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TECHNICAL ADVISORY

TA #201

Date: February 14, 2002

SUBJECT: LOUISIANA'S NEW PRODUCER LICENSING LAW

BACKGROUND:

For more than ten years, there has been growing support across the country for modernizing and streamlining the various state regulations on **producer licensing**, **nonresident licensing**, and **countersignature**. With the passage of the federal Financial Services Modernization Act (commonly known as the Gramm-Leach-Bliley Act) in 1999, a number of reform initiatives were set in motion across the country.

Louisiana was one of the first states to take action, and in 1999 the Legislature eliminated countersignature with the passage of HB 1295 (Act 882).

In the 2001 Legislative Session, HB 1557 was passed (Act 158), and was signed by Governor Foster to become effective January 1, 2002. This legislation provides for substantial revisions to Louisiana's producer licensing statutes, in conformity with the NAIC model act.

MAIN POINTS:

The following is a summary of the key points of Louisiana's new producer licensing statutes:

- Eliminates any reference to agents, brokers and solicitors who are all now referred to as "Insurance Producers."
- Defines key terms used throughout the law. The terms "sell," "solicit" and "negotiate," which determine when someone needs to obtain a producer license, are now defined in the law.
- Allows for renewal dates to be changed to a licensee's birthdate.

- Clearly sets forth exceptions as to when a person does not need to obtain a producer license.
- Creates a uniform application process for licensing both resident and non-resident producers.
- Allows for the use of today's technology to implement electronic applications, appointment of producers with the insurance companies they represent and receiving electronic payment of fees through the Internet.
- Deletes the provision that an applicant applying for an insurance license has a company appointment as part of the application submission.
- Clearly states when a producer is required to obtain an appointment with the insurer they represent.

Discussed below are some details on important points in the new licensing statute:

Definitions. Several key definitions were added for clarification.

***“Insurance Producer”** shall mean a person required to be licensed under the laws of this state to **sell, solicit, or negotiate** insurance, and includes all persons or business entities otherwise referred to in the Louisiana Insurance Code as “insurance agent” or “agent”, or “insurance broker” or “broker,” or “insurance solicitor” or “solicitor,” or “surplus lines broker.” [22:1132.(6)]*

Comment: The term “insurance producer” replaces all the previous terms listed above.

***“Sell”** shall mean to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurer.” [22:1132.(16)]*

***“Solicit”** shall mean to attempt to sell insurance or to ask or urge a person to apply for a particular kind of insurance from a particular insurer.” [22:1132.(17)]*

***“Negotiate”** shall mean to confer directly with or to offer advice directly to a purchaser, certificate holder, or enrollee, or prospective purchaser, certificate holder, or enrollee, of a particular contract of insurance, including certificates, riders, endorsements, or amendments, concerning any of the benefits, terms, or conditions of the contract, provided that the person engaged in the act is an insurance producer who either sells insurance or obtains insurance from insurers for purchasers, certificate holders, or enrollees.” [22:1132.(14)]*

Comment: “Sell,” “Solicit” or “Negotiate” are the key operative terms that determines whether or not a person must have a producer’s license. See below.

License required. The new statute clearly states when a person must obtain an insurance producer's license:

“No insurance producer shall sell, solicit, make an application for, procure, negotiate for, or place for others, any policies for any lines of insurance as to which he is not then qualified and duly licensed in this state.” [22:1133.]

License not required. Section 22:1134 provides for a number of exceptions to licensing. Following is a synopsis:

- (1) Officers, directors or employees who do not receive any commission, and whose activities are executive, administrative, managerial, clerical, or a combination of these, and does not sell, solicit or negotiate insurance. [22:1134.B.(1)(a)]
- (2) Officers, directors or employees whose function relates to underwriting, loss control, inspection, or the processing, adjusting, investigating, or settling of a claim on a contract of insurance. [22:1134.B.(1)(b)]
- (3) Officer, directors or employees 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. [22:1134.B.(1)(c)]
- (4) A person who secures and furnishes information for the purpose of group life 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. [22:1134.B.(2)]
- (5) Employees who respond to requests from existing policyholders on existing policies provided that those employees are not directly compensated based on the volume of premiums that may result from these services and provided that those employees do not sell, solicit, or negotiate insurance. [22:1134.B.(8)]

In addition, an insurance producer's license is not required for the following activities or duties, as provided in these exceptions to [22:1148.C.(1)]

- (a) *The clerical duties of office employees not involved in soliciting insurance.*
- (b) *Employees of insurance companies who solicit insurance only for or in conjunction with licensed insurance producers compensated on a commission basis.*
- (c) *The collection of insurance premiums by secretarial or clerical employees of a licensed insurance producer, or other person so authorized by a licensed insurance producer.*
- (d) *Employees of insurance companies who do not solicit insurance but are authorized by their employer to sign policies of insurance.*

Licensed lines. The only notable change is that the licensed lines of authority in property and casualty will be for Personal Lines or Commercial Lines, or both. In addition, licensing exams will be modified to reflect this change.

Nonresident licensing. One of the cornerstones of the movement to modernize and streamline insurance operations is a requirement for states to eliminate barriers to nonresident agents. Agents are still required to have a non-resident producer license in each state where they conduct business. The new NAIC licensing law streamlines this licensing process and eliminates state barriers against non-resident agents. A major component of this effort is the elimination of each state's countersignature requirements. Louisiana did so in 1999, as have the majority of states.

The other important requirement for streamlining and modernizing insurance operations is the uniformity in treatment of nonresident agents, both in licensing procedures as well as the scope of authority permitted by each state. The fundamental approach in the NAIC model act is "reciprocity" or "retaliation."

In reciprocity, each state takes a Golden Rule approach – "do unto others as you would have them do unto you." That is, a nonresident agent can do in Louisiana what a Louisiana agent is allowed to do in that other state. At present, 39 states have adopted this approach.

For states that do not adopt reciprocity, then the approach with them is retaliation. Essentially, for the few remaining states that have not agreed to remove the barriers to nonresident agents, their agents cannot operate in Louisiana with any greater privileges or authority than a Louisiana agent has in those states.

One additional very positive change is that all states which agree the new procedures in the NAIC model act are working to adopt a uniform nonresident licensing application.

Under Louisiana's new licensing statutes, the provisions for nonresident agents are outlined in the following sections: 22:1138; 22:1146; and 22:1147.

License renewals. A very significant change for license renewals is mandated in the new statutes. While not yet in place, the new procedure, once adopted by the Department of Insurance, will be that licenses are renewed every two years, rather than the current approach of even-year and odd-year renewals. Also, the Department will at some point adopt a birthdate-based renewal date, rather than one common date for all licenses, as is the practice now. The section dealing with license renewals is contained in 22:1137.(C)(1).

Company appointments. Company appointments are still required [22:1144], with the following exceptions:

- (1) No appointment will be necessary simply to obtain a license. Note, however, that an appointment is required in order to place business and receive commissions – [22:1144.A.(1)].
- (2) No appointment is required for an insurance producer who is not acting as an agent of an authorized insurer (previously called a “broker”) – [22:1144.A.(2)].
- (3) No appointment is required for an insurance producer who is duly empowered and authorized to act through or on behalf of another licensed insurance producer in the sale, solicitation, or negotiation of insurance (previously called a “solicitor”.) – [22:1144.A.(3).]

Additional information. The Louisiana Department of Insurance has an excellent web site, and includes a summary of the new licensing statutes, as well as an option to download Act 158 in its entirety. Go to www.ldi.state.la.us for more information.

Also, the NAIC has a great deal of resource information on nearly all aspects of the Financial Services Modernization Act (Gramm-Leach-Bliley Act). Go to www.naic.org for more information.

NECESSARY ACTION:

Circulate this Technical Advisory to all agency licensed personnel.