

NAIC REVIEW OF LIMITED LINES PRODUCER LICENSES

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Limited lines producer licenses run the gamut among the various states as to the type of insurance products covered and the applicable regulatory requirements. Issues with uniformity and reciprocity continue to be a source of utter confusion to regulators and trade alike. With recognition of the issues by the National Association of Insurance Commissioners, the Producer Licensing Task Force ("PLTF") and the Producer Licensing Working Group ("PLWG") have been charged with review of the limited lines issues. This article will provide an overview of limited lines licensing and discuss the review of the limited lines issues by the NAIC.

Overview of Limited Lines Licensing

A Limited Lines producer license is a license authorizing the sale, solicitation or negotiation of a line of insurance other than a major line of insurance (e.g. Life, Accident and Health or Sickness, Property, Casualty, Variable Life and Variable Annuity Products and Personal Lines). A current review of the NAIC's Compendium of State Laws On Insurance Topics¹ reveals approximately fifty-five (55) different types of limited lines licenses available in the various states. The type of limited lines producer licenses include what are referred to as the five (5) "core" limited lines: car rental, credit, crop insurance, surety, and travel. In addition to the "core" limited lines, some states authorize limited lines licenses for such things as pet, self-storage, communications equipment, pre-paid legal, and motor club among others. A number of states also include a catch-all provision for classification as limited lines as the Commissioner directs.

In addition to the variation in the type of available limited lines licenses, the regulatory requirements for issuance of a limited line license also vary widely among the states. For example - rental car limited lines variations:

1. Some states require rental car company to obtain limited lines license.
2. Some states require rental car company *and* 1 employee at each location to obtain limited lines license.
3. Some states require rental car company *and* managing employee to obtain limited lines license.
4. Some states require rental car company *and* all counter employees to obtain limited lines license.
5. Some states require rental car company *and* designated responsible producer to obtain limited lines license.
6. Some states define "car rental" as a limited line of insurance which requires licensing under said states' Producer Licensing Regulations.
7. Some states' Producer Licensing regulations require limited lines license for rental car company - not officers, directors or employees.
8. Some states do not require a limited lines insurance license where travel-related coverages are offered concurrently with the rental of a motor vehicle.

These requirements are in addition to the issues with having each officer/director of the business entity submit fingerprints² and biographical affidavits, not to mention insurer appointments and fingerprint and/or test requirements of the individuals noted above in their resident state,³ as well as in a few non-resident states.⁴

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Regulatory Response To Achieve Reciprocity/Uniformity

With passage of the federal Gramm-Leach-Bliley Act ("GLBA") in 1999, the NAIC has been working to avoid certain preemption of state producer licensing laws by complying with the provisions of Section 321 for major lines of insurance, but limited lines did not receive the same attention until recently.

For those who do not follow these issues, Section 321 required a majority of states, not later than three years after the effective date, to enact: (1) uniform laws and regulations governing the licensure of individuals and entities authorized to sell and solicit the purchase of insurance within the state; *or* (2) reciprocity laws and regulations governing the licensure of non-resident individuals and entities authorized to sell and solicit insurance within those states.

To avoid federal preemption, the NAIC elected the reciprocity route rather than the uniformity route and crafted a model law to assist with meeting the reciprocity requirement. The Producer Licensing Model Act (PLMA)⁵ was adopted by the NAIC in 2000 and was intended to serve as the primary vehicle for states to achieve reciprocity, as well as assist in the next step to reach uniformity.

Although, the PLMA established uniform definitions for the six major lines of insurance: (1) Life, (2) Accident and Health, (3) Property, (4) Casualty, (5) Variable Life and Variable Annuity, and (6) Personal Lines, the PLMA specifically addressed only one limited line - credit insurance.⁶ The PLMA did provide certain definitions relating to limited lines, including the definition for:

"Limited lines insurance"⁷ means those lines of insurance defined in [insert reference to state specific limited line statute] or any other line of insurance that the insurance commissioner deems necessary to recognize for the purposes of complying with Section 8E; and

"Limited lines producer"⁸ means a person authorized by the insurance commissioner to sell, solicit or negotiate limited lines insurance.

Subsequent to the adoption of the PLMA, in 2002 the NAIC adopted the Uniform Resident Licensing Standards which focused on certain broad areas not addressed in the PLMA: (1) licensing qualifications, (2) pre-licensing education, (3) licensing testing, (4) integrity/background check standards, (5) license application process, (6) appointment process, (7) continuing education requirements, and (8) limited lines.⁹

The NAIC's Producer Licensing (D) Working Group (PLWG) is charged with ongoing monitoring of state implementation of the Uniform Resident Licensing Standards ("URLS"). In June 2002, the Uniform Producer Licensing Initiatives Working Group, acting under the direction of the NARAB Working Group, adopted limited lines definitions which are commonly referred to as "core" limited lines - car rental, credit, crop insurance, surety and travel.¹⁰

Notwithstanding these actions, continued issues with reciprocity and application of the URLS continued to persist. As a result, the NAIC ordered an assessment as to whether states previously certified as compliant for purposes of the GLBA continued to be in compliance, as well as review of state compliance with the URLS and barriers to implementation and full compliance. The assessment was reported on February 19, 2008 in the *Producer Licensing Assessment Aggregate Report of Findings*.

The Aggregate Report acknowledged continuing issues in producer licensing and additional roadblocks to reciprocity and uniformity compliance, including recognition of issues in the area of limited lines licensing. The Aggregate Report also commented on compliance with the URLS in the companion *Uniformity Standards Compliance Report*.

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Recognition of the Issue

The Aggregate Report noted a general consensus that the lines of authority, both major and limited, are areas where achieving uniformity is critical, as well as that the standards are in need of additional interpretive guidance.

Following the Aggregate Report and numerous discussions regarding the NAIC's approach to achieve reciprocity and uniformity in standards which directed adoption of the core limited lines and reduction in the number of non-core limited lines,¹¹ the PLWG in 2009 was charged with reviewing limited line licensing issues with particular focus on the following: (1) the establishment of a limited line that encompasses several insurance products where the business of insurance is ancillary to the business of the person offering the product, (2) the licensing requirements of individuals selling limited line insurance products, and (3) the fingerprinting of individuals selling limited line insurance products.

Deliberations and Demand for Change

Throughout 2009, thoughtful information was presented to the PLWG in an effort to outline changes to the PLMA, as well as provisions of the URLS, which were necessary to address the limited lines issues. Interested parties presented additional concerns regarding the practical aspects of licensing, including particular reference to limited lines issues and best practices, in connection with comments to the revisions to the NAIC State Licensing Handbook and the Uniform Applications. Issues were noted to reflect how the URLS and the PLMA were unintentionally undermining the goal of reciprocity and increasing the compliance burdens without improving consumer protection. Provision for a limitation of fewer than nine (9) limited lines would do little to address uniformity issues and a more broadened approach would have to be taken to address real change. With fifty-five (55) different types of limited lines licenses, regulatory function and purpose should be considered to obtain a proper standard and balance for regulating limited lines licenses and provide appropriate consumer protection. The review should consider the method of distribution in order to arrive at an appropriate license standard that will address the regulatory function and provide true uniformity. Interested parties presented proposed modifications to the PLMA and revisions to the URLS to substantively change the system of licensing limited lines producers to better reflect the method of distribution.

The deliberations confirmed that consumer complaints attributable to limited lines products are nominal. Licensing the counter person at a car rental company, the counter person at the self-storage facility, or the travel agent at a travel agency does little to provide consumer protection when the substantive issues of regulatory consumer protection lie with the insurer or the MGA/MGU who developed and distributed the limited lines product. Such method of distribution and product development is demonstratively much like the service agreement and/or extended warranty which according to the Service Contracts Model Act¹² do not require licensing at the counter or retail level, not to mention those products which contain accidental damage and theft coverage in addition to product defect.

As part of the PLWG effort in 2009, an ancillary¹³ definition of insurance was developed and then tabled due to resistance of some PLWG members to establish change in the current process. Issues were presented which included whether to include "core" limited lines in the definition of "ancillary" limited lines. Some regulators expressed concern with a new ancillary line definition because of the belief that implementation would require legislative action. Some regulators also objected to any changes that would allow those who sold these products not to have to be specifically licensed. Following the discussions, the Chair and Vice Chair of the PLWG issued a Report on the Producer Licensing Working Group Limited Lines Discussion and suggested recommendations to the PLTF, which included tabling the ancillary definition until the licensing requirements and guidance on fingerprints could be established, and requested further guidance on the extent of changes the PLTF wished to implement. Specifically, should ancillary type insurance products have less rigorous licensing requirements than other limited lines (such as crop insurance or surety)? Does the Task Force wish to include

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previously defined "core" limited lines that are incidental in nature within an ancillary line? Does the Task Force wish the Working Group to pursue any changes that may require modifications to the Producer Licensing Model Act?

Next Steps

Following the PLWG Report, the PLTF has advised that the 2010 charges to the PLWG will provide the requested guidance and direction on the future of limited lines regulation. We will have to wait and see whether the necessary changes can be made to obtain true reciprocity among states and achieve uniformity that provides functional and appropriate regulation for limited lines products.

Endnotes

1. See the NAIC's Compendium of State Laws on Insurance Topics, Lists of *Producer Licensing: Limited Line*, I-PL-10-1.
2. Alaska, Arizona, Connecticut, Florida, Georgia, Idaho, Louisiana, Montana, New Jersey, Nevada, Ohio, Oregon, Pennsylvania, Tennessee, Texas, Utah and Washington require fingerprints for resident limited lines producer applicants.
3. Some states continue to require pre-license testing for limited lines producer applicants while others require an approved course of instruction to be provided by the insurer.
4. California, Florida, and Washington continue to require fingerprints from non-resident limited lines producers. California and Washington have recently advised that fingerprints for non-resident limited lines producers will no longer be required if the resident state requires fingerprints at licensure.
5. NAIC Model # 218.
6. PLMA Section 2G
7. PLMA Section 2I.
8. PLMA Section 2J.
9. The Limited Lines Subgroup was charged with developing standard definitions for the eight most common limited lines licenses. These limited lines licenses were identified at a meeting of the Uniform Producer Licensing Initiatives Working Group in August, 2001 and included Credit, Car Rental, Crop/Hail, Industrial Fire, Motor Club, PreNeed Life, Travel and Surety.
10. Originally motor club, industrial fire and funeral expense insurance was also included in the limited lines definitions proposed by the Subgroup but removed prior to adoption for various reasons, including the limited number of states having such lines in effect at the time of consideration. See March 18, 2002 Report of the Limited Lines Subgroup and Uniform Producer Licensing Initiatives Subgroup Report of June 8, 9, 10, 2002.
11. See URLs at Standard 16b.

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12. NAIC Model # 685.

13. Limited Lines Ancillary Insurance: Specific types of insurance offered, solicited, or sold to the consumer under an individual policy or enrolled in a group or master policy as an add on in connection with and incidental to non-insurance goods or services, including coverage for (i) pet, (ii) self-service storage, (iii) mobile communication, (iv) travel, (v) car rental, or any other similar coverages as designated by the insurance commissioner.