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July 12, 2006

Via E-mail to Eric Nordman

David Parsons
Alabama Department of Insurance
Chair, Personal Lines Market Regulatory Framework
(EX) Working Group
National Association of Insurance Commissioners
2301 McGee Street
Kansas City, MO 64108-2662

Re: *Property and Casualty Rate and Policy Form Model Law – May 30, 2006 Draft*

Dear Mr. Parsons:

On behalf of the National Association of Mutual Insurance Companies (NAMIC) and its more than 1,400 member companies, we thank you for the opportunity to provide comments on the draft *Property and Casualty Rate and Policy Form Model Law* that was circulated just prior to the June NAIC meeting in Washington.

NAMIC is disappointed that the working group has opted for a “file and use” model as the starting point for its new draft model law. We are not providing detailed comments as to each section and subsection of the draft model because we believe that would serve no useful purpose. However, we do provide the following overall comments:

Process and Principles: NAMIC is troubled that the working group is starting its task by adopting a position – the “file and use” model – for no apparent reason and without much discussion by the regulator members. If the working group chooses to begin work on its charge by putting a draft on the table, perhaps it should choose a draft based on discussion by the working group and interested parties. If the working group agreed to put a “file and use” model on the table in an open meeting, NAMIC was not aware of that meeting.

A better approach might be for the working group first to agree on the principles that will provide the underpinnings of a model rather than starting with a model to which no one has agreed. Once the principles of a rate regulation scheme are agreed to, the job of constructing a model law to incorporate those principles would become much easier.

Existing Models: NAMIC and other interested parties have suggested to the working group (and to predecessor working groups) that consideration be given to starting with an existing reasonable rate regulation model. NAMIC renews that suggestion. The National Conference of Insurance Legislators (NCOIL), the National Conference of State Legislatures (NCSL), and the American Legislative Exchange Council (ALEC) all have endorsed competition as the best regulator of insurance rates. NCOIL has adopted a significant model law that would create a liberal “use and file” system for personal lines and an informational filing system for commercial lines.

Consensus Issue: The chair of the working group indicated during the NAIC Summer Meeting that he would be seeking to establish consensus on the model over the next 6 months. Obviously, consensus by the working group members will be necessary in order for any draft model law to be adopted. Consensus, however, will have to exist among all the interested parties if the working group wants to develop a model law that will in fact be adopted in the states. Comments made to the working group by industry representatives earlier this year made it clear that the industry does not believe a “file and use” model represents an acceptable step forward by the NAIC toward rate modernization. That being the case, NAMIC questions why the working group is now presenting just such a “file and use” model as its starting point. It may make consensus-building difficult to begin the group’s work with concepts to which the insurance industry is currently opposed.

State Regulation and Rate Modernization: NAMIC supports state regulation of insurance, believes it has worked well in the past and can work well in the future – for the benefit of both consumers and insurers – but state insurance regulation must drag itself into the 21st century in order to remain vibrant and effective. Nowhere does the patchwork of state regulation (and its inability to change with the times) become more conspicuous than in rate regulation.

NAMIC supports a state-based regulatory system that fosters and enhances a *competitive marketplace* for insurance products. We urge the NAIC and this working group to take on the challenge and do more than give lip service to regulatory modernization. While certain NAIC initiatives in recent years have resulted in some degree of enhanced efficiency in the processing of company filings, those initiatives – programs such as SERFF – accomplish little other than to speed up a series of cumbersome filing and review procedures that are necessitated by outmoded and ineffective rate and form filing laws.

The NAIC’s “A Reinforced Commitment: Insurance Regulatory Modernization Action Plan” released in 2003 included recognition only that, “[t]o the extent feasible, for most markets, states recognize that competition can be an effective element of regulation.” The NAIC “Roadmap” as finalized in June 2004 seemed to suggest that there could be no single “recommended” personal lines regulatory scheme because “states face different circumstances regarding the regulatory framework for personal lines.” These official NAIC pronouncements make it clear that state insurance regulators have not embraced the idea of competitive markets for personal lines products.

Despite the NAIC position, however, some states have actually made encouraging moves toward true regulatory modernization. In recent years, nine states have adopted flex-band rating systems for property/casualty products to replace more rigid systems of price controls and 14 states have adopted the more flexible “use and file” system. Twenty-four states have established “no-file” requirements, primarily for large commercial insureds. Sixteen states still have prior approval laws and among these are some of the largest states; 40.8% of the private passenger auto insurance market and 41.4% of the homeowners market are subject to these prior approval systems.

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NAMIC's member companies believe that it is time for the NAIC to acknowledge the need for, and trend towards, less insurance price control. This working group's task presents the perfect opportunity for development of a model law based on competition in the marketplace and not on artificial regulation and control of insurance pricing based on factors unrelated to market conditions. An official NAIC model setting out a "file and use" system of rate regulation would not represent progress towards regulatory modernization but, to the contrary, would constitute a step backwards. The NAIC should take its cue from those states that have tackled insurance rate control and enacted less restrictive legislation in recent years. The move toward competitive markets is real, it benefits consumers and the NAIC should embrace it. NAMIC believes that neither consumers, regulators nor insurers will be served by consideration of a model law that will not help solve a problem but only add to it.

Please contact me by telephone at 317-876-4270 or by e-mail at mharrison@namic.org if you have questions or if I can provide further information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Marsha Harrison", with a long horizontal flourish extending to the right.

Marsha Harrison
Regulatory Affairs Counsel