

PROJECT HISTORY - 2006

UNAUTHORIZED TRANSACTION OF INSURANCE CRIMINAL MODEL ACT (#890)

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

This act relates to criminal penalties for the unlawful transaction of insurance or health coverage.

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

This model was developed by the MEWA Subgroup of the Producer, Company, Unauthorized Entities and Unlawful Activity Working Group of the Antifraud (D) Task Force and first presented at the March 14, 2004, NAIC National Meeting in New York.

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

Develop a program to enhance recognition, investigation and prosecution of current unauthorized entities' fraud in the marketplace and current regulatory and law enforcement responses; identify or develop recommendations for coordination and cooperation between state insurance department and law enforcement authorities on unauthorized issues.

Develop methods to enhance the investigation and prosecution of financial services fraud.

Establish guidelines on the investigative and prosecutorial resources necessary to investigate insider insurance industry fraud.

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 open to comments and participation by all interested parties. Representatives from the producer, life, health and consumer areas participated in the process and discussion. Comments were received on each draft of the model and considered by the working grouping in open session.

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)

Copies of each draft were posted on the NAIC website and ample time provided for comments on each draft. Beginning with the March 2004 NAIC National Meeting the MEWA Subgroup presented the first draft to the working group. A new draft was introduced at the 2005 NAIC Summer National Meeting and further discussion and comments were received from all parties. A new draft was introduced in of April 2006 and open for comment. After the 2006 NAIC Summer National Meeting a new draft was introduced in July of 2006 and open for comment. On August 31, 2006, a final draft was introduced at the 2006 NAIC Fall National Meeting. After the working group and Antifraud (D) Task Force adopted the model, a hearing was held at the (D) committee.

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

- 1) The definition of "Certificate of authority" was changed to a "license issued by the Commissioner of Insurance, authorizing to act as an insurer."
- 2) The definition of "Represent or aid" was added to the model to have the meaning provided from a state's applicable Insurance Code definition.
- 3) State Department of Insurance shall preempt local regulation of insurance. Interested parties wanted to make sure that the preemption was for local and not federal regulation and that jurisdiction was defined.
- 4) The non-admitted or surplus lines insurers wanted explicit language in the context of the model to give specific recognition for surplus lines transaction or exemption from sanctions. The working group decided to address the issue with a drafting note.

- 5) Industry wanted a “knowingly” standard in Section 4 and the working group agreed on “knowingly acted as or reasonably should have known”.
- 6) Industry urged the working group to create a new section to provide producers a “safe harbor” from prosecution if they receive verification from the state department of insurance that an entity was authorized. The working group expressed concern about producers claiming they contacted the state department of insurance without a way to verify or refute these claims. The working group wanted to maintain the responsibility for producers to conduct their own due diligence on the companies and products they wish to sell. The working group felt that inadvertent acts would not equate to knowingly or intentional acts. Because of this, the working group decided a producer could argue in a court about the steps they took to determine if a company or product was valid and why they should not have known about a company or product being unauthorized.

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

Congress and the General Accounting Office (GAO) have expressed interest in unauthorized activity by licensed and unlicensed producers taking advantage of unsuspecting consumers. Many states have enacted legislation criminalizing the sale and marketing of unauthorized products.