

PROJECT HISTORY - 2021

UNFAIR TRADE PRACTICES ACT (#880)

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

The NAIC's Innovation and Technology (EX) Task Force began discussing rebating issues in 2018 during the NAIC Summer National Meeting in Boston, MA, particularly because of the increased interest in offering value-added products and services such as risk mitigation devices and related services that are not necessarily addressed within the applicable insurance policy language. After finding that state interpretation and application of anti-rebating laws varies and after reviewing the history of the NAIC's *Unfair Trade Practices Act* (#880) along with the history and the intent of the anti-rebating portion, it became clear that applying the anti-rebating laws to the innovation of new insurance products and services could be challenging. The Task Force received presentations and testimony from many stakeholders, including state insurance regulators, producers, consumers, insurance companies and the startup community regarding a wide array of opinions and concerns. They also offered various suggestions for improving uniform application of anti-rebating statutes in the states. Based on this research and hearing from stakeholders, the Task Force members determined it would be appropriate to review Model #880, specifically Section 4(H)(2).

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

The Innovation and Technology (EX) Task Force was responsible for the drafting of the revisions to Model #880. The process began with the formation of a drafting group. The group was led by Superintendent Elizabeth Kelleher Dwyer (RI). Seven other states participated in the drafting process: Alaska, Alabama, Iowa, Missouri, North Dakota, Ohio and Washington. Also participating were six industry representatives, including one startup; one state legislator (Rep. Matt Lehman (IN), the president of National Council of Insurance Legislators—NCOIL); and a consumer representative.

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

The mission of the Innovation and Technology (EX) Task Force is to: 1) provide a forum for state insurance regulator education and discussion of innovation and technology in the insurance sector; 2) monitor technology developments that affect the state insurance regulatory framework; and 3) develop regulatory guidance, as appropriate. This work was done under the specific charge:

The Innovation and Technology (EX) Task Force will:

Develop regulatory guidance, model laws or model law revisions, and white papers or make other recommendations to the Executive (EX) Committee, as appropriate.

At its meeting during the 2019 Summer National Meeting, the Task Force voted to move forward with the Request for NAIC Model Law Development to open Model #880 to amend or add to the language in Section 4(H)(2). The request was adopted by the Task Force in October 2019 and subsequently by the NAIC Executive (EX) Committee in December during the 2019 Fall National meeting.

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 group met twice at the beginning of 2020, in January and February, and then stopped meeting for a period of time because of the COVID-19 pandemic. However, it regrouped to meet two more times in May and June. Given the Task Force had already received considerable input from stakeholders regarding this topic, the drafting group was able to move forward expeditiously and disbanded prior to the 2020 Summer National Meeting.

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)

The first draft published out of the drafting group was posted for comment on June 23. Twenty-one comment letters were submitted, and Superintendent Dwyer reviewed the changes made based on those comments during the Task Force's meeting on Aug. 7. A new draft was posted and exposed for comment on Aug. 10. Seventeen comments were reviewed, and a new draft was posted on Oct. 30. During the Task Force's meeting on Nov. 4, Superintendent Dwyer again reviewed each substantive comment, noting whether it was accepted or rejected in the latest draft. Comments regarding the Oct. 30 draft were again requested and accepted. Seven comments were reviewed, and interested parties were given an opportunity to present their

points orally. Additionally, Task Force members and interested parties had the opportunity to ask questions or pose challenges to those points during a meeting on Nov. 30. Five presentations were made. Following the meeting on Nov. 30, another draft was posted on Dec. 2. During its meeting on Dec. 4 and with 44 members of the Task Force in attendance, the revised language was adopted, with Nevada dissenting and California, Hawaii, Idaho and New Jersey abstaining.

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

While the genesis for drafting this revised language was primarily the need to clarify intentions related to the acceptability of the offering of things of value in the best interests of the consumer and to mitigate risk associated with what is being underwritten, value-added products and services, Section H(2)(e), the group also took on drafting clarifying language related to producer and insurer marketing including non-cash gifts meals, charitable donations on behalf of a customer, raffles and drawings, Section H(2)(f).

Since the term “value-added” is relatively new, there was considerable discussion regarding its use. Ultimately, the drafters and most of the state insurance regulators and interested parties agreed it was the appropriate term and needed no further defining.

There was considerable debate and discussion regarding the list in Section H(2)(e)(ii). The term “primarily designed” was discussed very thoroughly as the early use of the term “primarily intended” gave some state insurance regulators concern given the difficulty in determining “intent.” There seemed to be consensus that “designed” was a much better term to use in this case. The list itself was heavily debated both in terms of it being comprehensive and there not being a “catch-all,” as well as in terms of the value-added product or service needing to satisfy at least one of the listed criteria.

The cost discussed in Section H(2)(e)(iii) was also heavily debated. In the end, in addition to other language in that section, it was determined to be appropriate to include a drafting note that notes states may consider alternative language depending on their filing requirements. There was great care given to there being deference or to acknowledging some states may already have statute or regulation language that addresses or sets out permitted practices.

There was also a lot of discussion regarding Section H(2)(e)(vii). The debate was primarily around differences of opinion regarding whether offering the value-added product or service would need to be preapproved by the Department of Insurance (DOI). The concern on the part of industry was slowing down the ability to move forward with a pilot or testing something new, which led, ultimately, to the decision to require notification to the DOI, with a 21-day time period for the DOI to object.

In Section H(2)(f), great care was given to the specific terms used in this section. Given the history with this issue specific to the dollar amount, a drafting note was included to offer a suggested monetary amount but ultimately left to the state. In addition, this section addresses commercial or institutional customers as there was a great deal of discussion around excluding commercial lines from this section altogether, considering the notion that a transaction between sophisticated purchasers and sellers does not require this type of oversight.

Lastly, Section H(3) is intended to make clear that original rebating language intended to prevent abuses related to inducement to purchase or renew is still in effect, and this new language should not be construed to change that.

7. List the key provisions of the model (sections considered most essential to state adoption)

Section H(2)(e), Section H(2)(f) and Section H(3)

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

No other items are identified at this time.

PROJECT HISTORY - 2008

UNFAIR TRADE PRACTICES ACT (#880)
(Travel Underwriting Revisions)

1. Description of the project, issues addressed, etc.

The revisions address the issue of underwriting in life insurance based on past lawful travel experiences and future lawful travel plans. The revisions prohibit an insurer from refusing life insurance to, refusing to continue life insurance of, or limiting the amount, extent or kind of life insurance available to an individual based on past lawful travel experiences. The revisions also prohibit an insurer from taking the same action based on future lawful travel plans unless such an action is based on sound actuarial principles and actual or reasonably anticipated experience related to a specific destination or the action is taken because, with respect to the specific travel destination, the Centers for Disease Control and Prevention has issued certain alerts or there is an ongoing armed conflict involving the military of a sovereign nation foreign to the country of conflict.

2. Name of group responsible for draft the model and states participating:

Travel to Foreign Countries (A) Working Group and the Life Insurance and Annuities (A) Committee

States Participating during the drafting process:

Alabama	New York
California	North Dakota
Connecticut	Ohio
District of Columbia	Pennsylvania
Florida	Texas
Iowa	Utah
Minnesota	Wisconsin
Missouri	
Nebraska	
New Mexico	

3. Project authorized by what charge and date first given to the group:

The following charge was given in 2006:

Analyze issues related to underwriting practices and/or policy exclusions in life insurance policies relating to lawful travel to foreign countries and draft guidelines for interpretation of the Unfair Trade Practices Act or model legislation to address the issues, as necessary.

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 revisions, and comments received on them, were reviewed and discussed by the Working Group. The Working Group adopted a draft of proposed revisions in December 2006, which was then forwarded to the Committee for its consideration. The Committee decided to reopen the draft for additional comments. The Committee reviewed and discussed all comments received. All drafts were distributed to over 100 interested parties and posted on the NAIC Web site. Interested parties that commented on the drafts included industry groups such as the American Council of Life Insurance (ACLI) and MetLife; the American Academy of Actuaries (AAA); and consumer groups, such as the Center for Economic Justice (CEJ) and Anti-Defamation League.

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).

Each draft of the proposed revisions to the model was circulated to interested parties and posted on the NAIC website. Interested parties were given the opportunity to submit comments. The Working Group and Committee reviewed and considered all comments received. Please see below.

6. A discussion of the significant issues (items of some controversy) raised during the due process and the group's response.

The main issue that arose during the drafting process concerned the approach to be used to address the issue and in what manner, if at all, insurers could underwrite life insurance policies based on past or future lawful travel. Among the more controversial provisions in the different approaches debated, was a proposed revision that would have required insurers to file with the commissioner a complete description of any underwriting guidelines based on an individual's future lawful travel plans and the supporting actuarial analysis. Another approach offered that also was controversial concerned what exceptions should be included in the revisions that would allow an insurer to underwrite based on future lawful travel to a specific travel destination if certain specified conditions exist at that travel destination or certain alerts have been issued concerning that specific travel destination. Another approach offered suggested that the revisions were not necessary, but if revisions were made that such revisions apply to future lawful travel plans only. The Committee extensively debated these approaches and others offered. The final revisions represent a compromise reached between all of the impacted stakeholders.

7. Any other important information (e.g., amending an accreditation standard).

None.

Travel Underwriting UTPA Revisions Development Timeline

Date	Action
March 5, 2006	At the NAIC 2006 Spring National Meeting, the Life Insurance and Annuities Committee (Committee) decides to form a working group to work on the Committee's 2006 charge on travel underwriting.
Sept. 9, 2006	At the NAIC 2006 Fall National Meeting, the Working Group holds a public hearing. Congresswoman Debbie Wasserman Schultz (FL) provided taped testimony. Other participants were: Arnold Dicke (American Academy of Actuaries); Karen Aroesty (Anti-Defamation League); Robbie Meyer (American Council of Life Insurers); and Birny Birnbaum (Center for Economic Justice).
Nov. 27, 2006	1 st Draft of proposed revisions to the Unfair Trade Practices Model Act (UTPA) to address travel underwriting is distributed for comment to over 100 interested parties. Draft also posted on the NAIC Web site.
Dec. 4, 2006	The Working Group holds a conference call to discuss the comments received on the Nov. 27, 2006, draft. Interested parties, including ACLI, CEJ, and AAA, discuss their comments. The Committee directs NAIC staff to prepare and distribute for comment a new draft of revisions to reflect the conference call discussion.
Dec. 15, 2006	2 nd Draft of proposed revisions to the UTPA is distributed for comment to over 100 interested parties. Draft also posted on the NAIC Web site.
Dec. 20, 2006	Working Group holds a conference call to discuss the comments received on the Dec. 15, 2006, draft. Interested parties, including ACLI, CEJ, and AAA discuss their comments. Working Group adopts with amendments to send to the Committee for its consideration. The Working Group directs NAIC staff to prepare and distribute for comment the revised draft.
Dec. 20, 2006	3 rd Draft of proposed revisions, as adopted by the Working Group, distributed to over 100 interested parties. Draft posted on the NAIC Web site.
March 5, 2007	Committee holds a conference call to discuss the comments received on the Dec. 20, 2006, draft. Interested parties, including ACLI, CEJ, and AAA, discuss their comments. The Committee took the comments under advisement.
March 11, 2007	At the NAIC 2007 Spring National Meeting, the Committee adopts revisions to Dec. 20, 2006, draft based on Alabama comments (with a tie vote and Chair breaking the tie in favor the revisions). Committee decides to hold draft.
March 11, 2007	4 th Draft of proposed revisions is distributed for comment to over 100 interested parties. Draft posted on NAIC Web site.
June 12, 2007	5 th draft of proposed revisions is distributed for comment to over 100 interested parties. Draft posted on NAIC Web site.
Aug. 28, 2007	Committee holds a conference call to discuss model law development or guideline status for UTPA revisions. Committee decides on guideline status.
Sept. 30, 2007	At the NAIC 2007 Fall National Meeting, the Committee discusses the UTPA revisions. Interested parties comment on the major issues. Discussion of a dual-option approach.
Nov. 27, 2007	Committee holds a conference call to discuss the approach to the UTPA revisions. Decides to again pursue single-option approach and to try to reach a consensus. Announces plans to continue discussion at NAIC 2007 Winter National Meeting.
Dec. 3, 2007	At the NAIC 2007 Winter National Meeting, the Committee decides to re-circulate the June 12, 2007, draft with a new comment period of Jan. 10, 2008, particularly for Committee members

Date	Action
	wishing to submit additional comments.
Jan. 15, 2008	NAIC staff re-distributes June 12, 2007, draft and comments received to over 100 interested parties. Asks for additional comments by Feb. 22, 2008.
Feb. 25, 2008	NAIC staff distributes all additional comments received by the Feb. 22, 2008, deadline to over 100 interested parties. All comments posted on NAIC Web site.
March 24, 2008	Committee holds a conference call and, again, discusses the travel underwriting revisions to UTPA.
March 27, 2008	6 th draft of proposed revisions is distributed for comment to over 100 interested parties.
March 30, 2008	At NAIC 2008 Spring National Meeting, Committee discusses March 27, 2008, draft and adopts unanimously.
April 17, 2008	The Committee holds a conference call on April 17, 2008, and adopts clarifying revisions to the version the Committee adopted at the NAIC 2008 Spring National Meeting.