

PROJECT HISTORY - 2023

NONADMITTED INSURANCE MODEL ACT (#870)

1. Description of the Project, Issues Addressed, etc.

The 2023 revisions to the NAIC *Nonadmitted Insurance Model Act* (#870) are intended to conform Model #870 to the federal Nonadmitted and Reinsurance Reform Act of 2010 (NRRA), which was part of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). The current Model #870 was adopted in 1994 to combine three NAIC models that date as far back as 1969: 1) the Unauthorized Insurers Model Act; 2) the Model Surplus Lines Law; and 3) the Model Nonadmitted Insurance Act. Since the adoption of Model #870 on Sept. 18, 1994, the NAIC has amended it on the following dates: 1) Dec. 16, 1996; 2) March 18, 1998; 3) Dec. 6, 1999; and 4) Sept. 10, 2002. The 2002 modifications resulted from the passage of the federal Gramm-Leach-Bliley Act (GLBA) by the U.S. Congress (Congress). Currently, 31 states have adopted Model #870.

The most recent activity regarding Model #870 is related to the NRRA. Model #870 was not modified as a result of the implementation of the NRRA. On Oct. 11, 2011, the *Nonadmitted Insurance Reform Sample Bulletin* (Bulletin), which was distributed to the state insurance departments, was adopted by the Executive (EX) Committee and Plenary. The Bulletin outlined federally mandated regulatory changes that affect the placement of nonadmitted insurance. Specifically, the Bulletin addressed the scope of the NRRA, the application of “Home State” for the purposes of jurisdictional authority and paying premium tax, licensure requirements for brokers, diligent search requirements, and eligibility requirements for nonadmitted insurers.

During the implementation of the NRRA, the Surplus Lines (C) Task Force and NAIC staff were working on state tax allocation proposals. The leading proposals were the Surplus Lines Insurance Multistate Compliance Compact (SLIMPACT), which pre-dated the NRRA, and the Nonadmitted Insurance Multistate Agreement (NIMA), which was developed by the Task Force in response to the NRRA. The SLIMPACT failed to obtain the 10 states needed to become operative. The NIMA clearinghouse operated for only a few years before the NIMA was dissolved in 2016. With the focus on achieving a system of tax allocation before the NRRA deadline in July 2012, the decision was made to draft the Bulletin rather than amend Model #870.

During the 2020 Summer National Meeting of the Task Force, the chair directed staff to develop a drafting group to produce a summary document that outlined significant updates needed to modernize Model #870 and present a recommendation to the Task Force at a future national meeting. The drafting group consisted of Tom Travis (LA), Jeff Baughman (WA), Eli Snowbarger (OK), Andy Daleo (NAIC), and Dan Schelp (NAIC). The drafting group met Sept. 30 and Oct. 27, 2020. As a result of those meetings, the drafting group outlined numerous proposed revisions to Model #870.

During the 2020 Fall National Meeting, the Task Force adopted the Request for NAIC Model Law Development. During the 2021 Spring National Meeting, the Executive (EX) Committee approved the Request for NAIC Model Law Development.

2. Name of Group Responsible for Drafting the Model and States Participating

The Surplus Lines (C) Task Force and the drafting group consisting of Louisiana, Chair; Colorado; Illinois; Texas; and Washington.

3. Project Authorized by What Charge and Date First Given to the Group

The charges of the Surplus Lines (C) Task Force state, “Develop or amend relevant NAIC model laws, regulations, and/or guidelines.” Also, as described in charge #1, the Request for NAIC Model Law Development was approved by the Executive (EX) Committee during the 2021 Spring National Meeting.

4. A General Description of the Drafting Process (e.g., drafted by a subgroup, interested parties, the full group, etc). Include any parties outside the members that participated

During the 2021 Summer National Meeting, the Surplus Lines (C) Task Force formally developed the Model #870 Drafting Group that consisted of Travis, chair; Rolf Kaumann (CO); Marcy Savage (IL); Jamie Walker (TX); and Jeff Baughman (WA). The Drafting Group began its work on Model #870 on Aug. 19, 2021. During that call the Drafting Group discussed the overall approach to updating the model, initial comments received, and a timeline.

5. A General Description of the Due Process (e.g., exposure periods; public hearings; or any other means by which widespread input from industry, consumers, and legislators was solicited)

The Drafting Group met Aug. 19, 2021, for a regulator-only planning session. Following the initial meeting, the Drafting Group met in open session Sept. 28, Oct. 20, Nov. 4, and Dec. 1, 2021. During these sessions, interested state insurance regulators and parties submitted comment letters to the Drafting Group. The Drafting Group held regulator-only discussion and planning calls on Jan. 10, March 15, and May 3, 2022. During a Surplus Lines (C) Task Force call on May 23, 2022, Model #870 was exposed for a 60-day public comment period. Comments were received from the American Property Casualty Insurance Association (APCIA), CRC Group: Wholesale and Specialty Insurance; Lloyd’s of London; McDermott Will & Emery; the National Risk Retention Association (NRRA); Surplus Line Association of Illinois (SLAI); the Council of Insurance Agents & Brokers (CIAB); and the Wholesale & Specialty Insurance Association (WSIA). The Drafting Group held a regulator-only discussion and planning call on Aug. 3, 2022 and the Task Force held a call on Oct. 17 to discuss the comments received and on Oct. 27, 2022 it exposed Model #870 for a 30-day public comment period. Comments were received from the Maine Bureau of Insurance; the APCIA; Lloyd’s of London; and the WSIA. During the Fall National Meeting, the Task Force heard a summary of the comments received. The Drafting Group held a regulator-only discussion and planning call on Jan. 18, 2023 to discuss comments received and on Jan. 23 exposed a new draft of Model #870 for a 14- day public comment period. Comments were received from the California Department of Insurance; the APCIA; the CIAB; Lloyd’s of London; McDermott Will & Emery; and the WSIA. On Feb. 10 the drafting group held a regulatory-only discussion and planning call and integrated edits into Model #870.

6. A Discussion of the Significant Issues (e.g., items of some controversy raised during the due process and the group’s response)

The most significant issue raised was related to the methodology of determining the “Home State” for unaffiliated groups as outlined within Section 2 of the model. Following comments from various interested parties and discussion among Drafting Group members, an agreed-upon revision resulted in clarification via a drafting note.

7. List the Key Provisions of the Model (e.g., sections considered most essential to state adoption)

Section 5C(2)(b) – Non-U.S. Insurers

- For a Nonadmitted Insurer domiciled outside the U.S., the insurer shall be listed on the *Quarterly Listing of Alien Insurers* maintained by the International Insurers Department (IID) of the NAIC.

Section 5G – Surplus Lines Tax

- In addition to the full amount of gross Premium charged by the insurer for the insurance, every Person licensed pursuant to Section 5J of this Act shall collect and pay to the commissioner a sum equal to [insert number] percent of the gross Premium charged, less any return Premium, for Surplus Lines Insurance provided by the licensee pursuant to the license. Where the insurance covers properties, risks or exposures located or to be performed both in and out of this state, the sum payable shall be paid entirely to the Home State of the insured. The tax on any portion of the Premium unearned at the termination of insurance having been credited by the state to the licensee shall be returned to the policyholder directly by the Surplus Lines Licensee or through the producing broker, if any. The Surplus Lines Licensee is prohibited from rebating, for any reason, any part of the tax.

Section 5T – Domestic Surplus Lines Insurer

- The commissioner may designate a domestic insurer as a domestic Surplus Lines Insurer upon its application, which shall include, as a minimum, an authorizing resolution of the board of directors and evidence to the commissioner's satisfaction that the insurer has capital and surplus of not less than \$15 million. (Although this was added to the model as optional, it remains an important part of the model.).

8. Any Other Important Information (e.g., amending an accreditation standard)

There were no discussions held regarding making Model #870 an accreditation standard.

PROJECT HISTORY - 2002

NONADMITTED INSURANCE MODEL ACT (#870)

1. Description of the project, issues addressed, etc.

To update the provisions of the Nonadmitted Insurance Model Act to bring it into compliance with Gramm-Leach-Bliley

2. Name of group responsible for draft the model:

Nonadmitted Model Act Revision Working Group

States Participating:

New York,
Chair Alaska
California
Georgia
Illinois
Washington

3. Project authorized by what charge and date first given to the group:

The Surplus Lines Task Force was charged in 2001 and 2002 to “Review the Nonadmitted Insurance Model Act provisions relating to out of state placements and make modifications as necessary to reflect the provisions of the Gramm-Leach-Bliley Act.”

4. A general description of the drafting process (e.g., drafted by a subgroup, interested parties, the full group, etc). Include any parties outside the members that participated.

The revisions were drafted by the working group.

5. A general description of the due process (e.g., exposure periods, public hearings, or any other means by which widespread input from industry, consumers and legislators was solicited.

Proposed revisions were extensively exposed both at National meetings and prior to one conference call. Long exposure periods were used to ensure that comment could be received.

6. A discussion of the significant issues (items of some controversy) raised during the drafting process and the group’s response.

Some states believe that removing the surplus lines bonding requirement for non-resident surplus lines agents – which seemingly is necessary under Gramm-Leach-Bliley – would reduce policyholder protections and increase the risk of fraud. The working group reported these concerns to its Task Force. The Task Force has subsequently created a new working group to examine multi-state surplus lines bonds which might be allowed under the Act and thereby may ameliorate the problem.