

PROJECT HISTORY – 2004

MARKET CONDUCT SURVEILLANCE MODEL ACT (#693)

1. Project Description

The model act establishes a legislative framework for the implementation of structured market analysis, uniform targeted examinations and interstate collaboration. More specifically, the purpose of the model act is to accomplish the following: (1) establish a system for identifying, assessing and prioritizing market regulatory problems that have a substantial adverse impact on consumers, policyholders and claimants; (2) set forth a broader continuum of regulatory responses that a commissioner might take to substantiate market problems; and (3) develop procedures to communicate and coordinate market regulatory actions among states to foster the most efficient and effective use of resources.

The National Conference of Insurance Legislators (NCOIL) was heavily involved in the process since NCOIL adopted the model act prior to the NAIC. Subsequent to NCOIL's initial adoption of its model act in February of 2004, the NAIC provided additional comment. As a result of these comments, NCOIL modified its model act and adopted a revised model act in July of 2004.

2. Group Responsible for Drafting Model and States Participating

The Market Conduct and Consumer Affairs (D) Committee was responsible for revising and providing comment on the NCOIL model act. Once NCOIL considered the NAIC's comments, the model was provided to the NAIC Executive Committee for adoption. The following states are members of the D Committee: Oregon (chair), Massachusetts (vice-chair), Delaware, Florida, Idaho, Illinois, Michigan, Missouri Nebraska, Nevada, Ohio, Pennsylvania and Wyoming. In addition to D Committee participation, all NAIC members were provided with a copy of the NCOIL model for comment.

3. Charge Authorizing Project

There was no specific charge addressing this project since NCOIL initially developed the model act. To ensure NCOIL appropriately addressed NAIC policies and concerns, the D Committee took a lead role in coordinating and providing NAIC input into NCOIL's drafting of the model act.

4. General Description of Drafting Process

The NAIC provided formal comment on the NCOIL model act as it was being drafted. NCOIL adopted its initial model act in February of 2004. The D Committee adopted the NCOIL model on April 29, 2004. The states of Oregon, Massachusetts, Florida, Illinois, Michigan, Nebraska, Nevada, Ohio, Pennsylvania, and Wyoming voted yes. The states of Delaware, Idaho and Missouri abstained. The model was then presented to the NAIC Executive Committee and Plenary at NAIC Summer National Meeting. Because the draft did not address all of the NAIC concerns based upon further solicitation of input from all NAIC members, the NAIC requested NCOIL to reopen the model to consider further NAIC comment. As a result of this request, NCOIL modified its model act and adopted a revised model act in July of 2004. The NAIC Executive Committee considered the revised model act during the NAIC Fall National Meeting and adopted the NCOIL model act as a NAIC model act.

The drafting process was very open as the D Committee and Executive Committee solicited comments from all interested parties, including interested regulators, funded consumer representatives and industry representatives. All meetings and conference calls adhered to the NAIC's Open Meeting Policy.

5. Significant Issues Raised

Some states expressed concern that the model act places restrictions on a state's authority to conduct regulatory investigations and examinations. Contrary to this opinion, is the opinion that the model act sets forth a regulatory structure that will create greater uniformity and consistency of market regulation among the states.

Interested parties were concerned that specific references to NAIC products may permit the NAIC to change market regulatory standards by changing its work products without going through the legislative process. The three options of subsection 5D, which address a "material change" to a NAIC work product and opportunity for a hearing address this issue.

There was significant discussion regarding the use of "budget" or "cost estimate" in subsection 6D(1)(h). The term "budget" is used. Since a budget is a list of proposed expenditures, which is dependent upon the time estimate and, ultimately, the actual time it takes to complete a targeted examination, the term budget provides states the necessary flexibility during the examination process.

The drafting note of subsection 7A was discussed in detail since the NAIC has not adopted a formal position on self-evaluative privilege laws. This drafting note includes the following language: "States may consider enacting an insurer self-evaluation privilege law, which some believe encourages insurers to identify and remedy insurance and other compliance problems. Such laws typically provide for a limited expansion of the protection against disclosure"

Some states considered the conflict-of-interest provision found in subsection 8B too restrictive.

6. Other Pertinent Information

The Financial Services Committee of the United States Congress has included market regulatory reforms within its review and draft State Modernization and Regulatory Transparency Act (SMART Act). Because of potential Federal activity, there is a heightened need for state insurance regulators and state insurance legislators to work in a coordinated fashion to implement market regulatory reforms.