

SUMMARY OF LIMITED LINES DRAFT: WV Comments OCTOBER 2009

Pursuant to discussions on the August teleconference and at the NAIC Fall National Meeting regarding the charge to review Limited Lines, revisions and additions have been made to the discussion draft to include the following items:

- Expanded the Core Limited Lines to add a new definition for Limited Line Ancillary that removes reference to travel and car rental. However for those states who elect to move Car Rental and Travel under the Ancillary definition that would be acceptable as well.

The goal is to work towards uniformity. We will never achieve this as long as we continue to have optional provisions. Rather than allow non-uniform provisions to continue, we should make the uniform standard and give a reasonable time for states who have to make statutory changes to come into compliance. Basically what we are saying is we cannot reach a uniform standard, so we are making in non-uniform and calling it uniformity.

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- Define electronic mapping process to facilitate electronic transactions that will permit for a consistent uniform license process
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- Reinforces that limited lines applicants and licensees maintain the same license requirements as set forth in PLMA and as designated within the Uniform Licensing Standards.
- Incorporated the license structure to define that persons who sell, solicit or negotiate insurance must be licensed

We need to take a look at PLMA's definitions of sell, solicit, and negotiate and coincide how we can exclude the point of sale solicitation and sell from these and fit them into enroller without opening a large loop hole.

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- Confirms that any person who enrolls individuals in group plans AND receives a commission is required to obtain a license

I have some concerns here as we attempt to broaden the original intent of the enroller exemption. The original discussions were for the exemption of an enroller in an employment type situations where there was no sell or solicitation, the individual enrolled for benefits. Thus, the limitation for a person who secures and furnishes information. They are paid only their salary and receive not bonus or commission for the sale.

- (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;

This section is not limited to, nor does it reference limited lines. If we want to open this up to cover limited lines in its interpretation, how do we limit it to this? How do we limit this to interpretation to prevent the realtor from enrolling the new home purchaser in the group property and casualty plan, the car dealer from enrolling the purchaser into the group property and casualty plan, etc...?

We are potentially opening a very large gap in licensing requirements when we broaden enrolling to include point of purchase solicitation.

I have never been comfortable with this provision as it is overly broad and vague and can be open to many interpretations by a court. If we go the proposed route this provision of the model needs amended to be clear in what we want the exemption to be.

You are hard pressed in limited lines to twist that there is no solicitation or sell of the product. It typically starts with do you want to purchase or buy coverage?

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- Clarifies that individuals whose duties and actions do not constitute the selling, soliciting, or negotiating of business and the person does not receive a commission would not be required to be licensed

Receiving no commission should not be determinative as to whether licensing is required. Insurance licensing is a competency requirement for consumer protection; how the individual is paid is not relevant for this purpose. How do we define what a commission is? If the employee is paid a salary and given a bonus for enrolling ten people, is a bonus the same as a commission? How do we enforce the distinction? What difference from a competency and consumer protection stand point does it make if the individual selling the product is paid a salary or a commission?

- Two options for consideration for individual limited lines applicants regarding fingerprinting requirements

The main thing we need to first is to define what we are doing and why we are doing it. During the last conference call we discussed this issue and left with no clear answer. I think we need to determine this before we decide what licensing actions we are going to take.

Essentially what was said is that points of sale personnel have a high turnover rate and it is cumbersome for the retailer to maintain licensed individuals. This will become even more burdensome if fingerprinting and background checks are required. Industry wants a way to work around this and it make it easier to maintain authorized points of sale persone. The proposal was the point of sale person need not be licensed, but they be administered by a licensed entity or insurance agency. They would have a number to call if they had questions. The industry representative indicated another unlicensed person would man the phones and have access to a licensed person.

This runs dangerously close to the complaints that are historically lodged against administrative agencies. We protect the entities that we regulate.

If we implement the above, we have basically acknowledged that you do not need a licensed person at the point of sale. But we are going to be protectionist and force them to go through a regulated entity. This entity is going to collect significant commissions for being the regulated entity but do very little to entitle it to this overseer position or provided added value in consumer protection.

If having someone for the consumer to call that is competent is the issue, then require the insurer to provide the call center and cut out the intermediary that acknowledged on the conference call the phones would be manned by unlicensed individuals.

If we want to achieve a licensing requirement that seems reasonable, then require a licensed individual be on the premises where the sale is made to answer questions. The other option is acknowledge these transactions do not require a licensed individual and we should make an exemption for these types of insurance transactions if a licensed person is not necessary for the sale.

Sample exemption to be added to PLMA: a producer license is not required for the sale, solicitation or negotiation of insurance coverage's which are ancillary to a non-insurance good or services purchased by a consumer (for example pet insurance, self-storage insurance, small electronics insurance, etc.) and the annual premium does not exceed \$_____.

Here we do not open the enroller door and we limit the scope of the exemption by the amount of the annual premium.

Again I am not comfortable with widening the enroller definition and most definitely without some limit on how wide it can be expanded to.

The PLMA needs to be amended for these changes. We cannot keep changing what the intent, purpose and interpretation of the various sections mean. Ultimately a Court will

tell us what the provisions mean. When we the drafters cannot come to a clear understanding of the meaning that is a pretty clear indication the statute is overly broad and vague. Under the principles of statutory construction, the Court will typically construe against the drafter.

The general principle and in many states constitutional requirement is that a statute must not be so vague that men of common intelligence are necessarily required to guess at its meaning and differ as to its application; and is sufficiently specific and provides adequate notice of its restrictions.

We as the drafters of PLMA can't do this on several sections.

It is difficult to go back and change the model and then enact the changes among the several states and territories. However, it not going to work to keep trying to reinterpret the language of the PLMA to meet our most current issue and desire..

In the current discussion Sections 4 and 13 of PLMA have this issue. The enroller provision and subsection D of Section 13, assignment and payment of commissions.

I have provided a suggested amendment to Section 4. As to Section 13, we need a clear decision as to what this was to achieve before and amendment can be made. There is currently wide disagreement. The NAIC records indicate it was for contingent commissions. Industry claims there was to be no limitation. It is clearly overly broad and vague as currently drafted. This is specifically why WV did not enact this subsection of the model.

Model 218 s 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 negotiation of insurance; 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 where selling, soliciting or negotiating of the insurance product does not occur (e.g. enroller for an employee benefit plan); 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; or

(8) an employee of a retail establishment offering coverages which are ancillary to a non-insurance good or services purchased by a consumer (for example pet insurance, self-storage insurance, small electronics insurance, etc.) and the annual premium does not exceed \$_____.

Drafting Note: A state should by regulation prescribe the requirements that the insurer offering the ancillary product be required to maintain a call center to answer consumer questions and inquires regarding the ancillary line products.

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").

Model 218 s 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].

In going forward we should do the following:

Define the problem we are trying to address.

Develop solutions to the problem.

Develop methods to implement the solutions.

Look for unintended consequences, e.g. open a broad loop hole in the licensing exemptions.

Decide on the most appropriate solution and method of implementation.

Then implement the solution and method.