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January 19, 2005

Commissioner Diane Koken
President
National Association of Insurance Commissioners
2301 McGee Street
Suite 800
Kansas City, MO 64108-2662

RE: NAIC Executive Task Force on Broker Activities
Comment on January 7 Request for Comment
NAMIC Testimony

Dear Commissioner Koken:

The proposed amendment to the NAIC's Producer Licensing Model Act, re-released on January 7th, would exacerbate section A's over-breadth, making the Act less clear than before, and adding burden without value to the sale of insurance.

Over-breadth exacerbated

As we have maintained in prior testimony, any amendments to the Producer Licensing Model Act relating to disclosure of compensation should apply strictly to the one potential problem that has been identified - transactions in which the producer receives compensation from both parties. To date, other problems remain the product of allusion, and should not be the subject of legislation. While we can appreciate the NAIC's desire to provide a product for this year's legislative sessions, the necessary haste has made it impossible to identify and resolve the ambiguities that are inevitable in the legislative drafting process. Therefore, it is imperative that the NAIC's early efforts are tightly focused to compensate for the problems inherent in abbreviated public debate. Attempting to resolve undefined problems with hastily drafted legislation is bad public policy.

Increased Confusion

While the amendments adopted on December 29th reflected some progress in narrowing the NAIC's focus, that will be erased by adoption of section B. As your deliberations proceed, please consider the following concerns:

The varying information required for "disclosure" in section A (1) and "documented acknowledgement" in A (2) is distinct from the information that would be disclosed as a result of section B, which must be provided "when applicable". As we noted in our December 22, 2004 testimony, the meaning of "if applicable" is unclear. Does this mean if all three conditions in section B apply?

Another concern left unresolved by section B is how this notice is to be provided. In order to comply with the law, and avoid expensive and unnecessary litigation, producers must know which standard applies to section B information, and how it relates to the varying requirements in section A.

The confusion created by section B's conflicting information disclosure requirements is exacerbated by the fact that section A's "disclosure" and "documented acknowledgement" standards remain undefined.

At this time, producers can at least discern whether they are required to disclose under section A (1) or (2). It is less clear whether they will be required to disclose anything under section B. However, even if this ambiguity is resolved, NAMIC believes that the NAIC must take greater care to define the manner in which "documented acknowledgement" or "disclosure" is to occur. As we have noted previously, those attempting to comply with this law would have no idea if they had succeeded if those terms are left undefined.

Burden without value

NAMIC agrees that the burden of disclosing that a producer is compensated by both parties is balanced with the value that such disclosure adds to the insurance buying process. Once placed on notice, the customer is able to decide whether asking for more information is important. Should the producer not want to answer compensation related questions, the customer may choose to buy insurance elsewhere.

In the future, other evidence of documented problems may be released supporting other disclosure requirements. NAMIC believes that the NAIC must wait for this evidence to be fully developed before proposing a "solution".

While we appreciate regulators desire to respond quickly to the broker compensation concerns, the NAIC has gone too far too fast. We urge the NAIC to:

1. Suspend further consideration of section B. Absent specific evidence, supporting this measure is unjustified.
2. Clarify the many ambiguities in section A.
3. Provide clear guidance on how to comply with section A's varying requirements.

Respectfully Submitted

A handwritten signature in black ink, appearing to read "Peter A. Bisbecos". The signature is fluid and cursive, with the first letters of each word being capitalized and prominent.

Peter A. Bisbecos
Director of Legal and Regulatory Affairs