

**PCI COMMENTS (in bold) TO THE
EXCERPT FROM THE
PRODUCER LICENSING ASSESSMENT
AGREGATE REPORT OF FINDINGS
FEBRUARY 19, 2008**

EXCERPTED FROM SECTION III, pages 18 - 20

III KEY FINDINGS AND CONCLUSIONS

D. Business Entity Licensing

PCI General Comments: Business entity licensing should be considered in the broad context of licensing in general. There must be comprehensive reform of all of producer licensing, appointment and related matters. Our comments here may address specifics, but we urge the NAIC to consider a broader reform of licensing and appointment in general. For example, business entities and producers should hold licenses designated as property and casualty and/or life and health. Other “lines” should not be required on a license. Business entities should be able simply to register (for example, pursuant to the Federal Liability Risk Retention Act this is the procedure for risk retention groups in nondomicile jurisdictions).

The NAIC membership understands the top priority of the national producer trades is the streamlining of business entity licensing. There is continued debate regarding the consumer protections afforded consumers through the business entity licensing process. Some have argued that business entities should not be licensed and that states should focus on licensing only the individual who ultimately sells, solicits or negotiates insurance and has direct contact with consumers. In addition to arguments about consumer protections associated with business entity licensing, there are issues related to duplicative regulatory processes whereby a business entity must be licensed with the insurance department and register with the Secretary of State. **If the business entity is registered with the insurance department, registration with the secretary state should not be required. This is similar to the situation for insurers for whom corporate filings are generally with the insurance departments.** Additionally, we found most states indicate the purpose of business entity licensing is (1) the enforcement and oversight regulatory concern when a business entity is marketing the product to consumers of a state and there is no other identifying information for the individual licensee to track and (2) enforcement concerns related to handling of premiums by business entities. For example, a business entity may market a product to consumers in a state without any specific identification of an individual producer. In addition, business entities may also process premium payments and, without the proper licensure and oversight, regulatory actions would become more difficult. From the insurer perspective, the licensure of a business entity facilitates and eases the payment of commissions to one legal entity and helps eliminate concerns of paying commissions to an unlicensed entity or person. **If business entities are determined to not need to be licensed, then it should be made clear elsewhere that commissions may be paid to the employer (or registered firm) of a producer even though the employer (registered firm) is technically unlicensed.**

The on-site assessment found a variety of requirements for licensing business entities. These include licensing requirements for branch locations; affiliation requirements; designation of a responsible producer (DRP); filing of organizational documents; and name approval/registration. The uniformity initiatives have brought standardization to many areas of the resident and non-resident individual licensing process across multiple jurisdictions. Business entity licensing would benefit from greater consistency and uniformity. **Providing it is uniformity consistent with principles of good insurance regulation and not uniformity for uniformity sake.** Below are some statistics that were gained from the producer licensing assessment on state requirements for business entities.

i. Licensing of Branch Locations

Forty-three jurisdictions issue a business entity that includes all branch locations of the business entity. Nine jurisdictions require each branch location of a business entity to be separately licensed. An additional 16 jurisdictions, while not requiring the licensure of each branch location, require a business entity to register or list each branch location. **Licensing of branch locations should not be required. A business entity, if a license is required at all, should be licensed based on its principle place of business or some other single location test. That license should apply to any location within the licensing jurisdiction. The contact point for the entity should be the single location to ease communication.**

ii. Affiliations

Twenty-two jurisdictions are “affiliation jurisdictions” and require a business entity to list all producers affiliated with it on the license application. Eleven of these states require the listing of affiliated producers by branch location. Related to this regulatory framework, five states require each individual producer’s license to indicate what business entity with which the producer is affiliated. **Presuming a business entity license, the better view is a single producer attached or responsible for the entity, the designated responsible producer below.**

iii. Designated Responsible Producer

In accordance with Subsection 6B(2) of the PLMA, 41 jurisdictions have the requirement that each business entity designate a producer who is responsible for the regulatory compliance of the business entity. Variations in the practice arise in that 26 jurisdictions require the DRP to hold the same line of authority as the business entity. **It is agreed that the DRP should hold the same line, but “lines” should be simplified as far as possible. Business entities and producers should hold licenses designated as property and casualty and/or life and health. Other “lines” should not be required on a license. There should not be any requirement that the business entity track and report the producers affiliated with it.** Finally, it should be noted that 36 jurisdictions require the DRP to be licensed prior to licensing of the business entity.

States should review this to ensure there is a method of concurrent licensure and that states work to facilitate the licensing of a business entity and DRP at the same time. **Concurrent licensure is appropriate.**

iv. Filing of Organizational Documents

Review teams identified twenty jurisdictions requiring business entities to file organizational documents for residents, such as articles of incorporation, with the business entity application. **It is appropriate for business entities to file these documents in their domicile which seems to have been done at the time of incorporation. Additional filing in the domicile is redundant. Non-domiciles should not require filing of these documents.**

v. Proof of Financial Responsibility

Review teams identified at least six jurisdictions requiring the filing of proof of financial responsibility with the business entity license for residents. **We are not sure if the six are all the states that require financial responsibility or if there are states requiring financial responsibility proof of producers but not of business entities. This process, however, should follow licensure, if business entities are to be licensed, then proof of financial responsibility follows.**

vi. Name Approval/Registration

Twenty-one jurisdictions pre-approve business entities name prior to use. If a business entity uses an assumed name, 20 jurisdictions require the assumed name to be approved prior to use, while 36 jurisdictions simply require the filing of the assumed name prior to use as required by the PLMA. **The issue of the name used by the business entity should follow whatever is the requirement for the use of a name by any business, insurance or otherwise but no more. Presumably, in the domicile, this would have been filed at incorporation. There should not be any prior approval of a name. Nor should there be filing of the name if the entity does become licensed (registered), licensing (registration) to be considered the filing of the name.**

vii. Appointments

Twenty-five jurisdictions require business entities to be appointed. In addition, six states require each branch location of a business entity to hold an appointment. Finally, in 15 states the appointment of a business entity eliminates the requirement for each individual producer working for that business entity to hold an appointment with the insurer. **Appointments are anachronistic and should be eliminated. If the entity is to be licensed, just as with licensing, there should be no appointment requirement for branches of the business entity, those being the business entity also. We agree with the 15 states where the entity appointment, if required suffices and each individual need not be appointed. It may be appropriate to appoint the Designated Responsible Producer however.**

viii. Business Entity Renewals

The renewal date for business entities varies among jurisdictions and a uniform standard has never been firmly established. While 38 jurisdictions renew business entities on a specific date, the renewal date is not uniform across these states. For example some of these states renew all business entities on a date certain, such as September 1. Other states renew business entities on the date the initial business entity license was issued. **We take no position as to the timing of business entity renewals, but uniformity is desired, not only as to whatever time is chosen, but also the renewal process nationwide. Renewal of a business license is inherently ministerial.**

ix. Multi-jurisdiction licensing issues

The PLMA contains two key provisions designed to simplify the process for a business entity to operate in multiple jurisdictions; however, the producer trade associations continue to claim that not all states have adopted these exemptions. In addition, the producer trades claim that there continues to be varying interpretations and applications of these exemptions in the states that have adopted the exemptions.

- Commercial Lines Multi-State Exemption: The PLMA contains the following commercial lines exemption for business entities: “A person (including business entity) 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.” At least 45 jurisdictions have adopted this exemption. **This needs to be clarified that it is appropriate for commissions to be paid to that producer even though not licensed in the other states. The remaining states need to adopt this provision as the danger of inadvertent non-compliance will exist so long as a single state lacks this provision.**
- Commission Sharing Exemption: The PLMA contains the following exemption from licensure: “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)]. While the application of this exemption will be fact-specific, states should review their application of this exemption and work toward a general statement of interpretation to help eliminate the current confusion in the marketplace. **We strongly agree that a clarification establishing a national, consistent guideline is needed.**