

PROJECT HISTORY – 2006

REINSURANCE INTERMEDIARY MODEL ACT (#790)

1. Project Description

The Reinsurance (G) Task Force was charged with reviewing the Reinsurance Intermediary Model Act. The purpose of these amendments is to ensure that a reinsurance broker or manager be required to comply with the order of a court or arbitration panel requiring the production of non-privileged documents or the testimony of an employee or other individual otherwise under the control of the intermediary with respect to reinsurance transactions for which the intermediary provided services. The language provides for safeguards with respect to the nature or scope of the requested documents or testimony, penalties in the event of a violation, and safeguards with respect to multiple appearances by the same witness.

2. Group Responsible for the Report

The project was assigned to the Reinsurance (G) Task Force. The members of the task force at the time were: Julie Bowler (MA), Chair; John Oxendine (GA), Vice-Chair; Walter Bell (AL); John Garamendi (CA); Susan Cogswell (CT); Matthew Denn (DE); Thomas Hampton (DC); Kevin McCarty (FL); Michael McRaith (IL); Martin Koettters (KY); Alessandro Iuppa (ME); Glenn Wilson (MN); Alice Molasky-Arman (NV); Roger Seigny (NH); Steven Goldman (NJ); Howard Mills (NY); Jim Poolman (ND); Diane Koken (PA); Dorelisse Juarbe Jimenez (PR); Mike Geeslin (TX); Alfred Gross (VA); Mike Kriedler (WA) and Jorge Gomez (WI).

3. Charge Authorizing the Project

As part of the NAIC 2006 Model Law Review, changes were proposed to the Reinsurance Intermediary Model Act.

4. General Description of the Drafting Process and Discussion of Key Issues

Most reinsurance contracts are conceived, negotiated and drafted by reinsurance intermediaries and that most such contracts contain arbitration clauses. When disputes arise between the parties to the reinsurance contract, arbitrators often look to intermediaries for background documentation and testimony concerning the intentions of the parties, representations made and the course of conduct during the operation of contract. All too often, however, intermediaries refuse to provide this information leaving the arbitrators to evaluate the transaction created and documented by intermediaries without their assistance.

Due to a gap in the Federal Arbitration Act, an arbitration panel lacks the authority to order a pre-hearing deposition or production of documents. The issue is not just one of facilitating the conflict resolution method of choice between insurers and reinsurers. The issue is also whether an intermediary is “fit and proper” from a regulatory standpoint, if it refuses to cooperate with efforts to resolve problems growing out of the contracts it conceived, negotiated and drafted.

During an August 17, 2005, conference call, the Interested Persons reviewed the recommended amendments to the Intermediary Act that reflected agreed language worked out between several interested parties. The task force then exposed those amendments for comment from interested parties and regulators. Receiving no additional comments or disagreement with the proposal, the task force adopted amendments during the NAIC 2006 Spring National Meeting.

PROJECT HISTORY – 2001

REINSURANCE INTERMEDIARY MODEL ACT (#790)

1. Project Description

The Reinsurance (G) Task Force was charged with reviewing the Reinsurance Intermediary Model Act to clarify non-resident reciprocity provisions for reinsurance intermediaries consistent with the Gramm-Leach-Bliley Act. The charge was proposed by the NARAB Working Group after the NAIC 2000 Winter National Meeting.

2. Group Responsible for the Report

The project was assigned to the Reinsurance (G) Task Force. The members of the task force at that time were: John Oxendine (GA), Chair; Alessandro Iuppa (ME), David Parsons (AL); Elisara Togiai (AS); Harry Low (CA), Donna Lee Williams (DE), Nathaniel Shapo (IL), Greg Serio (NY), and Jose Montemayor (TX).

3. Charge Authorizing the Project

At the NAIC 2000 Winter National Meeting, Nicole Allen, Council of Insurance Agents and Brokers, alerted the task force of an issue surrounding the possible applicability of the NARAB reciprocity standards to non-resident licensure for reinsurance intermediaries. Ms. Allen recommended that the task force review the NAIC Reinsurance Intermediary Model Act to ensure that appropriate reciprocity requirements are in place for reinsurance intermediaries.

4. General Description of the Drafting Process and Discussion of Key Issues

A draft of revisions to the Reinsurance Intermediary Model Act was prepared on January 16, 2001, by NAIC Staff. The task force then exposed those amendments for comment from interested parties after a January 25, 2001, conference call. The task force adopted amendments during the NAIC 2001 Spring National Meeting, which were finalized during a May 22, 2001, conference call. The adopted amendments redefine licensed producers as persons required to be licensed under the laws to sell, solicit or negotiate insurance. The Model Act was further revised to include new language concerning non-resident reinsurance intermediaries, which advise that a license shall be granted if: 1) the person is currently licensed as a resident reinsurance intermediary or insurance producer and in good standing in his or her home state; 2) the person has submitted the proper request for licensure and has paid the fees required; 3) the person has submitted or transmitted to the insurance commissioner the application for licensure that the person submitted to his or her home state, or in lieu of that application, a completed application deemed appropriate by the commissioner; and 4) the person's home state awards nonresident licenses to residents of this state on the same basis. The existing service of process provision was amended to preclude any condition precedent being established before the Commissioner would be designated as agent for service of process. Language was also included at the request of the Underwriting and Reinsurance Pools Working Group to clarify the scope of the "Pool Manager" exemption from licensure.

The Regulation was presented and adopted by the Task Force at the NAIC 2001 Summer National Meeting.