

**OH DOI COMMENTS**

**PRODUCER LICENSING MODEL ACT**

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**Section 1. Purpose and Scope**

This Act governs the qualifications and procedures for the licensing of insurance producers. It simplifies and organizes some statutory language to improve efficiency, permits the use of new technology and reduces costs associated with issuing and renewing insurance licenses.

This Act does not apply to excess and surplus lines agents and brokers licensed pursuant to Section [refer to state excess and surplus lines statutes] except as provided in Section 8 and Section 16B of this Act.

**Drafting Note:** It is recommended that any statute or regulation inconsistent with this Act be repealed or amended.

**Drafting Note:** This Act also requires a report to the insurance commissioner of the termination of a producer by an insurer, whether with or without cause.

**Section 2. Definitions**

- A. “Business entity” means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.
- B. “Home state” means the District of Columbia and any state or territory of the United States in which an insurance producer maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance producer.
- C. “Insurance” means any of the lines of authority in [insert reference to appropriate section of state law].
- D. “Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance.
- E. “Insurer” means [insert reference to appropriate section of state law].
- F. “License” means a document issued by this state’s insurance commissioner authorizing a person to act as an insurance producer for the lines of authority specified in the document. The license itself does not create any authority, actual, apparent or inherent, in the holder to represent or commit an insurance carrier.

- G. “Limited line credit insurance” includes credit life, credit disability, credit property, credit unemployment, involuntary unemployment, mortgage life, mortgage guaranty, mortgage disability, guaranteed automobile protection (gap) insurance, and any other form of insurance offered in connection with an extension of credit that is limited to partially or wholly extinguishing that credit obligation that the insurance commissioner determines should be designated a form of limited line credit insurance.
- H. “Limited line credit insurance producer” means a person who sells, solicits or negotiates one or more forms of limited line credit insurance coverage to individuals through a master, corporate, group or individual policy.
- I. “Limited lines insurance” means those lines of insurance defined in [insert reference to state specific limited line statute] or any other line of insurance that the insurance commissioner deems necessary to recognize for the purposes of complying with Section 8E.
- J. “Limited lines producer” means a person authorized by the insurance commissioner to sell, solicit or negotiate limited lines insurance.
- K. “Negotiate” means the act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms or conditions of the contract, provided that the person engaged in that act either sells insurance or obtains insurance from insurers for purchasers.
- L. “Person” means an individual or a business entity.
- M. “Sell” means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.
- N. “Solicit” means [the act of contacting a consumer to pre-qualify and/or gauge their interest in purchasing insurance](#), attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular insurance company.
- O. “Terminate” means the cancellation of the relationship between an insurance producer and the insurer or the termination of a producer’s authority to transact insurance.
- P. “Uniform Business Entity Application” means the current version of the NAIC Uniform Business Entity Application for resident and nonresident business entities.
- Q. “Uniform Application” means the current version of the NAIC Uniform Application for resident and nonresident producer licensing.

### **Section 3. License Required**

A person shall not sell, solicit or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this Act.

### **Section 4. Exceptions to Licensing**

- A. Nothing in this Act shall be construed to require an insurer to obtain an insurance producer license. In this section, the term “insurer” does not include an insurer’s officers, directors, employees, subsidiaries or affiliates.
- B. A license as an insurance producer shall not be required of the following:
  - (1) An officer, director or employee of an insurer or of an insurance producer, provided that the officer, director or employee does not receive any commission on policies written or sold to insure risks residing, located or to be performed in this state and:
    - (a) The officer, director or employee’s activities are executive, administrative, managerial, clerical or a combination of these, and are only indirectly related to the sale, solicitation or



- (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) A person who secures and furnishes information for the purpose of group life insurance, group property and casualty insurance, group annuities, group or blanket accident and health insurance; or for the purpose of enrolling individuals under plans; issuing certificates under plans or otherwise assisting in administering plans; or performs administrative services related to mass marketed property and casualty insurance; where no commission is paid to the person for the service;
  - (3) An employer or association or its officers, directors, employees, or the trustees of an employee trust plan, to the extent that the employers, officers, employees, director or trustees are engaged in the administration or operation of a program of employee benefits for the employer's or association's own employees or the employees of its subsidiaries or affiliates, which program involves the use of insurance issued by an insurer, as long as the employers, associations, officers, directors, employees or trustees are not in any manner compensated, directly or indirectly, by the company issuing the contracts;
  - (4) Employees of insurers or organizations employed by insurers who are engaging in the inspection, rating or classification of risks, or in the supervision of the training of insurance producers and who are not individually engaged in the sale, solicitation or negotiation of insurance;
  - (5) A person whose activities in this state are limited to advertising without the intent to solicit insurance in this state through communications in printed publications or other forms of electronic mass media whose distribution is not limited to residents of the state, provided that the person does not sell, solicit or negotiate insurance that would insure risks residing, located or to be performed in this state;
  - (6) A person who is not a resident of this state who sells, solicits or negotiates a contract of insurance for commercial property and casualty risks to an insured with risks located in more than one state insured under that contract, provided that that person is otherwise licensed as an insurance producer to sell, solicit or negotiate that insurance in the state where the insured maintains its principal place of business and the contract of insurance insures risks located in that state; or
  - (7) A salaried full-time employee who counsels or advises his or her employer relative to the insurance interests of the employer or of the subsidiaries or business affiliates of the employer provided that the employee does not sell or solicit insurance or receive a commission.

**Drafting Note:** Persons who provide general insurance advice in connection with providing other professional services such as legal services, trust services, tax and accounting services, financial planning and investment advisory services are not deemed to be soliciting the sale of insurance under this Act. Sections 3 and 4 of this Act are intended to address all persons meeting the definition of "insurance producer" as defined in Title III, Section 336, of Public Law No. 106-102 (the "Gramm-Leach-Bliley Act").

## **Section 5. Application for Examination**

- A. A resident individual applying for an insurance producer license shall pass a written examination unless exempt pursuant to Section 9. The examination shall test the knowledge of the individual concerning the lines of authority for which application is made, the duties and responsibilities of an insurance producer and the insurance laws and regulations of this state. Examinations required by this section shall be developed and conducted under rules and regulations prescribed by the insurance commissioner.
- B. The insurance commissioner may make arrangements, including contracting with an outside testing service, for administering examinations and collecting the nonrefundable fee set forth in [insert appropriate reference to state law or regulation].

- 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. An individual who fails to appear for the examination as scheduled or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

**Drafting Note:** A state may wish to prescribe by regulation limitations on the frequency of application for examination in addition to other preclicensing requirements.

**Section 6. Application for License**

- A. A person applying for a resident insurance producer license shall make application to the insurance commissioner on the Uniform Application and declare under penalty of refusal, suspension or revocation of the license that the statements made in the application are true, correct and complete to the best of the individual's knowledge and belief. Before approving the application, the insurance commissioner shall find that the individual:
  - (1) Is at least eighteen (18) years of age;
  - (2) Has not committed any act that is a ground for denial, suspension or revocation set forth in Section 12;
  - (3) Where required by the insurance commissioner, has completed a preclicensing course of study for the lines of authority for which the person has applied;

**Drafting Note:** Paragraph (3) would apply only to those states that have preclicensing education requirements.

- (4) Has paid the fees set forth in [insert appropriate reference to state law or regulation]; and
  - (5) Has successfully passed the examinations for the lines of authority for which the person has applied.
- B. A business entity acting as an insurance producer is required to obtain an insurance producer license. Application shall be made using the Uniform Business Entity Application. Before approving the application, the insurance commissioner shall find that:
  - (1) The business entity has paid the fees set forth in [insert appropriate reference to state law or regulation]; and
  - (2) The business entity has designated a licensed producer responsible for the business entity's compliance with the insurance laws, rules and regulations of this state.

**Drafting Note:** Subsection B is optional and would apply only to those states that have a business entity license requirement.

- C. The insurance commissioner may require any documents reasonably necessary to verify the information contained in an application.
- D. Each insurer that sells, solicits or negotiates any form of limited line credit insurance shall provide to each individual whose duties will include selling, soliciting or negotiating limited line credit insurance a program of instruction that may be approved by the insurance commissioner.

**Section 7. License**

- A. Unless denied licensure pursuant to Section 12, persons who have met the requirements of Sections 5 and 6 shall be issued an insurance producer license. An insurance producer may receive qualification for a license in one or more of the following lines of authority:

- (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 commissioner deems necessary.
- F. Licensees shall inform the insurance commissioner by any means acceptable to the insurance commissioner of a change of address within thirty (30) days of the change. Failure to timely inform the insurance commissioner of a change in legal name or address shall result in a penalty pursuant to [insert appropriate reference to state law].
- G. In order to assist in the performance of the insurance commissioner’s duties, the insurance commissioner may contract with non-governmental entities, including the National Association of Insurance Commissioner (NAIC) or any affiliates or subsidiaries that the NAIC oversees, to perform any ministerial functions, including the collection of fees, related to producer licensing that the insurance commissioner and the non-governmental entity may deem appropriate.

**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 license issued by the producer's home state. For the purposes of Section 8E, limited line insurance is any authority granted by the home state which restricts the authority of the license to less than the total authority prescribed in the associated major lines pursuant to Section 7A(1) through (6).

**Section 9. Exemption from Examination**

- A. An individual who applies for an insurance producer license in this state who was previously licensed for the same lines of authority in another state shall not be required to complete any prelicensing education or examination. This exemption is only available if the person is currently licensed in that state or if the application is received within ninety (90) days of the cancellation of the applicant's previous license and if the prior state issues a certification that, at the time of cancellation, the applicant was in good standing in that state or the state's Producer Database records, maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries, indicate that the producer is or was licensed in good standing for the line of authority requested.
- B. A person licensed as an insurance producer in another state who moves to this state shall make application within ninety (90) days of establishing legal residence to become a resident licensee pursuant to Section 6. No prelicensing education or examination shall be required of that person to obtain any line of authority previously held in the prior state except where the insurance commissioner determines otherwise by regulation.

**Section 10. Assumed Names**

An insurance producer doing business under any name other than the producer's legal name is required to notify the insurance commissioner prior to using the assumed name.

**Section 11. Temporary Licensing**

- A. The insurance commissioner may issue a temporary insurance producer license for a period not to exceed one hundred eighty (180) days without requiring an examination if the insurance commissioner deems that the temporary license is necessary for the servicing of an insurance business in the following cases:
- (1) To the surviving spouse or court-appointed personal representative of a licensed insurance producer who dies or becomes mentally or physically disabled to allow adequate time for the sale of the insurance business owned by the producer or for the recovery or return of the producer to the business or to provide for the training and licensing of new personnel to operate the producer's business;
  - (2) To a member or employee of a business entity licensed as an insurance producer, upon the death or disability of an individual designated in the business entity application or the license;
  - (3) To the designee of a licensed insurance producer entering active service in the armed forces of the United States of America; or
  - (4) In any other circumstance where the insurance commissioner deems that the public interest will best be served by the issuance of this license.
- B. The insurance commissioner may by order limit the authority of any temporary licensee in any way deemed necessary to protect insureds and the public. The insurance commissioner may require the temporary licensee to have a suitable sponsor who is a licensed producer or insurer and who assumes responsibility for all acts of the temporary licensee and may impose other similar requirements designed to protect insureds and the public. The insurance commissioner may by order revoke a temporary license if the interest of insureds or the public are endangered. A temporary license may not continue after the owner or the personal representative disposes of the business.

**Section 12. License Denial, Nonrenewal or Revocation**

- A. The insurance commissioner may place on probation, suspend, revoke or refuse to issue or renew an insurance producer's license or may levy a civil penalty in accordance with [insert appropriate reference to state law] or any combination of actions, for any one or more of the following causes:
- (1) Providing incorrect, misleading, incomplete or materially untrue information in the license application;
  - (2) Violating any insurance laws, or violating any regulation, subpoena or order of the insurance commissioner or of another state's insurance commissioner;
  - (3) Obtaining or attempting to obtain a license through misrepresentation or fraud;
  - (4) Improperly withholding, misappropriating or converting any monies or properties received in the course of doing insurance business;
  - (5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;
  - (6) Having been convicted of a felony;
  - (7) Having admitted or been found to have committed any insurance unfair trade practice or fraud;



- (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) Forging another's name to an application for insurance or to any document related to an insurance transaction;
- (11) Improperly using notes or any other reference material to complete an examination for an insurance license;
- (12) Knowingly accepting insurance business from an individual who is not licensed;
- (13) Failing to comply with an administrative or court order imposing a child support obligation; or
- (14) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax.

**Drafting Note:** Paragraph (14) is for those states that have a state income tax.

- B. In the event that the action by the insurance commissioner is to nonrenew or to deny an application for a license, the insurance commissioner shall notify the applicant or licensee and advise, in writing, the applicant or licensee of the reason for the denial or nonrenewal of the applicant's or licensee's license. The applicant or licensee may make written demand upon the insurance commissioner within [insert appropriate time period from state's administrative procedure act] for a hearing before the insurance commissioner to determine the reasonableness of the insurance commissioner's action. The hearing shall be held within [insert time period from state law] and shall be held pursuant to [insert appropriate reference to state law].
- C. The license of a business entity may be suspended, revoked or refused if the insurance commissioner finds, after hearing, that an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the partnership or corporation and the violation was neither reported to the insurance commissioner nor corrective action taken.
- D. In addition to or in lieu of any applicable denial, suspension or revocation of a license, a person may, after hearing, be subject to a civil fine according to [insert appropriate reference to state law].
- E. The insurance commissioner shall retain the authority to enforce the provisions of and impose any penalty or remedy authorized by this Act and Title [insert appropriate reference to state law] against any person who is under investigation for or charged with a violation of this Act or Title [insert appropriate reference to state law] even if the person's license or registration has been surrendered or has lapsed by operation of law.

### **Section 13. Commissions**

- A. An insurance company or insurance producer shall not pay a commission, service fee, brokerage or other valuable consideration to a person for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this Act and is not so licensed.
- B. A person shall not accept a commission, service fee, brokerage or other valuable consideration for selling, soliciting or negotiating insurance in this state if that person is required to be licensed under this Act and is not so licensed.
- C. Renewal or other deferred commissions may be paid to a person for selling, soliciting or negotiating insurance in this state if the person was required to be licensed under this Act at the time of the sale, solicitation or negotiation and was so licensed at that time.

- 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 original or additional notification, the producer may file written comments concerning the substance of the notification with the insurance commissioner. The producer shall, by the same means, simultaneously send a copy of the comments to the reporting insurer, and the comments shall become a part of the insurance commissioner's file and accompany every copy of a report distributed or disclosed for any reason about the producer as permitted under Subsection F.

E. Immunities

- (1) In the absence of actual malice, an insurer, the authorized representative of the insurer, a producer, the insurance commissioner, or an organization of which the insurance commissioner is a member and that compiles the information and makes it available to other insurance commissioners or regulatory or law enforcement agencies shall not be subject to civil liability, and a civil cause of action of any nature shall not arise against these entities or their respective agents or employees, as a result of any statement or information required by or provided pursuant to this section or any information relating to any statement that may be requested in writing by the insurance commissioner, from an insurer or producer; or a statement by a terminating insurer or producer to an insurer or producer limited solely and exclusively to whether a termination for cause under Subsection A was reported to the insurance commissioner, provided that the propriety of any termination for cause under Subsection A is certified in writing by an officer or authorized representative of the insurer or producer terminating the relationship.
- (2) In any action brought against a person that may have immunity under Paragraph (1) for making any statement required by this section or providing any information relating to any statement that may be requested by the insurance commissioner, the party bringing the action shall plead specifically in any allegation that Paragraph (1) does not apply because the person making the statement or providing the information did so with actual malice.
- (3) Paragraph (1) or (2) shall not abrogate or modify any existing statutory or common law privileges or immunities.

F. Confidentiality

- (1) Any documents, materials or other information in the control or possession of the department of insurance that is furnished by an insurer, producer or an employee or agent thereof acting on behalf of the insurer or producer, or obtained by the insurance commissioner in an investigation pursuant to this section shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the insurance commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the insurance commissioner's duties.
- (2) Neither the insurance commissioner nor any person who received documents, materials or other information while acting under the authority of the insurance commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials, or information subject to Paragraph (1).
- (3) In order to assist in the performance of the insurance commissioner's duties under this Act, the insurance commissioner:

- (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) Nothing in this Act shall prohibit the insurance commissioner from releasing final, adjudicated actions including for cause terminations that are open to public inspection pursuant to [insert appropriate reference to state law] to a database or other clearinghouse service maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries of the National Association of Insurance Commissioners.

- G. Penalties for Failing to Report. An insurer, the authorized representative of the insurer, or producer that fails to report as required under the provisions of this section or that is found to have reported with actual malice by a court of competent jurisdiction may, after notice and hearing, have its license or certificate of authority suspended or revoked and may be fined in accordance with [insert appropriate reference to state law].

## **Section 16. Reciprocity**

- A. The insurance commissioner shall waive any requirements for a nonresident license applicant with a valid license from his or her home state, except the requirements imposed by Section 8 of this Act, if the applicant's home state awards nonresident licenses to residents of this state on the same basis.
- B. A nonresident producer's satisfaction of his or her home state's continuing education requirements for licensed insurance producers shall constitute satisfaction of this state's continuing education requirements if the non-resident producer's home state recognizes the satisfaction of its continuing education requirements imposed upon producers from this state on the same basis.

**Drafting Note:** States are encouraged to eliminate any licensing and appointment retaliatory fees. In accordance with Public Law No. 106-102 (the "Gramm-Leach-Bliley Act") states should not require non-resident fees that are so disparate from the resident fees that they impose a barrier to entry. Such fees would be prohibited under Public Law 106-102.

## **Section 17. Reporting of Actions**

- A. A producer shall report to the insurance commissioner any administrative action taken against the producer in another jurisdiction or by another governmental agency in this state within thirty (30) days of the final disposition of the matter. This report shall include a copy of the order, consent to order or other relevant legal documents.

- B. Within thirty (30) days of the initial pretrial hearing date, a producer shall report to the insurance commissioner any criminal prosecution of the producer taken in any jurisdiction. The report shall include a copy of the initial complaint filed, the order resulting from the hearing and any other relevant legal documents.

**Section 18. Compensation Disclosure**

- A. (1) Where any insurance producer or any affiliate of the producer receives any compensation from the customer for the placement of insurance or represents the customer with respect to that placement, neither that producer nor the affiliate shall accept or receive any compensation from an insurer or other third party for that placement of insurance unless the producer has, prior to the customer's purchase of insurance:
- (a) Obtained the customer's documented acknowledgment that such compensation will be received by the producer or affiliate; and
  - (b) Disclosed the amount of compensation from the insurer or other third party for that placement. If the amount of compensation is not known at the time of disclosure, the producer shall disclose the specific method for calculating the compensation and, if possible, a reasonable estimate of the amount.
- (2) Paragraph (1) shall not apply to an insurance producer who:
- (a) Does not receive compensation from the customer for the placement of insurance; and
  - (b) In connection with that placement of insurance represents an insurer that has appointed the producer; and
  - (c) Discloses to the customer prior to the purchase of insurance:
    - (i) That the insurance producer will receive compensation from an insurer in connection with that placement; or
    - (ii) That, in connection with that placement of insurance, the insurance producer represents the insurer and that the producer may provide services to the customer for the insurer.

**Drafting Note:** In states where no appointment is required, the phrase "that has contractually authorized the producer to act as its legal agent" may be substituted for "that has appointed the producer."

- B. A person shall not be considered a "customer" for purposes of this section if the person is merely:
- (1) A participant or beneficiary of an employee benefit plan; or
  - (2) Covered by a group or blanket insurance policy or group annuity contract sold, solicited or negotiated by the insurance producer or affiliate.
- C. This section shall not apply to:
- (1) A person licensed as an insurance producer who acts only as an intermediary between an insurer and the customer's producer, for example a managing general agent, a sales manager, or wholesale broker; or
  - (2) A reinsurance intermediary.

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 in [insert reference to statutory provisions or regulations] or any fee or amount collected by or paid to the producer that does not exceed an amount established by the commissioner.
- (4) “Documented acknowledgement” means the customer’s written consent obtained prior to the customer’s purchase of insurance. In the case of a purchase over the telephone or by electronic means for which written consent cannot reasonably be obtained, consent documented by the producer shall be acceptable.

E. This section shall take effect [insert date].

**Drafting Note:** States that are considering the licensing of business entities should reference Section 6B of the NAIC’s Producer Licensing Model Act and the Uniform Application for Business Entity License/Registration, which address the licensing of a business entity acting as an insurance producer.

#### **Section 19. Regulations**

The insurance commissioner may, in accordance with [insert appropriate reference to state law], promulgate reasonable regulations as are necessary or proper to carry out the purposes of this Act.

#### **Section 20. Severability**

If any provisions of this Act, or the application of a provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of the provision to persons or circumstances other than those to which it is held invalid, shall not be affected.

#### **Section 21. Effective Date**

This Act shall take effect [insert date].

**Note:** A minimum of six months to one year implementation time for proper notice of changes, fees and procedures is recommended.

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#### *Chronological Summary of Action (all references are to the Proceedings of the NAIC)*

1988 Proc. 19, 18, 91, 101-102, 106-109 (adopted).  
1989 Proc. 19, 21, 125, 129, 135-142 (amended and reprinted).  
1989 Proc. II 13, 22-23, 161, 166-167, 178-184, 189-190 (amended and reprinted).  
1990 Proc. II 7, 13-14, 159-160, 192, 195 (amended).  
1997 Proc. 3<sup>rd</sup> Quarter 25, 26, 1148, 1166-1168 (amended).  
1999 Proc. 3<sup>rd</sup> Quarter 121, 123-136 (model adopted by parent committee).  
2000 Proc. 1<sup>st</sup> Quarter 9-23, 33 (amended and reprinted).  
2000 Proc. 3<sup>rd</sup> Quarter 7, 11, 36-45, 386, 403 (amended and reprinted).  
2005 Proc. 1<sup>st</sup> Quarter 55, 56-57 (amended).

## 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**

**KEY:**

**MODEL ADOPTION:** States that have citations identified in this column adopted the most recent version of the NAIC model in a **substantially similar manner**. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

**RELATED STATE ACTIVITY:** Examples of Related State Activity include but are not limited to: older versions of the NAIC model, statutes or regulations addressing the same subject matter, or other administrative guidance such as bulletins and notices. States that have citations identified in this column **only** (and nothing listed in the Model Adoption column) have **not** adopted the most recent version of the NAIC model in a **substantially similar manner**.

**NO CURRENT ACTIVITY:** No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Alabama		ALA. CODE §§ 27-7-1 to 27-7-40 (1957/2014) (previous version of model); ALA. ADMIN. CODE r. 482-1-109-.01 to 482-1-109-.06 (1994/2009); 482-1-110-.01 to 482-1-110-.09 (1994/2012); 482-1-146-.01 to 482-1-146-.14 (2009/2010); 482-1-147-.01 to 482-1-147-.13 (2012/2014).
Alaska		ALASKA STAT. §§ 21.27.010 to 21.27.570 (1966/2014) (previous version of model); § 21.97.900 (2006/2010); ALASKA ADMIN. CODE tit. 3, §§ 23.100 to 23.208 (1996/2013); BULLETIN 2004-14 (2004); BULLETIN 2006-11; BULLETIN 2009-8 (2009); BULLETIN 2015-3 (2015).
American Samoa	NO CURRENT ACTIVITY	
Arizona		ARIZ. REV. STAT. ANN. §§ 20-281 to 20-302 (2002/2015) (previous version of model); §§ 20-2901 to 20-2904 (1998/2014); BULLETIN 2009-4 (2009).
Arkansas	ARK. CODE ANN. §§ 23-64-501 to 23-64-520 (2001/2005).	ARK. CODE ANN. §§ 23-64-101 to 23-64-227 (1959/2011); § 23-64-301 (2008/2013); BULLETIN 2-2000 (2000); BULLETIN 3-2006 (2006).
California		CAL. INS. CODE §§ 1621 to 1758.993 (1959/2016); CAL. CODE REGS. tit. 10, §§ 2186 to 2188.8 (2006/2014); § 260.204.9 (2012).



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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Colorado		COLO. REV. STAT. §§ 10-2-101 to 10-2-804 (1995/2014) (previous version of model); § 18-5-211 (2014); 3 COLO. CODE REGS. §§ 702-1:1-2-4 to 702-1:1-2-5 (1995/2015); § 702-1:1-2-10 (1995/2015); § 702-1:1-2-17 (2009).
Connecticut	CONN. GEN. STAT. §§ 38a-702a to 38a-718 (2002/2004).	CONN. GEN. STAT. ANN. § 38a-702s (2014); BULLETIN 1-18 (2012).
Delaware		DEL. CODE ANN. tit. 18, §§ 1701 to 1724 (2002/2014) (previous version of model).
District of Columbia		D.C. CODE §§ 31-1131.01 to 31-1131.19 (2002/2013) (previous version of model); D.C. MUN. REGS. tit. 26A, §§ 100 to 199 (2003/2013).
Florida		FLA. STAT. §§ 626.011 to 626.711 (1959/2014) (previous version of model); FLA. ADMIN. CODE ANN. r. 69B-228.010 to 69B-228-280 (1993/2009).
Georgia		GA. CODE ANN. §§ 33-23-1 to 33-23-46 (1992/2014); GA. COMP. R. & REGS. 120-2-3-.01 to 120-2-3-.50 (1965/2014).
Guam		22 GUAM CODE ANN. §§ 15701 to 15712 (2001).
Hawaii		HAW. REV. STAT. §§ 431-9A-101 to 431-9A-130 (2002/2012) (previous version of model); HAW. CODE R. §§ 16-171-301 to 16-171-318 (2005/2013).
Idaho	IDAHO CODE ANN. §§ 41-1001 to 41-1029 (2001/2005).	
Illinois	.	215 ILL. COMP. STAT. 5/500-5 to 5/500-155 (2002/2014) (previous version of model); ILL. ADMIN. CODE tit. 50, §§ 3119.10 to 3119.80 (1985/2015); BULLETIN 2009-4 (2009); BULLETIN 2010-1 (2010).
Indiana	IND. CODE §§ 27-1-15.6-1 to 27-1-15.6-33 (2002/2014) (portions of model).	BULLETIN 218 (2015).

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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 191-111.14 (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 (1997/2010); BULLETIN 395 (2014).
Maryland		MD. CODE ANN., INS. §§ 10-101 to 10-133 (2008/2014); MD. CODE REGS. 31.03.02.01 to 31.03.02.17 (1987/2014).
Massachusetts		MASS. GEN. LAWS ch. 175, §§ 162 to 163 (2003) (previous version of model); §§ 164 to 177E (1969/2014); BULLETIN B-2005-09 (2005); BULLETIN B-2011-12 (2011); BULLETIN B-2013-09 (2013).
Michigan		MICH. COMP. LAWS §§ 500.1201 to 500.1247 (1972/2013) (previous version of model); BULLETIN 2006-09-INS (2006); MEMORANDUM 5-21-2009 (2009); MEMORANDUM 11-3-2009 (2009); BULLETIN 2013-17-INS (2013).
Minnesota		MINN. STAT. §§ 60K.30 to 60K.56 (2002/2011) (previous version of model).
Mississippi		MISS. CODE ANN. §§ 83-17-51 to 83-17-89 (2002/2015) (previous version of model); BULLETIN 2009-2 (2009); BULLETIN 2014-9 (2014).

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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 (1985/2003) (portions of model).	BULLETIN 2010-004 (2010).
New York		N.Y. INS. LAW §§ 2101 to 2139 (1984/2014); CIRCULAR LETTER 2010-18 (2010).
North Carolina		N.C. GEN. STAT. §§ 58-33-1 to 58-33-125 (1988/2013) (previous version of model); 11 N.C. ADMIN. CODE 6A.0802 (2011); MEMORANDUM 10-1-2010 (2010); MEMORANDUM 11-4-2010 (2010).
North Dakota		N.D. CENT. CODE §§ 26.1-26-01 to 26.1-26-56 (1985/2013) (previous version of model); N.D. ADMIN. CODE §§ 45-02-02-01 to 45-02-02-15 (1983/2010).
Northern Marianas		4 N. MAR. I. CODE § 7303 (1984); 11-55 N. MAR. I. ADMIN. CODE § 2 (1984).

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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).

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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 6.75 (1981/2009).
Wyoming		WYO. STAT. ANN. §§ 26-9-201 to 26-9-235 (2001/2015) (previous version of model).



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Discussion about a single licensing system for agents, brokers and other licensees began in the mid-1980s. An agents licensing advisory committee indicated it was in favor of the concept. **1986 Proc. I 132.**

That advisory committee prepared a draft of a single license statute to the task force for consideration in the summer of 1986. **1986 Proc. II 169-171.**

A group of regulators was appointed to review the concept and work on drafting model legislation. A second draft was presented in the fall of 1986. **1987 Proc. I 110-118.**

At the summer 1987 meeting a regulator noted the need for regulators to get more involved in the drafting process. He noted that regulators should be proposing drafts for comments from interested parties, not the other way around. The advisory group did present another draft document for regulator consideration. **1987 Proc. II 94, 100-104.**

A group of regulators met to consider the advisory committee draft in the fall of 1987 and produced the draft that was adopted with only one change. This draft did not repeal the Agents and Brokers Licensing Model Act, but did offer an alternative for those states wishing to adopt the single license procedure concept. **1988 Proc. I 103, 106-109.**

Several provisions of the model were rewritten over the years, but a major review of the entire model was not undertaken until 1998. Once the Single License Procedure Model Act was fully reviewed, the working group would be able to make a recommendation on whether to repeal the Agents and Brokers Model Act. **1998 Proc. 2<sup>nd</sup> Quarter I 114.**

The focus of the redraft was to codify uniform treatment of producers. That was necessary to create a more efficient licensing system and to preserve state regulation of producers. At the same time the group committed to developing a model law that was realistic and could receive broad support from regulators and the industry. In addition the drafters needed to focus on consumer protection while eliminating statutory requirements that were simply administrative burdens. **1998 Proc. 3<sup>rd</sup> Quarter 109, 112-113.**

Nearly a year after efforts to redraft the model began, the working group expressed concern that it had gotten off track. The chair restated the regulatory goals of the redraft: 1) break down barriers that do not provide a benefit; 2) create a consensus among industry and regulators; 3) recognize the importance of the Producer Information Network (PIN) and the Producer Database (PDB); and 4) remain focused on the issue of consumer protection. **1999 Proc. 1<sup>st</sup> Quarter 108.**

A few months later another regulator commented that the working group was on a path to create a monster. Regulator comments reflected an attitude of “we need it because that is the way we do it now.” Industry comments reflect an attitude of “we need it because it seems unnecessary and my company was cited for it on a market conduct examination.” This project requires more than “thinking outside the box.” It requires starting with a clean sheet of paper and designing a new way to regulate people who sell insurance. **1999 Proc. 1<sup>st</sup> Quarter 91.**

Prior to adoption of the revised model, the regulators affirmed the ultimate goal of a system of uniform licensing. A regulator expressed concern about going to the legislature twice and suggested the alternative of just adopting a provision granting reciprocity. The chair of the drafting group responded that there were many uniform provisions in the model act that were desirable, and predicted that simply granting reciprocity would not get the support of the insurance industry, which supported uniformity. **2000 Proc. 1<sup>st</sup> Quarter 10.**

The Producer Licensing Model Act was amended after the passage of the Gramm-Leach-Bliley Act of 1999 (GLBA), but before the NAIC had time for extensive review. After that time it became clear that several more issues needed to be addressed. The amendments considered in the fall of 2000 addressed issues related to limited lines, retaliatory fees and other technical changes regarding GLBA issues. **2000 Proc. 3<sup>rd</sup> Quarter 11.**

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#### Section 1. Purpose and Scope

When the NAIC began a major review of the model in 1998, an interested party suggested that Section 1 include language stating that any statute or regulation inconsistent with this act is invalid. The working group decided to add a drafting note. **1998 Proc. 3<sup>rd</sup> Quarter 106.**

The model had contained a paragraph noting that states had the flexibility to set conditions, terms and fees. Since the focus of the project was uniformity, the working group decided to delete the word “flexible” from the second paragraph, which had been in the model from its inception. **1998 Proc. 3<sup>rd</sup> Quarter 107.**

At one point a regulator suggested modifying the scope section to clarify that bail bond agents and viatical settlement brokers do not fall within the scope of the model. The working group recognized the concern but agreed not to make an amendment to this section. **2000 Proc. 2<sup>nd</sup> Quarter 400.**

#### Section 2. Definitions

A. Earlier versions of the model defined “firm” but during the extensive redraft begun in 1998 the regulators considered a definition instead of “business entity.” Included in that discussion was exploration of the idea of a firm license where individuals in the firm would not need to be licensed outside their home state. **1998 Proc. 3<sup>rd</sup> Quarter 107-108.**

The chair of the drafting group prepared written comments on the proposal. He opined that it went too far in eliminating licensing requirements for non-resident producers. He recommended instead that the model eliminate reference to firms and corporations and focus on licensing each producer. **1998 Proc. 3<sup>rd</sup> Quarter 110-111.**

One regulator said her state licensed firms because their agents could not obtain a non-resident license in certain states that require a firm license. Several other states spoke of the variations on this theme that their states follow. **1998 Proc. 3<sup>rd</sup> Quarter 108.**

One regulator said he had concerns about eliminating firm and corporate licensing because the situation might arise when a firm was soliciting in the state but no individual was soliciting. He suggested that the working group eliminate firm appointments but not firm licensure. The chair concurred that this might be a possible solution as firms currently incur appointment fees for each producer and also tremendous internal costs, since they are required also to internally track each appointment. **1998 Proc. 3<sup>rd</sup> Quarter 108.**

Another regulator said his state did not license corporations, but that the influx of banks and entities that have significant control over agents may lead to the requirement of firm licensure. He opined that there is no need for appointments, as the agent/principal relationship is already established. **1998 Proc. 3<sup>rd</sup> Quarter 108.**

An interested party suggested the working group focus on licensing agents and let the Secretary of State license entities. He opined the firm licensure is not needed as long as the following issues are addressed: (1) payment of commissions to agents and (2) advertising. **1998 Proc. 3<sup>rd</sup> Quarter 108.**

At the next meeting discussion continued on the advisability of licensing firms or individuals. One regulator questioned whether a sole proprietor would be considered an individual. The general consensus of the group was that it would. The recommendation was to consider a sole proprietor as an individual unless he incorporated. Then he would fall under the definition of business entity. **1998 Proc. 4<sup>th</sup> Quarter I 107.**

One regulator expressed concern over the phrase “or other legal entity.” He said it was not clearly defined. **1998 Proc. 4<sup>th</sup> Quarter I 107.**

B. A regulator questioned whether “home state” meant the producer’s primary place of residence or the producer’s principal place of business. Staff noted that the federal Gramm-Leach-Bliley Act of 1999 defined the home state as the producer’s principal place of business. The working group considered defining the home state as the place where the producer was licensed as a resident producer to avoid problems. **1999 Proc. 4<sup>th</sup> Quarter 111.**



## PRODUCER LICENSING MODEL ACT

### Proceedings Citations

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#### 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. 1<sup>st</sup> 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 licensed under the laws of the state to transact the business of insurance on behalf of an insurer. **1998 Proc. 3<sup>rd</sup> Quarter 107.**

The working group chair drew up a list of further explanations and examples of what the terms meant. **1998 Proc. 3<sup>rd</sup> Quarter 111.**

E. The working group drafting amendments in 1998-1999 looked at the definition of insurer and considered several alternatives. They could continue to use the definition added with the 1997 amendments to refer to the appropriate section of state law, or they could use a definition suggested for the drafters. One regulator expressed concern about conflicting with an existing definition, and another suggested adding the prefix, “For the purposes of this Act,” to alleviate that concern. The working group agreed to retain the definition already in place. **1998 Proc. 4<sup>th</sup> Quarter I 106.**

F. When the first model was adopted, there was little discussion of its provisions. There was discussion, though, of the last-minute amendment to add the second sentence to the definition of license. The sentence was important to make it clear that there was no change intended in the common law interpretation of agency. The drafting group did not express a great concern over this issue, but it was the consensus that the language did not pose any problem as it essentially restated the current status of the law. **1988 Proc. I 103.**

When the NAIC was examining the entire model during the 1998-1999 redraft to promote uniformity and reciprocity, one regulator questioned the purpose of the last sentence. Another regulator responded that the sentence clarifies that the authority granted is what is important and not the paper itself. **1998 Proc. 3<sup>rd</sup> Quarter 107.**

Further discussion focused on whether the license would specify the classes of insurance. The chair expressed the hope that most states would use the five major lines of insurance specified in the NAIC Declaration of Uniform Treatment. The group decided to retain the definition that had been in the model since its beginning. **1998 Proc. 4<sup>th</sup> Quarter I 106.**

G. This definition was included during the extensive redraft that took place in 1998-1999. **2000 Proc. 1<sup>st</sup> Quarter 11.**

The regulators considered a suggestion to delete the word “credit” from this definition to broaden its effect. A representative from a credit insurance association spoke against that suggestion. He said a lot of work went into the credit insurance definition and said its true intent could be lost. **2000 Proc. 1<sup>st</sup> Quarter 571-572.**

When considering modifications to limited lines provisions, the chair commented that the subsection references automobile dealer gap protection and that the subsection should be expanded to address all groups selling gap insurance and not just automobile dealers. **2000 Proc. 1<sup>st</sup> Quarter 572.**

H. This definition was added as part of the drafting effort that took place in 1998-1999. **2000 Proc. 1<sup>st</sup> Quarter 11.**

I. When first beginning a major redraft of the model in 1998, the working group discussed limited lines. Because of the concerns raised, the working group agreed to put the issue of limited lines aside and address it at a later time. **1998 Proc. 3<sup>rd</sup> Quarter 106.**

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#### Section 2I (cont.)

After the model with its extensive amendments was adopted in January 2000, the working group was asked to further address the issue of limited lines licensure. One regulator suggested eliminating the reference to “credit” in Subsection G to broaden that definition. Another regulator suggested expanding Section 8E and adding definitions for “limited lines insurance” and “limited lines producer.” He suggested it was important to incorporate language into the model act that allowed the commissioner to create new limited lines. **2000 Proc. 1<sup>st</sup> Quarter 571.**

As part of the effort to address limited lines licensing, the working group agreed to add a new definition to the model act describing limited lines insurance. Once regulator suggested that the reference to Section 8E needed to be eliminated as limited lines insurance applies to more than non-resident producers. An interested party suggested the reference was needed because the goal was to limit the commissioner’s authority to create new limited lines necessary to comply with GLBA. He said the first part of the definition applied to resident limited lines licenses and allowed states to create any limited lines license for resident producers. The second part of the definition addressed the need to create new limited lines licenses to ensure compliance with GLBA. **2000 Proc. 2<sup>nd</sup> Quarter 397.**

J. The definition was added during the summer 2000 effort to address limited lines. **2000 Proc. 2<sup>nd</sup> Quarter 397.**

K. During the drafting efforts of 1998-1999, the drafters agreed to add a definition of negotiate. One regulator suggested adding the phrase “conferring directly or *indirectly*” to the definition. Interested parties expressed concern that the word “indirectly” would be too encompassing. **1998 Proc. 4<sup>th</sup> Quarter I 108.**

After the model was adopted, regulators continued to discuss the definition of negotiate and its impact on consultants. A regulator said he did not believe consultants would fall under that definition. The chair said that states currently licensing consultants have specific statutes. States with no specific statutes pertaining to consultants needed to consider how they would license or authorize consulting. **2000 Proc. 1<sup>st</sup> Quarter 573.**

L. One regulator expressed concern that the definition of person as used in this model act might conflict with the definition of person contained elsewhere in state code. An interested party expressed concern about the old definition with the word “includes.” The working group agreed to define person as an individual or a business entity. **1998 Proc. 4<sup>th</sup> Quarter I 107.**

M. One regulator questioned the definition of “sell,” added with the amendments developed in 1998-1999. He asked why the phrase “money or its equivalent” was used in the definition. An interested party responded that this phrase was used in the commission sharing rules. **1999 Proc. 1<sup>st</sup> Quarter 92.**

N. The working group drafting amendments in 1998-1999 decided to add a definition of “solicit” to the model. An interested party urged the working group to keep it as simple as possible. The first definition agreed upon was to approach another with a request or to urge another to apply for or purchase an insurance product. An interested party said that “approach another” could be construed to encompass advertising. The next suggested definition was to approach another with an offer to apply or purchase. An interested party said that “offer” is not the appropriate term to use because the process of submitting an application for insurance is the offer and only insurers “approach” potential applicants. **1998 Proc. 4<sup>th</sup> Quarter I 107-108.**

An interested party opined that the suggested language “attempt to sell” or “approach” could encompass casual conversations, such as a father talking to his son about insurance. Another responded that this scenario should not be a concern because the father is not an insurance company with a product to sell. **1998 Proc. 4<sup>th</sup> Quarter I 108.**

O. The definition added to the model with the amendments on termination simply said it was the cancellation of the relationship between the producer and the insurer. Concern was expressed that the definition may not address terminations initiated by a regulatory agency. The group addressed that concern first by considering adding “... or by operation of law” at the end of the sentence. **1998 Proc. 4<sup>th</sup> Quarter I 107.**

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#### Section 2 (cont.)

P. This definition was added during the extensive redraft that took place in 1998-1999. **2000 Proc. 1<sup>st</sup> 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. 4<sup>th</sup> 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. 3<sup>rd</sup> 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. 3<sup>rd</sup> 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. 4<sup>th</sup> 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. 1<sup>st</sup> 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. 1<sup>st</sup> 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. 1<sup>st</sup> Quarter 110.**

The working group considered whether there should be a difference between quoting rates over the phone or on an Internet web site. One regulator saw those as two different activities and another said they were very similar. **1999 Proc. 1<sup>st</sup> Quarter 110.**

After extensive discussion of the itemized lists of licensable and non-licensable activities, one regulator commented that a detailed list of licensable and non-licensable activities may not be needed. He suggested regulators review the definitions of effectuate, negotiate and solicit. **1999 Proc. 1<sup>st</sup> Quarter 109.**

#### Section 4. Exceptions to Licensing

The model as it existed before 2000 had exceptions to licensing in the same section as the requirements for licensing. As the redraft began in 1998, one of the first suggestions was to place the exceptions in a “carve out” section. **1998 Proc. 3<sup>rd</sup> Quarter 109.**

In addition a separate section of exceptions existed. The working group agreed to move that section to become Section 4. Many of the requirements in the old Section 10 became provisions of Subsection B. **1989 Proc. II 181-182.**

Numerous exceptions were suggested by interested parties that did not remain until the model was finalized. **1998 Proc. 4<sup>th</sup> Quarter I 109-110.**

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#### Section 4 (cont.)

During the development of Section 4, a regulator drew up a list of non-licensable activities, which were extensively discussed by the working group. The list contained extensive descriptions of ministerial-type functions. **1999 Proc. 1<sup>st</sup> Quarter 110, 112-113.**

B. Discussion took place in the summer of 1988 to amend the model by adding exceptions to the licensing requirements. A version of the exceptions language was adopted in December 1988, but the drafting group expressed its intent to continue other modifications. **1989 Proc. I 129, 138-139.**

A regulator commented that an extensive list of exceptions to licensing was generally unnecessary. One danger of making a list is that it can never be complete and someone always wants to amend it to add another item. **1999 Proc. 1<sup>st</sup> Quarter 91.**

Interested parties presented a proposal that included a lengthy list of exceptions. Many of the suggestions were incorporated in the final version of the model. **1999 Proc. 1<sup>st</sup> Quarter 98.**

The working group spent a great deal of time discussing proposals for language in Paragraph (1). An interested party said 35 states had licensing exceptions for officers, directors and employees who engaged in clerical work. The key elements in these exceptions focused on the fact that these individuals did not receive commissions and their primary jobs did not involve the sale, solicitation, or negotiation of insurance. Another interested party suggested adding the word “incidental” to help clear up the gray area surrounding what activities fall within the definition of sell, solicit or negotiate. For example, some states consider the giving of quotes to be a licensable activity and it is unclear whether a person who helps an applicant complete an application needs to be licensed. **1999 Proc 3<sup>rd</sup> Quarter 143-144.**

An interested party expressed concern about Paragraph (2), which addressed mass marketing of property and casualty insurance. She stated that in group life insurance the employer is the owner of the policy, but the employer is not the owner of a policy of group property and casualty insurance. A regulator said that the paragraph seemed to lump together group insurance and mass marketed insurance and the two items needed to be separated. In mass marketed insurance, the employer makes the coverage available to employees but the employees who select the insurance are individually underwritten and receive an individual policy. The working group agreed to reword the paragraph to clarify the distinction between the two concepts. **1999 Proc. 3<sup>rd</sup> Quarter 144.**

The working group focused discussion at one point on the language that became Paragraph (5) of Subsection B. The suggestion from interested parties was found to be confusing. The working group clarified its intent for the marketing of insurance through mass media such as the Internet and included the paragraph in its draft. **1999 Proc. 1<sup>st</sup> Quarter 93.**

The working group reviewed comments regarding multi-state property and casualty risks and considered adding Paragraph (6) to address the concerns raised. One regulator asked where the premium for such a transaction was recorded. The interested party responded that the premium was recorded in the state where the risk was located, but a problem often arose in a market conduct examination when no licensed producer is located in that state. **1999 Proc. 1<sup>st</sup> Quarter 94.**

An interested party noted that the current draft provided that a person only needed to be licensed in a state where the insured risk had its principal place of business. She noted that this regulatory framework was limited to property and casualty risks. The chair asked working group members if they were willing to extent this concept to all lines of insurance. A regulator responded that this could allow an agent licensed in the headquarter state to do anything in another state. The interested party responded that, if the licensing requirements are the same in all states, this concern should be eliminated. Another regulator suggested the provision should also apply to life and health risks because an employee is typically removed from the actual issuance of coverage. Another regulator responded that the provision would be appropriate if there was reciprocity, but that there would be consumer protection issues without reciprocity. The group voted to limit the exemption to commercial property and casualty risks. **1999 Proc. 2<sup>nd</sup> Quarter 105.**

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#### 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 that the proposed exemption was for employees who work as risk managers for a particular company. **1999 Proc. 2<sup>nd</sup> Quarter 107.**

At one point in the drafting process a drafting note was added to Subsection B to explain that licensing was not required for employees who responded to requests from existing policyholders on existing policies, provided that those employees were not directly compensated based on premiums resulting from these services. The working group agreed this was appropriate for a drafting note, but interested parties encouraged the group to make this exemption a model provision. At the 1999 Summer National Meeting the group voted to make the provision a drafting note. **1999 Proc. 2<sup>nd</sup> Quarter 107.**

An interested party opined that an unlicensed person should be able to find out if an existing policyholder is interested in another coverage or policy and then be able to refer that person to a licensed agent (known as “x-dating”). While pointing out that at least one state requires a license for x-dating, another interested party urged the group to say that the gathering of information and x-dating should not require a license. **1999 Proc. 3<sup>rd</sup> Quarter 144.**

The drafting note was later made part of the model, included as Section 4B(8). When the parent group discussed this provision, the parent chair cautioned the group to draft carefully so that it did not create a loophole to the licensing requirements for the employees of direct writers. To help address this concern, the regulators added a phrase, “provided the person does not otherwise sell, solicit or negotiate.” A commissioner said he thought this language would help clarify who needed to be licensed. An interested party said he was not sure what the word “otherwise” added and questioned if this provision would apply to employees talking about the terms of existing policies or if it would apply to employees talking about the terms of new policies. The parent committee chair responded that the intent was to limit the exemption to employees addressing existing policyholders. An interested party said the paragraph should prohibit the placing of out-bound calls or cross-selling to existing policyholders. **1999 Proc. 3<sup>rd</sup> Quarter 121.**

After the revised model was adopted in January 2000, discussion continued on the meaning of Section 4B(8) as it was included in that model version. Interested parties made an effort to settle differences between them on the language of this exception for licensure of agency and company employees who provide service to existing policyholders or existing insurance contracts. A number of interested parties believed the language should remain as adopted. These organizations anticipated continued discussion on the issue in the individual states as legislation was drafted. Another interested party pointed out that, if uniformity was the ultimate goal, the interpretation of Section 4B(8) would be a problem. Discussion ensued around the possibility of clarifying the meaning of the paragraph. Many variations were discussed related to very specific examples of consumer service representatives not required to be licensed in one state applying for nonresident licenses in other states that did require licenses. **2000 Proc. 3<sup>rd</sup> Quarter 961.**

As discussion continued the chair of another working group charged with issues related to the federal Gramm-Leach-Bliley Act indicated that it had been the intention when the model was produced to preserve the status quo that was currently in place for the majority of states with regard to consumer service representatives. **2000 Proc. 3<sup>rd</sup> Quarter 959.**

An interested party said he was disappointed that the model was to reflect the status quo that currently existed in states with regard to consumer service representatives. He felt that the prior meetings had been intended to draft new legislation to modernize rather than to reflect the status quo. **2000 Proc. 3<sup>rd</sup> Quarter 959.**

An interested party suggested adding a drafting note saying that some states might wish to provide either more or less restrictive limits on the activities of employees of insurers or producers who responded to requests from existing policyholders. **2000 Proc. 3<sup>rd</sup> Quarter 955.**

Another interested party objected to what he saw as a significant restriction of non-licensed employees who respond to requests from existing policyholders. He questioned whether a change was needed to conform to the drafters’ original intent. **2000 Proc. 3<sup>rd</sup> Quarter 956.**

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#### 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. 3<sup>rd</sup> 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. 3<sup>rd</sup> 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. 2<sup>nd</sup> 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. 1<sup>st</sup> 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. 1<sup>st</sup> 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. 2<sup>nd</sup> 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. 3<sup>rd</sup> 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. 1<sup>st</sup> 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. 2<sup>nd</sup> 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. 3<sup>rd</sup> Quarter 148.**

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

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#### Section 6 (cont.)

D. Subsection D was included as part of the extensive redraft adopted in January 2000. **2000 Proc. 1<sup>st</sup> Quarter 15.**

After its adoption the working group discussed the subsection further. An interested party asked if there was a conflict between this subsection's reference to a "program of instruction" and the reference in Subsection A to a "prelicensing course of study. He suggested adding a new subsection to Section 9 exempting limited lines credit insurance producers from prelicensing and continuing education requirements and examinations. The working group agreed it had never been its intent to have prelicensing and continuing education requirements apply to credit limited lines. **2000 Proc. 1<sup>st</sup> Quarter 572.**

The chair said the provisions on limited line credit insurance were included in the model act to clarify that individuals selling limited lines credit insurance must undergo some sort of pre-education requirement. He also pointed out that this subsection required the department to approve the course of study. **2000 Proc. 2<sup>nd</sup> Quarter 398.**

The group decided to amend Subsection D to clarify that the limited line credit insurance program of instruction "may be" approved by the insurance commissioner instead of requiring that the program of instruction must be approved. **2000 Proc. 2<sup>nd</sup> Quarter 398.**

#### Section 7. License

A. The list of licenses was created during the development of the revised model adopted in January 2000. **1999 Proc. 3<sup>rd</sup> Quarter 127.**

During the discussion on limited lines the section was reviewed again, which led to a discussion on variable life insurance and the states' need to regulate licensing. The working group decided to modify Paragraph (5) because the determining factor as to whether a product is a variable product revolves around whether a contract with a separate account is filed with the Securities and Exchange Commission rather than whether the fund is in a separate account. **2000 Proc. 2<sup>nd</sup> Quarter 399-400.**

Over the period of development of the revised model adopted in January 2000, discussion returned periodically to whether there should be a license for limited lines credit insurance. One regulator spoke against it, because it was generally group coverage where people were enrolled. He said his state did not have a credit license. Another regulator pointed out that 39 states do license limited lines credit producers and it made sense to incorporate that in the model. The majority of states voted to include the limited lines credit insurance license. **1999 Proc. 2<sup>nd</sup> Quarter 103.**

At the working group's next session, the chair suggested noting that the credit insurance limited license was optional. **1999 Proc. 2<sup>nd</sup> Quarter 109.**

Discussion on limited lines insurance continued after the revised model was adopted in January 2000. An interested party suggested that the authority for the commissioner to create new limited lines licensing types should be added to the model. Each limited lines license should be based upon a clear demonstrated need for that line and a reasonable expectation that the licensee's activities would remain within the limited scope of authority and purposes of the limited line license. Licensed producers were concerned with specific licensing exemptions granted to groups that segment their approach to selling insurance and they believed that individuals selling insurance should be subject to the same requirements as producers engaged in similar activity. **2000 Proc. 1<sup>st</sup> Quarter 571.**

While discussing limited lines licenses, the working group debated whether the definition it had just created allowed the commissioner to create new limited lines licenses for residents. An interested party responded that this was addressed in Section 7A(7). **2000 Proc. 2<sup>nd</sup> Quarter 397.**

There were numerous comments from regulators regarding the need to eliminate the specific provisions related to limited line credit insurance, since the model act was going to address reciprocity for all limited line insurance. A commissioner recommended that the credit provisions remain in the model because these provisions would create greater uniformity, which is needed if credit insurance companies are to compete with banks. One member of the group suggested adding a drafting note explaining that the limited line credit provisions were included in the model act to help create greater uniformity in the

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#### Section 7A (cont.)

licensing of credit insurance. **2000 Proc. 2<sup>nd</sup> Quarter 398.**

While the Executive Committee was considering adoption of the model in the fall of 2000, a commissioner said that some consumer service representatives deal only with personal lines automobile insurance and, as the model was constructed, they would be required to pass examinations on commercial lines to be licensed. She suggested adding an additional line of authority for personal lines to Section 7A. **2000 Proc. 3<sup>rd</sup> Quarter 11.**

B. There was some discussion of setting July 1 as a uniform renewal date. The chair said a renewal date established by birthday or the alphabet could be used. For the time being, the group agreed to remove all reference to a uniform renewal date. This issue could be addressed in the future as an electronic renewal process was established. **1999 Proc. 2<sup>nd</sup> Quarter 106.**

C. This provision was part of the model act from its inception. Minor modifications and deletion of the drafting note were part of the amendments adopted in January 2000. **1988 Proc. I 108, 2000 Proc. 1<sup>st</sup> Quarter 15.**

Discussion of this subsection occurred when the group was reviewing the model relative to limited lines licenses. The chair asked if it was anticipated that a person would have to submit a short renewal or reinstatement application or whether a person could just call a state and request to be reinstated. He suggested requiring a renewal or reinstatement application in Subsection C. Another regulator commented that the purpose of Subsection C was to clarify how long a person could allow a license to lapse until he or she has to take a new licensing examination. The working group agreed to leave the subsection as it was with the understanding that the intent was to require some type of reinstatement request in either electronic or paper format. **2000 Proc. 2<sup>nd</sup> Quarter 400.**

D. Subsection D was drafted as part of the amendments developed during 1998-1999. The first draft exempted all producers who were in the military and that was of concern to some regulators. The chair suggested that the exemption could be limited by requiring that the producer request the exemption and that it be approved by the insurance department. **1999 Proc. 2<sup>nd</sup> Quarter 107.**

E. A regulator opined that Subsection E was unnecessary and better reserved to administrative regulation. Of particular concern to her was the provision, which had been in the model since the beginning, that spoke of the conditions of expiration and termination. She opined conditions of termination was too broad and could include a failure to comply with any number of sales practice statutes and regulations. It should be revised at least to include only the expiration date. **1999 Proc. 1<sup>st</sup> Quarter 91-92.**

F. The subsection was modified as part of the extensive redraft of 1998-1999. **2000 Proc. 1<sup>st</sup> Quarter 15.**

G. The working group discussed the need to draft language for states to use in granting a third party under the authority to handle the ministerial processing of applications. **2000 Proc. 2<sup>nd</sup> Quarter 400.**

A regulator suggested that the language should specifically reference the National Insurance Producer Registry (NIPR) as the third party vendor to help alleviate the need for a state to engage in a full bidding process with outside vendors. **2000 Proc. 2<sup>nd</sup> Quarter 394.**

When discussing specific language for Subsection G, one concern was whether the language should be broad enough to encompass entities other than the NAIC. One regulator did not feel it necessary to reference the NAIC, but another said he would like to specifically identify the NAIC and NIPR as the primary entities to provide services but, at the same time, wanted to be sure that the language was broad enough to allow a state to contract with other vendors for service. The group also discussed the need for the delegation language to specifically address the collection of fees. **2000 Proc. 3<sup>rd</sup> Quarter 405.**



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#### 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. 4<sup>th</sup> 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. 4<sup>th</sup> 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 payment of fees. Continuing education reciprocity means that the non-resident state accepts the producer's satisfaction of the home state's requirements. In addition, the law may place no restrictions or limitations due to the producer's place of residence or operations, so long as it is within the United States, including U.S. territories. **1999 Proc. 4<sup>th</sup> Quarter 112-113.**

Regulators discussed the advisability of pursuing reciprocity in states. One regulator pointed out that a system of reciprocity might create different standards for resident and non-resident producers, and a state might be hesitant to adopt such a system. Another regulator pointed out that if states obtain legislative approval for a system of reciprocity, they do not have to meet the uniformity requirements of NARAB. An interested party commented that adoption of the Producer Licensing Model Act helped create uniform standards that would make the states more comfortable with a system of reciprocity. **1999 Proc. 4<sup>th</sup> Quarter 111.**

A. During the 1998-1999 extensive redraft, one regulator pointed out the need to refer to the Uniform Application developed by the NAIC. **1999 Proc. 1<sup>st</sup> Quarter 92.**

B. Subsection B was added in January 2000 to refer to the Producer Database. **2000 Proc. 1<sup>st</sup> Quarter 15.**

C. The chair commented that, under current law, he had to terminate a non-resident producer license and have the producer reapply in his state if the non-resident producer moved to another state. A regulator indicated the model act should not require that a new license be issued but should specify that states treat this situation in the same way they treat a change of address. **1999 Proc. 2<sup>nd</sup> Quarter 106.**

D. When analyzing the GLBA provisions, an NAIC staff memo noted several amendments that would be necessary to enable the model to meet the reciprocity requirements of GLBA. The draft adopted by the working group did not apply to surplus lines, but GLBA specifically included such agents in its definition of producer. Unless surplus lines brokers were included, adoption of the model would not suffice to meet all reciprocity requirements. **1999 Proc. 4<sup>th</sup> Quarter 113.**

E. When discussion of limited licenses began in 1998, the chair of the drafting group opined that individuals who sell limited lines (credit life, etc.) should be licensed, but that there is no need to have these individuals pass a licensing examination and undergo continuing education requirements. For example, he did not see the need to have a bank representative who sells credit insurance take a test about life insurance since the person's primary business is banking and not insurance. **1998 Proc. 3<sup>rd</sup> Quarter 109.**

An interested party submitted an extensive drafting suggestion for limited lines licensing. He said that store clerks come and go quickly and his proposal addressed that high turnover rate. Another interested party expressed concern about the proposal, asking at what level an entity was licensed—national firm, each franchisee, each business location? **1999 Proc. 1<sup>st</sup> Quarter 95.**

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#### Section 8E (cont.)

A regulator asked how a non-resident state would license a producer with a limited lines license if the non-resident state did not issue the same type of limited lines license. An interested party opined that the non-resident producer would have to meet the licensing standards established by the license issued by the non-resident state. In other words, the non-resident producer would have to obtain a resident license that granted a similar scope of authority as the non-resident license for which he or she was applying. It was pointed out that GLBA with its reciprocity standards did not require states to adopt another type of license if they did not already have it. **1999 Proc. 4<sup>th</sup> Quarter 111.**

When the model was before the Executive Committee for adoption, a regulator explained that some trade groups believed it was possible to comply with the GLBA provisions without including limited lines licenses in the Producer Licensing Model Act. However, the same groups conceded that taking that approach involved a greater degree of risk that adoption of the model would not meet the requirements to avoid the creation of NARAB, as outlined in GLBA. NAIC staff and regulators did not believe that was the correct interpretation and the draft under consideration included reciprocal treatment of limited lines licenses. **2000 Proc. 1<sup>st</sup> Quarter 9.**

After adoption of the model in January 2000, regulators continued to discuss limited lines authority. There was concern voiced that a non-resident state would have to issue a license to a non-resident producer that is similar in scope to the license issued to the non-resident producer in his or her home state. A regulator suggested this could be a problem as the non-resident state may not know the scope of authority granted by the producer's home state. **2000 Proc. 1<sup>st</sup> Quarter 571.**

NAIC staff indicated that a non-resident state would have to recognize the resident state's authority and grant the same scope of licensing authority as granted by the resident state. Staff also commented that states may need to amend their laws to clarify that they can take regulatory and enforcement action against non-resident producers. A regulator questioned whether resident producers would have a discrimination claim if they could not obtain the same type of license as a non-resident producer. **2000 Proc. 2<sup>nd</sup> Quarter 396.**

A legal opinion provided by NAIC legal staff said that it appeared that reciprocity under GLBA did not have to extend to other types of licensees not involved in sales activities. Third party administrators, structured settlement providers, viatical settlement providers or adjusters do not fit under the reciprocity or uniformity requirement of GLBA. The legislative history of the federal law clearly indicated that Congress only intended to advance the reciprocal licensing of insurance agents and brokers and not persons or entities providing other insurance-related services. **2000 Proc. 2<sup>nd</sup> Quarter 410.**

In an effort to address limited lines licensing, the working group decided to add the last sentence of Subsection E. **2000 Proc. 2<sup>nd</sup> Quarter 397.**

#### Section 9. Exemption From Examination

As originally drafted, the model contained a requirement to file a physical clearance or certification letter. A regulator suggested that this was no longer required from an applicant that resided in a state included in the Producer Database. All states have access to that information. **1999 Proc. 1<sup>st</sup> Quarter 92.**

The original language was deleted from the proposal submitted in June 1999 and replaced by two subsections of different text. **1999 Proc. 2<sup>nd</sup> Quarter 116.**

A. The working group discussed the new Subsection A with its exemption from examinations. When a nonresident producer relocated to another state, one regulator said he should not be exempt from taking the state law portion of the insurance examination. Other regulators said they were comfortable with the language drafted and suggested Section 9 should also include an exemption from preclicensing education. The working group agreed with that suggestion. **1999 Proc. 2<sup>nd</sup> Quarter 105.**

Near the end of the drafting process a regulator expressed concern about the exemption from both preclicensing education and the examination for nonresident agents who are seeking to become resident agents. He opined there is a consumer protection issue to address and uniformity of agent licensing hurts consumers. Another regulator pointed out that continuing education

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#### 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. 3<sup>rd</sup> Quarter 145.**

#### Section 10. Assumed Names

The working group drafting amendments to the model in 1998-1999 discussed the need to define “assumed names.” They concluded that this issue was addressed by Section 10, which had been in the model from its inception. **1998 Proc. 4<sup>th</sup> Quarter I 107.**

#### Section 11. Temporary Licensing

This section was added in December 1988. The version adopted had a Subsection A that was similar to the current model, and optional subsections for temporary life and health or industrial fire licenses. **1989 Proc. I 139.**

The subsections specific to types of coverage were discussed again in May 1989. One trade association requested that the designation of “optional” for these two subsections be deleted. The association suggested that the optional designation might cast prejudice on the home service industry, which relies on states allowing provisions for temporary licenses. Citing concern over the propensity for abuse, regulators expressed concern over allowing agents to sell insurance without proper education and experience. The drafters decided to couple temporary licensing with controls, including a 90-day limit for the license. In addition, a provision was added referring specifically to home service business. **1989 Proc. II 186.**

A regulator suggested deleting this section and replacing it with a provision giving the commissioner the discretion to waive the examination requirement for good cause. **1999 Proc. 1<sup>st</sup> Quarter 92.**

B. Subsection B was new material added in the redraft adopted in January 2000. **2000 Proc. 1<sup>st</sup> Quarter 17.**

#### Section 12. License Denial, Renewal or Revocation

The first version of Section 12 was found in the model version adopted in December 1988. It was very similar to the current version. **1989 Proc. I 139-140.**

A. A regulator suggested that items listed in this section should be limited to actions that were relevant to the substance of the Act. For example, she suggested that Paragraph (5) was already prohibited by the unfair trade practices act or sales practices regulations in the states. **1999 Proc. 1<sup>st</sup> Quarter 92.**

The working group reviewed the suggestions for changes to Paragraph (8), which had been revised to address fraudulent and dishonest practices in all business activities, not just in the business of insurance. The group agreed that the scope of the paragraph should be expanded to address all business activities. **1999 Proc. 3<sup>rd</sup> Quarter 146.**

B. In 1988 provisions related to hearings were added and remained in the model without discussion until 1999. At that time one regulator suggested that references to hearing procedures should not be listed in this subsection, but it should instead include a reference to the state’s established hearing procedures. **1999 Proc. 1<sup>st</sup> Quarter 92.**

E. This subsection was added with the extensive redraft undertaken in 1998-1999. It was added to ensure that a state did not lose its authority to investigate an agent who allowed his or her license to lapse. Several states indicated this had been a problem for them. **1999 Proc. 3<sup>rd</sup> Quarter 146.**

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#### 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. 4<sup>th</sup> Quarter I 104.**

The language of the original model was replaced with four new subsections. **2000 Proc. 1<sup>st</sup> 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. 4<sup>th</sup> 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. 4<sup>th</sup> Quarter I 104.**

An association representative said the focus should be on the substantive reasons for the prohibition on sharing of commissions. The prohibition was designed to prohibit agents from entering into arrangements with unlicensed individuals, such as attorneys, who would solicit business on behalf of agents. The reasons for licensing are two fold: 1) licensing establishes a threshold standard and 2) licensing establishes a chain of responsibility to insurance policies. A regulator opined that regulators need to be able to tie the responsibility for the policy back to an individual but that regulators should not worry about individuals outside the chain of responsibility. **1998 Proc. 4<sup>th</sup> Quarter I 104.**

A few months later the issue of override commissions came up again. A regulator opined that once the group agreed that a person only needs a license if he or she solicits or negotiates, all references to commission payment fall into place. If a person does not need a license because he did not solicit or negotiate, why would he need a license to receive a share of an override commission? What consumer protection would be added by requiring a regional manager to have a license in a state solely because that manager received a small percentage of the commissions? **1999 Proc. 1<sup>st</sup> Quarter 91.**

When regulators considered modification of the language that had been in place since 1988, one suggestion was to incorporate the language that had been part of the drafting note into Subsection D. A regulator questioned why states would license firms, because Subsection D would provide for the assignment of commissions. An interested party responded that firms still needed to be licensed so that states could maintain regulatory authority over firms. Licensing of firms goes beyond the issue of commission assignments. **1999 Proc. 1<sup>st</sup> Quarter 95.**

#### Section 14. Appointments

The first version of Section 14 appeared in the model as adopted in December 1988. **1989 Proc. I 141.**

When working on the extensive redraft begun in 1998, one of the first topics of discussion was appointments. One regulator noted that appointments were optional and would not be required in a state that did not have them. **1998 Proc. 3<sup>rd</sup> Quarter 113.**

The entire section was revised and new language adopted in January 2000. **2000 Proc. 1<sup>st</sup> Quarter 18-19.**

A. The group drafting extensive amendments in 1998-1999 discussed appointments extensively. One regulator questioned whether a person can act as both an agent and a broker under the model. An interested party said the focus should remain on what activities require licensure and the model should not require brokers to be appointed. Another commented that appointing a broker might mean that the insurer would be found to have a principal/agent relationship with a broker when neither party intended such a relationship to be created. **1998 Proc. 4<sup>th</sup> Quarter I 105.**

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#### Section 14A (cont.)

An interested party opined that each state should retain the discretion as to who needs to be appointed. Appointments are required for three reasons: 1) generation of revenue; 2) to track who is working for whom; and 3) to create an additional review test for market conduct examiners. **1998 Proc. 4<sup>th</sup> Quarter I 105.**

Interested parties encouraged regulators to make a distinction between agents of an insurer and agents of an insured. This would preserve the distinction between an agent and a broker without using the term broker. **1999 Proc. 1<sup>st</sup> Quarter 93.**

B. During the summer of 1999 the working group added a provision to its draft that allowed an insurer to appoint a producer to all the insurers in a holding company system by filing one appointment request. A fee would still be assessed on a per company basis. Regulators agreed that an insurer could choose to appoint a producer to fewer than all of the companies, so as a point of clarification “or some” was added after “all.” **1999 Proc. 2<sup>nd</sup> Quarter 109.**

C. A regulator opined that the subsection on verification by the insurance division should be deleted. With the continued development of the Producer Database (PDB) and the Producer Information Network (PIN), appointments will be available for review and the commissioner should not have the burden of sending a notification. States should instead focus on making the information generally available to insurers through PDB. **1999 Proc. 1<sup>st</sup> Quarter 92.**

Near the end of the drafting process the working group decided to eliminate a phrase from the subsection that required a fee “prior to the renewal date” to allow greater flexibility in the collection of renewal appointment fees. The group also decided to mark the subsection as optional. **1999 Proc. 3<sup>rd</sup> Quarter 145.**

E. Near the end of the drafting process a suggestion was made to the working group to designate Subsection E as optional. **1999 Proc. 3<sup>rd</sup> Quarter 145.**

#### Section 15. Notification to Insurance Commissioners of Termination

The first version of this section appeared in the model as adopted in December 1988. It was designated as optional for those states that required company appointments and was limited to notification of termination of an appointment. It also contained a brief confidentiality provision. **1989 Proc. I 141.**

In 1989 the regulatory drafting group decided to delete the phrase providing immunity “so long as they are furnished in good faith.” The phrase was deleted and the optional designation for the section was also removed. **1989 Proc. II 187.**

In 1997 a working group developing a producer database recognized the importance of insurance department information on agent terminations. An insurance industry trade association provided draft language providing immunity to insurers reporting terminations for cause. **1997 Proc. 1<sup>st</sup> Quarter 654.**

A draft considered by the NAIC was designed as a separate model but the regulators decided instead to revise the Single License Procedure Model Act (now known as the Producer Licensing Model Act). **1997 Proc. 2<sup>nd</sup> Quarter 574-576.**

Amendments considered in the fall of 1997 added new language to the section on terminations. **1997 Proc. 3<sup>rd</sup> Quarter 1166-1168.**

During the extensive redraft of 1998-1999, an interested party asked whether Subsections A, B and C were intended to apply to brokers. The chair responded that these subsections address agents and do not address brokers because a broker does not transact business through an insurer. Another interested party asked if an insurer that knew a broker was engaging in a prohibited act had an obligation to report this to the insurance department. A regulator responded that only agents need to be appointed but that brokers do have a business relationship with insurers; it is just not an agency relationship. A representative from a producers trade association opined that the reporting requirements of Section 15 should apply to brokers. **1999 Proc. 3<sup>rd</sup> Quarter 148.**

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#### 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. 3<sup>rd</sup> 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. 3<sup>rd</sup> 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. 3<sup>rd</sup> 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. 3<sup>rd</sup> Quarter 146.**

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

D. This subsection was added in 1997 as part of the update of the termination provisions. **1997 Proc. 3<sup>rd</sup> 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 *permanent* part of an insurance commissioner’s file. He questioned whether the intent was to ensure that the comments remained a part of the file until the investigation of the termination was closed. The working group agreed this was the intent and decided to delete the word “permanent.” **1999 Proc. 3<sup>rd</sup> Quarter 146.**

E. This provision was added in 1997 when the NAIC considered model amendments to encourage reporting of terminations. **1997 Proc. 3<sup>rd</sup> Quarter 1168.**

When the extensive redraft of 1998-1999 was well underway, the chair of the drafting group explained that the main issue with appointment terminations was immunity for insurers that terminated an appointment for cause. Most of the comments received on this issue indicated that the “actual malice” standard was too high of a standard for producers to prove. A regulator responded that a high standard was necessary to help ensure companies give pertinent information to regulators. The working group agreed to leave the language as written. **1999 Proc. 2<sup>nd</sup> Quarter 105-106.**

F. Confidentiality provisions were expanded significantly with the addition of amendments to this section drafted in 1997. **1997 Proc. 3<sup>rd</sup> Quarter 1168.**

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#### 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. 3<sup>rd</sup> 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. 3<sup>rd</sup> 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. 3<sup>rd</sup> 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 the preservation of any applicable legal privilege and to indicate a high degree of intent to protect the documents from public disclosure. Members of the group from various jurisdictions noted court rulings indicating that omission of one or more words or phrases contained in the sentence could result in unintended disclosure. **1999 Proc. 4<sup>th</sup> Quarter 16.**

The drafting group discussed whether the confidentiality should apply to documents only, or instead to the broader phrase, “documents, materials and other information.” The broader language was chosen to protect not only information in tangible form, such as a paper document or a computer disk or hard drive, but also information that may be personal knowledge. The group noted that the reason to choose the broader phrase was to avoid the situation where, for example, examination work papers were protected, but an attempt was made to take the oral deposition of an examiner that would reveal the same sensitive information as the work papers. This protection was further clarified by Paragraph (2). **1999 Proc. 4<sup>th</sup> Quarter 16.**

A revision to Paragraph (1) was made to clarify that the provisions only applied to documents, materials or information in the possession or control of the commissioner. Some interested parties expressed concern that otherwise the provision might be misinterpreted to include information in the possession of a private entity that happened to have been shared with a commissioner. **1999 Proc. 4<sup>th</sup> Quarter 16.**

The question of the commissioner’s ability or discretion to disclose the confidential information received extensive discussion by the drafting group. The group expressed the concern that the commissioner not be placed in the position of possessing crucial information but be unable to use it to carry out his or her duties. With this in mind, the technical group drafted Paragraph (1) to make it clear that information could be acted upon (implying disclosure), but also limiting the circumstances to “regulatory or legal action brought as part of the commissioner’s official duties.” **1999 Proc. 4<sup>th</sup> Quarter 16.**

The provisions of Paragraph (3) received extensive discussion on several occasions. In particular, the group drafted the paragraph to make it clear that the commissioner has the authority both to share and to receive confidential information. The provision concerning the sharing of information with the NAIC and its subsidiaries or affiliates was discussed at length. Regulators expressed a strong need to retain specific language to ensure the ability of the NAIC to maintain confidential data for support of solvency, anti-fraud and other regulatory areas. The language referring to affiliates and subsidiaries was added to address the potential that one or more databases would be maintained by a related NAIC entity. **1999 Proc. 4<sup>th</sup> Quarter 16.**

During the discussion, Paragraph (4) was added to clarify that persons providing information to a commissioner did not waive any existing privilege or confidentiality protection by doing so. The paragraph was further clarified to show that the transmission of the information by the commissioner to another regulator or law enforcement official did not create a waiver. **1999 Proc. 4<sup>th</sup> Quarter 16.**

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#### Section 15F (cont.)

Various NAIC committees took up the confidentiality language in the context of specific models. A few technical changes were made to address the particular subject matter, but most groups heeded the request that changes be kept to a minimum in order to ensure the creation of a uniform platform for information sharing. **1999 Proc. 4<sup>th</sup> Quarter 16.**

An interested party asked if the new Paragraph (5) would still permit states to share information through the Producer Database (PDB). There was general consensus that a state could report the termination to the PDB, but that it would not be noted as a “for cause” termination until the state completed its investigation and made a final decision. **1999 Proc. 3<sup>rd</sup> Quarter 147.**

G. Subsection G was added with the amendments developed in 1997. The provision adopted at that time provided for a \$10,000 fine per violation. **1997 Proc. 3<sup>rd</sup> Quarter 1168.**

An interested party suggesting adding “or producer” to Subsection G. A regulator asked why that would be added if the producer was not required to report. She asked if adding the phrase meant that insurance departments would accept appointment terminations sent in by a producer on behalf of the insurer. The working group decided to add the phrase. **1999 Proc. 3<sup>rd</sup> Quarter 148.**

#### Section 16. Reciprocity

This section first appearing in the draft proposal developed in mid-1999. It was initially titled “Retaliation.” The draft contained two subsections: one forbidding different fees for nonresidents, and one allowing the commissioner to waive requirements for an applicant with a valid license from a state with similar requirements or to promote uniformity. **1999 Proc. 2<sup>nd</sup> Quarter 121.**

The version adopted contained three subsections. The first two are outlined above, and the third spoke of reciprocity for continuing education. **2000 Proc. 1<sup>st</sup> Quarter 22.**

After the model adoption in January 2000, the working group continued to discuss necessary changes to comply with the federal Gramm-Leach-Bliley Act of 1999 (GLBA). One issue under consideration was elimination of the retaliatory fees, which could result in a loss of revenues. The chair suggested states may wish to consider revising certain fees in order to make the changes revenue neutral. **2000 Proc. 1<sup>st</sup> Quarter 573.**

Originally the model prohibited a state from charging a higher licensing fee for nonresident producers than it charged for residents. The real intent was to eliminate retaliatory fees and this section did not eliminate retaliatory fees. The group decided to delete the subsection and replace it with a drafting note indicating that states should eliminate retaliatory fees. **2000 Proc. 2<sup>nd</sup> Quarter 394.**

The group discussed whether the elimination of the subsection about higher fees for nonresidents adequately addressed the issue of retaliatory fees. An interested party commented that GLBA prohibits states from charging nonresident fees that would be considered a barrier to entry. The working group decided to add that comment to the drafting note. **2000 Proc. 3<sup>rd</sup> Quarter 405.**

A. The first draft of this subsection met with concern that it appeared to require the commissioner to address the waiver of licensing requirements on an individual basis. An interested party suggested the commissioner should be able to waive licensing requirements on a statewide basis. The draft also said the commissioner “may” waive, and this was a concern. **1999 Proc. 2<sup>nd</sup> Quarter 104.**

After passage of GLBA in November 1999, an NAIC staff memo pointed out that Subsection A could not say that the commissioner “may” waive the requirements for licensing when the applicant has a valid license in another state; the word “shall” must be used instead. **1999 Proc. 4<sup>th</sup> Quarter 113.**



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#### 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. 2<sup>nd</sup> Quarter 400.**

#### Section 17. Reporting of Actions

This section was added as part of the extensive redrafting effort of 1998-1999. **2000 Proc. 1<sup>st</sup> 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. 4<sup>th</sup> Quarter 136, 2005 Proc. 1<sup>st</sup> 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. 4<sup>th</sup> 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. 4<sup>th</sup> 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. 1<sup>st</sup> 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. 1<sup>st</sup> Quarter 70.**

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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. 1<sup>st</sup> 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. 4<sup>th</sup> 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 objective was consumer protection, the amendment should provide that consumers get disclosure from all producers so that they could weigh the circumstances with complete information. A commissioner said that there were two different issues: corruption and transparency. The task force should deal swiftly with the issue of corruption and resolve to address the transparency of compensation separately. **2004 Proc. 4<sup>th</sup> Quarter 138.**

At a hearing to determine if further steps were needed, representatives from the producer community said the NAIC amendment adequately addressed the need for producers to disclose the receipt of compensation from insurers in situations where there was a potential for a conflict of interest. The state unfair practices acts addressed inappropriate insurance sales practices and federal and state laws already prohibited bid-rigging and steering problems, which prompted the NAIC to address producer disclosure compensation in the first place. Any additional regulation would be a burden on the producers without any measurable benefit to the insurance consumers. Other speakers enforced support for the NAIC amendment as adopted. The best way to guard against conflicts of interest and the appearance of conflicts would be through transparency. Transparency between brokers and carriers, and between brokers and their clients, included proper and appropriate disclosure of contingency commission arrangements. The NAIC model's additional disclosure obligations were sufficient in addition to other tools that states currently possessed under the Unfair Trade Practices Act and similar laws and regulations including common law. Adding additional specific or detailed disclosures would be unnecessary and perhaps counterproductive. **2005 Proc. 1<sup>st</sup> Quarter 71.**

A commissioner asked for an explanation of an early comment about when the consumer had leverage to squeeze the producer for rebates because the producer had disclosed compensation. An industry representative explained that if one element or ingredient of the overall premium—in this case, the producer's compensation—was highlighted, increased rebating was a likely result. The commenter said that his association did not believe it was helpful or warranted to highlight one ingredient of the overall premium. Some consumers might try to play one producer against another and encourage that producer to engage in rebating. Although that practice was illegal, it likely would be one of the results from disclosure. Another commissioner said that some of the comments revolved around the fact that contingent commissions benefited consumers because they allowed for lower, more competitive prices. An interested party responded that there were two different kinds of property and casualty brokers here: the very, very large entities versus the middle market and the

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#### Section 18A (cont.)

smaller brokers. For the smaller mid-market and smaller commercial property and casualty producers, contingent compensation arrangements were beneficial in terms of developing relationships and opening markets for producers to place policies. **2005 Proc. 1<sup>st</sup> Quarter 72.**

The task force chair provided a summary of the group's action plan. The first prong involved developing model legislation to encourage greater transparency. This work resulted in the NAIC's adoption of the broker compensation amendment to the Producer Licensing Model Act in December 2004. Subsequently the task force sought public comment, including a public hearing held during the NAIC Spring National Meeting, to determine if any further model legislation was necessary. The chair stated that, in developing the compensation disclosure amendment, the task force decided to focus mainly on improving disclosure. Comments received since adoption of the amendment were generally supportive of the amendment. Most comments from interested parties discouraged further action, such as requiring statutory fiduciary duty obligations or requiring the disclosure of all quotes by either producers or insurers. However, some interested parties called for stronger disclosure requirements. With regard to the current status of legislative activity, he reported the latest information from the NAIC staff indicated 32 bills or regulations had been introduced in 17 states. Of these, three bills were enacted and one was awaiting signature by the governor. At least two regulations were issued in final form. The bills enacted so far appeared to focus primarily on requiring disclosure in situations where producers received compensation from the customer. The chair indicated the consensus of the task force appeared to be to refrain from making any changes to the compensation disclosure amendment in its current form. This impression was confirmed by a vote of the task force members to leave Section 18 as it had been adopted in December 2004. **2005 Proc. 2<sup>nd</sup> Quarter 261-262.**

#### Section 19. Regulations

During the extensive drafting effort of 1998-1999, the chair suggested incorporating a provision that granted states rule-making authority. He expressed the opinion that this should not affect uniformity. The working group agreed to incorporate the provision. **1999 Proc. 2<sup>nd</sup> Quarter 106.**

#### Section 20 Severability

#### Section 21. Effective Date

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#### *Chronological Summary of Action*

*December 1987: Model adopted.*

*December 1988: Added several new sections to model.*

*June 1989: Model amended.*

*June 1990: Amended license requirement.*

*March 1998: Added to Section 15 on terminations of license.*

*January 2000: Adopted revised model with extensive redrafting to promote uniformity and reciprocity.*

*October 2000: Amended model to address issue of limited lines, consumer service representatives, and other narrow issues.*

*December 2004: During a special Plenary conference call, the model was amended by adding a new Section 18 to address issues related to broker compensation.*