



AMERICAN ACADEMY *of* ACTUARIES

January 17, 2007

Commissioner James Poolman
Chairman, NAIC Life Insurance and Annuities (A) Committee

RE: American Academy of Actuaries'¹ Life Products Committee Comments on
Revisions to NAIC Unfair Trade Practices Act
Concerning Travel Underwriting

Dear Commissioner Poolman:

The American Academy of Actuaries Life Products Committee appreciates the opportunity to comment on proposed revisions to the NAIC Unfair Trade Practices Act concerning travel underwriting.

Background

On December 20, 2006, the Life Insurance and Annuities (A) Committee (Committee) exposed a draft of an amendment to the Unfair Trade Practices Act, revising the draft previously exposed on November 27, 2006. The December 20 draft incorporated wording for item (i) of subparagraph 3(a) of paragraph G of Section 4 that had been suggested by the Life Products Committee of the American Academy of Actuaries (Life Products Committee). This change having been made, the Life Products Committee was satisfied that the other changes proposed in the November 27 draft did not raise any further substantive actuarial issues.

However, the December 20 exposure draft does incorporate further changes: a new subparagraph 3(c) of paragraph G of Section 4 and a new drafting note following subparagraph 3(c). The new subparagraph requires "an insurer intending to use an individual's future lawful travel plans for underwriting life insurance" to "file with the commissioner on or before such use a complete description of any underwriting guidelines... and *the supporting actuarial analysis*"[emphasis added] required under subparagraph 3(a). Moreover, the drafting note indicates that some states may want to interpret this new subparagraph 3(c) as requiring approval of the filed underwriting guidelines prior to use, or alternatively as requiring the filing be for informational purposes as a notice of the insurer's intended practices.

The Life Products Committee believes the addition of subparagraph 3(c) in the December 20 draft raises issues of concern to actuaries. The Life Products Committee appreciates the opportunity to explain its concerns and to provide an actuarial perspective on these issues.

¹ The American Academy of Actuaries is a national organization formed in 1965 to bring together, in a single entity, actuaries of all specializations within the United States. A major purpose of the Academy is to act as a public information organization for the profession. Academy committees, task forces and work groups regularly prepare testimony and provide information to Congress and senior federal policy-makers, comment on proposed federal and state regulations, and work closely with the National Association of Insurance Commissioners and state officials on issues related to insurance, pensions and other forms of risk financing. The Academy establishes qualification standards for the actuarial profession in the United States and supports two independent boards. The Actuarial Standards Board promulgates standards of practice for the profession, and the Actuarial Board for Counseling and Discipline helps to ensure high standards of professional conduct are met. The Academy also supports the Joint Committee for the Code of Professional Conduct, which develops standards of conduct for the U.S. actuarial profession.

Actuarial Concerns Raised by the December 20 Exposure Draft

Although the additional risk involved in travel to certain destinations may remain constant for extended periods of time, many conditions having the potential to result in adverse underwriting or rating actions result from circumstances, such as pandemics, natural catastrophes and civil disturbances, that develop and change rapidly. The actuarial analysis appropriate to such situations would also change rapidly and frequent re-filing could as a result be required by such a provision.

This raises several concerns. First, the extended period for developing the analysis and obtaining regulatory review could leave an insurer unprotected and open to adverse selection during this period. Moreover, providing ongoing updates to these analyses that meet actuarial standards of practice in order to maintain preparedness for the receipt of applications for insurance could become a significant burden for insurers, especially those with smaller actuarial staffs. Practicality suggests that actuarial analyses be conducted only for those situations that actually arise in the insurer's course of business, and timing considerations would not allow the contemplated actuarial analysis and regulatory review to be done in advance on a case-by-case basis. The November 27 draft has no pre-approval requirement, but provides instead for a review of the insurer's implementation of the travel underwriting rules during each market conduct examination. This approach would require actuarial analyses for all those situations where the insurer's underwriting or rating decisions were based on travel destinations, but would not require complex analyses in advance for the many situations around the world that had no impact on such decisions. The Life Products Committee recommends this approach and believes it would offer significant protection to applicants for life insurance.

In addition to concerns about possible adverse selection during the review process and the burden placed on actuarial resources by proposed subparagraph 3(c), the Life Products Committee is also concerned that many companies would be unable or simply choose not to consider travel destinations when underwriting life insurance. This could lead, as will be explained below, to inequity among policyholders. Actuarial literature identifies three reasons—equity among current and prospective insurance policyholders, solvency protection, and availability of coverage—that make the use of risk classification systems necessary whenever the purchase of insurance is voluntary on the part of the applicant.² The Actuarial Standard of Practice on Risk Classification (ASOP 12) states that the first of these—equity among policyholders—is considered to exist “if differences in rates reflect material differences in expected cost for risk characteristics.”

This is consistent with subparagraph (1) of paragraph G of Section 4 of the Unfair Trade Practices Act, which defines unfair discrimination—in rates, dividends, benefits or terms and conditions of a life insurance policy—between individuals *having the same expectation of life* to be an unfair trade practice. However, equity also requires that *material differences in life expectancy that do exist be reflected*. If the premium rates charged to individuals subject to increased risk do not reflect this risk, the cost of insuring the higher-risk individuals would have to be subsidized by the remaining policyholders to assure that sufficient premiums are collected. This result is inconsistent with the principle that insurance premium rates should reflect the expected cost of coverage. The Life Products Committee is concerned that the addition of subparagraph 3(c) could result in some insurers either not choosing or not being able to consider travel destination in underwriting and rating, even when the differences in expected mortality are material. The mortality experience of insureds with increased risk due to planned travel would then be combined with the experience of those insureds that are not subject to such risk. The result would be a subsidization of the higher risk group—individuals who, at the time of application for insurance, have plans to travel to destinations associated with higher expected mortality rates—a result that is not consistent with the purposes of risk classification.

² American Academy of Actuaries, “Risk Classification Statement of Principles,” June 1980.

Additionally, the subsidization of higher risk insureds has the potential to be material. If insurers do not take account of travel destination in underwriting, some individuals going to risky locations could purchase a large amount of coverage and pay the premium only for the duration of the trip. Unless each and every company kept up with the required actuarial analysis for all areas of increased or increasing risk, finding a company that has not kept up with the filings and thus is required to issue the policy at standard rates could turn into a smart move for anyone traveling to areas where war or pandemic threatens. This would be especially true for those intending extended stays. While finding insurers that are unable to or choose not to use travel destination in underwriting could be difficult for the person contemplating travel, agents or brokers would be available to facilitate the process. Such behavior would be subsidized by the policyholders not traveling to those destinations.

Conclusion

Actuaries are committed to the achievement of the complementary goals of company solvency, equity among policyholders and widespread availability of coverage. Properly designed risk classification systems, developed according to sound actuarial principles, play a significant role in achieving these goals. With regard to foreign travel, the Life Products Committee believes the revisions contained in the November 27 exposure draft (with the changes in wording suggested by the Life Products Committee) will assure that sound actuarial principles are applied when underwriting or rating decisions are based on travel destination and that the revisions added in the December 20 exposure draft are not necessary to achieve this purpose. Moreover, further restrictions on or practical barriers to the application of sound, actuarially justified underwriting standards have the potential to result in inequitable subsidies of those traveling to hazardous destinations by other policyholders and, in some circumstances, adversely impact insurer solvency and/or the availability of coverage.

Attached is a redlined version of the NAIC draft of the Unfair Trade Practices Act that reflects the changes discussed above.

Thank you again for the opportunity to provide comments on the proposed changes to this model act.

We would be happy to answer any questions.

Academy of Actuaries Life Products Committee

Cande Olsen, F.S.A., M.A.A.A., Chairperson
John MacBain, F.S.A., M.A.A.A., Vice-Chairperson

Noel J. Abkemeier, F.S.A., M.A.A.A.	Barbara Lautzenheiser, F.S.A., F.C.A., M.A.A.A.
Douglas J. Bennett, F.S.A., M.A.A.A.	Jean B. Liebmann, F.S.A., M.A.A.A.
Eric Carlson, F.S.A., M.A.A.A.	Thomas E. Rhodes, F.S.A., M.A.A.A.
Paul Carmody, F.S.A., M.A.A.A.	Linda Rodway, F.S.A., M.A.A.A.
Arnold A. Dicke, F.S.A., F.C.A., M.A.A.A.	Larry H. Rubin, F.S.A., M.A.A.A.
David J. Hippen, F.S.A., M.A.A.A.	Andy Ware, F.S.A., M.A.A.A.
Kitty Kennedy, A.S.A., M.A.A.A.	David J. Weinsier, F.S.A., M.A.A.A.

Draft: ~~1/8/07~~12/20/06

Revisions to Model 880 ([AAA recommended changes](#))

The NAIC solicits comments on this draft. Underlining and overstrikes show the changes from the existing model. Comments should be sent by email to Jolie Matthews at jmatthew@naic.org.

UNFAIR TRADE PRACTICES ACT

Table of Contents

Section 1.	Purpose
Section 2.	Definitions
Section 3.	Unfair Trade Practices Prohibited
Section 4.	Unfair Trade Practices Defined
Section 5.	Favored Agent or Insurer; Coercion of Debtors
Section 6.	Power of Commissioner
Section 7.	Hearings, Witnesses, Appearances, Production of Books, and Service of Process
Section 8.	Cease and Desist and Penalty Orders
Section 9.	Judicial Review of Orders
Section 10.	Judicial Review by Intervenor
Section 11.	Penalty for Violation of Cease and Desist Orders
Section 12.	Regulations
Section 13.	Provisions of Act Additional to Existing Law
Section 14.	Immunity from Prosecution
Section 15.	Separability Provision

Prefatory Note: By adopting amendments to this model act in June 1990, the NAIC separated provisions dealing with unfair claims settlement into a newly adopted Unfair Claims Settlement Practices Model Act, to make clearer distinction between general unfair trade practices and more specific unfair claim settlement issues and to focus on market conduct practices and market conduct regulation. By doing so, the NAIC is not recommending that states repeal existing acts, but states may modify them for the purpose of capturing the substantive changes. However, for those states wishing to completely rewrite their comprehensive approach to unfair claims practices, this separation of unfair claims from unfair trade practices is recommended.

Section 1. Purpose

The purpose of this Act is to regulate trade practices in the business of insurance in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress) and the Gramm-Leach-Bliley Act (Public Law 106-102, 106th Congress), by defining, or providing for the determination of, all such practices in this state that constitute unfair methods of competition or unfair or deceptive acts or practices and by prohibiting the trade practices so defined or determined. Nothing herein shall be construed to create or imply a private cause of action for a violation of this Act.

Section 2. Definitions

When used in this Act:

- A. "Affiliate" means any company that controls, is controlled by, or is under common control with another company.
- B. "Commissioner" means the commissioner of insurance of this state.

Drafting Note: Insert the appropriate term for the chief insurance regulatory official wherever the term "commissioner" appears.

- C. “Customer” means an individual who purchases, applies to purchase, or is solicited to purchase insurance products primarily for personal, family or household purposes.
- D. “Depository institution” means a bank or savings association. The term depository institution does not include an insurance company.
- E. “Insured” means the party named on a policy or certificate as the individual with legal rights to the benefits provided by such policy.
- F. “Insurer” means any person, reciprocal exchange, interinsurer, Lloyd’s insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including producers, adjusters and third-party administrators. Insurer shall also mean medical service plans, hospital service plans, health maintenance organizations, prepaid limited health care service plans, dental, optometric and other similar health service plans as defined in Sections [insert applicable section]. For purposes of this Act, these foregoing entities shall be deemed to be engaged in the business of insurance.

Drafting Note: Each state may wish to consider the advisability of defining “insurance” for purposes of this Act if its present insurance code is not satisfactory in this regard. In some cases a cross reference will be sufficient.

- G. “Person” means a natural or artificial entity, including but not limited to, individuals, partnerships, associations, trusts or corporations.
- H. “Policy” or “certificate” means a contract of insurance, indemnity, medical, health or hospital service, suretyship, or annuity issued, proposed for issuance, or intended for issuance by any insurer.
- I. “Producer” means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

Section 3. Unfair Trade Practices Prohibited

It is an unfair trade practice for any insurer to commit any practice defined in Section 4 of this Act if:

- A. It is committed flagrantly and in conscious disregard of this Act or of any rules promulgated hereunder; or
- B. It has been committed with such frequency to indicate a general business practice to engage in that type of conduct.

Section 4. Unfair Trade Practices Defined

Any of the following practices, if committed in violation of Section 3, are hereby defined as unfair trade practices in the business of insurance:

- G. Unfair Discrimination.
 - (1) Making or permitting any unfair discrimination between individuals of the same class and equal expectation of life in the rates charged for any life insurance policy or annuity or in the dividends or other benefits payable thereon, or in any other of the terms and conditions of such policy.
 - (2) [Refusing life insurance to, refusing to continue a life insurance of, limiting the amount, extent or kind of life insurance coverage available to an individual, or determining the premium of life insurance based on the individual’s past lawful travel experiences.](#)

- (3) (a) Refusing life insurance to, refusing to continue life insurance to, limiting the amount, extent or kind of life insurance available to an individual, or determining the premium of life insurance based on the individual's future lawful travel plans unless:
- (i) The risk of loss for individuals who travel to a specified destination at a specified time is reasonably anticipated to be greater than if the individuals did not travel to such destination at such time; and
 - (ii) Such risk classification is based upon sound actuarial principles.
- (b) The commissioner may adopt regulations necessary to implement the provisions of this paragraph and may provide for limited exceptions that are based upon national or international emergency conditions that affect the public health, safety, and welfare and that are consistent with public policy.
- (c) Each market conduct examination of a life insurer conducted pursuant to [insert reference to applicable state law] shall include a review of the life insurer's implementation of this paragraph and Paragraph (2) of this subsection. ~~An insurer intending to use an individual's future lawful travel plans for underwriting life insurance shall file with the commissioner on or before such use a complete description of any underwriting guidelines based on an individual's future lawful travel plans and the supporting actuarial analysis required under Subparagraph (a) of this paragraph.~~

~~**Drafting Note:** States may want to interpret Subparagraph (c) above to require insurers to obtain the commissioner's approval of the filing described in Subparagraph (c) prior to its use. For those states that do not wish to require prior approval of the filing, as an alternative, they may want to interpret Subparagraph (c) to require insurers to file the underwriting guidelines for informational purposes as a notice of the insurer's intended practice to underwrite based on travel plans. States may want to require such companies to subsequently report any policies affected by the underwriting practice to the state's consumer outreach unit or market investigations unit.~~

- (4) (a) Notwithstanding the provisions of Section 8 of this Act, if, after a hearing, the commissioner finds that an insurer, person, depository institution or affiliate of a depository institution has violated Paragraphs (2) or (3), the commissioner shall reduce the findings to writing and shall issue and cause to be served upon the insurer, person, depository institution or affiliate of a depository institution charged with the violation a copy of the findings in an order requiring the insurer, person, depository institution or affiliate of a depository institution to cease and desist from engaging in the act or practice.
- (b) In addition to Subparagraph (a) of this paragraph, the commissioner may order payment of a monetary penalty of not more than \$10,000 for each violation, unless the violation was committed flagrantly in a conscious disregard of this Act, in which case the penalty shall be not more than \$50,000 for each violation.
- ~~(5)~~ Making or permitting any unfair discrimination between individuals of the same class and of essentially the same hazard in the amount of premium, policy fees or rates charged for any accident or health insurance policy or in the benefits payable thereunder, or in any of the terms or conditions of such policy, or in any other manner.

Drafting Note: In the event that unfair discrimination in connection with accident and health coverage is treated in other statutes, this paragraph should be omitted.

- ~~(6)~~ Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazard by refusing to insure, refusing to renew, canceling or limiting the amount of insurance coverage on a property or casualty risk solely because of the geographic location of the risk, unless such action is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience.

- ~~(4)~~(7) Making or permitting any unfair discrimination between individuals or risks of the same class and of essentially the same hazards by refusing to insure, refusing to renew, canceling or limiting the amount of insurance coverage on the residential property risk, or the personal property contained therein, solely because of the age of the residential property.
- ~~(5)~~(8) Refusing to insure, refusing to continue to insure, or limiting the amount of coverage available to an individual because of the sex, marital status, race, religion or national origin of the individual; however, nothing in this subsection shall prohibit an insurer from taking marital status into account for the purpose of defining persons eligible for dependent benefits. Nothing in this section shall prohibit or limit the operation of fraternal benefit societies.
- ~~(6)~~(9) To terminate, or to modify coverage or to refuse to issue or refuse to renew any property or casualty policy solely because the applicant or insured or any employee of either is mentally or physically impaired; provided that this subsection shall not apply to accident and health insurance sold by a casualty insurer and, provided further, that this subsection shall not be interpreted to modify any other provision of law relating to the termination, modification, issuance or renewal of any insurance policy or contract.
- ~~(7)~~(10) Refusing to insure solely because another insurer has refused to write a policy, or has cancelled or has refused to renew an existing policy in which that person was the named insured. Nothing herein contained shall prevent the termination of an excess insurance policy on account of the failure of the insured to maintain any required underlying insurance.
- ~~(8)~~(11) Violation of the state's rescission laws at [insert reference to appropriate code section].

Drafting Note: A state may wish to include this section if it has existing state laws covering rescission and to insert a reference to a particular code section.
