

MISSOURI DEPARTMENT OF COMMERCE & INSURANCE

AIRCRAFT INSURANCE IN MISSOURI

SPRING 2022



DCI

Missouri Department of Commerce & Insurance

Overview

Private/personal and commercial aircraft insurance are considered to be types of property and casualty insurance – just like automobile, homeowners or small business insurance.

And, just like these other types of insurance products - private/personal and commercial casualty aircraft insurance are regulated under the provisions of Chapter 379, RSMo.

Specifically, “commercial casualty insurance” is defined as casualty insurance for business or nonprofit interests which is not for personal, family or household purposes. All other insurance is classified as private or personal insurance.

In 2018 the Missouri Department of Commerce and Insurance (DCI) become aware of situations where insurers were issuing both private/personal and commercial casualty aircraft insurance in violation of current state laws and regulations.

For private/personal casualty aircraft insurance these findings are:

- Insurers using unfiled rates in violation of Section 379.321.1, RSMo.
- Insurers failing to submit the required notice to the DCI of a consent to use an unfiled rate agreed to and signed by the policy holder as required by law (Section 379.321.3, RSMo and 20 CSR 500-4.300).

For commercial casualty aircraft insurance these findings are:

- Insurers failing to file policy forms for aircraft policies issued to Missouri risks, contrary to the requirements of Section 379.321.6(7), RSMo.
- Insurers applying base rate modifications that exceed $\pm 25\%$, contrary to the requirements of Sections 379.318(4), 379.321.6(10), RSMo and 20 CSR500-4.100(7)(A).

The DCI is aware that some insurers are making the business decision to stop issuing aircraft liability insurance in Missouri.

However, the department does believe there are solutions currently available to encourage those insurers to re-enter the market.

Those solutions include the DCI encouraging the following procedures:

- Insurers should file policy forms and rates for aircraft insurance - using the same process that is currently used for other types of property and casualty insurance, and
- Insurers should utilize the existing process that allows for rate variations with the consent of the insured.

Other States Information

DCI staff conducted a limited review of how aircraft insurance is handled in Missouri's surrounding states. This research indicates that while insurance laws and regulations may vary, many states, including Missouri, allow an insurer an amount of flexibility in the setting of aircraft insurance rates.

These variations in the regulation of aircraft insurance center around three areas:

1. Distinguishing between personal and commercial lines of business,
2. Requirements for filing rates, and
3. The amount of flexibility allowed in terms of how individual risks are rated.

Some states do not distinguish between personal and commercial lines for rating purposes, while other states are similar to Missouri in that there is a distinction made between personal and commercial risks.

Tennessee, for example, does not allow for any such distinction as their law specifically defines what is considered to be personal lines insurance and aircraft insurance is not included in that statutory definition. As such, aircraft insurance is considered to be commercial insurance and is regulated accordingly. On the other hand, Oklahoma and Arkansas are similar to Missouri in that they both make a distinction between personal and commercial aircraft coverage.

Further, based upon the review of these surrounding states, the DCI found the following three basic scenarios regarding the filing of aircraft rates:

1. Rates are not required to be filed,
2. Personal lines rates are required to be filed, but commercial lines rates are not, and
3. Both personal and commercial lines rates are required to be filed.

The amount of flexibility allowed in how individual risks can be rated also varies. Missouri requires rates for both personal and commercial lines be filed with the DCI. However, for both of these coverages insurers may increase or decrease their filed rate using a "consent to rate process." For commercial lines, insurance companies are also permitted to use scheduled ratings if the credit/debit applied does not exceed $\pm 25\%$.

Oklahoma requires that only personal lines rates be filed and also permits scheduled rating that is within $\pm 25\%$. In Nebraska, companies are required to file specific rates for both commercial and personal lines business but are allowed rating flexibility of up to $\pm 40\%$ in their filed rates. Arkansas requires all aircraft rates be filed, but does not appear to have any specific laws or regulations restricting the flexibility in the rating of individual risk to a specified percentage. Finally, other states such as Kansas and Illinois do not appear to require aircraft rate filings.

Discussions with Insurers

DCI staff invited 12 company groups to meet and discuss the current Missouri marketplace. These companies represented 15 different insurers believed to have been active in the aircraft insurance market over the last 3 to 5 years.

Of these 12 groups, 10 groups were able to attend. Collectively, the 10 groups represented approximately 70% of the total Missouri aircraft market in 2020.

The purpose of these conversations was to ensure the insurers were aware of the rating flexibility currently offered in Missouri law. The DCI was also interested to learn from these insurers of changes they felt could be made to create a more competitive marketplace.

In advance of the meeting each company was provided the following agenda:

1. Introductions
2. Department Overview of Current Missouri Law
 - A. Distinction Between Personal and Commercial Lines
 - B. Filing Requirements
 - C. Rating Requirements
 - i. Scheduled Rating
 - ii. Consent to Rate Process
3. Specific Challenges Associated With Current Missouri Law
4. Competitive Aircraft Insurance Marketplace
5. Next Steps

Information provided by the DCI included an overview of current Missouri law explaining the distinction between personal lines and commercial lines insurance, filing requirements, rating requirements and the Consent to Rate process. In addition, copies of the relevant statutes and regulations were attached to the agenda.

The discussions at these individual meetings were open and thoroughly addressed the current market and challenges faced by each insurer. Each Company was very generous with their time and provided insightful suggestions on potential ways to improve the Missouri marketplace.

While the perspectives on the current marketplace varied, common themes regarding characteristics and challenges of the aircraft insurance market were expressed by all of the insurers in attendance.

These themes focused on the unique nature of the aircraft market in terms of the number and types of risks. Specifically it was noted that:

- There are a relatively small number of risks in general and even fewer in Missouri.
- The nature of each risk is quite diverse, making it difficult to use 'mainstream' underwriting and rating practices in the current market.
- Because of the small number of risks it is very difficult for the successful application of the 'law of large numbers,' a principle traditionally used in other lines of insurance as a reliable way to predict losses and establish rates.
- Insurers generally rely, to a large extent, on an underwriter's judgment and/or experience in the underwriting and rating process.

- Over the past decade there have been historic losses in the aircraft market. Insurers specifically mentioned the recent Boeing 777 Max crashes and the impact those incidents have had across all segments of the aircraft market, including the impact on reinsurers.

In terms of the challenges faced by insurers in this marketplace, the following themes were noted:

- The distinction between personal and commercial insurance, as codified in the current Missouri insurance laws, is at odds with the definition of a commercial risk as defined by the Federal Aviation Administration (FAA). Historically the industry has used the FAA definition in determining how to classify and rate risks.
- The lack of rating flexibility, particularly in the private/personal aircraft market, is too restrictive given the nature of the risks to be insured.
- The rating flexibility provided under the Consent to Rate process presents operational challenges in the aircraft market due to the unique nature of the product and the risks involved.

In summary, the primary concern expressed by all insurers was the lack of flexibility to rate risks based on individual risk characteristics, in a manner that is sufficient to cover the diversity of risks that exist in the market. However, while it was unanimous among insurers that increased flexibility is needed, there was no consensus on the amount of that flexibility.

Conclusion

As noted above, one common theme throughout the DCI's conversations with insurers is their desire to have greater flexibility in adjusting aircraft insurance premiums based on the unique risks assigned to each individual coverage.

To address the meeting participants' request to increase the rating flexibility a statutory change would be needed that eliminates the distinction between personal lines and commercial lines for aircraft insurance. This could be achieved by modifying the definition of commercial casualty insurance currently in Section 379.321.6(9), RSMo to specifically state that "... all policies of aircraft casualty insurance, regardless of whether for business and professional interests, whether for profit, nonprofit or public in nature or for personal, family or household purposes, are considered to be commercial casualty insurance."

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