter does not require any insurer to become a member of or a subscriber to any advisory organization.
3. The commissioner shall review filings as soon as reasonably possible after they have been made in order to determine whether they meet the requirements of this chapter.
4. Subject to the exceptions specified in subsections 5 and 6, each filing must be on file for a waiting period of sixty days before it becomes effective. The period may be extended by the commissioner for an additional period not to exceed fifteen days if the commissioner gives written notice within the waiting period to the insurer or advisory organization which made the filing that the commissioner needs the additional time for the consideration of the filing. Upon written application by the insurer or advisory organization, the commissioner may authorize a filing which the commissioner has reviewed to become effective before the expiration of the waiting period or any extension thereof. A filing is deemed to meet the requirements of this chapter unless disapproved by the commissioner within the waiting period or any extension thereof.
5. A filing with respect to a competitive market commercial risk rate filing, a private passenger automobile rate filing in which the average rate change is less than five percent, or a homeowner rate filing in which the average rate change is less than five percent is deemed to meet the requirements of this chapter until such time as the commissioner reviews the filing and so long thereafter as the filing remains in effect. Specific inland marine rates on risks specially rated by an advisory organization become effective when filed and are deemed to meet the requirements of this chapter until such time as the commissioner reviews the filing and so long thereafter as the filing remains in effect.
6. An insurer must file notice of a rate change for either a competitive market commercial risk product, a private passenger automobile rate filing in which the average rate change is less than five percent, or a homeowner rate filing in which the average rate change is less than five percent with the commissioner within thirty days after implementing the rate change. The exemption provided in subsection 5 for a private passenger automobile or homeowner rate change filing is limited to no more than one filing per calendar year.
7. The commissioner after notice and hearing may determine by order that a commercial risk market is noncompetitive. A rate filing for a product in a noncompetitive commercial risk market is subject to the provisions of this chapter. The commissioner's order finding that a commercial risk market is noncompetitive expires after two years.
8. Under any rules the commissioner may adopt, the commissioner may, by written order, suspend or modify the requirement of filing as to any kind of insurance, subdivision, or combination thereof, or as to classes of risks, the rates for which cannot practicably be

filed before they are used. The orders and rules must be made known to insurers and advisory organizations affected thereby. The commissioner may make any examination the commissioner deems advisable to ascertain whether any rates affected by the order meet the standards set forth in subdivision e of subsection 1 of section 26.1-25-03.

9. Upon the written application of the insured, stating the insured's reasons therefor, filed with and approved by the commissioner, a rate in excess of that provided by a filing otherwise applicable may be used on any specific risk.
10. No insurer may make or issue a contract or policy except in accordance with the filings that have been approved and are in effect for the insurer as provided in this chapter or in accordance with subsection 8 or 9.
11. Nothing in this chapter may be construed to require an advisory organization or its members or its subscribers to immediately refile final rates or premium charges previously approved by the commissioner. Members or subscribers of an advisory organization are authorized to continue to use insurance rates or premium charges approved before July 1, 1991, or decreases from those rates or premium charges filed by the advisory organization and subsequently approved after July 1, 1991.

26.1-25-04.1. Motor vehicle insurance rate filings - Premium reduction for accident prevention course completion.

All rate filings with the commissioner for motor vehicle liability and physical damage insurance must provide for an appropriate reduction in premium charges for the principal operators of motor vehicles for at least a two-year period following their successful completion of a motor vehicle accident prevention course. The reduction in premium charges must be separately disclosed. The premium billing must disclose the reduction in premium charges with respect to the person eligible for the reduction. The reduction in premium charges does not apply to an operator who is subject to an experience rating or a driver education premium reduction. If a policy insures two or more motor vehicles, the premium reduction applies only to the motor vehicle principally operated by the person who has satisfactorily completed the motor vehicle accident prevention course. The course must be approved by the superintendent of the state highway patrol. The course sponsor shall provide each successful participant a certificate that is the basis for the insurance discount. A driver fifty-five years of age or older who successfully completes an approved motor vehicle accident prevention course is entitled to a three-year insurance premium reduction. The reduction may be applied only to a private passenger motor vehicle or a pickup truck or van that has a gross vehicle weight of less than ten thousand pounds [4535.92 kilograms] and which is not used for delivering or transporting goods or materials unless the delivery and transport is incidental to an operator's business.

26.1-25-04.2. Motor vehicle accident surcharge.

Concerning motor vehicle accidents occurring after August 1, 1993:

1. An insurer may not assess an accident surcharge on the policy of any insured as a result of a comprehensive coverage claim or when the insured's unattended vehicle was legally parked when the damage occurred.
2. An insurer may not assess an accident surcharge on the policy of any insured when a claim has been paid pursuant to section 26.1-40-17.1 unless the insurer is not entitled to recover damages from the party at fault.

26.1-25-04.3. Disclosure of accident surcharge and loss of discount.

Before, or at the time of issuance of a policy, an insurer insuring a motor vehicle must notify the insured in writing of the insurer's underwriting and rating procedures applicable to accident surcharges and loss of discounts.

26.1-25-04.4. Notice of withdrawal.

An insurer must provide the commissioner notice in writing of its plan to cease writing and renewing a property and casualty insurance product before the notification of agents and

policyholders. The notice must contain the effective date of the plan, the number of policies affected, and the reason therefor.

26.1-25-05. Disapproval of filings.

1. If within the waiting period or any extension thereof as provided in subsection 4 of section 26.1-25-04 the commissioner finds that a filing does not meet the requirements of this chapter, the commissioner shall send to the insurer or advisory organization which made the filing written notice of disapproval of the filing specifying therein in what respects the commissioner finds the filing fails to meet the requirements of this chapter and stating that the filing will not become effective.
2. If within thirty days after a filing subject to subsection 5 of section 26.1-25-04 has become effective the commissioner finds that the filing does not meet the requirements of this chapter, the commissioner shall send to the insurer or advisory organization that made the filing written notice of disapproval of the filing specifying therein in what respects the commissioner finds that the filing fails to meet the requirements of this chapter and stating when, within a reasonable period thereafter, the filing will be deemed no longer effective. The disapproval may not affect any contract made or issued prior to the expiration of the period set forth in the notice.
3. If at any time subsequent to the applicable review period provided for in subsection 1 or 2 the commissioner finds that a filing does not meet the requirements of this chapter, the commissioner shall, after a hearing held upon not less than ten days' written notice, specifying the matters to be considered at the hearing, to every insurer and advisory organization which made the filing, issue an order specifying in what respects the commissioner finds that the filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, the filing will be deemed no longer effective. Copies of the order must be sent to every such insurer and advisory organization. The order may not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.
4. Any person or organization aggrieved with respect to any filing which is in effect may make written application to the commissioner for a hearing thereon. However, the insurer or advisory organization that made the filing may not proceed under this subsection. The application must specify the grounds to be relied upon by the applicant. If the commissioner finds that the application is made in good faith, that the applicant would be so aggrieved if the grounds are established, and that the grounds otherwise justify holding such a hearing, the commissioner shall, within thirty days after receipt of the application, hold a hearing upon not less than ten days' written notice to the applicant and to every insurer and advisory organization which made the filing. If, after the hearing, the commissioner finds that the filing does not meet the requirements of this chapter, the commissioner shall issue an order specifying in what respects the filing fails to meet the requirements of this chapter, and stating when, within a reasonable period thereafter, the filing will be deemed no longer effective. Copies of the order must be sent to the applicant and to every such insurer and advisory organization. The order may not affect any contract or policy made or issued prior to the expiration of the period set forth in the order.
5. A manual, minimum class rate, rating schedule, rating plan, or rating rule, or any modification of any of the foregoing, which has been filed pursuant to the requirements of section 26.1-25-04, may not be disapproved if the rates thereby produced meet the requirements of this chapter.

26.1-25-06. Rating organizations.

Repealed by S.L. 1991, ch. 302, § 26.

26.1-25-07. Deviations.

Repealed by S.L. 1991, ch. 302, § 26.

26.1-25-08. Appeal by minority.
Repealed by S.L. 1991, ch. 302, § 26.

26.1-25-09. Information to be furnished insureds - Hearings and appeals of insureds.
Every insurer which files rates shall, within a reasonable time after receiving written request therefor and upon payment of such reasonable charge as it may make, furnish to any insured affected by a rate made by it, or to the authorized representative of such insured, all pertinent information as to the rate. Every insurer which files rates shall provide within this state reasonable means whereby any person aggrieved by the application of its rating system may be heard, in person or by an authorized representative, on the person's written request to review the manner in which the rating system has been applied in connection with the insurance afforded the person. If the insurer fails to grant or reject the request within thirty days after it is made, the applicant may proceed in the same manner as if the application had been rejected. Any party affected by the action of the insurer on the request may, within thirty days after written notice of the action, appeal to the commissioner, who, after a hearing held upon not less than ten days' written notice to the appellant and to the insurer, may affirm or reverse the action.

26.1-25-10. Advisory organizations.
Repealed by S.L. 1991, ch. 302, § 26.

26.1-25-10.1. Licensing advisory organizations.
1. No advisory organization may provide any service relating to the rates of any insurance subject to this chapter, and no insurer may utilize the services of such organization for such purposes unless the organization has obtained a license under subsection 3.
2. No advisory organization may refuse to supply any services for which it is licensed in this state to any insurer authorized to do business in this state and offering to pay the fair and usual compensation for the services.
3. a. An advisory organization applying for a license shall include with its application:
   (1) A copy of its constitution, charter, articles of organization, agreement, association or incorporation, and a copy of its bylaws, plan of operation, and any other rules or regulations governing the conduct of its business;
   (2) A list of its members and subscribers;
   (3) The name and address of one or more residents of this state upon whom notices, process affecting it, or orders of the commissioner may be served;
   (4) A statement showing its technical qualifications for acting in the capacity for which it seeks a license;
   (5) A biography of the ownership and management of the organization; and
   (6) Any other relevant information and documents that the commissioner may require.

   b. Every organization that has applied for a license shall notify the commissioner of every material change in the facts or in the documents on which its application was based. Any amendment to a document filed under this section must be filed at least thirty days before it becomes effective.

   c. If the commissioner finds that the applicant and the natural persons through whom it acts are competent, trustworthy, and technically qualified to provide the services proposed, and that all requirements of the law are met, the commissioner shall issue a license specifying the authorized activity of the applicant. The commissioner may not issue a license if the proposed activity would tend to create a monopoly or to substantially lessen the competition in any market.

   d. Licenses issued pursuant to this section are perpetual in duration unless the license is suspended or revoked. The fee for the license is fifty dollars per year. The commissioner may at any time, after hearing, revoke or suspend the license

of an advisory organization that does not comply with the requirements and standards of this chapter.

26.1-25-10.2. Insurers and advisory organizations - Prohibited activity.

1. No insurer or advisory organization may:
   a. Attempt to monopolize or combine or conspire with any other person to monopolize an insurance market.
   b. Engage in a boycott, on a concerted basis, of an insurance market.
2. a. No insurer may agree with any other insurer or with an advisory organization to mandate adherence to or to mandate use of any rate, rating plan, rating schedule, rating rule, policy or bond form, rate classification, rate territory, underwriting rule, survey, inspection or similar material, except as needed to develop statistical plans permitted by subsection 1. The fact that two or more insurers, whether or not members or subscribers of an advisory organization, use consistently or intermittently the same rates, rating plans, rating schedules, rating rules, policy or bond forms, rate classifications, rate territories, underwriting rules, surveys or inspections, or similar materials is not sufficient in itself to support a finding that an agreement exists.
   b. Two or more insurers having a common ownership or operating in this state under common management or control may act in concert between or among themselves with respect to any matters pertaining to those activities authorized in this chapter as if they constituted a single insurer.
3. No insurer or advisory organization may make any arrangement with any other insurer, advisory organization, or other person which has the purpose or effect of restraining trade unreasonably or of substantially lessening competition in the business of insurance.
4. In addition to the other prohibitions contained in this chapter, except as specifically permitted under this section, no advisory organization may compile or distribute recommendations relating to rates that include expenses other than loss adjustment expenses, or profit.

26.1-25-10.3. Advisory organizations - Permitted activity.

Any advisory organization in addition to other activities not prohibited, is authorized, on behalf of its members and subscribers, to:

1. Develop statistical plans, including territorial and class definitions.
2. Collect statistical data from members, subscribers, or any other sources.
3. Prepare and distribute prospective loss costs.
4. Prepare and distribute factors, calculations, or formulas pertaining to classification, territory, increased limits, and other variables.
5. Prepare and distribute manuals of rating rules and rating schedules that do not include final rates, expense provisions, profit provisions, or minimum premiums.
6. Distribute information that is required or directed to be filed with the commissioner.
7. Conduct research and onsite inspections in order to prepare classifications of public fire defenses.
8. Consult with public officials regarding public fire protection as it would affect members, subscribers, and others.
9. Conduct research and collect statistics in order to discover, identify, and classify information relating to causes or prevention of losses.
10. Prepare policy forms and endorsements and consult with members, subscribers, and others relative to their use and application.
11. Conduct research and onsite inspections for the purpose of providing risk information relating to individual structures.
12. Collect, compile, and distribute past and current prices of individual insurers and publish such information.
13. File final rates, at the direction of the commissioner, for residual market mechanisms.

14. Furnish any other services, as approved or directed by the commissioner, related to those enumerated in this section.

26.1-25-10.4. Advisory organizations - Filing requirements.

Every advisory organization shall file with the commissioner for approval all prospective loss costs and all supplementary rating information and every change or amendment or modification of any of the foregoing proposed for use in this state. The filings are subject to the provisions of this chapter relating to filings made by insurers.

26.1-25-10.5. Joint underwriting, joint reinsurance pool, and residual market activities.

1. Notwithstanding subdivision a of subsection 2 of section 26.1-25-10.2, insurers participating in joint underwriting, joint reinsurance pools, or residual market mechanisms may in connection with such activity act in cooperation with each other in the making of rates, rating systems, policy forms, underwriting rules, surveys, inspections and investigations, the furnishing of loss and expense statistics or other information, or carrying on research. Joint underwriting, joint reinsurance pools, and residual market mechanisms may not be deemed an advisory organization.
2. Regulation.
   a. Except to the extent modified by this section, insurers, joint underwriting, joint reinsurance pool, and residual market mechanism activities are subject to the other provisions of this chapter.
   b. If, after hearing, the commissioner finds that any activity or practice of an insurer participating in joint underwriting or a pool is unfair, is unreasonable, will tend to lessen competition in any market, or is otherwise inconsistent with the provisions or purposes of this chapter, the commissioner may issue a written order and require the discontinuance of such activity or practice.
   c. Every pool shall file with the commissioner a copy of its constitution; its articles of incorporation, agreement, or association; its bylaws, rules, and regulations governing its activities; its members; the name and address of a resident of this state upon whom notices or orders of the commissioner or process may be served; and any changes in amendments or changes in the foregoing.
   d. Any residual market mechanism, plan, or agreement to implement such a mechanism, and any changes or amendments thereto, must be submitted in writing to the commissioner for consideration and approval, together with such information as may be reasonably required. The commissioner may approve only such agreements as are found to contemplate:
      (1) The use of rates that meet the standards prescribed by this chapter; and
      (2) Activities and practices that are not unfair, unreasonable, or otherwise inconsistent with the provisions of this chapter.

      At any time after such agreements are in effect, the commissioner may review the practices and activities of the adherents to such agreements and if, after a hearing, the commissioner finds that any such practice or activity is unfair or unreasonable, or is otherwise inconsistent with the provisions of this chapter, the commissioner may issue a written order to the parties and either require the discontinuance of such acts or revoke approval of any such agreement.

26.1-25-11. Joint underwriting or joint reinsurance.

Repealed by S.L. 1991, ch. 302, § 26.

26.1-25-12. Examinations.

The commissioner may, as often as the commissioner deems expedient, make or cause to be made an examination of each advisory organization referred to in section 26.1-25-10.1 and of each group, association, or other organization referred to in section 26.1-25-10.5. The reasonable costs of any examination must be paid by the advisory organization, or group,

association, or other organization examined upon presentation to it of a detailed account of the costs. The officer, manager, agents, and employees of the advisory organization, or group, association, or other organization may be examined at any time under oath and shall exhibit all books, records, accounts, documents, or agreements governing its method of operation.

The commissioner shall furnish two copies of the examination report to the organization, group, or association examined and shall notify the organization, group, or association that it may, within twenty days thereafter, request a hearing on the report or on any facts or recommendations therein. Before filing any report for public inspection, the commissioner shall grant a hearing to the organization, group, or association examined. The report of any examination, when filed for public inspection, is admissible in evidence in any action or proceeding brought by the commissioner against the organization, group, or association examined, or its officers or agents, and is prima facie evidence of the facts stated therein. The commissioner may withhold the report of any examination from public inspection for the time as the commissioner deems proper.

In lieu of any such examination the commissioner may accept the report of an examination made by the insurance supervisory official of another state, pursuant to the laws of that state.

26.1-25-13. Rate administration.

1. The commissioner shall adopt reasonable rules and statistical plans, reasonably adopted to each of the rating systems on file with the commissioner, which may be modified from time to time and which must be used thereafter by each insurer in the recording and reporting of its loss and countrywide expense experience, in order that the experience of all insurers may be made available at least annually in such form and detail as may be necessary to aid the commissioner in determining whether rating systems comply with the standards set forth in section 26.1-25-03. The rules and plans may also provide for the recording and reporting of expense experience items which are specially applicable to this state and are not susceptible of determination by a prorating of countrywide expense experience. In adopting the rules and plans, the commissioner shall give due consideration to the rating systems on file with the commissioner and, in order that the rules and plans may be as uniform as is practicable among the several states, to the rules and to the form of the plans used for the rating systems in other states. No insurer may be required to record or report its loss experience on a classification basis that is inconsistent with the rating system filed by it. The commissioner may designate one or more advisory organizations or other agencies to assist the commissioner in gathering such experience and making compilations thereof, and the compilations must be made available, subject to reasonable rules adopted by the commissioner, to insurers and advisory organizations.
2. Reasonable rules and plans may be adopted by the commissioner for the interchange of data necessary for the application of rating plans.
3. In order to further uniform administration of rate regulatory laws, the commissioner and every insurer and advisory organization may exchange information and experience data with insurance supervisory officials, insurers, and advisory organizations in other states and may consult with them with respect to ratemaking and the application of rating systems.
4. The commissioner may adopt reasonable rules necessary to effect the purposes of this chapter.

26.1-25-14. False or misleading information.

No person or organization may willfully withhold information from, or knowingly give false or misleading information to, the commissioner, any statistical agency designated by the commissioner, any advisory organization, or any insurer, which will affect the rates or premiums chargeable under this chapter. A violation of this section subjects the offender to the penalties provided in section 26.1-25-18.

26.1-25-15. Assigned risks.

Agreements may be made among insurers with respect to the equitable apportionment among them of insurance which may be afforded applicants who are in good faith entitled to but who are unable to procure such insurance through ordinary methods and the insurers may agree among themselves on the use of reasonable rate modifications for such insurance. These agreements and rate modifications are subject to the approval of the commissioner.

26.1-25-16. Rebates prohibited - Exception.

1. No insurance producer may knowingly charge, demand, or receive a premium for any insurance policy except in accordance with this chapter. No insurer or employee of an insurer, and no broker or agent may pay, allow, or give, or offer to pay, allow, or give, directly or indirectly, as an inducement to insurance, or after insurance has been effected, any rebate, discount, abatement, credit, or reduction of the premium named in an insurance policy, or any special favor or advantage in the dividends or other benefits to accrue on the policy, or any valuable consideration or inducement whatever, not specified in the insurance policy, except to the extent provided for in applicable filing. No insured named in an insurance policy, nor any employee of the insured, may knowingly receive or accept, directly or indirectly, any such rebate, discount, abatement, credit, or reduction of premium, or any such special favor or advantage or valuable consideration or inducement. This section does not prohibit the payment of commissions or other compensation to licensed insurance producers, nor any insurer from allowing or returning to its participating policyholders, members, or subscribers dividends, savings, or unabsorbed premium deposits. As used in this section, "insurance" includes suretyship and "policy" includes bond.
2. Notwithstanding any other provision in this section, if the cost does not exceed an aggregate retail value of one hundred dollars per person per year, an insurance producer may give a gift, prize, promotional article, logo merchandise, meal, or entertainment activity directly or indirectly to a person in connection with marketing, promoting, or advertising the business. As used in this subsection, "person" means the named insured, policy owner, or prospective client or the spouse of any of these individuals, but the term does not include a certificate holder, child, or employee of the named insured, policy owner, or prospective client. Subject to the limits of this subsection, an insurance producer may give a gift card for specific merchandise or services such as a meal, gasoline, or car wash but may not give cash, a cash card, any form of currency, or any refund or discount in premium. An insurance producer may not condition the giving of a gift, prize, promotional article, logo merchandise, meal, or entertainment activity on obtaining a quote or a contract of insurance. Notwithstanding the limitation in this subsection, an insurance producer may conduct raffles or drawings, if there is no financial cost to an entrant to participate, the drawing or raffle does not obligate a participant to purchase insurance, the prizes are not valued in excess of a reasonable amount determined by the commissioner, and the drawing or raffle is open to the public. The raffle or drawing must be offered in a manner that is not unfairly discriminatory and may not be contingent on the purchase, continued purchase, or renewal of a policy. Notwithstanding the limitation in this subsection, an insurance producer may make a donation to a nonprofit organization that is exempt from federal taxation under Internal Revenue Code section 501(c)(3) [26 U.S.C. 501(c)(3)] in any amount as long as the donation is not given as an inducement to obtain a contract of insurance.
3. The provisions in this section may not be construed as including within the definition of discrimination or rebates any of the following practices:
    a. The offer or provision by an insurer or producer, by or through an employee, an affiliate, or a third-party representative, of value-added products or services at no or reduced cost if the products or services are not specified in the policy of insurance if the product or service:
        (1) Relates to the insurance coverage and is designed to satisfy one or more of the following:

(a) Provide loss mitigation or loss control;
(b) Reduce claims costs or claim settlement costs;
(c) Provide education about liability risk or risk of loss to persons or property;
(d) Monitor or assess risk, identify sources of risk, or develop strategies for eliminating or reducing risk;
(e) Enhance health;
(f) Enhance financial wellness through items such as education of financial planning services;
(g) Provide post-loss services;
(h) Incent behavioral changes to improve the health or reduce the risk of death or disability of an individual defined as policyholder, potential policyholder, certificate holder, potential certificate holder, insured, potential insured, or applicant; or
(i) Assist in the administration of the employee or retiree benefit insurance coverage.

(2) If offered by the insurer or producer, the insurer or producer, upon request, shall ensure the person is provided with contact information to assist the person with questions regarding the product or service.
(3) Is based on fair documented criteria and offered in a manner not unfairly discriminatory. The documented criteria must be maintained by the insurer or producer and produced at the request of the commissioner.
(4) Is reasonable in comparison to that person's premiums or insurance coverage for the policy class.

b. If an insurer or producer does not have sufficient evidence, but has a good-faith belief the product or service meets the criteria in subdivision a, the provision by the insurer or producer of a product or service in a manner that is not unfairly discriminatory as part of a pilot or testing program no longer than one year. An insurer or producer shall notify the department of the pilot or testing program offered to consumers in this state before launching and may proceed with the program unless the department objects within twenty-one days of notice.

4. An insurer, producer, or representative of an insurer or producer may not offer or provide insurance as an inducement to the purchase of another policy or otherwise use of the words "free" or "no cost" or words of similar import in an advertisement.
5. The commissioner may adopt regulations when implementing the permitted practices set forth in this regulation to ensure consumer protection. Consistent with applicable law, the topics addressed by the regulations may include consumer data protections and privacy, consumer disclosure, and unfair discrimination.

26.1-25-17. Hearing procedure and judicial review.

Any insurer or advisory organization aggrieved by any order or decision of the commissioner made without a hearing, within thirty days after notice of the order to the insurer or organization, may make written request to the commissioner for a hearing thereon. The commissioner shall hear the party within twenty days after receipt of the request and shall give not less than ten days' written notice of the time and place of the hearing. Within fifteen days after the hearing, the commissioner shall affirm, reverse, or modify the previous action, specifying the reasons therefor. Pending the hearing and decision thereon the commissioner may suspend or postpone the effective date of the previous action. This chapter does not require the observance at any hearing of formal rules of pleading or evidence.

26.1-25-18. Penalties.

Any person who violates this chapter shall be guilty of a class B misdemeanor.

The commissioner may suspend the license of any advisory organization or insurer which fails to comply with the order of the commissioner with the time limited by the order or any extension thereof which the commissioner may grant. However, no right to suspend any license exists until after the time for appeal from the order has expired, or if an appeal has been taken,

until the order has been affirmed, and no right of suspension exists if prompt compliance with the order is made following the expiration of the time for appeal or the entry of a final order or judgment of affirmance upon appeal. The commissioner may determine when a suspension becomes effective and it remains in effect for the period fixed by the commissioner, unless the commissioner modifies or rescinds the suspension, or until the order upon which the suspension is based is modified, rescinded, or reversed.

A license may not be suspended or revoked except upon a written order of the commissioner, stating the findings, made after a hearing held upon not less than ten days' written notice to the person or organization specifying the alleged violation.

26.1-25-19. Exemptions.

The commissioner may, by rule, exempt any market from any or all of the provisions of this chapter, if and to the extent that the exemption is necessary to achieve the purposes of this chapter.