

PROJECT HISTORY - 2012

BUSINESS TRANSACTED WITH PRODUCER CONTROLLED PROPERTY/CASUALTY INSURER ACT (#325)

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

The original request was from the Financial Regulation Standards and Accreditation (F) Committee (FRSAC), which noted that RRGs are specifically excluded in the definition of “licensed insurer” in the *Business Transacted with Producer Controlled Property/Casualty Insurer Act* (#325). The FRSAC requested that the Property and Casualty Insurance (C) Committee review Model #325 to determine if the exclusion of RRGs and other residual market mechanisms from the definition of insurer is appropriate and should remain in the model. Until this matter is resolved, FRSAC decided that accredited jurisdictions would not be deemed as failing the Part A Standards applicable to RRGs if they have not adopted a regulatory framework similar to that in Model #325. Ultimately, the Property and Casualty Insurance (C) Committee adopted a revision to the Act removing the exemption for RRGs.

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

The Property and Casualty Insurance (C) Committee. The Risk Retention (C) Working Group did the actual drafting. States participating included: California, Delaware, District of Columbia, Florida, Hawaii, Louisiana, Mississippi, Missouri, Nevada, New York, Oklahoma, South Carolina, Utah, Vermont and Washington.

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

The Property and Casualty Insurance (C) Committee was asked by the Financial Regulation Standards and Accreditation (F) Committee (FRSAC) in 2011 to give its opinion on RRGs being specifically excluded in the definition of “licensed insurer” in Model #325.

Formal permission to open the model for revision was granted by the Executive (EX) Committee on Aug. 12, 2012. The Risk Retention (C) Working Group had already discussed the matter and recommended the removal of the RRG exemption. The Property and Casualty Insurance (C) Committee agreed with this recommendation and adopted this revision to Model #325 on Aug. 13, 2012.

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

The Risk Retention (C) Working Group discussed the matter on two conference calls and the Risk Retention Handbook and Model Law Amendment (C) Subgroup discussed it on one conference call. The Working group decided in December 2011 that the *Business Transacted with Producer Controlled Property/Casualty Insurer Act* (#325) should be applicable to RRGs and the RRG exemption should be removed from the current version of the Act.

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

The Risk Retention (C) Working Group discussed the matter on an open conference call on Nov. 4, 2011, and the Risk Retention Handbook and Model Law Amendment (C) Subgroup discussed it on an open conference call on Nov. 17, 2011. The revised law was posted on the Working Group’s webpage and distributed to members, interested regulators and interested parties on Nov. 23, 2011. No comments were received and the Working Group held a conference call on Dec. 14, 2011, followed by an electronic vote to approve the recommendation.

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

The project came about because RRGs were specifically excluded in the definition of “licensed insurer” in Model #325. The NAIC Legal Division researched this issue and concurred that the model excludes RRGs. However, the Legal Division also noted Model #325 excludes other entities such as joint underwriting pools and residual market mechanisms. The Legal Division’s conclusion was there may have been an oversight when the model was revised in 1991 to amend the penalty provisions. In the original version of Model #325, the penalty was that the controlling producer would be liable to reimburse the state guaranty fund. However, RRGs are not protected by guaranty funds, thus it seems this is why RRGs, and the other

entities not covered by guaranty funds were excluded from the original version of the model. The 1991 revisions to Model #325 changed the penalty provision so the receiver may maintain a civil cause of action against the controlling producer. This would seem to eliminate the original reasoning in excluding RRGs, but the exclusion of RRGs has remained in the model.

NAIC Legal Division also explained that Model #325 refers to RRGs as defined under both the federal Liability Risk Retention Act (LRRRA) and the Superfund Amendments Reauthorization Act of 1986 (SARA). The Legal Division stated in a memo that “It appears likely that the drafters of Model #325 may have considered SARA-RRGs and LRRRA-RRGs to be two different types of entities, thus causing the distinction in the model.” SARA created a separate classification of RRGs dealing with pollution risks for underground storage tanks, and is probably the reason for the separate language originally in Model #325. Working Group members did not think there were any existing RRGs, as defined by SARA, writing exclusively pollution liability insurance.

The Working Group decided Model #325 should apply to all RRGs, even though it is unlikely that RRGs would meet the model’s criteria for producer-controlled insurer given that they are owned by their member insureds. The removal of the exemption from the model will allow the Part A Standards of the NAIC Financial Regulation Standards and Accreditation Program to become effective for captive RRGs, including a requirement that state enactments of a regulatory framework similar to Model #325 apply to RRGs.

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

This project affects an accreditation standard. The Part A Standards of the NAIC Financial Regulation Standards and Accreditation Program became effective for captive RRGs on January 1, 2011, and included a requirement that Model #325 should apply to RRGs. One of these standards is entitled Producer Controlled Insurers and requires that states provide evidence of a regulatory framework similar to that contained in Model #325 or similar provisions. The FRSAC postponed the applicability of this standard to RRGs until this matter is resolved.