

Chapter 2

Producer Licensing Model Act

Uniformity Provisions of the *Producer Licensing Model Act*

Through the *Producer Licensing Model Act* (#218), the NAIC created a system of reciprocity for producer licensing and established uniform standards in key areas of producer licensing. Model #218 was initially adopted in January 2000. It was subsequently amended in October 2000 and in January 2005.

In December 2002, the Producer Licensing (EX) Working Group adopted a set of Uniform Resident Licensing Standards (URLS). In December 2008, the standards were revised and updated to incorporate standardization and uniformity for both resident and nonresident licensing. Therefore, the standards were renamed the Uniform Licensing Standards (ULS). Model #218 and the ULS are designed to complement each other and assist the states in creating a uniform system of producer licensing. In 2008, the Working Group was charged with reviewing the ULS. Subsequent revisions were made to the ULS in August 2010 (limited lines definitions) and in August 2011 (definitions for certain noncore limited lines). The revised standards are included in the Appendix, and updates can be found on the Working Group's web page on the NAIC website.

The key uniformity provisions of Model #218 are:

1. Definitions for “negotiate,” “sell” and “solicit,” and uniform exceptions to licensing requirements.
2. An application process for both resident and nonresident producer license applications that uses the NAIC Uniform Application for resident and nonresident producers.
3. Definitions for the six major lines of insurance: Life, Accident and Health, Property, Casualty, Personal Lines, and Variable Life or Annuity Products.
4. Exemptions from completing prelicensing education and examinations for licensed producers who apply for nonresident licenses.
5. Standards for license denials, non-renewals and revocations.
6. Standards regarding which individual producers and business entities may receive a commission related to the sale of an insurance policy.
7. Standards for producer appointments for states that have an appointment system.
8. Procedures for state insurance regulators, companies, and producers to report and administratively resolve “not for cause” and “for cause” appointment terminations.
9. A definition for limited lines insurance. The Working Group has adopted a recommended list of limited lines licenses, as set forth in the ULS, and it has encouraged the states to eliminate licensing categories for other lines of insurance.

Other Key Provisions of Model #218

Model #218 also contains a number of provisions that promote simplified licensing procedures.

Home State

The intent of Model #218 is for a producer to have one state of residence. Section 2(B) of Model #218 defines this concept as the home state:

“Home state” means the District of Columbia and any state or territory of the United States in which an insurance producer maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance producer.”

A producer is permitted to designate either the actual state of residence or the principal place of business as the home state. Model #218 does not specifically prohibit the existence of two home state licenses. The producer may select either the resident state or the principal place of business. This option was intended to accommodate a producer who lives in one state but maintains his/her business in another state. However, it was the intent of the drafters for one state

to be designated as the home state to prevent forum shopping. The Working Group has discouraged any state from adopting a stance that a producer can maintain two home states.

Change of Home State

Under Model #218, there is now a simplified process for producers who move from state to state and were in good standing prior to the change of residence.

Section 9 of Model #218 provides a mechanism for licensed producers to maintain an active license when changing the state of residence. Section 9(A) creates an exemption from prelicensing education or examination for a producer who moves into a state who was previously licensed for the same lines of authority (LOAs) in another state. In this scenario, the producer receives a new resident license for the same LOAs, so long as the producer applies for a resident license within 90 days of the cancellation of the producer's previous license and the producer was in good standing in the prior state.

Section 9(B) creates an exemption from prelicensing education or examination for an LOA held by a former nonresident producer who moves into a state and becomes a resident of that state. In practice, when a nonresident becomes a resident, that producer is to be granted the same LOAs previously held, so long as the producer applies for a resident license within 90 days of establishing legal residence. States are not to impose prelicensing education or an examination on a nonresident producer who subsequently moves into another state and declares it to be the home state, unless "the commissioner has determined otherwise by regulation."

Under Model #218, letters of certification were eliminated as a prerequisite to granting a nonresident license. The State Producer Licensing Database (SPLD) provides verification of good standing in the producer's home state.

One unresolved issue is the long-established practice of requiring a letter of clearance for producers changing their resident state. Despite the fact that Model #218 does not contain any reference to a letter of clearance, some states still require the producer to provide a letter of clearance from the former state before the new state will grant the producer an active resident status. Other states grant the new nonresident license but continue to monitor the producer's record to make sure that the prior resident license changes in status from resident to nonresident. This is done to prevent the producer from holding two active resident licenses.

The Working Group and National Insurance Producer Registry (NIPR) have identified this as an issue that could best be resolved by the establishment of an electronic method for the producer to communicate the desired changes to all affected states in one transaction. NIPR's launch of the Contact Change Request (CCR) service allows producers for many states to change their physical addresses, email addresses, phone numbers and fax numbers. The Working Group will turn its attention to solving the issues surrounding a change of resident state once all states have fully implemented the CCR service.

Commissioner Discretion

Model #218 contains language that allows a state to adopt regulations to cover a state-specific situation. The states should carefully consider the impact that deviation from Model #218 might have on NAIC uniformity and reciprocity initiatives.

Section-by-Section Summary of Model #218

The full text of Model #218 is in the Appendices.

Section 1: Purpose and Scope

- To promote efficiency and uniformity in producer licensing.

Section 2: Definitions

- Defines the terms “home state,” “limited lines insurance,” “sell,” “solicit,” “negotiate,” and other pertinent terms.

Section 3: License Required

Section 4: Exceptions to Licensing

- Lists the persons and entities that do not need licenses, even though they participate in the insurance industry.

Section 5: Application for Examination

- Requires that producers must pass an examination in the LOAs for which applications are made.
- Allows the use of outside testing services to administer examinations.

Section 6: Application for License

- Sets forth the qualifications for licensure as an individual or business entity.
- Provides that limited line credit insurers must provide instruction to individuals who will sell credit insurance.

Section 7: License

- Sets forth the six major LOAs, the limited line of credit insurance, and any other line of insurance permitted under state laws or regulations.
- Provides guidelines for license continuation and reinstatement.
- Provides for hardship exemptions for failure to comply with renewal procedures.
- Lists the information the license should contain.
- Requires licensees to notify the insurance commissioner of a legal change of name or address within 30 days of the change.

Section 8: Nonresident Licensing

- Requires states to grant nonresident licenses to persons from reciprocal states for all LOAs held, including limited lines and surplus lines insurance, if those persons are currently licensed and in good standing in their home states.
- Requires a nonresident licensee who moves from one state to another to file a change of address and certification from the new resident state within 30 days with no fee or application.

Section 9: Exemption from Examination

- Exempts licensed individuals who change their home state from prelicensing and examination.
- Requires a licensed nonresident who becomes a resident to register in the new home state within 90 days of establishing legal residence, unless “the commissioner determines otherwise by regulation.”

Section 10: Assumed Names

- Requires a producer to notify the insurance commissioner prior to using an assumed name.

Section 11: Temporary Licensing

- Allows temporary licensure for up to 180 days without requiring an exam when the insurance commissioner deems that the temporary license is necessary for the servicing of an insurance business in specific cases.

Section 12: License Denial, Non-Renewal or Revocation

- Lists 14 grounds for denial, non-renewal or revocation of a producer license.
- Provides that a business entity license may be revoked if an individual licensee's violation was known or should have been known by one or more of the partners, officers or managers acting on behalf of the partnership or corporation, and the violation was not reported to the insurance commissioner nor was corrective action taken.

Section 13: Commissions

- Prohibits payment of commissions or other compensation to or acceptance by an unlicensed person for "selling, soliciting or negotiating" insurance.
- Allows payment of renewal commissions to an unlicensed person if the person was licensed at the time of the sale, solicitation or negotiation.
- Permits payment or assignment of commissions or other compensation to an insurance agency or to persons who do not sell, solicit or negotiate, unless the payment would violate rebate provisions.

Section 14: Appointments (optional)

- Prohibits a producer from acting as a producer for an insurer unless appointed. The insurer appoints the producer either within 15 days from the date the agency contract is executed or within 15 days from the date that the first insurance application is submitted.
- Sets forth processes for initial and renewal appointments.

Section 15: Notification to the Insurance Commissioner of Termination

- Requires the insurer to notify the insurance commissioner within 30 days following the effective date of termination of a producer's appointment if the termination is for cause. The insurer also has a duty to promptly notify the insurance commissioner of any new facts learned after the termination. When requested by the insurance commissioner, the insurer shall provide additional information, documents, records, or other data pertaining to the termination or activity of the producer.
- If termination of a producer is not for cause, the insurer must notify the insurance commissioner within 30 days following the effective date of termination.
- Sets forth a detailed process for notifying the producer and for a producer to submit comments to the state.
- Provides that in the absence of actual malice, insurers have immunity from any actions that result from providing information required by or provided pursuant to this section.
- Contains penalties for insurers who fail to report or who report with actual malice.
- Requires that documents furnished to the insurance commissioner pursuant to this section shall be confidential and privileged.

Section 16: Reciprocity

- A state cannot impose additional requirements on nonresident license applicants who are licensed in good standing in their home state other than the requirements imposed by Section 8 of Model #218 if the applicant's home state grants nonresident producer licenses on the same basis.
- A nonresident's satisfaction of continuing education (CE) in the producer's home state shall constitute satisfaction of all CE requirements in the nonresident state if the home state practices CE reciprocity.

Section 17: Reporting of Actions (By Producers)

- A producer must report any administrative actions taken in another jurisdiction or by another government agency in the home jurisdiction within 30 days of the final disposition of the matter.
- A producer shall report any criminal prosecution taken in any jurisdiction within 30 days of the initial pretrial hearing date. The report must include the legal order, relevant court documents, and the original complaint.

Section 18: Compensation Disclosure

- In any instance, when a producer will receive compensation from a customer for placing an insurance policy and will also receive compensation from an insurer for that placement, prior to placing that policy, the producer is required to disclose to the customer the amount and sources of compensation the producer will receive if the customer makes an insurance purchase.

Section 19: Regulations

- The insurance commissioner may promulgate reasonable regulations to carry out the purposes of Model #218.

Section 20: Severability

Section 21: Effective Date

Frequently Asked Questions

The Working Group has created several documents that answer frequently asked questions (FAQ) about reciprocity, uniformity, and how to administer Model #218. The current version of the FAQ, as of the publication date, appears below. The latest version of these documents can be found on the Working Group's web page on the NAIC website.

Model #218 Implementation - FAQ

This document has been prepared by the Working Group for informational purposes only. The following questions and answers are based upon the language of Model #218. This document is not intended as legislative history or to replace a state insurance department's independent review and analysis of these questions. The contents of this document should not be interpreted as representing the views or opinions of the NAIC or of any individual NAIC member or state insurance department.

Question 1: Is Section 14 of Model #218 regarding appointments, which is labeled "optional," intended to be optional for adoption by a state that requires insurer appointments of producers?

Answer 1: No. If a state requires appointments, it should adopt Section 14. It was labeled "optional" only to accommodate those states that do not require appointments (e.g., Colorado).

Question 2: Model #218 Section 14B starts a clock of 15 days for insurer compliance by providing, “the appointing insurer shall file ... within 15 days from the date the agency contract is executed or the first insurance application is *submitted*” (emphasis added). When is an application deemed “submitted?”

Answer 2: An application is *submitted* when it is dated received by the insurer. The use of any other event will undermine the ability of the states and insurers to achieve uniform national practice for regulatory notifications. This is because any other temporal event is unknown to the insurer, which has the compliance responsibility. That is, “submitted” should not mean when a producer mails an application, since different producers might use different means of communicating applications; different producers will mail applications at different times; mail pick-up and delivery varies among localities; etc. The one certain time of submission is when the application is dated received by the insurer.

Question 3: If a state adopts Model #218 Section 14, is there an option for the state to require an insurer to execute an agency contract with a producer prior to accepting the first insurance application from a producer that has not yet been appointed?

Answer 3: No. Model #218 Section 14B provides, “the appointing insurer shall file, in a format approved by the insurance commissioner, a notice of appointment within 15 days from the date the agency contract is executed **or** the first insurance application is *submitted*” (emphasis added). The use of the word “or” in the model clearly allows an insurer to notice appointment upon the earliest of the two events. Pennsylvania has adopted modified language and is not in complete agreement with this answer.

Question 4: Since Model #218 works toward uniform national procedures by eliminating the traditional distinctions between agents and brokers for the purposes of licensure, is it appropriate to require appointments of producers acting as brokers?

Answer 4: No. Model #218 Section 14A makes clear that an insurer need only appoint producers “*acting as agents on behalf of the insurer.*” Inasmuch as brokers are not appointed, notification of appointments of brokers is not required.

Question 5: Must a business entity reside in a state to obtain a producer license?

Answer 5: No. Section 8 outlines the requirements that a person must fulfill in order to obtain a nonresident license, and the definition of “person” (see Model #218 §2L) makes it clear that this section applies to the licensing of both individuals and business entities. Section 8 is devoid of any residency requirement, and a nonresident business entity should be able to obtain a nonresident producer license, if business entities are required to be licensed by the insurance department at all. In addition, the states that impose residency requirements on business entities are likely not compliant with the National Archives and Records Administration (NARA) provisions of the Gramm-Leach-Bliley Act (GLBA).

Question 6: Should the record of producer qualifications obtainable from the NIPR SPLD satisfy all certification requirements for state licensing?

Answer 6: Yes. Model #218 Section 7G, Section 8B and Section 9 make it clear that the states should adopt and use the SPLD record for all regulatory purposes.

Question 7: Should a state require that a resident be licensed as a producer if he or she is entitled to renewal or other deferred commissions produced in another state?

Answer 7: No. Model #218 Section 3 and Section 13C indicate that a producer license is required to sell, solicit or negotiate the sale of insurance but do not suggest that a license is needed after such activity has ceased. The person’s receipt of renewal or other deferred commissions does not result in any licensing requirement.

Question 8: Are insurers alone responsible for educating those persons who sell limited lines credit insurance products?

Answer 8: Yes. Model #218 Section 6D requires such insurers to furnish the program of instruction to those who sell limited lines insurance. The program is filed with the insurance commissioner in most states.

Question 9: Does reciprocity pursuant to Section 8 of Model #218 require recognition of a nonresident LOA when the state in which the nonresident license is sought does not recognize an LOA for resident producers?

Answer 9: Yes. For example, the reciprocity mandates of Section 8E should be respected for a limited LOA, as is the case with any other LOA. Consequently, the states should be prepared to recognize the authority on a nonresident basis.

Question 10: What process is to be followed by a producer in identifying a new “home state” without the loss of his or her license to do business in the prior home state?

Answer 10: The producer should notify the prior home state of his or her change of address and intent to apply for a resident license in the new home state. The producer must apply for resident license in his or her new home state. Pursuant to Section 9 of Model #218, the producer or applicant is not required to complete any preclicensing education or examination in order to secure the new resident license.

Question 11: What process is to be followed by the new home state insurance regulator with regard to a producer changing his or her state of residency?

Answer 11: The new home state should process the producer’s application; issue a resident license if warranted; and, if issued, notify the SPLD of the producer’s new status as a resident licensee.

Question 12: What is the process to be followed by the prior home state insurance regulator?

Answer 12: At the time the producer notifies the prior home state insurance regulator of a change of address, the prior home state insurance regulator should send a report of “active with notice of transfer of residency to [the new home state]” to the SPLD identifying the new state of residency. Upon Producer Database (PDB) notification of the new resident state licensure, the prior home state resident license is replaced with a nonresident license for the duration of its term. It is noted that time frames for notice to the states of a change in address are stated in Model #218.

Question 13: If a commission is paid to enroll a customer in a group credit insurance policy, must the enroller be licensed?

Answer 13: Yes. An individual who enrolls customers under a group insurance policy must obtain a limited lines license if a commission is paid. Model #218 Section 4B(2) provides an exception from licensing if no commission is paid to the enroller and the enroller does not engage in selling, soliciting or negotiating.

Question 14: May an individual sell, solicit or negotiate group credit insurance coverage without a license?

Answer 14: No. An individual must have a limited lines license before he or she can sell, solicit or negotiate the purchase of group insurance. While Model #218 Section 4B(2) provides an exception for securing and furnishing information in connection with group insurance coverage, there is no such exception from licensing for selling, soliciting or negotiating group insurance coverage.

Question 15: Can a person enrolling someone in a group insurance policy secure and furnish information about the policy to a customer and still be exempt from licensure?

Answer 15: Yes. As set forth in Section 4B(2) of Model #218, there is an exception that allows a group enroller to secure and furnish information about the group insurance policy to a customer, provided no commission is paid or there is no selling, solicitation or negotiation. However, Section 4B(2) generally recognizes an exception for the purposes of enrolling individuals under plans, issuing certificates under plans, assisting with the administration of plans, and performing administrative services related to the mass marketing of property/casualty (P/C) insurance.

Note: It is important to note that individual state laws and factual circumstances will control in determining whether an activity involves selling, solicitation or negotiation. Likewise, the states will have discretion in interpreting what activities constitute the “securing or furnishing” of information.

Question 16: With regard to products sold by life insurers, does the qualification in Model #218 that a person shall not sell, solicit or negotiate insurance “in this state” without a license mean that the producer must be licensed in the state(s) where the: 1) sale, solicitation or negotiation occurs; or 2) policyholder principally resides?

Answer 16: In those states that have adopted Model #218, licensure should be based upon where a producer “sells, solicits or negotiates” insurance, as specifically stated in Model #218. In traditional insurance sales transactions, licensure should be determined solely by this Model #218 standard without reference to the state of residence of the insured. Application of the “sells, solicits or negotiates” standard where an insurance transaction takes place purely by electronic or telephonic means is more complex. In such transactions, application of the Model #218 licensure standard should turn on the state of residence of the customer.

Question 17: Section 14B of Model #218 states: “To appoint a producer as its agent, the appointing insurer shall file, in a format approved by the insurance commissioner, a notice of appointment within 15 days from the date the agency contract is executed or the first insurance application is submitted.” In a situation in which a producer is not currently appointed by an insurer, but was previously appointed by and submitted an application to that insurer, must that producer now obtain a new appointment before submitting a new application to that insurer because it would not be the first application the producer ever submitted to that insurer?

Answer 17: No. Section 14B of Model #218 requires appointment within 15 days of the date an insurer receives the first application submitted by a producer who is not currently appointed, even if that producer was previously appointed by that insurer and submitted business in the past. Reference to the agency contract or the first application is based on the current time period. If a producer’s prior appointment with the insurer was terminated, each jurisdiction would consider the time period to start again with the new contract execution or the time period when the agent submits his first insurance application following the prior termination.