

## ADVERTISEMENTS OF LIFE INSURANCE AND ANNUITIES MODEL REGULATION

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### Section 1. Purpose

The purpose of this regulation is to set forth minimum standards and guidelines to assure a full and truthful disclosure to the public of all material and relevant information in the advertising of life insurance policies and annuity contracts.

### Section 2. Definitions

For the purpose of this regulation:

- A. (1) “Advertisement” means material designed to create public interest in life insurance or annuities or in an insurer, or in an insurance producer; or to induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy including:

**Comment:** See drafting note caveat immediately following the definition of “insurance producer” in this section.

- (a) Printed and published material, audiovisual material and descriptive literature of an insurer or insurance producer used in direct mail, newspapers, magazines, radio and television scripts, telemarketing scripts, billboards and similar displays, and the Internet or any other mass communication media.
  - (b) Descriptive literature and sales aids of all kinds, authored by the insurer, its insurance producers, or third parties, issued, distributed or used by the insurer or insurance producer; including but not limited to circulars, leaflets, booklets, web pages, depictions, illustrations and form letters;
  - (c) Material used for the recruitment, training and education of an insurer’s insurance producers which is designed to be used or is used to induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy;
  - (d) Prepared sales talks, presentations and materials for use by insurance producers.
- (2) “Advertisement” for the purpose of this regulation shall not include:
- (a) Communications or materials used within an insurer’s own organization and not intended for dissemination to the public;
  - (b) Communications with policyholders other than material urging policyholders to purchase, increase, modify, reinstate or retain a policy; and

- (c) A general announcement from a group or blanket policyholder to eligible individuals on an employment or membership list that a policy or program has been written or arranged; provided the announcement clearly indicates that it is preliminary to the issuance of a booklet explaining the proposed coverage.
- B. “Determinable policy elements” means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion, but where the values or amounts cannot be determined until some point after issue. These elements include the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these. These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable policy elements only, or from both determinable and guaranteed policy elements.
- C. “Guaranteed policy elements” means the premiums, benefits, values, credits or charges under a policy, or elements of formulas used to determine any of these that are guaranteed and determined at issue.
- D. “Insurance producer” means a person required to be licensed under the laws of this state to sell, solicit or negotiate insurance.

**Drafting Note:** Each jurisdiction may wish to revise the definition of “insurance producer” to reference the definition in that jurisdiction’s licensing law. This definition from the NAIC Producer Licensing Model Act, which also defines the terms “sell,” “solicit,” and “negotiate,” should be used. This term and words related thereto should not be included in life advertising regulations unless “insurance producer” also is statutorily defined and the definitions are identical.

- E. “Insurer” means any individual, corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd’s, fraternal benefit society, and any other legal entity which is defined as an “insurer” in the insurance code of this state or issues life insurance or annuities in this state and is engaged in the advertisement of a policy.
- F. “Nonguaranteed elements” means the premiums, credited interest rates (including any bonus), benefits, values, non-interest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.
- G. “Policy” means any policy, plan, certificate, including a fraternal benefit certificate, contract, agreement, statement of coverage, rider or endorsement which provides for life insurance or annuity benefits.
- H. “Preneed funeral contract or prearrangement” means an arrangement by or for an individual before the individual’s death relating to the purchase or provision of specific funeral or cemetery merchandise or services.
- I. “Registered product” means an annuity contract or life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

**Drafting Note:** Registered product includes, but is not limited to, contingent deferred annuities.

### **Section 3. Applicability**

- A. This regulation shall apply to any life insurance or annuity advertisement intended for dissemination in this state. In variable contracts and other registered products where disclosure requirements are established pursuant to federal regulation, this regulation shall be interpreted so as to eliminate conflict with federal regulation.

- B. All advertisements, regardless of by whom written, created, designed or presented, shall be the responsibility of the insurer, as well as the producer who created or presented the advertisement. Insurers shall establish and at all times maintain a system of control over the content, form and method of dissemination of all advertisements of its policies. A system of control shall include regular and routine notification, at least once a year, to agents, brokers and others authorized by the insurer to disseminate advertisements of the requirement and procedures for company approval prior to the use of any advertisements that is not furnished by the insurer and that clearly sets forth within the notice the most serious consequence of not obtaining the required prior approval.

**Section 4. Form and Content of Advertisements**

- A. Advertisements shall be truthful and not misleading in fact or by implication. The form and content of an advertisement of a policy shall be sufficiently complete and clear so as to avoid deception. It shall not have the capacity or tendency to mislead or deceive. Whether an advertisement has the capacity or tendency to mislead or deceive shall be determined by the Commissioner of Insurance from the overall impression that the advertisement may be reasonably expected to create upon a person of average education or intelligence within the segment of the public to which it is directed.
- B. No advertisement shall use the terms “investment,” “investment plan,” “founder’s plan,” “charter plan,” “deposit,” “expansion plan,” “profit,” “profits,” “profit sharing,” “interest plan,” “savings,” “savings plan,” “private pension plan,” “retirement plan” or other similar terms in connection with a policy in a context or under such circumstances or conditions as to have the capacity or tendency to mislead a purchaser or prospective purchaser of such policy to believe that he will receive, or that it is possible that he will receive, something other than a policy or some benefit not available to other persons of the same class and equal expectation of life.

**Section 5. Disclosure Requirements**

- A. The information required to be disclosed by this regulation shall not be minimized, rendered obscure, or presented in an ambiguous fashion or intermingled with the text of the advertisement so as to be confusing or misleading.
- B. An advertisement shall not omit material information or use words, phrases, statements, references or illustrations if the omission or use has the capacity, tendency or effect of misleading or deceiving purchasers or prospective purchasers as to the nature or extent of any policy benefit payable, loss covered, premium payable, or state or federal tax consequences. The fact that the policy offered is made available to a prospective insured for inspection prior to consummation of the sale, or an offer is made to refund the premium if the purchaser is not satisfied or that the policy or contract includes a “free look” period that satisfies or exceeds regulatory requirements, does not remedy misleading statements.
- C. In the event an advertisement uses “non-medical,” “no medical examination required,” or similar terms where issue is not guaranteed, terms shall be accompanied by a further disclosure of equal prominence and in juxtaposition thereto to the effect that issuance of the policy may depend upon the answers to the health questions set forth in the application.
- D. An advertisement shall not use as the name or title of a life insurance policy any phrase that does not include the words “life insurance” unless accompanied by other language clearly indicating it is life insurance. An advertisement shall not use as the name or title of an annuity contract any phrase that does not include the word “annuity” unless accompanied by other language clearly indicating it is an annuity. An annuity advertisement shall not refer to an annuity as a CD annuity, or deceptively compare an annuity to a certificate of deposit.
- E. An advertisement shall prominently describe the type of policy advertised.
- F. An advertisement of an insurance policy marketed by direct response techniques shall not state or imply that because there is no insurance producer or commission involved there will be a cost saving to prospective purchasers unless that is the fact. No cost savings may be stated or implied without justification satisfactory to the commissioner prior to use.

- G. An advertisement for a life insurance policy containing graded or modified benefits shall prominently display any limitation of benefits. If the premium is level and coverage decreases or increases with age or duration, that fact shall be commonly disclosed. An advertisement of or for a life insurance policy under which the death benefit varies with the length of time the policy has been in force shall accurately describe and clearly call attention to the amount of minimum death benefit under the policy.
- H. An advertisement for the types of policies described in Subsections F and G of this section shall not use the words “inexpensive,” “low cost,” or other phrase or words of similar import when the policies being marketed are guaranteed issue.
- I. Premiums
- (1) An advertisement for a policy with non-level premiums shall prominently describe the premium changes.
  - (2) An advertisement in which the insurer describes a policy where it reserves the right to change the amount of the premium during the policy term, but which does not prominently describe this feature, is deemed to be deceptive and misleading and is prohibited.
  - (3) An advertisement shall not contain a statement or representation that premiums paid for a life insurance policy can be withdrawn under the terms of the policy. Reference may be made to amounts paid into an advance premium fund, which are intended to pay premiums at a future time, to the effect that they may be withdrawn under the conditions of the prepayment agreement. Reference may also be made to withdrawal rights under any unconditional premium refund offer.
  - (4) An advertisement that represents that a pure endowment benefit has a “profit” or “return” on the premium paid, rather than a policy benefit for which a specified premium is paid is deemed to be deceptive and misleading and is prohibited.
  - (5) An advertisement shall not represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits, unless that is the fact.
  - (6) An advertisement shall not use the term “vanish” or “vanishing premium,” or a similar term that implies the policy becomes paid up, to describe a plan using nonguaranteed elements to pay a portion of future premiums.
- J. Analogies between a life insurance policy or annuity contract’s cash values and savings accounts or other investments and between premium payments and contributions to savings accounts or other investments shall be complete and accurate. An advertisement shall not emphasize the investment or tax features of a life insurance policy to such a degree that the advertisement would mislead the purchaser to believe the policy is anything other than life insurance.
- K. An advertisement shall not state or imply in any way that interest charged on a policy loan or the reduction of death benefits by the amount of outstanding policy loans is unfair, inequitable or in any manner an incorrect or improper practice.
- L. If nonforfeiture values are shown in any advertisement, the values must be shown either for the entire amount of the basic life policy death benefit or for each \$1,000 of initial death benefit.
- M. The words “free,” “no cost,” “without cost,” “no additional cost,” “at no extra cost,” or words of similar import shall not be used with respect to any benefit or service being made available with a policy unless true. If there is no charge to the insured, then the identity of the payor shall be prominently disclosed. An advertisement may specify the charge for a benefit or a service or may state that a charge is included in the premium or use other appropriate language.

N. No insurance producer may use terms such as “financial planner,” “investment adviser,” “financial consultant,” or “financial counseling” in such a way as to imply that he or she is generally engaged in an advisory business in which compensation is unrelated to sales unless that actually is the case. This provision is not intended to preclude persons who hold some form of formal recognized financial planning or consultant designation from using this designation even when they are only selling insurance. This provision also is not intended to preclude persons who are members of a recognized trade or professional association having such terms as part of its name from citing membership, providing that a person citing membership, if authorized only to sell insurance products, shall disclose that fact. This provision does not permit persons to charge an additional fee for services that are customarily associated with the solicitation, negotiation or servicing of policies.

O. Nonguaranteed Elements

- (1) An advertisement shall not utilize or describe nonguaranteed elements in a manner that is misleading or has the capacity or tendency to mislead.
- (2) An advertisement shall not state or imply that the payment or amount of nonguaranteed elements is guaranteed. Unless otherwise specified in [insert reference to the state law or regulation based on the NAIC Life Insurance Illustrations Model Regulation], if nonguaranteed elements are illustrated, they shall be based on the insurer’s current scale and the illustration shall contain a statement to the effect that they are not to be construed as guarantees or estimates of amounts to be paid in the future.

**Drafting Note:** A state that has not adopted the Life Insurance Illustrations Model Regulation should delete the phrase referencing it.

- (3) Unless otherwise specified in [insert reference to state equivalent to the NAIC Life Insurance Illustrations Model Regulation], an advertisement that includes any illustrations or statements containing or based upon nonguaranteed elements shall set forth, with equal prominence comparable illustrations or statements containing or based upon the guaranteed policy elements.

**Drafting Note:** A state that has not adopted the Life Insurance Illustrations Model Regulation should delete the phrase referencing it.

- (4) An advertisement shall not use or describe determinable policy elements in a manner that is misleading or has the capacity or tendency to mislead.
- (5) Advertisement may describe determinable policy elements as guaranteed but not determinable at issue. This description should include an explanation of how these elements operate, and their limitations, if any.

**Drafting Note:** Paragraphs (4) and (5) above contain references currently only applicable to equity indexed annuity products but could apply beyond such products. Additional requirements with respect to these products can be found in the Annuity Disclosure Model Regulation.

- (6) If an advertisement refers to any nonguaranteed policy element, it shall indicate that the insurer reserves the right to change any such element at any time and for any reason. However, if an insurer has agreed to limit this right in any way; such as, for example, if it has agreed to change these elements only at certain intervals or only if there is a change in the insurer’s current or anticipated experience, the advertisement may indicate any such limitation on the insurer’s right.
- (7) An advertisement shall not refer to dividends as “tax-free” or use words of similar import, unless the tax treatment of dividends is fully explained and the nature of the dividend as a return of premium is indicated clearly.
- (8) An advertisement may not state or imply that illustrated dividends under either or both a participating policy or pure endowment will be or can be sufficient at any future time to assure without the future payment of premiums, the receipt of benefits, such as a paid-up policy, unless the advertisement clearly and precisely explains the benefits or coverage provided at that time and the conditions required for that to occur.

P. An advertisement shall not state that a purchaser of a policy will share in or receive a stated percentage or portion of the earnings on the general account assets of the company.

Q. Testimonials, Appraisals, Analysis, or Endorsements by Third Parties

- (1) Testimonials, appraisals or analysis used in advertisements must be genuine; represent the current opinion of the author; be applicable to the policy advertised, if any; and be accurately reproduced with sufficient completeness to avoid misleading or deceiving prospective insureds as to the nature or scope of the testimonial, appraisal, analysis or endorsement. In using testimonials, appraisals or analysis; the insurer or insurance producer makes as its own all the statements contained therein, and these statements are subject to all the provisions of this regulation.
- (2) If the individual making a testimonial, appraisal, analysis or an endorsement has a financial interest in the insurer or related entity as a stockholder, director, officer, employee or otherwise, or receives any benefit directly or indirectly other than required union scale wages, that fact shall be prominently disclosed in the advertisement.
- (3) An advertisement shall not state or imply that an insurer or a policy has been approved or endorsed by a group of individuals, society, association or other organization unless such is the fact and unless any proprietary relationship between an organization and the insurer is disclosed. If the entity making the endorsement or testimonial is owned, controlled or managed by the insurer, or receives any payment or other consideration from the insurer for making an endorsement or testimonial, that fact shall be disclosed in the advertisement.
- (4) When an endorsement refers to benefits received under a policy for a specific claim, the claim date, including claim number, date of loss and other pertinent information shall be retained by the insurer for inspection for a period of five (5) years after the discontinuance of its use or publication.

R. An advertisement shall not contain statistical information relating to any insurer or policy unless it accurately reflects recent and relevant facts. The source of any statistics used in advertisement shall be identified.

S. Policies Sold to Students

- (1) The envelope in which insurance solicitation material is contained may be addressed to the parents of students. The address may not include any combination of words which imply that the correspondence is from a school, college, university or other education or training institution nor may it imply that the institution has endorsed the material or supplied the insurer with information about the student unless such is a correct and truthful statement.
- (2) All advertisements including, but not limited to, informational flyers used in the solicitation of insurance shall be identified clearly as coming from an insurer or insurance producer, if such is the case, and these entities shall be clearly identified as such.
- (3) The return address on the envelope may not imply that the soliciting insurer or insurance producer is affiliated with a university, college, school or other educational or training institution, unless true.

T. Introductory, Initial or Special Offers and Enrollment Periods

- (1) An advertisement of an individual policy or combination of policies shall not state or imply that the policy or combination of policies is an introductory, initial or special offer, or that applicants will receive substantial advantages not available at a later date, or that the offer is available only to a specified group of individuals, unless that is the fact. An advertisement shall not describe an enrollment period as "special" or "limited" or use similar words or phrases in describing it when the insurer uses successive enrollment periods as its usual method of marketing its policies.
- (2) An advertisement shall not state or imply that only a specific number of policies will be sold, or that a time is fixed for the discontinuance of the sale of the particular policy advertised because of special advantages available in the policy.

- (3) An advertisement shall not offer a policy that utilizes a reduced initial premium rate in a manner that overemphasizes the availability and the amount of the reduced initial premium. A reduced initial or first year premium may not be described as constituting free insurance for a period of time. When insurer charges an initial premium that differs in amount from the amount of the renewal premium payable on the same mode, all references to the reduced initial premium shall be followed by an asterisk or other appropriate symbol that refers the reader to that specific portion of the advertisement that contains the full rate schedule for the policy being advertised.

**Drafting Note:** Some states prohibit a reduced initial premium. This section does not imply that a state that prohibits an initial premium is not in conformity with the NAIC model.

- (4) An enrollment period during which a particular insurance policy may be purchased on an individual basis shall not be offered within this state unless there has been a lapse of not less than [insert number] months between the close of the immediately preceding enrollment period for the same policy and the opening of the new enrollment period. The advertisement shall specify the date by which the applicant must mail the application, which shall be not less than ten (10) days and not more than forty (40) days from the date on which the enrollment period is advertised for the first time. This regulation applies to all advertising media—i.e., mail, newspapers, radio, television, magazines and periodicals—by any one insurer or insurance producer. The phrase “any one insurer” includes all the affiliated companies of a group of insurance companies under common management or control. This regulation does not apply to the use of a termination or cutoff date beyond which an individual application for a guaranteed issue policy will not be accepted by an insurer in those instances where the application has been sent to the applicant in response to his or her request. It is also inapplicable to solicitations of employees or members of a particular group or association that otherwise would be eligible under specified provisions of the insurance code for group, blanket or franchise insurance. In cases where insurance product is marketed on a direct mail basis to prospective insurance by reason of some common relationship with a sponsoring organization, this regulation shall be applied separately to each sponsoring organization.
- U. An advertisement of a particular policy shall not state or imply that prospective insureds shall be or become members of a special class, group, or quasi-group and as such enjoy special rates, dividends or underwriting privileges, unless that is the fact.
- V. An advertisement shall not make unfair or incomplete comparisons of policies, benefits, dividends or rates of other insurers. An advertisement shall not disparage other insurers, insurance producers, policies, services or methods of marketing.
- W. For individual deferred annuity products or deposit funds, the following shall apply:
- (1) Any illustrations or statements containing or based upon nonguaranteed interest rates shall likewise set forth with equal prominence comparable illustrations or statements containing or based upon the guaranteed accumulation interest rates. The nonguaranteed interest rate shall not be greater than those currently being credited by the company unless the nonguaranteed rates have been publicly declared by the company with an effective date for new issues not more than three (3) months subsequent to the date of declaration.
- (2) If an advertisement states the net premium accumulation interest rate, whether guaranteed or not, it shall also disclose in close proximity thereto and with equal prominence, the actual relationship between the gross and the net premiums.
- (3) If the contract does not provide a cash surrender benefit prior to commencement of payment of annuity benefits, an illustration or statement concerning the contract shall prominently state that cash surrender benefits are not provided.
- (4) Any illustrations, depictions or statements containing or based on determinable policy elements shall likewise set forth with equal prominence comparable illustrations, depictions or statements containing or based on guaranteed policy elements.

- X. An advertisement of a life insurance policy or annuity that illustrates nonguaranteed values shall only do so in accordance with current applicable state law relative to illustrating such values for life insurance policies and annuity contracts.
- Y. An advertisement for the solicitation or sale of a preneed funeral contract or prearrangement as defined in Section 2F that is funded or to be funded by a life insurance policy or annuity contract shall adequately disclose the following:
  - (1) The fact that a life insurance policy or annuity contract is being used to fund a prearrangement as defined in Section 2F; and
  - (2) The nature of the relationship among the soliciting agent or agents, the provider of the funeral or cemetery merchandise services, the administrator and any other person.

**Section 6. Identity of Insurer**

- A. The name of the insurer shall be clearly identified in all advertisements about the insurer or its products, and if any specific individual policy is advertised it shall be identified either by form number or other appropriate description. If an application is a part of the advertisement, the name of the insurer shall be shown on the application. However, if an advertisement contains a listing of rates or features that is a composite of several different policies or contracts of different insurers, the advertisement shall so state, shall indicate, if applicable, that not all policies or contracts on which the composite is based may be available in all states, and shall provide a rating of the lowest rated insurer and reference the rating agency, but need not identify each insurer. If an advertisement identifies the issuing insurers, insurance issuer ratings need not be stated.
- B. An advertisement shall not use a trade name, an insurance group designation, name of the parent company of the insurer, name of a particular division of the insurer, a reinsurer of the insurer, service mark, slogan, symbol or other device or reference without disclosing the name of the insurer, if the advertisement would have the capacity or tendency to mislead or deceive as to the true identity of the insurer or create the impression that a company other than the insurer would have any responsibility for the financial obligation under a policy.
- C. An advertisement shall not use any combination of words, symbols or physical materials that by their content, phraseology, shape, color or other characteristics are so similar to a combination of words, symbols or physical materials used by a governmental program or agency or otherwise appear to be of such a nature that they tend to mislead prospective insureds into believing that the solicitation is in some manner connected with a governmental program or agency.

**Section 7. Jurisdictional Licensing and Status of Insurer**

- A. An advertisement that is intended to be seen or heard beyond the limits of the jurisdiction in which the insurer is licensed shall not imply licensing beyond those limits.
- B. An advertisement may state that an insurer or insurance producer is licensed in a particular state or states, provided it does not exaggerate that fact or suggest or imply that competing insurers or insurance producers may not be so licensed.

An advertisement shall not create the impression that the insurer, its financial condition or status, the payment of its claims or the merits, desirability, or advisability of its policy forms or kinds of plans of insurance are recommended or endorsed by any governmental entity. However, where a governmental entity has recommended or endorsed a policy form or plan, that fact may be stated if the entity authorizes its recommendation or endorsement to be used in an advertisement.



**Section 8. Statements About the Insurer**

An advertisement shall not contain statements, pictures or illustrations that are false or misleading, in fact or by implication, with respect to the assets, liabilities, insurance in force, corporate structure, financial condition, age or relative position of the insurer in the insurance business. An advertisement shall not contain a recommendation by any commercial rating system unless it clearly defines the scope and extent of the recommendation including, but not limited to, the placement of insurer's rating in the hierarchy of the rating system cited.

**Section 9. Enforcement Procedures**

- A. Each insurer shall maintain at its home or principal office a complete file containing a specimen copy of every printed, published or prepared advertisement of its individual policies and specimen copies of typical printed, published or prepared advertisements of its blanket, franchise and group policies, hereafter disseminated in this state, with a notation indicating the manner and extent of distribution and the form number of any policy advertised. The file shall be subject to inspection by the department. All advertisements shall be maintained in the file for a period of five (5) years after discontinuance of its use or publication.
- B. If the commissioner determines that an advertisement has the capacity or tendency to mislead or deceive the public, the commissioner may require an insurer or insurance producer to submit all or any part of the advertising material for review or approval prior to use.
- C. Each insurer subject to the provisions of this regulation shall file with the commissioner with its annual statement a certificate of compliance executed by an authorized officer of the insurer stating that to the best of his or her knowledge, information and belief the advertisements that were disseminated by or on behalf of the insurer in this state during the preceding statement year, or during the portion of the year when these rules were in effect, complied or were made to comply in all respects with the provisions of these rules and the insurance laws of this state as implemented and interpreted by this regulation.

**Drafting Note:** In furtherance of efficient and effective use of scarce regulatory resources, the drafters recommend that any state requirements for review and pre-approval of life insurance and annuity advertisements be carefully examined and reconsidered. In particular it seems appropriate that generic or branding advertisements that are designed to create public interest in life insurance or annuities or in an insurer be exempt from such requirements.

**Section 10. Penalties**

An insurer or its officer, directors, producers or employees that violate any of the provisions of this regulation, or knowingly participate in or abet such violation, shall be subject to a fine up to \$1000 for each violation and suspension or revocation of its certificate of authority or license.

**Section 11. Conflict With Other Laws or Regulations**

It is not intended that this regulation conflict with or supersede any regulations currently in force or subsequently adopted in this state governing specific aspects of the sale or replacement of life insurance including, but not limited to, laws or regulations dealing with life insurance cost comparison indices, deceptive practices in the sale of life insurance, replacement of life insurance policies, illustration of life insurance policies, and annuity disclosure. Consequently, no disclosure pursuant to or required under those regulations shall be deemed to be an advertisement within the meaning of this regulation.

**Section 12. Severability**

If any section, term or provision of this regulation shall be judged invalid for any reason, that judgment shall not affect, impair or invalidate any other section, term or provision of this regulation, and the remaining sections, terms and provisions shall be and remain in full force and effect.

*Chronological Summary of Actions (all references are to the Proceedings of the NAIC).*

*1975 Proc. II 6, 9, 244, 325, 326-330 (adopted).*

*1976 Proc. II 15, 17, 342, 366, 373-374 (amended).*

*1988 Proc. I 9, 18, 88-91, 130-131, 138-144 (amended and reprinted).*

*1988 Proc. II 5, 12, 478, 490, 497-503 (amended).*

*2000 Proc. 1<sup>st</sup> Quarter 9, 26-27, 58, 110-117, 135 (amended and reprinted).*

*2015 Proc. 1<sup>st</sup> Quarter, Vol. I 117-118, 131-134, 337-342, 431 (amended).*

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**This chart is intended to provide readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings related to the NAIC model. Such guidance provides readers with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state’s activity in this area and has determined whether the citation most appropriately fits in the Model Adoption column or Related State Activity column based on the definitions listed below. The NAIC’s interpretation may or may not be shared by the individual states or by interested readers.**

**This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist readers in locating useful information. Readers should consult state law for further details and for the most current information.**

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**KEY:**

**MODEL ADOPTION:** States that have citations identified in this column adopted the most recent version of the NAIC model in a **substantially similar manner**. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

**RELATED STATE ACTIVITY:** Examples of Related State Activity include but are not limited to: older versions of the NAIC model, statutes or regulations addressing the same subject matter, or other administrative guidance such as bulletins and notices. States that have citations identified in this column **only** (and nothing listed in the Model Adoption column) have **not** adopted the most recent version of the NAIC model in a **substantially similar manner**.

**NO CURRENT ACTIVITY:** No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Alabama		ALA. ADMIN. CODE r. 482-1-132 (1981/2004) (previous version of model).
Alaska	NO CURRENT ACTIVITY	
American Samoa	NO CURRENT ACTIVITY	
Arizona		ARIZ. ADMIN. CODE § R20-6-202 (1969/2007) (previous version of model).
Arkansas		ARK. ADMIN. CODE §§ 054-00-991 to 054-00-99-14 (2011) (previous version of model).
California		CAL. ADMIN. CODE §§ 2547 to 2547.11 (1975) (previous version of model).
Colorado		3 COLO. CODE REGS. § 702-4:4-1-2 (1974/2014) (previous version of model).
Connecticut		CONN. AGENCIES REGS. §§ 38a-819-21 to 38a-819-31 (1976/1992) (previous version of model).
Delaware	NO CURRENT ACTIVITY	
District of Columbia	NO CURRENT ACTIVITY	
Florida		FLA. ADMIN. CODE ANN. r. 69O-150.101 to 69O-150.122 (1973/2000) (previous version of model); FLA. ADMIN. CODE ANN. r. 69W-100.007 (1979/2014).

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Georgia		GA. COMP. R. & REGS. 120-2-11 (1965/2007) (previous version of model).
Guam	NO CURRENT ACTIVITY	
Hawaii	NO CURRENT ACTIVITY	
Idaho	NO CURRENT ACTIVITY	
Illinois		ILL. ADMIN. CODE tit. 50, §§ 909.10 to 909.120 (1976/2007) (previous version of model).
Indiana	NO CURRENT ACTIVITY	
Iowa		IOWA ADMIN. CODE r. § 191-15.1 to 191-15.14 (1997/2011) (parts of health advertising reg. included in broader provisions applicable to insurers).
Kansas		KAN. ADMIN. REGS. §§ 40-9-118 (1977/2014) (previous version of model); BULLETIN 2014-1 (2014).
Kentucky		806 KY. ADMIN. REGS. 12:010 to 12:020 (1975/2007).
Louisiana		LA. ADMIN. CODE §§ 37:XIII.4101 to 37:XIII.4123 (Regulation 60) (1997/2018) (previous version of model).
Maine	NO CURRENT ACTIVITY	
Maryland		MD. CODE REGS. §§ 31.15.01.01 to 31.15.01.10 (1970).
Massachusetts	NO CURRENT ACTIVITY	
Michigan		MICH. ADMIN. CODE r. 500.1371 to 500.1387 (1984/1997) (previous version of model).
Minnesota		MINN. R. 2790.0100 to 2790.2200 (1971/1989).
Mississippi	NO CURRENT ACTIVITY	

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Missouri	MO. CODE REGS. ANN. tit. 20, § 400-5.100 (1976/2016).	
Montana	NO CURRENT ACTIVITY	
Nebraska		210 NEB. ADMIN. CODE ch. 50, §§001 to 014 (1990/2008) (previous version of model).
Nevada	NO CURRENT ACTIVITY	
New Hampshire		N.H. CODE ADMIN. R. ANN. INS. 2602.01 to 2602.11 (2008/2016) (previous version of model).
New Jersey		N.J. ADMIN. CODE §§ 11:2-23.1 to 11:2-23.10 (1985/2013) (previous version of model).
New Mexico	NO CURRENT ACTIVITY	
New York		N.Y. COMP. CODES R. & REGS. tit. 11, §§ 219.1 to 219.7 (Regulation 34-A) (1980/2006) (previous version of model).
North Carolina		11 N.C. ADMIN. CODE §§ 0424 to 0433 (1978/1992). (previous version of model).
North Dakota		N.D. ADMIN. CODE §§ 45-04-10-01 to 45-04-10-08 (1988/2006) (previous version of model).
Northern Marianas	NO CURRENT ACTIVITY	
Ohio		OHIO ADMIN. CODE 3901-6-01 (1997/2018).
Oklahoma		OKLA. ADMIN. CODE §§ 365:10-3-30 to 365:10-3-39 (1990/2015) (previous version of model).
Oregon		BULLETIN 2009-7 (2009).
Pennsylvania		31 PA. CODE §§ 51.1 to 51.43 (1973/1976).
Puerto Rico	NO CURRENT ACTIVITY	

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Rhode Island		230 R.I. CODE R. §§ 20-25-5.1 to 20-25-5.13 (2009) (previous version of model).
South Carolina	NO CURRENT ACTIVITY	
South Dakota		S.D. ADMIN. R. 20:06:10 (1973/2012) (based on accident and health insurance model at page 40-1).
Tennessee		TENN. COMP. R. & REGS. 0780-1-33-.01 to 0780-1-33-.13 (1976) (previous version of model).
Texas		28 TEX. ADMIN. CODE §§ 21.101 to 21.114 (1981/2010).
Utah		UTAH ADMIN. CODE R590-130 (1989/2012) (based on accident and health insurance advertising model at 40-1).
Vermont		VT. ADMIN. CODE. §§ 4-3-4:1 to 4-3-4:9; Appx. A to C (Regulation 77-2) (1978/1980).
Virgin Islands	NO CURRENT ACTIVITY	
Virginia		14 VA. ADMIN. CODE §§ 5-41-10 to 5-41-160 (2011) (previous version of model).
Washington		WASH. ADMIN. CODE 284-23-010 to 284-23-110 (1975/2010) (previous version of model).
West Virginia		W. VA. CODE R. §§ 114-11-1 to 114-11-11 (1974/20) (previous version of model).
Wisconsin		WIS. ADMIN. CODE INS. § 2.16 (1984/2015).
Wyoming	NO CURRENT ACTIVITY	



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When a committee was appointed to draft health insurance advertising regulation in 1974, the chair noted the need to appoint a task force to draft regulations governing advertisements of life insurance. **1974 Proc. II 415.**

Prior to adoption of the first model, an interested party commented that specific advertising regulations and guidelines tended to be developed to remedy existing problems that the public had experienced in connection with product advertising. Regulations that were general in nature should not be interpreted to force advertising to become an educational tool, since to do so might detract from the essential purpose of motivating the purchase of a worthwhile product. The interested party opined that the model regulation should be interpreted and applied under what courts termed the “rule of reason.” He noted that experience dealing with advertising of life insurance and annuities to that point did not require distinguishing between different types of advertisements, such as invitations to inquire, invitations to contract, and institutional advertisements. **1975 Proc. II 331.**

In 1998 the NAIC charged a working group to review the advertising model and consider changes. An interested party asked why this working group was considering changes to the advertising regulation. The chair responded that it had been a long time since this model was updated, and some states added provisions to their own regulations that would be helpful additions to the NAIC model. In addition many new products have been developed that did not exist when the model was last updated, life illustration standards have been developed, and direct marketing is a more common method of solicitation. All of these contributed to a need to update the life insurance advertising model regulation. **1998 Proc. 4<sup>th</sup> Quarter 637.**

#### Section 1. Purpose

In 1985 a committee looked at problems associated with sales of annuities coupled with life insurance. One suggestion was to prohibit the sale of combination products. Another suggestion was to review the advertising rules to clearly indicate the joint responsibility of insurers and agents in the area of abusive sales practices. **1985 Proc. II 236.**

A draft was discussed in June 1986 that prohibited simultaneous sales of life insurance and annuities unless separate and distinct applications and policy contracts were utilized. The proposed model gave a purchaser ten days to review sales material before the application could be taken. **1986 Proc. II 191-192.**

#### Section 2. Definitions

A. The task force assigned to prepare a model regulation received a first draft of proposed life insurance advertising rules from the insurance industry. The task force was unanimous in the opinion that the industry draft was too limited in its applicability and accordingly made substantial modifications to the definition of “advertisement.” It was the consensus of the task force that much of the material used by insurers in the training of agents, solicitors and other sales personnel was often eventually presented to prospective insureds or reflected in the sales presentations by agents. Consequently, that material was included within the definition of “advertisement,” with a corresponding modification to the exemption provision so that purely internal communications of insurers would not be subject to the requirements of the proposed model. **1975 Proc. I 563.**

Interested parties urged an exemption for communications between insurers and prospective group policyholders and between group policyholders and prospective group members. The task force concluded that these communications caused serious regulatory problems where group policyholders were small and unsophisticated or where prospective eligible individual insureds were members of ill-defined groups and declined to include the exemption. **1975 Proc. I 564.**

At the next meeting of the task force, the industry committee requested further consideration by the task force of an exemption from the requirements in these rules on material designed as communication from a group or blanket policyholder to its employees or members that an insurance policy or contract had been arranged for them and a more detailed explanation of the proposed coverage would be forthcoming to eligible individuals. It was the consensus of the task force that the exemption should be granted. Language to that effect was added to Subsection A(2)(c). That language remains unchanged to date. **1975 Proc. II 330.**

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#### Section 2A (cont.)

The task force considered and rejected a request that Paragraph (1)(c) be amended to limit its application to recruitment and training material that was designed to be used to induce the public to purchase insurance and to delete from the model material that was used by the agents or brokers, but was not designed to induce the public to purchase insurance. It was the consensus of the task force that the insurer should be responsible for all material actually used to induce the purchase of insurance. That language remains basically unchanged to date. **1975 Proc. II 330.**

An interested party expressed a concern that the language of the regulation as it was written would mandate total company responsibility for any and all agent advertising. The commenter stated that, in the real world, it was not reasonable, practical or possible for an insurance company to control totally the activities of its agents. The task force considered but rejected this suggestion. **1975 Proc. II 332.**

A new subgroup was appointed in 1986 to look at the rules governing the advertising of life insurance. The first draft of revisions contained several important changes, including greater agent/broker liability for advertisements used in the sale of life insurance and/or annuities; and the introduction of the concept of “insurance producer” to generically describe those individuals who solicit, negotiate, affect, procure, renew or continue policies of insurance. **1987 Proc. I 151.**

Interested parties commenting on the new draft expressed concern about the expansion of the definition of advertisement and especially about the addition of the term “third parties” without its being defined. The interested parties recommended that, unless the need for this addition could be demonstrated and the term clearly defined, “third parties” should be deleted. They noted that when the existing rules were adopted in 1975, concern was expressed regarding the scope of insurer responsibility. One company had proposed amendments that would limit the definition of advertising to that which was authorized or used by the company. The proposal was rejected, but the interested parties believed it was clear that agent/solicitor/broker appointment by the insurer was assumed when the model was adopted by the NAIC. The producer definition added in the draft didn’t clearly limit the individuals to those appointed by the insurer. **1987 Proc. I 140.**

The record included a list of comments received on the draft and regulators’ response to each comment. One interested party recommended that the definition of “advertisement” be modified to exclude those insurance producers who are not under contract with the insurer. The response said that to exempt third party insurance producers (brokers) from the definition of an “advertisement” would allow producers to broker life insurance business without advertising oversight. It was felt that this would open the door for abuses in the area of non-contracted relationships between the producer and the insurer. **1987 Proc. II 135.**

When discussions began on amending the model in 1999, one of the first recommendations was to add reference to the Internet in Section 2A(1)(a) and to Web pages in Subparagraph (b). A regulator said the concept was correct, but he suggested waiting to see what terminology was developed by the special committee that had been appointed to consider regulatory issues related to electronic commerce. An interested party suggested using the term “broadcast media” that reaches the public rather than being so descriptive. A regulator responded that this would also cover newspapers and radio. He suggested using “electronic commerce” as a placeholder for now. Another regulator noted that the suggestion to add Web pages in Subparagraph (b) might be duplicative because depictions, illustrations, etc., could be delivered over Web pages. The first regulator responded that the first three in that list were more like Web pages whereas the last suggestions were more generic. **1999 Proc. 1<sup>st</sup> Quarter 533.**

At the end of the drafting process, Section 2A(1)(a) was changed specifically to include telemarketing scripts. It was always the position of the working group that telemarketing scripts were advertising, but the phrase was added to the definition for clarity. An interested party asked if this term implied that the materials were preplanned and the chair responded that the term “script” said that. **2000 Proc. 1<sup>st</sup> Quarter 134.**

In 1999 an industry trade association recommended deleting the provision that the definition of an advertisement included general advertising about the company and limiting it only to advertising about a particular product. The chair disagreed with that recommendation and said he would not be comfortable narrowing the scope of the model in this way. The association believed this was important because the Unfair Trade Practices Act already covered general information; the intent of this

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#### Section 2A (cont.)

regulation was to regulate the advertising of the life insurance products. She expressed concern that the regulation would apply when an insurer sponsored a sporting event, for example, and showed its logo. No regulators spoke in support of the industry suggestion, so it was not included in the draft. **1999 Proc. 3<sup>rd</sup> Quarter 820.**

Near the end of the drafting process the trade association again raised the issue of institutional advertising. A representative summarized his comments on “branding” advertisements and said he viewed advertising that was designed to raise awareness of the company name as generic and was concerned about its being covered under the regulation. Another interested party said that these generic advertisements did not refer to specific products and should not be subjected to the advertising rules. She said some states then subjected them to filing requirements and, for a national advertising campaign, a delay in approval by one state could affect the entire campaign. The chair said that this model had been around for a long time and there had not be an exception for these types of advertisements. He pointed out several sections of the model that would apply to this type of advertisement and expressed concern about exempting branding advertisements from Section 4B, 5Q, 5S and 5T(4). He said he was sympathetic to the industry’s concerns about filing of advertising but the NAIC model regulation did not require filing. A regulator added that the definition suggested by the trade association was too vague and would be difficult to enforce. **1999 Proc. 4<sup>th</sup> Quarter 899.**

Another regulator said that he did not think it would be very constructive to have to argue about what would fit under an exemption for a generic advertisement. An industry representative said this was an important issue to companies. There has been a fundamental shift in how companies wanted to present themselves in advertising. The regulator responded that the problem the industry was describing was a filing problem, not a problem with the NAIC’s model. A consumer advocate opined that branding advertisements on television were the most misleading type of ads, and were simply designed to give a warm and fuzzy feeling about the company. A regulator suggested that the group should send a strong message about how the regulators felt about filing of advertising. She said that if the working group has a consensus, it should raise that issue but another regulator said he did not think it was relevant to include that issue in the model. The working group decided to add a drafting note to Section 9 explaining its position. **1999 Proc. 4<sup>th</sup> Quarter 899.**

The working group considered a suggestion that Section 2A(1)(c) be revised because, if materials for agents were misleading or incomplete, then agents might in turn mislead the public. The chair asked if regulators were interested in deleting the language that said “which is designed to be used or is used to induce the public....” He said he did not recall seeing incorrect or misleading training materials, so this was somewhat a theoretical question. An interested party said that, if that text were deleted, this language would be broad enough to include material designed to inspire agents to sell more for the company. All of the information in the regulation would then need to be included in that inspirational brochure. The chair asked if there was a middle ground, such as requiring the regulation to apply to material that describes to the producer the features, advantages or disadvantages of an insurance product. The regulators agreed that was an appropriate compromise. The chair said that as the regulators go through the rule, they might find quite a few parts of the regulation that they would not want to apply to agent training materials. Because of that fact, the model would have to be reconfigured to segregate requirements for agent training materials. What the regulators really wanted to say was that the agent training materials should not be misleading or incomplete. **1999 Proc. 3<sup>rd</sup> Quarter 820-821.**

A trade association suggested the working group revise Section 2A(2) because the financial marketplace would change as a result of the passage of the federal financial services modernization legislation [the Gramm-Leach-Bliley Act of 1999]. The NAIC’s model regulation should reflect the reality of today’s marketplace. The chair responded that regulators did not yet know what that marketplace would look like and expressed discomfort with changing the model before regulators had any experience. He asked what parts of this rule would be a problem under the possible scenarios created by financial services modernization. The trade association representative responded that filing of advertising for “branding” communications could create a problem. The chair responded that the NAIC’s model did not require filing of advertising and asked if an exclusion in the model for advertisements that did not reference specific products was appropriate. A regulator said he could foresee confusion about what was included or excluded and suggested that a state with a filing requirement should review to see if branding advertisements should be included. A representative from a producer association said his organization tried to raise awareness of the value of life insurance, but did not mention any particular company. He opined that the model was not

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#### Section 2A (cont.)

designed to cover that type of situation. The chair confirmed that an organization not licensed as an insurer was not covered by the regulation. **1999 Proc. 4<sup>th</sup> Quarter 921.**

B. An industry trade association suggested adding definitions from the Annuity Disclosure Model Regulation as Subsections B and C. One member of the group suggested adding a drafting note to point out the connection to the Annuity Disclosure Model Regulation and the group agreed it was appropriate to do so in Section 5O where the definitions were used. **1999 Proc. 3<sup>rd</sup> Quarter 821.**

D. The definition of producer was included first in amendments discussed in late 1986. An interested party objected, commenting that the concept of “insurance producer” was an all-inclusive, generic label for individuals involved in a broad spectrum of insurance transaction activities. The definition could include individuals who were not authorized or appointed to act on behalf of the insurer. He suggested that, if the concept of insurance producer was deemed essential to the model, it should be at least qualified by adding “insurer-appointed” immediately preceding the word “individual” in the definition. **1987 Proc. I 140.**

The amendments adopted in 1987 included the insurance producer definition, as well as a drafting note cautioning states to only adopt this definition if their state laws defined the term in an identical manner. **1988 Proc. I 138-139.**

The definition was amended to match that in the Producer Licensing Model Act. **2000 Proc. 1<sup>st</sup> Quarter 111.**

F. The definition and concept of nonguaranteed elements first appeared in the model as a result of the December 1987 amendments. **1988 Proc. I 139.**

Interested parties suggested that Subsection F be replaced with the definition of nonguaranteed elements found in the NAIC Annuity Disclosure Model Regulation. The working group agreed to that suggestion. **1999 Proc. 4<sup>th</sup> Quarter 921.**

H. The definition of a preneed funeral contract was added when other amendments to address the issue were added to Section 5. **1988 Proc. II 498.**

A regulator expressed concern about the definition of preneed funeral contract or prearrangement. He said most state insurance departments do not regulate preneed funeral contracts. NAIC staff said the only place the model used this definition was in Section 5Y, where regulation of life insurance policies used to fund preneed funeral contracts was discussed. The working group agreed that was appropriate insurance regulation. **1999 Proc. 4<sup>th</sup> Quarter 921.**

#### Section 3. Applicability

A. It was determined that, consistent with the deliberations of the group that was developing model rules for variable life insurance, these rules would be made applicable to variable contracts. **1975 Proc. I 564.**

The second sentence was added during the drafting done in 1999. **2000 Proc. 1<sup>st</sup> Quarter 111.**

B. When drafting amendments in 1999, a regulator suggested that agents that utilize advertising not approved by the company be held separately accountable. The chair agreed, saying that in his state both the company and the agent were held responsible. He thought this sent a good message. An interested party also spoke in favor of penalties for agents. The working group discussed whether to add a requirement that only company approved advertising could be used. The chair opined that it should be up to the company whether it wanted to allow agents to do their own advertising. He said that by making the company responsible, it would likely want to review any agent advertising. **1999 Proc. 1<sup>st</sup> Quarter 533.**

As discussion of this subsection continued later in 1999, the working group heard a suggestion that, when a producer uses advertising that had not been approved by the insurer, the insurer would not be liable. The chair said he did not believe the model should absolve the insurer; the regulator should be free to take into consideration the circumstances of the situation. In

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#### Section 3b (cont.)

addition, interested parties suggested changing the last two lines of Section 3B to say that the notice would state that there were consequences of not obtaining the required approval. The chair said he did not think that would be very effective. He suggested telling the producer the most dire consequences that could occur, rather than the least. Simply saying there were consequences would not be effective. **1999 Proc. 4<sup>th</sup> Quarter 921.**

#### Section 4. Form and Contents of Advertisements

A. One interested party commented on the list of words that had the capacity to mislead. He recommended that the term “deposit” be deleted from the list because it could discourage or prohibit the proper use of that term with innovative products such as variable and universal life insurance. The response was that the proposed model did not prohibit the use of the term “deposit.” However, it did prohibit the use of certain terms when taken out of context. Inclusion of the word “deposit” within the proposed rule was deemed necessary to remove ambiguity in specific and repeated areas of abuse. **1987 Proc. II 135.**

B. A regulator suggested that the working group consider developing parameters to help measure whether advertising was misleading or deceptive. Companies have advertising materials approved in some places but not others and he opined that this might be because the language was written so broadly. The chair said he did not want to be in the position of having to approve advertising just because some other states had done so. The working group discussed the terms used in Subsection B and decided to consider whether any other terms should be added to this list. **1999 Proc. 1<sup>st</sup> Quarter 533.**

The model included a sentence in Subsection B that said, “Every insurer shall establish and at all times maintain a system of control over the content, form and method of dissemination of all advertisements of its policies.” An industry trade association suggested deleting this sentence. The chair said he was not in favor of that change because he felt insurers should be responsible for their agents. Several states spoke up in agreement with that position. The chair said he would like to have the authority to look at this on a case-by-case basis. If the agent went to great lengths to hide his bad actions from the company, he would probably not recommend regulatory sanctions, but if the company was not policing its agents carefully, he would hold them responsible. An interested party said the problem with the language in the draft was that it created an absolute liability that would take away the discretion to weigh the insurer’s activities. **1999 Proc. 3<sup>rd</sup> Quarter 821.**

#### Section 5. Disclosure Requirements

B. The working group agreed to add language that referred to a free-look period. The chair noted that this related to whether the advertising was within the rules, not whether it complied with the contract language. It would apply regardless of when the information was found to be misleading. **1999 Proc. 1<sup>st</sup> Quarter 534.**

D. The working group agreed to add a reference to the CD annuity. A regulator questioned the use of that term and asked whether it was intended to be illustrative or whether other terms should also be included. The chair opined that the language was written broadly enough that this was an example and encouraged its inclusion because he said annuities were often sold to the elderly with the information that this was “just like a CD.” An insurer representative asked if this meant that insurers could never compare an annuity with a certificate of deposit. The chair responded that this did not say they could not be compared, but the insurer must point out similarities and differences. **1999 Proc. 1<sup>st</sup> Quarter 534.**

G. The chair suggested adding some paragraphs to Subsection G to describe what “prominent” meant in different types of media. He said the administrative law office in his state had often criticized the department for using subjective terms like “prominent” without specific standards so that a company would know whether it had met the test of prominence. An interested party responded that the current language of the model had worked for 15 years so this was a response to a problem that does not exist. The chair said that he thought it helped the companies to have more concrete standards. A regulator said that she appreciated having minimum standards in the regulation instead of having the discretion. The chair said that it had been his impression also, but he heard from the industry that it is more comfortable with the regulators having broad discretion. **1999 Proc. 3<sup>rd</sup> Quarter 821.**

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#### Section 5 (cont.)

H. This subsection was added in 1987, with a provision limiting its effect to persons age 50 or older. **1988 Proc. I 140.**

When amendments were being considered in 1999, regulators questioned the limitation of Subsection H to persons age 50 or older and decided to delete it. **1999 Proc. 1<sup>st</sup> Quarter 534.**

I. During the revision of the model begun in 1986, the chair of the drafting group noted that a number of suggested changes were included to address marketing issues unique to universal life products. The recommended changes included new Paragraphs (2), (3) and (4). **1987 Proc. I 151, 153.**

When reviewing comments on the draft, the group heard from one interested party who recommended that Paragraph (3) be revised to clearly indicate that the withdrawal from the cash value of a flexible premium product was not a prohibited practice. The drafters concurred with the recommendation and incorporated alternate language in the draft. **1987 Proc. II 135.**

During the drafting effort that began in 1999, the chair proposed including prohibitions from the Life Insurance Illustrations Model Regulation within Section 5I. He said he did not see anything wrong with having similar material in two different regulations, as long as they were consistent. The working group agreed to the suggestion to include Paragraphs (5) and (6), which were taken from that model regulation. **1999 Proc. 2<sup>nd</sup> Quarter 530.**

An interested party commented on Subsection I(1). She said that her company's concern was with the word "describe." Is anything less than an illustration adequate? She said they would like to see, for example, "describe by a statement that premiums are not level." The chair responded that a statement that premiums are not level would not be enough and the interested party asked what he would envision as sufficient. The response gave an example: if the premium changed at age 65, the disclosure could say the premium was level to age 65 and then typically increased by 40%. He said he did not think this required the disclosure of the dollar amount of the premium. **1999 Proc. 3<sup>rd</sup> Quarter 821.**

J. During the revision of the model begun in 1986, the chair of the drafting group noted that a number of suggested changes were included to address marketing issues unique to universal life products. The recommended changes included new Subsections J, K, L and M. **1987 Proc. I 151, 154.**

While drafting amendments in 1999, the working group considered a suggestion from one state to add information to Section 5J. The language discussed the possibility of misleading a purchaser as to the investment aspect of insurance. The chair pointed out that an issue in many lawsuits has been that the life insurance policy was being sold as an investment. An industry trade association spoke against including the language, opining that what was already in the model regulation was adequate. A member of the drafting group said that the language was not tight enough because it talked about the person who "possibly will receive" or to "the degree it will mislead." The chair agreed that the language might need some work, but said he favored the concept. **1999 Proc. 2<sup>nd</sup> Quarter 530.**

K. When amendments were being drafted in 1999, one interested party suggested deleting Subsection K, which had been a part of the model since 1987. The chair said he was reluctant to remove a long-standing provision that had given clear guidance. **1999 Proc. 3<sup>rd</sup> Quarter 821.**

N. An interested party commented on the provisions related to financial planners included in the 1986 draft revisions. He said the subsection listed specific activities that allegedly constituted the activities of a "financial planner," "investment advisor," "financial consultant" or "financial counselor." Although the first sentence of this paragraph properly prohibited use of these terms unless the insurance producer was actually engaged in these activities, this prohibition was already contained in the Life Insurance Disclosure Model Regulation. He opined that the draft regulation was not the proper vehicle for regulating the undefined activities of a "financial planner," "investment adviser," "financial consultant" or "financial counselor." The activities of these specialists were already regulated by various state and federal laws, so there was no need to establish dual regulation of this activity. **1987 Proc. I 140, 154.**

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#### Section 5N (cont.)

The task force heard a recommendation to delete or modify the requirement that persons using the term “financial planner” or other similar nomenclature be engaged in that business. The response from regulators was that insurance producers advertised their services and expertise in the areas of financial planning or counseling when in fact no such expertise or experience actually existed. These assertions subjected the insured to misrepresentation and fraud in the handling of his financial affairs. The task force said that some middle ground must be found where the insured was protected from misleading and deceiving representations of “unqualified” professional financial or investment planners and felt that the NAIC process presented the best forum to define what this middle ground should be. Until such time, it was suggested that the text of remain intact. **1987 Proc. II 135.**

An industry advisory committee noted that the draft model seemed to prohibit the use of terms such as “financial planner,” unless “complete financial planning advice” were given regarding all of the following services: investments, insurance, real estate, tax matters and trust and estate matters. The committee said that many qualified individuals, with and without professional designations, offered advice to their clients concerning some, but not all of the above services. Furthermore, many “financial planners” served as the coordinator or leader of a team of professional experts, all of whom had their own field of expertise to contribute to the overall planning process. These professionals should not be prevented from using “financial planner” or similar terms to describe the services that they offerered. The group noted that the Securities and Exchange Commission and the North American Securities Administrators Association (NASAA) have not defined “financial planner,” “financial consultant” or “financial counselor.” Because of the myriad services provided, they apparently have concluded that the terms defy definition. But they have focused on the term “investment adviser.” If a financial planner, consultant or counselor holds himself out to provide investment advisory services, then registration under the Investment Advisers Act of 1940 would be required. The state security administrators have developed substantially similar regulation through NASAA’s model bill, the Uniform Securities Act of 1956, as amended. The committee urged the task force to agree that this constituted adequate regulation of financial planners, consultants and counselors or, if competence standards were subsequently deemed necessary by the NAIC, they should be established by model statute, not advertising rules. **1987 Proc. II 137.**

This subsection continued to generate discussion as the model was being amended in 1999. The working group compared this language to the Life Disclosure Model Regulation. The chair said he thought the language in the Life Disclosure Model Regulation was stronger than that included in this model draft, and he expressed a preference for that language. He noted that the authority to adopt this regulation came from the Unfair Trade Practices Act and asked if regulators could draft a regulation that is broader. Another regulator said he would argue that the language suggested by the chair adds precision to the vague language of the Unfair Trade Practices Act. **1999 Proc. 3<sup>rd</sup> Quarter 800.**

Near the end of the 1999 drafting effort, the working group again was asked to consider the use of financial planner designations. A representative from a standards group said that he agreed that a financial planner designation should not imply that someone was offering financial planning services if he or she was only selling insurance. He said his organization’s concern was that a person with a properly obtained designation should not be precluded from using it on his stationary or business cards. Another interested party expressed concern that three different models talked about financial planners and each chose a different approach. He pointed out that the Unfair Trade Practices Act language was different from that in the advertising model and from that in the Life Disclosure Model Regulation. He said there were ambiguities created by three different approaches. He suggested taking out the provision in this model and relying on the Unfair Trade Practices Act. The chair noted that the group drafting changes to the Life Disclosure Model Regulation inserted the same language being considered for the advertising model. He said the Unfair Trade Practices Act created more of a problem because, in his opinion, the drafting note contradicted the provision. The working group agreed to add the text to Subsection N. **1999 Proc. 4<sup>th</sup> Quarter 899-900.**

When the revised model was presented to the parent committee for adoption, an interested party again raised concern about this provision. He said that some of the members of his organization were not in the business of giving financial advice but did so periodically. He noted that the word “only” in Section 5N could be confusing if the person mostly sold insurance but occasionally provided financial planning services. The parent committee chair said that she did not agree with that interpretation and said that if a person did some financial planning, he did not “only” sell insurance. She suggested deleting

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#### Section 5N (cont.)

the phrase “when they are only selling insurance” to clarify that issue. The working group chair said the purpose of the provision was to be sure that consumers were not misled and he did not see any problem with adding a phrase to clarify that. The parent committee chair asked the working group to review the narrow issues raised and bring a recommendation to the next meeting. **1999 Proc. 4<sup>th</sup> Quarter 844-845.**

When the working group again met to consider this narrow issue, the chair expressed concern that a person who was trained only to sell insurance might give the impression that he could give much broader advice and asked if that was misleading. The interested parties representing an association of producers and financial advisors said the implication of their association’s new name was that the association was a “big tent” including financial advisers and traditional insurance agents. Members were precluded by the bylaws from implying that they could do more than their licenses allowed them to do. The association representative explained that a member must agree to comply with the bylaws and the code of ethics of the association. He said members needed to be engaged in the sale or management of insurance products to the public. A regulator opined that it would be easy for the public to get the impression that this individual was ready to advise on insurance and other financial products rather than one or the other. The association representative pointed out that the model regulation prohibited agents from giving the impression that compensation was unrelated to sales and the regulator responded that, if the violation turned on the intent of the advisers, it would be very difficult to prove. A regulator from another state said that her state’s Unfair Trade Practices Act forbade a person to hold himself out as a financial planner if he was really selling insurance. She opined that members of the association could not use their designation on business cards in her state, but that there was an exception for those who had earned a financial planning designation. Another regulator agreed that people with a designation were uniquely qualified to give financial advice but he expressed concern about how the consumer would perceive this organization’s title. The chair suggested that the way to fix the problem would be to allow the organization name to be used, provided there was some additional disclosure about what types of products that person could sell. Representatives of the association said that they would agree to do so only if it might be misleading and the chair responded that the comments of the working group seem to indicate regulators’ belief that it was misleading. **2000 Proc. 1<sup>st</sup> Quarter 136.**

When the working group reconvened, the interested party from the trade association offered a revised suggestion for the working group’s consideration. He suggested adding a sentence before the last sentence of that paragraph that said, “This provision also is not intended to preclude persons who are members of a recognized trade or professional association having such terms as part of its name from citing membership, providing the persons also disclose the products they are authorized to sell.” The chair said his concern was to make sure consumers were clear about what the producer was authorized to sell. Another regulator asked how this coordinated with the model provision in the Unfair Trade Practices Act regarding a person who held himself out as a financial planner.

The chair responded that the working group was addressing a different issue here where advertising might be misleading or might be misunderstood. Another regulator asked whether this language would preclude the department from taking action if complaints showed that people were misled and asked if this should be characterized as a safe harbor. The chair agreed that was true with regard to citing membership in an association, but cautioned the producer community to use this carefully. **2000 Proc. 1<sup>st</sup> Quarter 134-135.**

O. When the model was being considered for amendment in December of 1987, an interested party commented that his association would like to see a change to this subsection. The item in question was the provision that would require that illustrations of nonguaranteed policy elements be based on the insurer’s current scale. His trade association had developed an alternative approach that would provide more information to the consumer and a more level playing field for the companies. Under this approach, the illustration of benefits greater than those based on current scale would be permitted, but only if there was clear disclosure that they were more favorable and only if corresponding figures based on the current scale were also illustrated. Thus, an illustration could contain figures based on three different scales: guaranteed, current, and illustrated. **1988 Proc. I 144.**



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#### Section 50 (cont.)

By the time amendments were being considered in 1999, the Life Insurance Illustrations Model Regulation had been adopted. The working group agreed that Paragraph (2) as written was inconsistent with the Life Insurance Illustrations Model Regulation. An interested party asked that this be changed to apply only in states where the illustrations regulation was not adopted. The working group reviewed the suggestion and agreed to reconcile the comments in the next draft. The working group also discussed a proposal to add several new paragraphs. **1999 Proc. 2<sup>nd</sup> Quarter 530.**

Q. When the model was amended in 1987, the text of Paragraph (1) was revised to clarify that the materials must be reproduced with sufficient completeness to avoid misleading or deceiving prospective insureds as to the nature of the testimonial. **1988 Proc. I 141.**

During the 1999 drafting effort, the working group decided to include a new Paragraph (4) suggested by one member to address situations where the person making a testimonial or endorsement was someone who had had a claim resolved. The paragraph specified that the claim information must be available so that a regulator could identify the claim that was the subject of the endorsement. **1999 Proc. 2<sup>nd</sup> Quarter 530.**

An interested party commented that Subsection Q(4) as drafted required an insurer to keep the information forever if a company was doing business in 50 states and one of those never did a market conduct examination. He recommended replacing the language of Paragraph (4) with a requirement to keep the material not more than five years after its use was discontinued. **1999 Proc. 3<sup>rd</sup> Quarter 822.**

R. One company representative suggested that Subsection R be changed so that the second sentence was preceded by “Unless the source of the information is itself, the source ...” The chair said he could not go along with that suggestion because it was important to know if the statistic was based on the insurer’s experience rather than that of the whole industry. The other regulators agreed that it would not be appropriate to change Subsection R. **1999 Proc. 3<sup>rd</sup> Quarter 822.**

S. In 1986 a special group was assigned the task of researching abuses of life insurance sales tied in with student loans. Some of the concerns highlighted were failure to use the words “life insurance” on the advertising material and use of misleading words. **1986 Proc. II 189-190.**

After further research, the group decided that sales of life insurance in connection with student loans was not an extensive problem and could be addressed by existing laws and regulations. **1987 Proc. I 149.**

The model on advertisements was drafted to include new provisions regarding marketing life insurance and annuities to students. **1987 Proc. I 151, 155.**

W. Amendments were made to the model to include much of what is now Subsection W at the same time amendments were being made to the Unfair Trade Practices Act. Although the amendments did not reference individual retirement accounts, the report to the parent said the amendments were for IRAs. **1976 Proc. II 366, 373-374.**

A trade association recommended changing the provision in Subsection W(1) to reference nonguaranteed interest rates. A regulator pointed out that the defined term was “nonguaranteed policy elements” rather than “nonguaranteed interest rates.” The chair asked if the definition was needed at all because “nonguaranteed interest rate” was pretty clear. The working group agreed to leave the definition and to accept the recommendation for Subsection W. **1999 Proc. 3<sup>rd</sup> Quarter 822.**

X. During the drafting effort in 1999, a regulator suggested deleting the existing Subsection X, which described disclosures and referring instead to the Life Insurance Illustrations Model Regulation. The working group agreed to that suggestion. **1999 Proc. 2<sup>nd</sup> Quarter 530.**

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#### Section 5 (cont.)

Y. A special group was convened to consider sales of life insurance to fund prepaid funeral plans. Some interested parties felt that a clear distinction between the role of life insurance and the sale of funeral goods and services should be made. There was, however, consensus that there should be a definition of insurance-funding preneed contracts. Some commented that an amendment to the NAIC model governing the advertising of life insurance was not the appropriate place to address the concerns of the group. Members of the group identified their regulatory concerns, which were primarily disclosure related. One regulator noted that, because the Federal Trade Commission has scheduled a study of funeral plans in 1988, and because of the number of complaints that have been received in state departments in this area, she felt it was necessary to proceed with a statute addressing disclosure quickly. **1988 Proc. I 602.**

Just prior to adoption of the new subsection, an interested party expressed objection to the provision that required disclosure of the fact that a sales commission was being paid. He said the disclosure would distract consumers and inform them of what they already knew. A regulator responded that the consumer did not know enough about the transaction, but should because of its unique nature. He commented that the suggested amendment did not require disclosure of the dollar amount or percentage, but just the fact that an agent would be receiving a commission. The provision was deleted before the model was adopted. **1988 Proc. II 478, 502.**

The group that drafted the amendments listed a number of concerns they sought to address. Their principal concern was to inform consumers about the products they were purchasing. The group believed it was vital that consumers know they were dealing with a life insurance agent and that they were purchasing a life insurance policy or an annuity contract that would fund the funeral contract. These concerns were prompted in part by consumer complaints filed with insurance departments stating the consumers were unaware that a life product had been purchased. The items that the group believed should be disclosed to the consumer were: (1) the fact that a life insurance policy or annuity contract was involved or being used to fund a prearrangement; (2) the nature of the relationship among the soliciting agent or agents, the provider of the funeral or cemetery merchandise or services, the prearranger and the insurer; (3) the relationship of the life insurance policy or annuity contract to the funding of the prearrangement and the nature and existence of any guarantees relating to the prearrangement; (4) the impact on the prearrangement (a) of any changes in the life insurance policy or annuity contract including but not limited to changes in the assignment, beneficiary designation or use of the proceeds, (b) of any penalties to be incurred by the policyholder as a result of failure to make premium payments, (c) of any penalties to be incurred or monies to be received as a result of cancellation or surrender of the life insurance policy or annuity contract; (5) a list of the merchandise and services that were applied or contracted for in the prearrangement and all relevant information concerning the price of the funeral services, including an indication that the purchase price was either guaranteed at the time of purchase or to be determined at the time of need; (6) all relevant information concerning what occurs and whether any entitlements or obligations arise if there was a difference between the proceeds of the life insurance policy or annuity contract and the amount actually needed to fund the prearrangement; (7) any penalties or restrictions, including but not limited to geographic restrictions or the inability of the provider to perform, on the delivery of merchandise, services or the prearrangement guarantee; and (8) the fact that a sales commission or other form of compensation was being paid and if so, the identity of the individual or entity to who it was paid. **1988 Proc. 479-480.**

After identification of the items to be disclosed, the most controversial issue discussed by the regulators and interested parties was the point at which disclosure should occur. After lengthy discussions on this issue, the consensus of the group was to require full disclosure of the specified items at the time of application and to require limited disclosure (items 1 and 2 listed above) at the advertising stage. **1988 Proc. II 480.**

Subsection Y also was discussed as amendments to the model were being drafted in 1999. One regulator said it seemed to imply that insurance departments could regulate preneed funeral contracts. In many states insurance regulators could only regulate life insurance used to fund preneed funeral contracts. The chair said he thought the intention of this section was to regulate insurance and suggested that perhaps the definition of preneed funeral contract needed to be redrafted to reflect that more clearly. **1999 Proc. 3<sup>rd</sup> Quarter 800.**

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#### Section 6. Identity of Insurer

A. When amendments were drafted in 1987, Subsection A was modified to clarify that the name of the insurer was to appear in advertisements and on the application form. **1988 Proc. I 143.**

During the redraft in 1999, language was added to Subsection A to serve as a safe harbor so that insurers did not have to list every company in every composite. A trade association recommended deletion of that additional language and opined that the last phrase conflicted with the first phrase. The chair explained that this was intended to be an exception. He said regulators needed to decide whether they wanted to provide a safe harbor or whether all names should be required. A company representative said that if another company included her company's name in its advertisement, the advertisement should be submitted to the company for comment. She suggested that if the composite contained comparisons of six companies, it would get six ideas of what was an appropriate way to describe this. She said the interested parties had not understood this last addition to be an exception. The chair asked interested parties to make suggestions for the redraft that would make this intent clearer. **1999 Proc. 3<sup>rd</sup> Quarter 822.**

An interested party asked if this section meant insurers were required to show the ratings. The chair confirmed that, in a composite where companies were not identified, the ratings must be shown. The interested party commented that the composite advertisements he had seen were pretty tight for space. The chair said that this was not required in other advertisements because they identified the insurer so a person could look up the company for himself. Here all the companies did not have to be identified, but the rating of the lowest insurer needed to be stated. The interested party asked about the procedure when there were different ratings from different agencies. The chair said that, if the company chose to use the Best ratings, for example, than it would go by the lowest on that scale. **1999 Proc. 4<sup>th</sup> Quarter 921.**

#### Section 7. Jurisdictional Licensing and Status of Insurer

An interested party suggested adding a sentence at the end of Subsection A to clarify that, if an advertisement identified the issuing insurers, the ratings did not need to be stated. The working group agreed to that addition. **1999 Proc. 4<sup>th</sup> Quarter 900.**

A. A trade association commented that Subsections A and B are out of date in light of the current trend toward electronic commerce. The chair said that it would be very easy to meet the requirements of Subsection A with a statement that not all products were available in all states. An interested party pointed out that what appeared to be a local broadcast could be placed on the Internet without the knowledge of the person who prepared it but a regulator said that the language of Subsection A would relieve that person of responsibility because it said the advertisement was intended to be heard beyond the limits of the jurisdiction. **1999 Proc. 3<sup>rd</sup> Quarter 822.**

B. The same trade association representative pointed out a similar problem in Subsection B. She noted that the language "where the advertisement appears," left the question of where an advertisement appears when it was on the Internet. A member of the group acknowledged that the phrase was a problem and suggested its deletion. The working group agreed. **1999 Proc. 3<sup>rd</sup> Quarter 822-823.**

#### Section 8. Statements About the Insurer

The chair pointed out that the existing language in Section 8 did not require disclosure of the ratings given to a company by all rating agencies; the insurer can pick only the one that was most favorable. He proposed additional language for Section 8 that would require the advertising to state where the insurer's rating that it chose to cite falls in the hierarchy of that particular rating agency, for example, "third highest of 15 ratings." **1999 Proc. 3<sup>rd</sup> Quarter 800.**

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#### Section 9. Enforcement Procedures

The original model adopted in 1975 contained provisions similar to the existing Subsection A. Subsections B and C were added during the amendment process begun in 1986. **1987 Proc. I 156.**

A. Interested parties pointed out that, if no examination was done, insurers would be required to keep advertisements forever. He suggested deleting the last part of the sentence so that the requirement was simply to keep the file for a period of years after discontinuance of its use or publication. The working group agreed. **1999 Proc. 3<sup>rd</sup> Quarter 823.**

B. Interested parties commented on the new proposed Subsection B. Prior review or approval of advertising should not turn on whether the commissioner “finds that it may be in the best interests of the public,” because that test was far too subjective and whimsical. The commenters suggested review if the commissioner found that advertising had the capacity to mislead the public. That suggestion was included in the draft later adopted. **1987 Proc. I 140, 156.**

The record included comments received from interested parties and regulators’ responses. One recommendation was a modification of Subsection B to remove the commissioner’s ability to require an insurer to pre-file life advertising material if he found it to be in the best interest of the public. The drafters responded that this language was specifically included to provide the commissioner with an expedited alternative to control life advertising content. **1987 Proc. II 135.**

C. Near the end of the drafting process a trade association raised the issue of institutional advertising. A representative summarized his comments on “branding” advertisements and said he viewed advertising that was designed to raise awareness of the company name as generic and expressed concern about its being covered under the regulation. Another interested party said that these generic advertisements did not refer to specific products and should not be subjected to the advertising rules. She said some states then subjected them to filing requirements and, for a national advertising campaign, a delay in approval by one state could affect the entire campaign. The chair said that this model had been around for a long time and there had not be an exception for these types of advertisements. He pointed out several sections of the model that would apply to this type of advertisement and expressed concern about exempting branding advertisements from Section 4B, 5Q, 5S and 5T(4). He said he was sympathetic to the industry’s concerns about filing of advertising but the NAIC model regulation did not require filing. A regulator added that the definition suggested by the trade association was too vague and would be difficult to enforce. **1999 Proc. 4<sup>th</sup> Quarter 899.**

Another regulator added that he did not think it would be very constructive to have to argue about what would fit under an exemption for a generic advertisement. An industry representative said this was an important issue to companies. There has been a fundamental shift in how companies want to present themselves in advertising. The regulator responded that the problem the industry was describing was a filing problem, not a problem with the NAIC’s model. A consumer advocate opined that branding advertisements on television were the most misleading type of ads, and were simply designed to give a warm and fuzzy feeling about the company. A regulator suggested that the group should send a strong message about how the regulators feel about filing of advertising. She said if the working group had reached consensus, it should raise that issue but another regulator said he did not think it was relevant to include that issue in the model. The working group decided to add a drafting note to Section 9 explaining its position. **1999 Proc. 4<sup>th</sup> Quarter 899.**

#### Section 10. Penalties

This section was added in 1987. **1988 Proc. I 144.**

#### Section 11. Conflict With Other Regulations

During the 1999 redraft the working group decided to add several words to Section 11 for clarification. These referred to other NAIC models that did not exist at the time the advertising model initially was developed. **1999 Proc. 3<sup>rd</sup> Quarter 823.**

#### Section 12. Severability

This provision first appeared in the draft being developed in late 1986. **1987 Proc. I 157.**

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*Chronological Summary of Actions*

*June 1975: Adopted model.*

*December 1987: Amended much of model.*

*June 2000: Amended model after total review of all provisions.*

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