PROJECT HISTORY – 2009/2010

PROPERTY AND CASUALTYMODEL RATE AND POLICY FORM LAW GUIDELINE (#1780) - 2009
&
PROPERTY AND CASUALTY MODEL RATE AND POLICY FORM REGULATION GUIDELINE (#1781) - 2010

1. Description of the Project, Issues Addressed, etc.

The Commercial Lines Re-engineering Working Group of the Property and Casualty Insurance (C) Committee was charged to rework the NAIC's two model rating laws for property and casualty insurance into one law, which:

1. Also regulates forms;
2. Establishes uniform non-renewal and cancellation provisions;
3. Creates waivers of form requirements for multi-state risks;
4. Establishes an exemption from rate and form requirements for large commercial policyholders; and
5. Enables the degree of regulation to vary so as to fit the needs of each marketplace.

The new model law guideline contemplates several possible approaches to rate regulation, but defaults to file and use. A prefatory drafting note to the sections relating to rate regulation conveys the context;

> The NAIC long ago concluded that competition could be an effective regulator of property/casualty insurance rates. Recent consideration of commercial lines rate regulation has led to the conclusion that commercial insurance consumers will generally be better served by less restrictive regulatory interventions—by greater reliance on competition. Consistent with these two conclusions, the rate- regulatory provisions contained in the model law guideline reflect a file and use rate-regulatory approach. It should be noted, however, that the NAIC has not taken a position respecting any particular line of insurance in any particular state. While this model law guideline "defaults" to file and use, it is expected that each state will consider whether other approaches are more appropriate for specific lines or all lines. Drafting notes contained in an appendix for sections 4 through 7 contemplate several alternative approaches, providing for greater or lesser degrees of reliance on competition, which a state may determine to be preferable.
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> The movement of states away from prior approval of rates has been more pronounced in connection with commercial lines than personal lines. It has occurred less rapidly in connection with workers' compensation insurance than with most other commercial lines. Although many states have adopted competitive rating approaches for medical professional liability insurance, each state will want to consider the extent to which that state's marketplace for such insurance is, in fact, structured in such a way that reliance upon competition is a viable approach. Each state will also want to consider the extent to which the reverse-competitive market structures of credit property insurance, credit involuntary unemployment insurance and mortgage guaranty insurance either suggest or demand a more guarded regulatory approach than is used for other lines of insurance.

The NAIC did not have a general policy form model law prior to the inclusion of policy form standards and filing requirements in this model law guideline. Development of the standards and filing requirements was necessary to meet the charge given the group to develop appropriate relaxation of regulatory requirements for certain large commercial policyholders. In the prior law there were no regulatory requirements for policy forms. Thus, a baseline was established so that a less restrictive stance for the sophisticated commercial buyer could be

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implemented. A "default" of prior approval was selected for policy form filings. While this was not very popular with the insurance industry, it reflects the reality of how the regulation of policy forms is accomplished in most states today, and the importance of assuring, prior to use, that policy forms meet minimum standards.

The project also includes a companion model regulation guideline that was developed to provide guidance to states when the model law guideline directs to commissioner to establish a regulation to implement a portion of a law.

2. Name of Group Responsible for Drafting the Model and States Participating

The Commercial Lines Re-engineering Working Group of the Property and Casualty Insurance (C) Committee was responsible for revising the Property and Casualty Model Rating Law and the Property and Casualty Model Rating Law (File and Use Version). The following states were members of the working group with Texas serving as chair: Florida, Iowa, Kentucky, Massachusetts, Maine, Missouri, Nebraska, New York, Ohio and South Dakota. Other regulators and various interested parties assisted in the process.

3. Project Authorized by What Charge and Date First Given to the Group

In 1999, the Property and Casualty Insurance (C) Committee was charged to: "Continue to discuss the feasibility of relaxing regulatory requirements for some commercial lines. Present at the 1999 Winter National Meeting the completed changes to NAIC model rating laws to implement the recommendations made by the (EX) Special Committee on Regulatory Re- engineering in its white paper on commercial lines." It appointed the Commercial Lines Re-engineering Working Group to develop the changes to the model rating laws. The charge was carried over into 2000 to provide the added time needed to meet it.

The law and regulation were adopted by the Property and Casualty Insurance (C) Committee at the 2000 Spring National Meeting, as was the NAIC *Statement of Intent: The Future of Insurance Regulation* However, the Committee also passed a motion to recommend a new charge to monitor the discussions of the then-Speed to Market (EX) Working Group relative to rate and form filings for property and casualty insurers and to revisit the model law and regulation for consistency with the recommendations of the Working Group.

In June 2000, the Executive (EX) Committee received the model law and model regulation, but instead of adopting them, referred them to the Speed to Market (EX) Working Group for further consideration. Many years passed while the Speed to Market (EX) Task Force considered the *Personal Lines Regulatory Framework* white paper and on April 16, 2009, the Speed to Market (EX) Task Force passed the following motion: "That model laws #775 and #780 and the 2000 draft model law and regulation be identified as guidelines and retained as a resource." The NAIC model law coordinator converted model laws #775 and #780 to guidelines consistent with the revised NAIC policy regarding model law development. The coordinator was unsure whether the 2000 model law and model regulation should be made a guideline without affirmative action from the Property and Casualty Insurance (C) Committee. The Property and Casualty Insurance (C) Committee was then asked to consider the model law and model regulation.

4. A General Description of the Drafting Process (e.g., drafted by a subgroup, interested parties, the full group, etc). Include any parties outside the members that participated

The drafting process was very open as the Commercial Lines Re-engineering Working Group solicited comments from all interested parties, including interested regulators, funded consumer representatives and insurance industry representatives. The Commercial Lines Re-engineering Working Group began its work in November of 1998, and adopted an initial exposure draft of the model law in March of 1999 at the NAIC Spring National Meeting. It met at all NAIC National Meetings in 1999, held an interim meeting and numerous conference calls

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to be certain that all issues were addressed and that all parties were given an opportunity to be heard. Because of the volume of comments and the important nature of the issues, the working group did not adopt the model law and the model regulation until March 14, 2000, having adopted a final exposure draft in December 1999. The Property and Casualty Insurance (C) Committee first adopted the model law and model regulation on March 15, 2000.

5. A General Description of the Due Process (e.g., exposure periods, public hearings, or any other means by which widespread input from industry, consumers and legislators was solicited)

All of the meetings of the Commercial Lines Re-engineering (C) Working Group, the Property and Casualty Insurance (C) Committee, the Personal Lines Regulatory Framework (EX) Working Group and the Speed to Market (EX) Task Force were open to all interested parties. All revised drafts of the model law were circulated for public comment. Most of the drafting was done by NAIC staff or members of the working group. There was language adopted by the working group as a result of suggestions from the American Insurance Association, the Alliance of American Insurers, the Property Casualty Insurers Association of America, the Independent Insurance Agents of America, various individual insurer representatives and law firms and the Center for Economic Justice.

On March 28, 2010, the Property and Casualty Insurance (C) Committee adopted the law and regulation as guidelines with the vote being subject to a 30-day review and comment period where Committee members can submit comments or ask for reconsideration; no comments or reconsideration request were made.

6. A Discussion of the Significant Issues (items of some controversy raised during the due process and the group's response)

While in the early drafting sessions, the working group's initial focus was upon relaxing regulatory requirements for large, sophisticated commercial risks, the working group also recognized that if it were to meet its assigned charge, that risks other than large commercial risks must also be addressed. As a result, the working group's main focus centered on developing a model rate and form law that would work for all risks, including personal lines.

While ensuring continued consumer protections, the working group's revision to the model law accomplishes the following:

1. provides a greater reliance on competition than the two other NAIC model rating laws;
2. "defaults" to a file and use competitive approach for rate filings with several legislative options suggested through drafting notes;
3. defaults to a prior approval approach for policy forms and other contract language;
4. suggests that the commissioner be granted authority to monitor competition and react with appropriate changes to regulatory processes through implementation of regulations, including the waiver if some or all rate filing requirements for one or more commercial lines of insurance, and a more limited degree of waivers relating to commercial policy forms;
5. addresses inefficiencies for multi-state commercial policyholders by introducing a limited form of reciprocity for insurers selling policies to risks operating in more than one state;
6. exempts from rate and form regulation sales made to "Exempt Commercial Policyholders" (state defined large, sophisticated commercial risks); and
7. promotes the use of the System for Electronic Rate and Form Filing (SERFF) through changes that make the rate and form filing process media neutral.

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7. **Any Other Important Information (e.g., amending an accreditation standard).**

Insurers, agent associations and consumer representatives had significantly different opinions regarding the extent to which rates and forms should be subject to regulatory scrutiny. Insurers generally believe that the working group did not go far enough in granting relief from rate and form filing and approval requirements. There were disagreements on where to draw the line that separates a sophisticated commercial buyer from an unsophisticated one. It is safe to say that insurers would generally favor an approach that employs use and file, informational filings or no filings for rate and policy forms. Consumer representatives, agents and regulators were not generally supportive of these options. Insurer representatives were supportive of lower thresholds for defining what type of entity is exempt from various regulatory requirements. Agents were generally opposed to low thresholds fearing an increase in litigation about the advice they provide to clients. Regulators generally opposed low thresholds as a matter of adequate consumer protection. Consumer interests feared that low thresholds place some consumers in an unequal bargaining position when dealing with insurers. Members of the working group have taken a balanced approach that considers the interests of all parties. They are proud of their work effort and believe that they have addressed all concerns. While not everyone agrees with the outcome on every issue, all parties will agree that the working group was open to hearing their issues and concerns. Members of the insurance industry, the producer community and consumer interests believe that a reasonable model law guideline and companion model regulation guideline have been developed.

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PROJECT HISTORY – 2002

PROPERTY AND CASUALTY MODEL RATING LAW (PRIOR APPROVAL VERSION)
PROPERTY AND CASUALTY MODEL RATING LAW (FILE AND USE VERSION)

1. Project Description

The NAIC currently has three alternative model rating laws that apply to property and casualty coverages. This project amends two of the three models. In particular, the Property and Casualty Model Rating Law (Prior Approval Version) and the Property and Casualty Model Rating Law (File and Use Version) have a common section that relates to the collection of statistical information to aid in determining whether rating systems comply with the rate standards set forth in the model laws. The section proved to be very controversial as insurers and consumer advocates could not agree on the level of public disclosure that should be required. Eventually the Statistical Task Force provided a recommendation to the Property and Casualty Insurance (C) Committee, however, the membership of the task force had dwindled to four states at the time—in large part because of the controversy related to this project. In its recommendation, the task force recognized that no consensus could be reached among the four states and so informed the committee. The issue proved to be no less controversial at the committee level than it was when the task force was wrestling with the issue. Eventually Commissioner José Montemayor (TX) tendered a compromise. He suggested that the real controversy lies in the issue of how insurer- specific data should be treated. In June 2001, he proposed a fairly simple resolution of the matter before the committee. He suggested that if regulators cannot agree on what to say regarding insurer-specific data, they should agree to say nothing. The effect of the silence by the committee is to leave such data open to disclosure, except to the extent protected under each state's public information laws. The committee unanimously accepted the compromise after further deliberation on the matter.

2. Group Responsible for Drafting Model and States Participating

The Statistical (EX) Task Force, later known as the Statistical (Technical) Task Force and now known as the Statistical Information (C) Task Force was originally asked to update the language in the two NAIC property and casualty model rating laws in place at that time. Over the period when the discussions were held, the following states served on the task force: Alaska, California, District of Columbia, Illinois, Iowa, Louisiana, Maryland, Michigan, Missouri, Nebraska, New Jersey, New York, North Carolina, Oregon, Texas and Virginia. When the recommendation was sent to the committee, the Statistical (Technical) Task Force was chaired by Missouri and had the District of Columbia, New York and Texas as members. When the recommendation, as amended, was finally adopted by the C Committee, the committee was chaired by South Dakota and had the following members: California, Kentucky, Missouri, New Jersey, New York, Oregon. Puerto Rico and Texas.

3. Charge Authorizing Project

In 1996 the Statistical (EX) Task Force was charged to—Review and recommend revisions to the Model Regulation to Require Statistical Reporting and (if necessary) to the model rating laws. Make final report by December 1996.

In 1997 the Statistical (Technical) Task Force was charged to—Complete consideration of the Model Regulation to Require Statistical Reporting and of statistically-related changes to the Property and Casualty Model Rating Law and the Property and Casualty Model Rating Law (File and Use Version). Make final recommendations by June 1997.

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In 1998 the Statistical (Technical) Task Force was charged to—Complete the Task Force's consideration of changes to the model P&C rating laws that deal with disclosure of statistical data reported to state insurance departments. Make final recommendations to Property and Casualty Commercial Lines (D) Committee by June 1998. Cost of approximately $200.

In 1999 the Statistical (Technical) Task Force was charged to—Complete consideration of changes to the sections of the model P&C rating laws that address possible disclosure of statistical data collected pursuant to the rating law. Make final recommendation by June 1999.

The task force presented its findings to the Property and Casualty Insurance (C) Committee in March 1999 and the committee has been considering the proposal since then.

4. General Description of Drafting Process

The Statistical Task Force solicited comments from all interested parties, including interested regulators, funded consumer representatives and industry representatives. The task force also solicited key concerns from interested parties and state regulators regarding their views on collection, compilation and public disclosure of statistical data. The task force and, later, the committee received and reviewed numerous comments from interested parties. The comments varied from one extreme to the other. Those working in the insurance industry are concerned that open access to data could compromise an insurer's competitive position and they tended to favor less data collection and protection of the data as trade secret. Consumer advocates believe that Commissioner Montemayor's proposal lessens public access to insurance data when compared with the current model language and they opposed its adoption. They believe the new proposal deletes current language that provides that data compilations prepared by statistical agents for the Commissioner are public documents and establishes only that industry-aggregate data are public records.

5. Significant Issues Raised

Clearly there is no consensus that can be achieved on this issue. Insurers and advisory organizations tend to favor minimizing the amount of data collected and limiting its publication to the greatest extent possible. On the other hand, consumer advocates tend to favor robust data collection systems that grant access to the public for all or virtually all data. Insurance regulators tend to be in the middle; however, there is also no clear consensus among regulators about the level of detail that should be collected or the amount of data that should be made publicly available. Thus, the proposal by Commissioner Montemayor is viewed as the consensus position. It simply leaves the decision on what data should be collected and how much of it should be published up to each state.

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