

LAWS OF DELAWARE
VOLUME 83
CHAPTER 530
151st GENERAL ASSEMBLY
FORMERLY
SENATE BILL NO. 282

AN ACT TO AMEND TITLE 18 OF THE DELAWARE CODE RELATING TO PRIVATE FLOOD INSURANCE.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend Title 18 of the Delaware Code by creating a new Chapter 88 and by making deletions as shown by strike through and insertions as shown by underline as follows:

Chapter 88. Private Primary Residential Flood Insurance Model Act.

§ 8801. Short title.

This Act is known and may be cited as the “Private Primary Residential Flood Insurance Model Act.”

§ 8802. Purpose and intent.

To provide protection of lives and property from the peril of flood, this legislation is designed to encourage a robust private primary residential flood insurance market to provide consumer choices and alternatives to the existing National Flood Insurance Program.

§ 8803. Definitions.

As used in this chapter:

(1) “Authorized insurer” means an insurer that is authorized by the Department to write insurance under a certificate of authority issued by the Department to transact insurance in Delaware.

(2) “Commissioner” means the Insurance Commissioner of the State of Delaware.

(3) “Department” means the Delaware Department of Insurance.

(4) “National Flood Insurance Program” or “NFIP” means the program of flood insurance coverage and floodplain management administered under the National Flood Insurance Act of 1968 (42 U.S.C. 4001 et seq.) and applicable federal regulations promulgated in Title 44 of the Code of Federal Regulations.

(5) “Primary residential flood insurance” means an insurance policy covering losses from flood to residential property, other than commercial property, written in Delaware by any insurer authorized to do business that is not written to apply coverage in excess of the coverage provided under another flood insurance policy, whether issued by a private insurer or the National Flood Insurance Program.

§ 8804. Rates.

(a) Rates for flood insurance coverage established pursuant to this chapter are subject to the requirements of chapter 25 of this title.

(b) An insurer shall file with the Department all rates and any change to such rates in accordance with the requirements of Chapter 25 of this title. Any filing requesting a rate change must include the name of the insurer and the average statewide percentage change in rates.

§ 8805. Forms.

(a) An insurer shall file with the Department all forms for flood insurance coverage in accordance with § 2712 of this title.

(b) The Department may require, through the promulgation of regulations, additional conditions related to the forms or rates for private residential flood insurance coverage, including any of the following:

(1) That an authorized insurer may issue an insurance policy, contract, or endorsement.

(2) For residential properties required to have flood insurance that are in a Special Flood Hazard Area designated by the Federal Emergency Management Agency, that the coverage at least meets the private flood insurance requirements as specified in 42 U.S.C. § 4012a(b) and applicable federal regulations in document 84 FR 4953, effective July 1, 2019.

§ 8806. Duties of insurer to provide regulatory notice of intent to transact residential primary flood insurance.

Authorized insurers intending to sell primary residential flood insurance products in Delaware must do all of the following:

(1) Notify the Department of its plans at least 30 days before making a form or rate filing relating to such flood insurance in Delaware.

(2) File a plan of operation and financial projections or material revisions to such plan.

§ 8807. Notice to consumers.

(a) If a consumer has no coverage under the NFIP, before placing the consumer applicant with private flood insurance, the consumer must be informed of the existence of the NFIP.

(b) All consumers covered by subsection (a) of this section as well as consumers who currently have coverage under the NFIP must be informed that the coverage under the NFIP may be provided at a subsidized rate and that the full-risk rate for flood insurance may apply to the property if the applicant later seeks to reinstate coverage under the program. The insurance producer, surplus lines broker, or the insurer upon its election or if there is no producer or broker must provide such notice.

(c) This section only applies if the applicant lives in a Special Flood Hazard Area. This section automatically sunsets if federal legislation is enacted allowing the insured to switch between private flood insurance and NFIP coverage without risk of penalty.

§ 8808. Cancellation and nonrenewal notice.

(a) Notice of cancellation or nonrenewal, other than for nonpayment of premium, shall be made and provided in compliance with § 4122 of this title, provided that at least 45 days' notice must be provided before the cancellation or nonrenewal of private flood insurance coverage to the insured.

(b) Notwithstanding subsection (a) of this section, notice of cancellation for nonpayment of premium shall be made and provided in compliance with § 4122 of this title.

§ 8809. Surplus lines placement.

§ 1912(c) of this title shall not apply to primary residential flood insurance coverage under an insurance policy issued by an eligible surplus lines insurer unless and until the Commissioner certifies in a bulletin or order that the admitted private flood insurance market is adequate.

§ 8810. Other provisions.

(a) FAIR Plan participation. Writing private flood insurance under this chapter does not constitute participation in the property insurance market for purposes of determining participation in the Delaware FAIR Plan under Chapter 41, Subchapter II of this title.

(b) Filings open to inspection. All rate filings and supporting information filed under this chapter shall be open to public inspection by parties in interest after the filing becomes effective.

(c) With respect to the regulation of flood coverage written in this State by authorized insurers, this chapter supersedes any other provision in this title in the event of a conflict.

(d) An insurer may certify that the insurance policy meets the definition of “private flood insurance,” as specified in 42 U.S.C. § 4012a(b)(7) and applicable federal regulations.

(e) It is the intent of the General Assembly that nothing in this Act is intended to restrict the use of existing filings by an insurer or limit the ability of private insurers to provide flood insurance coverage of any type not addressed herein.

§ 8811. Regulations.

The Commissioner may, in accordance with § 311 of this title, promulgate regulations necessary to carry out the provisions of this chapter.

Section 2. § 8809 of Title 18 as contained in Section 1 of this Act expires 2 years after the effective date of the Act.

Approved November 2, 2022