§2344. Flexible rate limitations in problem markets

(a) As used in this section:

(1) "Market" means a line, subline or classification (other than a classification delineated by geographic location) of property/casualty insurance risks whose coverages are not subject to subsection (b) of section two thousand three hundred five, section two thousand three hundred twenty-eight, section three thousand four hundred twenty-five, or three thousand four hundred forty-six of this chapter.

(2) "Rate" means charge per unit of exposure (whether such rate is manually generated or based upon judgment) for a particular market.

(b) The superintendent shall by regulation establish annual limitations upon rate level increases or decreases which may take effect without prior approval with respect to a market. The regulation shall be designed to restore and promote stability in such markets. Upon a determination made that, as to a particular market, competition is either sufficient to assure that rates will not be excessive or that such market is conducted in a manner not resulting in inadequate rates, not destructive of competition or detrimental to the solvency of insurers, the superintendent shall exempt such market from the limitations set forth in such regulation. The superintendent, upon a determination that annual limitations are necessary to restore and promote stability in such a market, shall thereafter withdraw or modify such exemption. The superintendent shall whenever he deems it appropriate hold a hearing, on a record and at which representatives of consumers and other interested parties may participate, for the purpose of determining, on the basis of findings of fact and conclusions, whether an exemption (or withdrawal or modification thereof) of any market is appropriate. The initial hearing for such purpose shall be held within sixty days of the effective date of this section, and the superintendent shall act expeditiously in determining whether to exempt any market.

(c) Limitations established or modified pursuant to subsection (b) of this section may vary by market and, in establishing or modifying such limitations, the superintendent may consider such factors as: the extent and nature of competition; size and significance of the coverage; level and range of rates and rate changes among insurers; investment and underwriting experience of insurers; reinsurance availability; extent of consumer complaints to the department of financial services; extent of denials and restrictions of coverage; volume of cancellations and nonrenewals; or changing conditions in the economic, judicial and social environment.

(d)(1) Notwithstanding any other provisions of this article, in any market governed by such regulation and not exempted by the superintendent pursuant to this section, filings that produce rate level changes within the limitations specified in such regulation shall become effective without prior approval pursuant to subsection (a) of section two thousand three hundred five of this article; filings which produce rate level changes beyond such limitations shall not become effective until approved by the superintendent pursuant to subsection (b) of section two thousand three hundred five of this article, except that filings shall be deemed approved unless disapproved by the superintendent within thirty days, which the superintendent may with cause extend an additional thirty days and with further cause extend an additional fifteen days.

(2) No insurer shall cause an expiring policy to be renewed with another insurer under common control, as defined by paragraph sixteen of subsection (a) of section one hundred seven of this chapter in order to avoid the limitations established by this section. An insurer may renew an expiring policy with another insurer under common control based upon underwriting criteria or other valid business reasons.

(e) The superintendent shall by regulation establish reasonable standards for rating plans (including experience rating plans, schedule rating plans, individual risk premium modification plans and expense reduction plans) designed to modify rates in the development of premiums for individual risks insured in a property/casualty market. Such standards shall permit recognition of expected differences in loss or expense characteristics, and shall be designed so that such plans are reasonable and equitable in their application, and are not unfairly discriminatory, violative of public policy or otherwise contrary to the best interests of the people of this state. Such standards shall not prevent the development of new or innovative rating methods which otherwise comply with this article. Such rating plans shall be filed or refiled by insurers in compliance with the regulation. The superintendent shall review such plans, and may without a hearing disapprove a plan that does not comply with the regulation. The regulation shall establish maximum debits and credits that may result from the application of a rating plan, shall encourage loss control, safety programs and other methods of risk management, and shall require insurers to maintain documentation of the basis for the debits or credits applied under any plan. Once it has been filed and approved, use of the rating plan shall become mandatory and such plan shall be applied uniformly for eligible risks in a manner that is not unfairly discriminatory.

(f) The superintendent shall review all rates filed between June first, nineteen hundred eighty-six, and the effective date of the regulation promulgated pursuant to subsection (b) of this section, and shall, on a selective basis, review rates established prior to June first, nineteen hundred eighty-six, including rates not manually rated, to determine whether they comply with the applicable standards prescribed by this article for purposes of the annual limitations established or modified pursuant to subsection (b) of this section. In establishing priorities for such selective review, the superintendent shall give consideration to markets which have been subject to the largest rate changes in the twelve month period prior to June first, nineteen hundred eighty-six and to markets affecting the greatest number of risks; the superintendent shall to the extent material also give consideration to the criteria set forth in subsection (c) of this section. In addition, the superintendent shall to the fullest extent possible review markets not manually rated, for the purpose of determining whether a manual rate is appropriate and shall, upon a determination of appropriateness, require that a manual rate be developed for such market. If the superintendent determines that the reviewed rate pursuant to the mandatory or selective review specified by this subsection does not comply with the applicable standards prescribed by this article, the insurer shall be afforded an opportunity to be heard and shall file in accordance with such determination prospective rates applicable to new and renewal policies. Except as to the procedures set forth in this subsection, nothing contained in this subsection shall be construed to alter, limit, modify, enlarge or abrogate any right of any insurer or any power or authority of the superintendent under any other provision of this chapter.

(g)(1) Within ninety days after the effective date of this section every insurer licensed to write property/casualty coverages in regard to a market not exempted pursuant to subsection (b) of this section and affected by the statutory provisions specified in this paragraph shall file with the superintendent rates, for each such market written by the insurer, appropriately modified to reflect the likely reductive cost effects reasonably attributable to any newly enacted statutory provisions of the civil practice law and rules, court of claims act and not-for-profit corporation law. Such filings shall contain a specific explanation of the reductive cost effects (which shall also be expressed in amounts or percentages) ascribed to such statutory provisions, in a form prescribed by the superintendent. In regard to a market not subject to this section or exempted pursuant to this section, subsequent filings shall reflect likely reductive cost effects reasonably attributable to such statutory provisions appropriate to such market.

(2) The superintendent shall determine whether the rates filed pursuant to paragraph one of this subsection reasonably reflect the likely reductive cost effects attributable to the statutory provisions specified in paragraph one of this subsection.

(3) In the event that the superintendent determines that the likely reductive cost effects are not properly reflected in such rates, the basis for such determination shall be stated and, within thirty days after receipt of such determination, the affected insurer may request a hearing. All policies written or renewed on or after the effective date of the statutory provisions specified in paragraph one of this subsection shall be subject to appropriate premium adjustments in the event the superintendent's

determination is sustained, and the insurer shall maintain its records in regard to each such policy for a period of no less than six years in order to verify that appropriate adjustments have been made.

(4) For purposes of the annual limitations established pursuant to subsection (b) of this section, the rates determined by the superintendent to reasonably reflect the likely reductive cost effects of the provisions specified in paragraph one of this subsection shall be treated as if they had been in effect for the twelve month period prior to the date of such determination.

(h) This section shall cease to be of any force or effect during the period August third, two thousand one through the day {Footnote 1} before the effective date of the property/casualty insurance availability act, {Footnote 2} and after June thirtieth, two thousand fourteen, except that rates shall reflect the likely reductive cost effects reasonably attributable to the statutory provisions specified in paragraph one of subsection (g) of this section.