§ 2313. Rate service organization; defined. (a) In this article, "rate service organization" means a person or any other entity which makes or files rates as permitted by this article, or which assists insurers in rate making or filing by collecting, compiling and furnishing loss or expense statistics, or by recommending rates or rate information, or which inspects risks, tests appliances, formulates rules or establishes standards, as such activities relate to rate making or to administration of rates. It shall include a person or entity which prepares and files policy forms and endorsements on behalf of insurers. It shall not include a joint underwriting association under section two thousand three hundred seventeen of this article, or any employee of an insurer, or in the case of insurers under common control or management an employee of any such insurer or their manager, nor shall it include actuaries, certified public accountants, attorneys or other professionals who in their respective vocations may advise insurers on rate questions.

(b) Except as provided in subsection (j) hereof, no insurer shall utilize the services of a rate service organization unless the organization has obtained a license as provided by this section.

(c) No rate service organization shall refuse to supply any services which it is permitted to render 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.

(d) A rate service organization applying for a license as required by subsection (b) hereof shall include with its application:

(1) a copy of its constitution, charter, articles of organization, agreement, association or corporation, and a copy of its by-laws, plan of operation and any other rules or regulations governing the conduct of its business;

(2) a list of its members and its subscribers;

(3) the name and address of one or more residents of this state upon whom notices, process affecting it or orders of the superintendent may be served;

(4) where appropriate a statement indicating one or more kinds of insurance, or classes of risks, or any part or combination of the foregoing, for which it seeks to obtain a license;

(5) a statement showing its technical qualifications for acting in the

capacity for which it seeks a license; and

(6) any other relevant information and documents that the superintendent may require.

(e) The officers, members of the governing board or committee, and other persons in control of a corporation or of an unincorporated association, for the time being, and each partner of a partnership, shall be held individually responsible for knowingly violating any provisions of this article applicable to such corporation, association or partnership as a rate service organization.

(f) Every organization which has applied for a license pursuant to subsection (d) hereof shall thereafter promptly notify the superintendent of every material change in the facts or in the documents as filed.

(g) If the superintendent 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 law are met, he shall issue a license specifying the authorized activity of the applicant.

(h) Licenses issued pursuant to this section shall remain in effect until the licensee withdraws from the state or until the license is suspended or revoked.

(i) Any amendment to a document filed pursuant to paragraph one of subsection (d) hereof shall be filed at least thirty days before it becomes effective. Failure to comply shall be a ground for revocation of the license granted pursuant to subsection (h) hereof.

(j) A rate service organization which does not make or file rates, as permitted by this article, is not required to obtain a license under this section but no insurer shall utilize the services of such a rate service organization unless the organization has filed with the superintendent the information and documents prescribed in subsection (d) hereof and shall thereafter promptly notify the superintendent of every material change in the information or documents. The superintendent may order any insurer or rate service organization found to be in violation of this subsection to discontinue such violation.

(k) If, after a hearing, the superintendent finds that the furnishing of such information or assistance by a rate service organization subject to subsection (j) hereof involves any act or practice which is unfair or

unreasonable or otherwise inconsistent with the provisions of this article, he may issue a written order specifying in what respects the act or practice is unfair or unreasonable or otherwise inconsistent with the provisions of this article, and requiring the discontinuance of the act or practice.

(l) No rate service organization shall directly or indirectly require the payment of any licensing, registration or membership fee by any broker, as such, who is licensed under this chapter; nor shall any rate service organization or any other association or bureau refuse to do business with, or prohibit or prevent the payment of commissions to, any person licensed as an insurance broker under this chapter.

(m) No rate service organization shall adopt any rule, the effect of which would be to prohibit or regulate the payment of dividends to policyholders.

(n) A rate service organization may subscribe for or purchase actuarial, technical or other services, and such services shall be available to all members and subscribers without discrimination.

(o) Cooperation among rate service organizations or among rate service organizations and insurers in rate making or in other matters within the scope of this article is hereby authorized, provided the filing resulting from such cooperation is subject to all the provisions of this article which are applicable to filings generally. The superintendent may review such cooperative activities and practices and if, after a hearing, he finds that any such activity or practice is unfair or unreasonable or otherwise inconsistent with this article, he may issue an order specifying in what respects such activity or practice is unfair or unreasonable or otherwise inconsistent with this article, and requiring the discontinuance of such activity or practice.

(p) A rate service organization which pursuant to subsection (j) hereof is not required to obtain a license is expressly prohibited from using or permitting the use of the phrase "supervised by the department of financial services of the state of New York" or any comparable phrase, or one which is likely to create the impression that such organization is supervised or subject to supervision by it.

(q) Any rate service organization may provide for the examination of policies, daily reports, binders, renewal certificates, endorsements, or the cancellation thereof, and may make reasonable rules governing their

submission. Such rules shall contain a provision that in the event an insurer does not within sixty days furnish satisfactory evidence to the rate service organization of the correction of any error or omission previously called to its attention by the rate service organization, it shall be the duty of the rate service organization to notify the superintendent. All information so submitted for examination shall be confidential.

(r) A rate service organization licensed pursuant to this section which files rates, rating plans or other statistical information pursuant to paragraph one of subsection (b) of section two thousand three hundred five of this article or otherwise relating to or in support of coverages written by its members or subscribers pursuant to paragraph fifteen of subsection (a) of section one thousand one hundred thirteen of this chapter shall be subject to audit by the superintendent by December thirty-first, nineteen hundred ninety-seven and not less than once every three years thereafter. Such audit shall examine the finances and operations of such rating organization and shall further make recommendations for actions to be taken by such rating organization in furtherance of the findings of such audit. The superintendent shall complete an audit report no later than sixty days after the conclusion of the audit period and shall submit such audit report to the governor and the legislature.

(s) Notwithstanding any other provision of this article, no rate service organization may file rates for workers' compensation insurance after February first, two thousand eight, but a rate service organization may file loss costs or other statistical information, including rating plans, until June second, two thousand eighteen. Notwithstanding subsection (j) of this section, any such rate service organization shall nonetheless be required to be licensed pursuant to this section.

* (t) (1) The governing body of a workers' compensation rate service organization shall be comprised of nine voting members. Four members shall represent insurers authorized to write workers' compensation insurance in this state, and shall be selected in such manner as is determined by the members of the rate service organization. One member of the governing body shall be a representative of the state insurance fund. Each of the remaining four members of the governing body shall

serve for a term of two years and until his or her successor shall have been appointed and approved, provided that the appointing entity appoints a successor member within one hundred twenty days of the expiration of the term of office, and shall not be employed by, or serve as an officer or director of, an insurer authorized to write workers' compensation insurance in this state, or any parent, subsidiary, or affiliate thereof. One such member of the governing body shall be appointed by the superintendent. The other three such members shall be appointed subject to the approval of the superintendent by the following: (A) the workers' compensation board; (B) the Business Council of New York State, Inc.; and (C) the American Federation of Labor - Congress of Industrial Organizations of New York State. Any vacancy on the governing body shall be filled in the same manner as the initial appointment. The governing body shall select a chief executive officer who shall serve at the pleasure of the governing body and whose terms and conditions of employment shall be approved by the governing body. No restriction in this subsection shall apply if compliance is prevented by the failure of any appointing authority to make an appointment, or of the superintendent to approve such appointment.

(2) The governing body of a workers' compensation rate service organization shall have charge of the general activities of the organization, including control and supervision over its finances and authority to establish budgets, approve assessments and impose fines on members of the rate service organization.

(3) A workers' compensation rate service organization shall have an underwriting committee and a medical and claims committee, and such other committees as the governing body deems appropriate. The underwriting committee shall have the same allocation of voting members as the workers' compensation rate service organization governing body, and it shall be the responsibility of the underwriting committee to address matters with respect to policy forms and endorsements, loss costs, rating and statistical plans, payroll audits and other employer related issues. It shall be the responsibility of the medical and claims committee to study the administration of claims under the workers' compensation law, and medical, surgical and hospital care of injured workers.

(4) A workers' compensation rate service organization shall have an

actuarial committee. It shall be the responsibility of the actuarial committee to review methodology and data collection processes used to develop loss costs. The American Federation of Labor - Congress of Industrial Organizations of New York State and the Business Council of New York State, Inc. shall together appoint one independent casualty actuary who is a fellow or associate of the casualty actuarial society to serve as a member of the actuarial committee. The appointment of such actuary, and his or her compensation and terms and conditions of retention, shall be subject to the approval of the superintendent as reasonable and customary for such professional. The actuary shall be paid by the workers' compensation rate service organization. Such actuary shall have the same access to the workers' compensation rate service organization data and documents as the other members of that committee. The governing body of a workers' compensation rate service organization shall select a chief actuary of the actuarial committee, who shall serve at the pleasure of the governing body and whose terms and conditions of employment shall be approved by the governing body. The public actuary shall issue a report on or before June first, two thousand eighteen and each of the next ten years, indicating the overall savings in the workers' compensation system as a result of the two thousand seventeen reforms.

(5) A workers' compensation rate service organization shall assess insurers that write workers' compensation coverage in New York state for expenses it incurs in its operation. Nothing in this paragraph shall prevent a workers' compensation rate service organization from also obtaining funds from any other source.

(6) A workers' compensation rate service organization shall retain all data used to calculate rates, class relativities, and experience modifications, as well as all data underlying any loss cost or other filing made with the department, and any other data the superintendent may direct, for such period of time as the superintendent shall direct.

* NB Repealed June 2, 2028