

OH DOI COMMENTS

- G. “Limited line credit insurance” includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage gu

Producer Licensing Model Act

- (b) The officer, director or employee's function relates to underwriting, loss control, inspection or the processing, adjusting, investigating or settling of a claim on a contract of insurance; or
- (c) The officer, director or employee is acting in the capacity of a special agent or agency supervisor assisting insurance producers where the person's activities are limited to providing technical advice and assistance to licensed insurance producers and do not include the sale, solicitation or negotiation of insurance;

(2)

- C. Each individual applying for an examination shall remit a nonrefundable fee as prescribed by the insurance commissioner as set forth in [insert appropriate reference to state law or regulation].
- D.

Producer Licensing Model Act

- (1) Life—insurance coverage on human lives including benefits of endowment and annuities, and may include benefits in the event of death or dismemberment by accident and benefits for disability income.
 - (2) Accident and health or sickness—insurance coverage for sickness, bodily injury or accidental death and may include benefits for disability income.
 - (3) Property—insurance coverage for the direct or consequential loss or damage to property of every kind.
 - (4) Casualty—insurance coverage against legal liability, including that for death, injury or disability or damage to real or personal property.
 - (5) Variable life and variable annuity products—insurance coverage provided under variable life insurance contracts and variable annuities.
 - (6) Personal lines—property and casualty insurance coverage sold to individuals and families for primarily noncommercial purposes.
 - (7) Credit—limited line credit insurance.
 - (8) Any other line of insurance permitted under state laws or regulations.
- B. An insurance producer license shall remain in effect unless revoked or suspended as long as the fee set forth in [insert appropriate reference to state law or regulation] is paid and education requirements for resident individual producers are met by the due date.
- C. An individual insurance producer who allows his or her license to lapse may, within twelve (12) months from the due date of the renewal fee, reinstate the same license without the necessity of passing a written examination. However, a penalty in the amount of double the unpaid renewal fee shall be required for any renewal fee received after the due date.
- D. A licensed insurance producer who is unable to comply with license renewal procedures due to military service or some other extenuating circumstance (e.g., a long-term medical disability) may request a waiver of those procedures. The producer may also request a waiver of any examination requirement or any other fine or sanction imposed for failure to comply with renewal procedures.

Drafting Note: References to license “renewal” should be deleted in those states that do not require license renewal.

- E. The license shall contain the licensee’s name, address, personal identification number, and the date of issuance, the lines of authority, the expiration date and any other information the insurance comm auao n t7(ndi)ndieos

Section 8. Nonresident Licensing

- A. Unless denied licensure pursuant to Section 12, a nonresident person shall receive a nonresident producer license if:
- (1) The person is currently licensed as a resident and in good standing in his or her home state;
 - (2) The person has submitted the proper request for licensure and has paid the fees required by [insert appropriate reference to state law or regulation];
 - (3) The person has submitted or transmitted to the insurance commissioner the application for licensure that the person submitted to his or her home state, or in lieu of the same, a completed Uniform Application; and
 - (4) The person's home state awards non-resident producer licenses to residents of this state on the same basis.

Drafting Note: In accordance with Public Law No. 106-102 (the "Gramm-Leach-Bliley Act") states should not require any additional attachments to the Uniform Application or impose any other conditions on applicants that exceed the information requested within the Uniform Application.

- B. The insurance commissioner may verify the producer's licensing status through the Producer Database maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries.
- C. A nonresident producer who moves from one state to another state or a resident producer who moves from this state to another state shall file a change of address and provide certification from the new resident state within thirty (30) days of the change of legal residence. No fee or license application is required.
- D. Notwithstanding any other provision of this Act, a person licensed as a surplus lines producer in his or her home state shall receive a nonresident surplus lines producer license pursuant to Subsection A of this section. Except as to Subsection A, nothing in this section otherwise amends or supercedes any provision of [refer to state excess and surplus lines statutes].
- E. Notwithstanding any other provision of this Act, a person licensed as a limited line credit insurance or other type of limited lines producer in his or her home state shall receive a nonresident limited lines producer license, pursuant to Subsection A of this section, granting the same scope of authority as granted under the

Producer Licensing Model Act

- (8) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness or financial irresponsibility in the conduct of business in this state or elsewhere;
- (9) Having an insurance producer license, or its equivalent, denied, suspended or revoked in any other state, province, district or territory;
- (10)

- D. An insurer or insurance producer may pay or assign commissions, service fees, brokerages or other valuable consideration to an insurance agency or to persons who do not sell, solicit or negotiate insurance in this state, unless the payment would violate [insert appropriate reference to state law, i.e. citation to anti- rebating statute, if applicable].

Section 14. Appointments [Optional]

- A. An insurance producer shall not act as an agent of an insurer unless the insurance producer becomes an appointed agent of that insurer. An insurance producer who is not acting as an agent of an insurer is not required to become appointed.
- B. To appoint a producer as its agent, the appointing insurer shall file, in a format approved by the insurance commissioner, a notice of appointment within fifteen (15) days from the date the agency contract is executed or the first insurance application is submitted. An insurer may also elect to appoint a producer to all or some insurers within the insurer's holding company system or group by the filing of a single appointment request.

Drafting Note: The group appointment provision of Subsection B is only applicable in jurisdictions that have implemented an electronic appointment process.

- C. [Optional] Upon receipt of the notice of appointment, the insurance commissioner shall verify within a reasonable time not to exceed thirty (30) days that the insurance producer is eligible for appointment. If the insurance producer is determined to be ineligible for appointment, the insurance commissioner shall notify the insurer within five (5) days of its determination.
- D. An insurer shall pay an appointment fee, in the amount and method of payment set forth in [insert appropriate reference to state law or regulation], for each insurance producer appointed by the insurer.
- E. [Optional] An insurer shall remit, in a manner prescribed by the insurance commissioner, a renewal appointment fee in the amount set forth in [insert appropriate reference to state law or regulation].

Drafting Note: This act designates as optional the section on appointments of producers by insurers. That designation recognizes that some states do not require the formal appointment of a producer before business can be conducted with an insurer or multiple insurers.

Section 15. Notification to Insurance Commissioner of Termination

- A. Termination for Cause. An insurer or authorized representative of the insurer that terminates the appointment, employment, contract or other insurance business relationship with a producer shall notify the insurance commissioner within thirty (30) days following the effective date of the termination, using a format prescribed by the insurance commissioner, if the reason for termination is one of the reasons set forth in Section 12 or the insurer has knowledge the producer was found by a court, government body, or self-regulatory organization authorized by law to have engaged in any of the activities in Section 12. Upon the written request of the insurance commissioner, the insurer shall provide additional information, documents, records or other data pertaining to the termination or activity of the producer.
- B. Termination Without Cause. An insurer or authorized representative of the insurer that terminates the appointment, employment, or contract with a producer for any reason not set forth in Section 12, shall notify the insurance commissioner within thirty (30) days following the effective date of the termination, using a format prescribed by the insurance commissioner. Upon written request of the insurance commissioner, the insurer shall provide additional information, documents, records or other data pertaining to the termination.

Drafting Note: Those states that do not require formal appointments may delete any reference to appointments in Subsections A and B above.

- C. Ongoing Notification Requirement. The insurer or the authorized representative of the insurer shall promptly notify the insurance commissioner in a format acceptable to the insurance commissioner if, upon further review or investigation, the insurer discovers additional information that would have been reportable to the insurance commissioner in accordance with Subsection A had the insurer then known of its existence.

D. Copy of Notification to be Provided to Producer.

- (1) Within fifteen (15) days after making the notification required by Subsections A, B and C, the insurer shall mail a copy of the notification to the producer at his or her last known address. If the producer is terminated for cause for any of the reasons listed in Section 12, the insurer shall provide a copy of the notification to the producer at his or her last known address by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.
- (2) Within thirty (30) days after the producer has received the orig

Producer Licensing Model Act

- (a) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Paragraph (1), with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;
- (b) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and
- (c) **[OPTIONAL]** May enter into agreements governing sharing and use of information consistent with this subsection.

Drafting Note: The language in Paragraph 3(a) assumes the recipient has the authority to protect the applicable confidentiality or privilege, but does not address the verification of that authority, which would presumably occur in the context of a broader information sharing agreement.

- (4) No waiver of any applicable privilege or claim of confidentiality in the documents, materials, or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Paragraph (3).
- (5)

B. Within thirty (30) days of the initial pretrial h

D. For purposes of this section:

- (1) “Affiliate” means a person that controls, is controlled by, or is under common control with the producer.
- (2) “Compensation from an insurer or other third party” means payments, commissions, fees, awards, overrides, bonuses, contingent commissions, loans, stock options, gifts, prizes or any other form of valuable consideration, whether or not payable pursuant to a written agreement.
- (3) “Compensation from the customer” shall not include any fee or similar expense as provided

PRODUCER LICENSING MODEL ACT

This chart is intended to provide readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings related to the NAIC model. Such guidance provides readers with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state’s activity in this area and has determined whether the citation most appropriately fits in the Model Adoption column or Related State Activity column based on the definitions listed below. The NAIC’s interpretation may or may not be shared by the individual states or by interested readers.

This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist readers in locating useful information. Readers should consult state law for further details and for the most current information.

PRODUCER LICENSING MODEL ACT

PRODUCER LICENSING MODEL ACT

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Iowa		IOWA CODE §§ 522B.1 to 522B.18 (2002/2014) (previous version of model); § 508E.3 (2000/2009); IOWA ADMIN. CODE r. 191-10.1 to 191-10.51 (1963/2009); §§ 191-11.1 to 191-11.14 (2009).
Kansas		KAN. STAT. ANN. §§ 40-4901 to 40-4918 (2001/2013) (previous version of model); KAN. ADMIN. REGS. §§ 81-3-1 to 81-3-7 (2006).
Kentucky		KY. REV. STAT. ANN. §§ 304.9-010 to 304.9-460 (1970/2011) (previous version of model).
Louisiana		LA. REV. STAT. ANN. §§ 22:2391 to 22:2395 (2013); §§ 22:1541 to 22:1573 (2008/2015) (previous version of model); ADVISORY LETTER 2010-1 (2010).
Maine		ME REV. STAT. ANN. tit. 24-A, §§ 1420 to 1420-P (2001) (previous version of model); §§ 1401 to 1485 (1997/2019)

PRODUCER LICENSING MODEL ACT

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Missouri		MO. REV. STAT. §§ 375.012 to 375.146 (1939/2014) (previous version of model); MO. CODE REGS. ANN. tit. 20, §§ 700-1.005 to 700-1.150 (1974/2008); § 700-3.200 (2009).
Montana		MONT. CODE ANN. §§ 33-17-101 to 33-17-1203 (1959/2013); MONT. ADMIN. R. 6.6.2801 to 6.6.2810 (1990/2009).
Nebraska		NEB. REV. STAT. §§ 44-4047 to 44-4066 (2001/2015) (previous version of model); 210 NEB. ADMIN. CODE §§ 38-001 to 38-018 (2009).
Nevada		NEV. REV. STAT. §§ 683A.020 to 683A.490 (1971/2011) (portions of previous version of model); NEV. ADMIN. CODE §§ 686A.320 to 686A.340 (2005).
New Hampshire		N.H. REV. STAT. ANN. §§ 402-J:1 to 402-J:19 (2001/2011) (previous version of model).
New Jersey		N.J. STAT. ANN. §§ 17:22A-26 to 17:22A-48 (2001). (previous version of model); N.J. ADMIN. CODE §§ 11:17-1.1 to 11:17-3.6 (2016); § 11:17B-3.1; BULLETIN 2004-20 (2004).

New Mexico

N.M. STAT. ANN. §§ 59A-11-1 to 59A-12-29

c6OR9(0)-1.1(1)4AT/c-.037 Tw[(c6OR9 504.48 ..7(00-)-2Tc-c]TJ- .98 0 0 0 10.02 4.9(o)5.54 .485.54 .485.5

PRODUCER LICENSING MODEL ACT

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Ohio		OHIO REV. CODE ANN. §§ 3905.01 to 3905.99 (1953/2014) (previous version of model); OHIO ADMIN. CODE 3901-5-01 to 3901-5-13 (2010/2014).
Oklahoma		OKLA. STAT. tit. 36, §§ 1435.1 to 1435.41 (1980/2014) (previous version of model); OKLA. ADMIN. CODE § 365:1-9-15.1 (1998/2005); § 365:25-3-19 (2008/2012); BULLETIN 10-1-2007; BULLETIN 6-1-2009 (2009); BULLETIN 8-18-2010 (2010); BULLETIN PC 2013-02 (2013).
Oregon		OR. REV. STAT. §§ 744.052 to 744.089 (2003/2009) (previous version of model); OR. ADMIN. R. 836-071-0108 to 836-071-0351 (2000/2012).
Pennsylvania		40 PA. STAT. ANN. §§ 310.1 to 310.14 (2002) (previous version of model).
Puerto Rico		P.R. LAWS ANN. tit. 26, §§ 949 to 953i (2006).
Rhode Island	R.I. GEN. LAWS §§ 27-2.4-1 to 27-2.4-23 (2002/2013).	BULLETIN 2007-8 (2007); BULLETIN 2011-2 (2011); BULLETIN 2015-4 (2015).
South Carolina		S.C. CODE ANN. §§ 38-43-10 to 38-43-260 (1988/2009) (previous version of model); S.C. CODE ANN. REGS. 69-23 (1984/2010); BULLETIN 16-2009 (2009); BULLETIN 17-2009 (2009); BULLETIN 9-2010 (2010).
South Dakota		S.D. CODIFIED LAWS §§ 58-30-1.1 to 58-30-218 (1966/2015) (previous version of model); S.D. ADMIN. R. 20:06:18:01 to 20:06:18:22 (1985/2013).
Tennessee		TENN. CODE ANN. §§ 56-6-101 to 56-6-126 (2003/2014) (previous version of model).
Texas		TEX. INS. CODE ANN. §§ 4001.001 to 4001.359 (2005/2015); § 4002.008 (2009); §§ 4004.151 to 4004.155 (2009); § 4005.004 (2005) (compensation disclosure); § 4005.054 (2005); §§ 4008.001 to 4008.008 (2009); 28 TEX. ADMIN. CODE §§ 19.1001 to 19.1030 (1994/2010); BULLETIN B-0041-07 (2007).

PRODUCER LICENSING MODEL ACT

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Utah		UTAH CODE ANN. §§ 31A-23a-101 to 31A-23a-505 (1986/2014); UTAH ADMIN. CODE r. 590-244 (2009/2015); BULLETIN 2010-3 (2010); BULLETIN 2011-3 (2011).
Vermont		VT. STAT. ANN. tit. 8, §§ 4791 to 4813n (1974/2002) (previous version of model); BULLETIN 172 (2012).
Virgin Islands	V.I. CODE ANN. tit. 22, §§ 751 to 793 (2016).	
Virginia		VA. CODE ANN. §§ 38.2-1800 to 38.2-1845 (1986/2013); § 54.1-118 (2012); ADMIN. LETTER 2012-10 (2012).
Washington		WASH. REV. CODE ANN. §§ 48.17.010 to 48.17.902 (1947/2012) (previous version of model); WASH. ADMIN. CODE §§ 284-17-001 to 284-17-835 (2008/2013); § 284-97-020 (2011).
West Virginia		W. VA. CODE §§ 33-12-1 to 33-12-38 (1957/2004) (previous version of model); W. VA. CODE R. §§ 114-2-1 to 114-2-7 (2008/2009); §§ 114-42-2 to 114-42-8 (1996/2012).
Wisconsin		WIS. STAT. §§ 628.01 to 628.12 (1975/2014); §§ 628.51 to 628.78 (1975/1981); WIS. ADMIN. CODE INS. §§ 6.50 to 6.59 (1992/2014); WIS. ADMIN. CODE INS. §§ 374.6.50 to 374.6.59 (1992/2014); WIS. ADMIN. CODE INS. §§ 374.6.50 to 374.6.59 (1992/2014); WIS. ADMIN. CODE INS. §§ 374.6.50 to 374.6.59 (1992/2014).

PRODUCER LICENSING MODEL ACT

Proceedings Citations

Cited to the Proceedings of the NAIC

Discussion about a single licensing system for agents, brokers an

PRODUCER LICENSING MODEL ACT

Proceedings Citations

Cited to the Proceedings of the NAIC

Section 2 (cont.)

C. Insurance was first defined in the model adopted in 1988 by referring to the appropriate section of the code. During the extensive redraft in 1998-1999, the regulators considered deleting the definition. Interested parties encouraged the regulators to retain a definition to ensure that it tied back to the definition in the state insurance code. **1999 Proc. 1st Quarter 93.**

D. The definition of insurance producer changed little during the life of the model. As part of the extensive review begun in 1998, the group discussed whether the terms “solicit, negotiate, effect, procure, deliver and renew” created ambiguity in terms of who needed to be licensed. The working group considered numerous options, such as creating a new section defining licensable activity versus non-licensable activity. Another suggestion was to define a producer as a person required to be 0

PRODUCER LICENSING MODEL ACT

Proceedings Citations

Cited to the Proceedings of the NAIC

Section 2I (cont.)

After the model with its extensive amendm

PRODUCER LICENSING MODEL ACT

Proceedings Citations

Cited to the Proceedings of the NAIC

Section 2 (cont.)

P. This definition was added during the extensive redraft that took place in 1998-1999. **2000 Proc. 1st Quarter 12.**

Q. The working group drafting amendments in 1998-1999 agreed with the suggestion from a trade association that it would be good to define “uniform application.” **1998 Proc. 4th Quarter I 107.**

Section 3. License Required

The working group spent a considerable amount of time discussing licensable versus non-licensable activities. An interested party requested guidance on what constitutes advertising versus solicitation. The working group reviewed a list prepared by one of the chairs, which he said had been culled from the Marketing of Insurance Over the Internet white paper. He said that a producer enters the state by mail, telephone or by means of electronic communication. **1998 Proc. 3rd Quarter 109.**

An interested party suggested that the working group remove the exceptions to licensing and put them in a separate section. The group also considered defining “solicit,” “negotiate” and “effectuate.” **1998 Proc. 3rd Quarter 109.**

The working group questioned whether “class or classes of insurance” needed to be defined or whether it should simply say “insurance.” **1998 Proc. 4th Quarter I 109.**

The drafting committee spent a great deal of time talking about licensable activities. The chair commented that it needed to be tied to acceptance of an application for insurance in order to ensure that the model focused on individuals actually trying to sell an insurance policy. **1999 Proc. 1st Quarter 110.**

At one point regulators considered adding a second part to Section 3 that said “Solicitation, negotiation and effectuation of an insurance contract includes ...” followed by an extensive laundry list of licensable activities. **1999 Proc. 1st Quarter 112.**

Regulators discussed the situation where a telemarketer gathers information from an individual’s current policy and then mails the individual a quote and decided it fell within the list of licensable activities. One said that the collection of information and inputting it into a computer was a ministerial function and should not require a license. Another regulator disagreed and opined that providing a quote is equivalent to urging an individual to purchase a specific insurance policy. Regulators agreed that quoting rates from a standard list was not a licensable activity but quoting rates for a specific company was. **1999 Proc. 1st Quarter 110.**

The working group considered whether there should be a difference between quot the U.her th ph pO5g8(h6.3((focuse-1.6(s)7.3(u)-9rA

PRODUCER LICENSING MODEL ACT

Proceedings Citations

Cited to the Proceedings of the NAIC

Section 4 (cont.)

During the development of Section 4, a regulator drew up a lis

PRODUCER LICENSING MODEL ACT

Proceedings Citations

Cited to the Proceedings of the NAIC

Section 4B (cont.)

Language was added creating a new Paragraph (7) to exempt risk managers. Almost all states exempt risk managers from producer licensing requirements, so the regulators agreed that the model also should exempt risk managers. The chair clarified

PRODUCER LICENSING MODEL ACT

Proceedings Citations

Cited to the Proceedings of the NAIC

Section 4B (cont.)

A representative from an agents' trade association said the original intent and the text of the model are in conflict. He supported elimination of the paragraph altogether or deletion of the word "otherwise." Both options would eliminate the existing ambiguity and increase the chances for uniformity. **2000 Proc. 3rd Quarter 956.**

When the Executive Committee considered adoption of the model, a commissioner noted that the exception for consumer service representatives contained in Section 4B(8) could be interpreted to provide a much broader exemption than intended. She recommended the deletion of the paragraph. The servicing activities of consumer service representatives would still be exempted in Section 4B(1)(a). The Executive Committee voted to delete the paragraph. **2000 Proc. 3rd Quarter 11.**

An interested party suggested that a person who gives insurance advice incidental to financial planning advice should not have to be licensed as an insurance producer. Financial planners have a fiduciary relationship with their clients and an obligation to give clients advice regarding their insurance needs. Another interested party opined that a specific exemption is not needed because the current provisions of the model address that scenario. The working group decided to add a drafting note to that effect. **1999 Proc. 2nd Quarter 106.**

Section 5. Application for Examination

A regulator opined that the level of detail contained in this section was unnecessary. The key element is that each state should require a written examination. The rest of the information in this section belonged in a regulation. **1999 Proc. 1st Quarter 91.**

Section 6. Application for License

A. A regulator recommended that the reference to prelicensing education be omitted. If a test is well-designed, a person will have to attend a pre-license study class to pass the test. Mandating a class would not increase consumer protection. **1999 Proc. 1st Quarter 91.**

When drafting amendments in the summer of 2000, the working group discussed the need for a technical amendment to Paragraph (3) to specify that a producer must only complete a prelicensing course of study where required by the commissioner. The working group agreed to make this amendment because of the additional language on limited lines licensing that had been added recently. **2000 Proc. 2nd Quarter 394.**

At the working group's next meeting, the chair explained that the proposed amendment did not waive the examination requirement. It would be possible for a state to issue a license for a particular line of authority without requiring a prelicensing course of study. **2000 Proc. 3rd Quarter 404.**

B. A regulator questioned why states need to license firms if they already license individuals. Another agreed that the license is unnecessary if a state has a mechanism in place to facilitate the payment of commissions. **1999 Proc. 1st Quarter 94.**

For a time regulators considered adding a provision saying that a firm had to disclose to the commissioner all owners, partners, officers and directors. One regulator suggested this was dual regulation because Secretaries of State already tracked this information. **1999 Proc. 2nd Quarter 104.**

A regulator commented that Paragraph (2) should require an officer or director to be responsible for compliance and not just a licensed producer. Another regulator said her state requires an officer to be responsible and requires that officer to be a licensed producer. The working group decided not to change Paragraph (2) and several states reiterated their desire to ensure that states were able to take regulatory action against individuals and not just the agency. **1999 Proc. 3rd Quarter 148.**

C. This subsection was a part of the model from its inception. It was included without discussion. **1988 Proc. I 108.**

PRODUCER LICENSING MODEL ACT

Proceedings Citations

Cited to the Proceedings of the NAIC

Section 6 (cont.)

D.

PRODUCER LICENSING MODEL ACT

Proceedings Citations

Cited to the Proceedings of the NAIC

Section 8. Nonresident Licensing

After the working group drafted major amendments in 1998-1999, but before the revised model was adopted by the NAIC, Congress passed the Gramm-Leach-Bliley Act (GLBA), also known as S. 900. One of the major sections of GLBA was a provision known as the National Association of Registered Agents and Brokers (NARAB), which would override state law in regard to licensing of non-resident agents unless the majority of states adopted either a system of reciprocity or uniform licensing laws. **1999 Proc. 4th Quarter 110.**

An interested party stressed that there would have to be a majority of states with a system of reciprocity or a majority of states with uniform licensing standards and that a combination of states with reciprocity and uniform standards would not meet the requirements of NARAB. **1999 Proc. 4th Quarter 110.**

NAIC staff explained that the standards for achieving reciprocity were laid out in GLBA: (1) the administrative procedures; (2) continuing education requirements; and (3) elimination of any limitations on non-residents, other than countersignature requirements. The administrative procedures can consist only of the following: (1) a request for licensure; (2) the application that the person submitted to its home state; (3) proof that the producer is licensing and in good standing in its home state; and

PRODUCER LICENSING MODEL ACT

PRODUCER LICENSING MODEL ACT

Proceedings Citations

Cited to the Proceedings of the NAIC

Section 9A (cont.)

requirements help ensure producers remain knowledgeable. In response to a motion to change “shall” to “may,” six regulators voted in favor and 11 states voted against the motion. **1999 Proc. 3rd Quarter 145.**

PRODUCER LICENSING MODEL ACT

Proceedings Citations

Cited to the Proceedings of the NAIC

Section 13. Commissions

The first version of the model that contained standards for commission payments was adopted in December 1988. The section contained substantially similar language to the current model Subsection A and B. **1989 Proc. I 140.**

When developing the extensive amendments begun in 1998, the working group discussed the licensing requirements surrounding the receipt of commissions. Discussion focused on the sharing of commissions. **1998 Proc. 4th Quarter I 104.**

The language of the original model was replaced with four new subsections. **2000 Proc. 1st Quarter 18-19.**

D. Several regulators enunciated their states' policies on accepting override commissions. Some required the person to be licensed and some did not. A regulator from a state without an anti-rebate law commented that an agent in another state could refer business to an agent in his state and receive a commission without having to be licensed. **1998 Proc. 4th Quarter I 104.**

An interested party pointed out the distinction between assignment of a commission and sharing commissions. Specifically he questioned whether a field marketing organization that contracts with local producers that actively solicit insurance needs to be licensed if it receives an override commission. **1998 Proc. 4th Quarter I 104.**

PRODUCER LICENSING MODEL ACT

Proceedings Citations

Cited to the Proceedings of the NAIC

Section 14A (cont.)

PRODUCER LICENSING MODEL ACT

Proceedings Citations

Cited to the Proceedings of the NAIC

Section 15 (cont.)

A. Most of the language in Subsection A was developed by a group that recognized the importance of including termination information in the producer database being developed. The amendments were trying to address the problem where a producer with a significant disciplinary history jumps from company to company and ends up harming consumers and companies. **1997 Proc. 3rd Quarter 1167, 1170.**

An interested party suggested that the working group insert “accurately and truthfully” in Subsection A to ensure that the commissioner had the authority to take action against an insurer that did not report truthfully. He said it is already implied in the actual malice standard of Subsection E, but the “accurately and truthfully” standard should be stated expressly in the model. Another interested party said the phrase is not needed and it may cause problems when minor reporting violations occur. The working group decided not to make the change recommended. **1999 Proc. 3rd Quarter 148.**

The chair noted that Subsections A and D read together required that the insurer notify the insurance department within 30 days of an appointment termination and then the insurer had another 75 days in which to notify the producer. The notification to the producer had to be by certified mail if it involved a “for cause” termination. **1999 Proc. 3rd Quarter 146.**

An interested party suggested that the reference to a self-regulatory organization be modified to a “self-regulatory organization authorized by law.” Another interested party responded that the intent of this phrase was to address information maintained by the National Association of Securities Dealers (NASD) and that the change was appropriate. **1999 Proc. 3rd Quarter 146.**

B. Subsection B was added as a companion to Subsection A with the 1997 amendments. **1997 Proc. 3rd Quarter 1167.**

One state regulator commented that his state objected to Subsection B because it required the state to be notified of not-for-cause terminations of appointment, and his state did not use appointments. **1999 Proc. 3rd Quarter 147.**

C. The amendments adopted in 1997 included a Subsection C that listed items that would be termination for cause. That list was later deleted, and what had been Subsection D became the new Subsection C. **1997 Proc. 3rd Quarter 1167.**

D. This subsection was added in 1997 as part of the update of the termination provisions. **1997 Proc. 3rd Quarter 1167.**

During the discussion undertaken as part of the 1998-1999 redraft, a provision was added to require that the termination notice be delivered to the producer by certified mail only in the case of termination for cause; regular mail was satisfactory if it involved a “not for cause” termination. A regulator expressed concern about the requirement in Paragraph (2) that comments submitted by a producer would become a

PRODUCER LICENSING MODEL ACT

Proceedings Citations

Cited to the Proceedings of the NAIC

Section 15F (cont.)

While the complete revision of the model in 1998-1999 was progressing, the chair noted that a separate NAIC group was developing standard confidentiality language to be incorporated in several NAIC models, including the Producer Licensing Model Act. That group was still working on the language for recommendation. **1999 Proc. 3rd Quarter 147.**

The working group agreed to a suggestion to incorporate language in Paragraph (5) referring to a database maintained by the NAIC to clarify that information may be disclosed to a database, such as the Producer Database. **1999 Proc. 3rd Quarter 147.**

Subsection F was completely rewritten to follow the language proposed by a group assigned the task of drafting language for several NAIC models to ensure that states would be able to share confidential information with each other and other state, federal and international regulators. **1999 Proc. 3rd Quarter 146.**

The first sentence of Paragraph (1) received extensive attention, and the wording was carefully chosen to provide maximum protection for sensitive information. The drafting team chose to use both the terms “privileged” and “confidential” to ensure

PRODUCER LICENSING MODEL ACT

Proceedings Citations

Cited to the Proceedings of the NAIC

Section 16A (cont.)

The working group deleted the phrase “license application” from Subsection B, since it was never its intent to waive the license application requirement. **2000 Proc. 2nd Quarter 400.**

Section 17. Reporting of Actions

This section was added as part of the extensive redrafting effort of 1998-1999. **2000 Proc. 1st Quarter 22.**

Section 18. Compensation Disclosure

This subsection was added in December 2005. Discussion of the section took place at a hearing and meeting during the Winter National Meeting, and adoption followed at a special Plenary call late in December. **2004 Proc. 4th Quarter 136, 2005 Proc. 1st Quarter 55.**

Most of the discussion at the national meeting focused on a Subsection B that was subsequently deleted during the Plenary call of the membership. One major issue was whether the independent agent arrangement was a separate issue from the traditional broker arrangement. Earlier drafts used statutory authorization to receive compensation from the customer as the bright-line test, but this did not fully capture the scope of the issues under consideration. The bright-line test had the potential to exclude producers who received compensation only from insurers and certain brokerage situations where a separate contract controls who technically received compensation. Because of this, the phrase “acts on behalf of the customer” was added. A producer who then disclaimed to be “acting on behalf of the customer” would be subject to Subsection A. **2004 Proc. 4th Quarter 137.**

A regulator stated that the typical consumer did not perceive a difference between a captive agent and an independent agent. She opined that an independent agent, who represented that he acted on behalf of a client, should be considered a broker and provide the necessary disclosures. A consumer advocate encouraged the task force to refrain from carving out exceptions to disclosure. An interested party said that the amendment should reference insurance producers who exclusively represented the customer, because it was highly subjective to determine whether a producer acted on behalf of a customer. Another interested party identified the remaining issues to be the exact disclosure required and how to properly identify producers covered by the amendment. He suggested that the bright-line should be whether the producer received compensation from the customer and not on whether the producer acted on behalf of the customer. Another interested party also questioned how to determine whether a particular producer acted on behalf of the customer and suggested the use of the phrase “solely represents the customer.” **2004 Proc. 4th Quarter 137.**

Another hearing was held in March 2005. At that time the NAIC president recapped the task force’s activities in the five months since the New York Attorney General announced litigation involving the issue of broker compensation. The purpose of the March hearing was to hear comments on two issues: first, whether current laws and industry practices were sufficient for addressing potential conflicts of interest in the marketplace and second, the marketplace ramifications caused by certain large sectors of the marketplace voluntarily or otherwise discontinuing the use of contingent commission arrangements. The task force used information from the hearing and written comments to determine how to approach the remaining issues it was charged to consider: the development of additional requirements, such as recognition of a fiduciary responsibility of producers, disclosure of all quotes received by a broker, and disclosures relating to agent-owned reinsurance arrangements. **2005 Proc. 1st Quarter 70.**

During the hearing, regulators heard testimony about how the National Conference of Insurance Legislators (NCOIL) addressed the issues of broker compensation. The NCOIL model was aimed at disclosure by producers who accepted fees from customers. A commissioner opined that the NCOIL model was appropriate for the personal lines market, which was very different from the large commercial market where most investigations of producer compensation had been directed. **2005 Proc. 1st Quarter 70.**

PRODUCER LICENSING MODEL ACT

Proceedings Citations

Cited to the Proceedings of the NAIC

Section 18 (cont.)

A consumer advocate urged the task force to recognize the broader issues in producer compensation; the problems were not concentrated only in the large brokerages and commercial lines. He suggested that true transparency could be achieved by enforcing two requirements: first, a comprehensive requirement for producers to disclose their compensation and second, a requirement that producers show customers the three lowest cost alternatives to the recommended product. He said that the NCOIL model would not assist regulators because it represented the industry consensus position. A commissioner asked what the specific content of the disclosure would be and the consumer advocate replied that the dollar amount of compensation should be disclosed if available, and if not, then the method of calculation. A regulator asked whether the disclosure would apply to captive agents. The consumer advocate replied affirmatively, because captive agents did not simply get commissions. These producers had quota and profitability requirements. The consumer needed to know how compensation on one line of business affected the producer's motivation to sell other lines. **2005 Proc. 1st Quarter 70.**

A. A representative from a producer trade association raised concerns about the definition of “documented acknowledgement” and said that it was impossible for the typical producer to estimate the compensation that would arise from a particular placement. In addition, she said the phrase “insurance transaction” was too broad and that the disclosure should be tied to the placement of a policy. That change was included in the draft. A representative from another producer trade association said that every agent acted in some way on behalf of the customer. A commissioner responded that if this question were litigated, the determining factor would be to which party the producer owed a fiduciary duty. The producer should have the duty to state on whose behalf he or she was acting. The trade association representative responded that every life insurance producer purports to hold himself out as representing the individual customer. A regulator said that was the essence of the issue—whether the producer induced reliance based on a misrepresentation of the producer's loyalty. A consumer advocate responded that the focus should be on disclosure of compensation for all consumers since all producers claim they serve the consumer in some capacity. **2004 Proc. 4th Quarter 137.**

A regulator said that the goal was consumer protection and most producers were honest about their obligations. The consumer advocate responded that, if the

