

The Insurance Federation of Pennsylvania, Inc.

RECEIVED

1600 Market Street
Suite 1520

Philadelphia, PA 19103

Tel: (215) 665-0500 Fax: (215) 665-0540

E-mail: mailbox@ifpenn.org

2008 AUG 29 AM 9:55

INDEPENDENT REGULATORY
REVIEW COMMISSION

#2709

John R. Doubman
Secretary & Counsel

August 26, 2008

Peter J. Salvatore,
Regulatory Coordinator
Pennsylvania Insurance Department
1326 Strawberry Square
Harrisburg, PA 17120

**Re: Military Sales Regulation: 31 Pa. Code Chapter 146d.,
Fiscal Note 11-241**

Dear Mr. Salvatore:

On behalf of the Insurance Federation, we take this opportunity to comment on the captioned proposed regulation (the "regulation") published on August 2, 2008, in the Pennsylvania Bulletin by the Insurance Department.

The Department has adhered to the NAIC model (National Association of Insurance Commissioners Model Military Sales Practices Regulation) (the "model") in most respects. The Federation supports the model and our members confirm it was carefully vetted. Most of the comments below discuss Department variations from the model and either recommend a return to the model language or seek an explanation for the changes.

As a general suggestion, the Insurance Department is better served by refraining from making minor tweaks to NAIC models, especially in this era when federal charter talk is rampant. Not only are concerned insurers put to the trouble of detecting such changes, but it opens 51 jurisdiction regulation to criticism as inconsistent.

On a different note, the model was not improved by changing

August 26, 2008

Page two

the gender neutral "his or her" to the (at least in politically correct circles) masculine "his." A member suggested this was slighting to all women and especially those serving in the armed forces.

The comments received from Federation members are outlined below arranged section by section. It is obvious which of these are of major substantive import, but all are points which the Federation recommends the Department revisit or explain.

1. Section 146d.1. Purpose

The Department deletes from the regulation a second paragraph (Section 1.B. of the model) providing "Nothing herein shall be construed to create or imply a private cause of action for a violation of this regulation." It is a close question whether this paragraph should be restored, but, on balance the Federation recommends it be included.

It is presumptively true a Pennsylvania regulation cannot create a cause of action. Moreover, the penalty section of the regulation (Section 146d.7) subjects violators to the rights and remedies in the Unfair Insurance Practices Act which do not include a private right of action. For both reasons, and, for the implications for other regulations which do not contain such a construction clause, the Department may have opted to drop the language of the model.

Nevertheless, we recommend restoring that language to the regulation for clarity sake, and, because omitting it for no significant reason raises questions about the Department's aim and intention in doing so. The variation from other Pennsylvania regulations is easily explained as being attributable to adherence to the model, which, it is clear, intends to wind up at the same place. On balance, the model language should be used.

August 26, 2008

Page three

2. Section 146d.3. Definitions

The Department removed reference to the National Guard in its revision of the definition of "active duty." While the Department evidences no real intention to change the scope of the definition in the model, the somewhat longer language in the model should be used so as to negate any presumption of change.

Consequently, absent some need to deviate from the model definition, we recommend the Department restore the definition of "active duty" appearing in Section 5.A. of the model.

Likewise, the Department has omitted specific reference to commissioned and warrant officers in revising the definition of "Service Member" appearing in Section 5.K. the model. We do not believe the Department intends any change in the scope of the language. Again, however, absent a reason to change, we suggest use of the model language.

3. Section 146d.5.(b)(1). Practices declared false . . . on a military installation.

In describing what would be an improper use of sales personnel on an installation, the Department has chosen to spell out the specific Department of Defense personnel who may not be used rather than use the short form ("DOD personnel") in the model at Section 6.B.(1). The model defines "Department of Defense (DoD) Personnel" and then uses that short form throughout, whereas the Department omits that definition, but spells out the elements where appropriate.

The Department has chosen to do the same thing in Sections 146.d.6(a)(5) and (a)(6). The problem is there are minor variations which make the longer form confusing. The Department should adopt the short form style of the model or correct the text.

The long form should read in Section 146d.5.(b)(1) after

August 26, 2008

Page four

the word "using:" "an active duty service member or a civilian employee, including nonappropriated fund employees and special government employees, of the Department of Defense."

4. Section 146d.6.(a)(7) attendance inducement

In place of the model's prohibition against "knowingly" inducing pay grades at or below E-4 to attend events where life applications are solicited, the Department has created a more difficult compliance standard. The Department describes the service member as one "whom the insurer or insurance producer knows, or in the exercise of ordinary care should have known . . ." has such a pay grade.

While the use of "knows" is arguably a repetition of the introductory "Knowingly," the Department's formulation adds a duty to investigate to which the industry did not agree in the model. It is undesirable to create a different compliance requirement when promulgating a model like this, probably for very little gain. In any event, again absent a substantiated problem which the Department needs to address with a variation, the Federation recommends returning to the model's formulation in Section 7.A.(7).

5. Section 146d.6.(f)4) nonforfeiture law compliance

The prohibition against selling life contracts in which all policy benefits comply with the standard nonforfeiture law in this section deviates from the model in Section 7.(f)(4). The Department adds "but not limited to" between "including" and "endowment."

Under general judicial interpretative rules, this omission would limit the constraint to those named benefits, although we doubt insurers would apply it in the strict sense. However, consistent with our approach, the Federation recommends returning to the model's wording.

6. Section 146d.6.(h)(1)(i). Needs assessment

The requirements for a needs assessment connected with selling a life product with a side fund in this subsection, drawn from Section 7.F.(2)(a) of the model has a confusing language change. It prescribes consideration of risks associated with ". . . immediate and future cash needs of the applicant's estate, or survivors or dependents, or both." The "or both" is language added by the Department and the model does not have this, but contains "and/or" between "estate" and "survivors."

The reference to "or both" in the regulation's formulation is unclear. Candidly, this might be better worded altogether if we were starting from scratch. However, consistent with our philosophy, we request the Department stick with the model's language so at least any interpretation issue has the NAIC's understandings as a base.

7. Miscellaneous typos

Given that the Department has probably picked several typographical errors up by now, we nevertheless advise of the following:

Section 146d.6.(e)(4) - "officer" in the third line should be "offer;"

Section 146d.6.(f)(4) - The subsection should be renumbered as "3" rather than "4;"

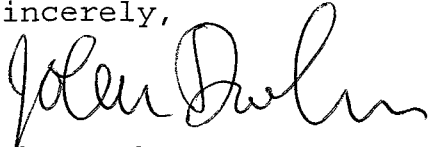
Section 146d.6.(h) - This subsection should be renumbered as "g" rather than "h;"

Section 146d.6.(h)(1)(ii) - There should be a space in the third line between "are" and "insufficient."

Please feel free to call with an questions or comments on these recommendations.

August 26, 2008
Page six

Sincerely,

A handwritten signature in cursive script, appearing to read "John Doubman". The signature is written in black ink and is positioned above the printed name.

John Doubman

cc: James Smith, IRRC analyst