

- 3) Use either the broad language or the itemized list and add a drafting note suggesting that states might feel more comfortable using the other approach.

After discussion, a decision was made to use the language suggested by Mr. Coleman in Section 3 and add as a drafting note the list of areas that might be more appropriate for use in some states and that should be addressed in the development of a regulation.

Section 4

Discussion of Section 4 focused on the sentence which gave the commissioner authority to require insurers illustrating benefits that were not supportable to pay benefits based on their illustrations. There was support from some members of the working group to significantly modify or delete this requirement because it would require commissioners to make a determination of which illustrations or practices would merit the payment of illustrated benefits. Mr. Wright pointed out that if commissioners were limited to the Unfair Trade Practices Act, they needed to show a pattern of behavior. Commissioner Robert Wilcox (Utah) said that if it was not a pattern, a mistake had been made, and he did not feel it appropriate to provide that type of penalty for a mistake. Mr. Higgins suggested adding the phrase "not supportable when presented." The working group agreed that the language should be retained at present with the addition of the language suggested by Mr. Higgins. It was also agreed that this question needed further study.

Section 5

Mr. Katz said that he was in agreement with Ms. Cobb's argument that the remedy provided under the private cause of action already existed. He said a provision creating a private cause of action was a major departure from NAIC policy. After extended discussion, the working group decided to take out the section creating a private cause of action.

Upon motion duly made and seconded, the working group voted to expose the draft with the amendments discussed (Attachment Three-A). Having no further business the Life Disclosure Working Group of the Life Insurance (A) Committee adjourned at 10 a.m.

ATTACHMENT THREE-A

LIFE INSURANCE ILLUSTRATIONS MODEL ACT Draft: 12/07/93

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Section 1. Applicability and Purpose

This Act shall apply to all life insurance companies and fraternal benefit societies licensed to do business in this state and to all [producers, agents and brokers] licensed to sell life insurance or annuities. The purpose of the Act is to authorize standards which shall be followed in the illustration of life insurance products to facilitate consumer understanding of these illustrations.

Drafting Note: Insert the appropriate terminology consistent with state licensing laws.

Drafting Note: This section refers to both life insurance policies and annuity contracts. A separate regulation will be required for each.

Section 2. Prohibited Practices

No person engaged in the business of insurance shall misrepresent the benefits, advantages, conditions or terms of any life insurance policy or annuity contract through misleading or incomplete illustrations.

Section 3. Authority to Promulgate Regulations

The commissioner shall promulgate regulations that establish standards to assure that illustrations are not misleading or incomplete.

Drafting Note: Insert the title of the chief insurance regulatory official wherever the term "commissioner" appears.

Drafting Note: Some states may feel it is more appropriate to have a specific list of items to use in developing standards. If so, they could add a provision such as: "These may include but are not limited to:

- A. Assumptions and methodologies;
- B. Definitions;
- C. Format;
- D. Prohibition or limitation of projections of policy values or benefits;
- E. Notification to policyowners of changes in assumptions from those provided when their policy was issued;
- F. Supportability of illustrations;
- G. Generic identification of the policy being illustrated; and
- H. Accountability of all parties to the transaction."

The drafters recognize that some of these items are mutually exclusive and will not all be included in a regulation. The purpose of their inclusion in this list is to provide a full range of options in the development of a regulation. Any regulation written pursuant to the authority contained in this act will address issues contained in A through H above at a minimum.

Drafting Note: In a state where the commissioner already has this authority, adoption of the model act may not be necessary in order to promulgate the model regulation.

Section 4. Penalties

A violation of this Act by any person shall be subject to the penalties found in section [insert penalty section of unfair trade practices law]. In addition to any other penalty, the commissioner may require insurers who illustrate benefits that are not supportable when presented to pay benefits based on the illustration most favorable to the policyowner or beneficiary.

Section 5. Separability

If any provision of this Act or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

Section 6. Effective Date

This Act shall be effective [insert date].

ATTACHMENT THREE-B

Life Disclosure Working Group
 Kansas City, Missouri
 November 15-16, 1993

The Life Disclosure Working Group of the Life Insurance (A) Committee met at the offices of the NAIC in Kansas City, Mo., on Nov. 15 and 16, 1993. Members of the working group in attendance were Bob Wright (Va.), Chair; Don Koch (Ala.); Roger Strauss (Iowa); Lester Dunlap (La.); Noel Morgan (Ohio); and Tony Higgins (N.C.). Attending portions of the meeting by conference call were John Montgomery, Sheldon Summers and Harold Phillips (Calif.) and Fred Nepple (Wis.). Also in attendance was Carolyn Johnson (NAIC/SSO).

1. Consider Model Act on Illustrations

Chair Bob Wright (Va.) said the first order of business would be to review the initial draft of a model act on illustrations, which would be designed as an enabling statute for a comprehensive regulation. This model would be exposed at the winter National Meeting in Honolulu. The draft was intended to be broad enough to allow the working group to go in any of the directions outlined in the white paper (see *NAIC Proceedings*, 1993 3rd Quarter, pp. 443-446) without closing off any of the alternatives.

Don Koch (Alaska) asked if the act would be part of the Unfair Trade Practices Act. Mr. Wright asked if there was a private cause of action in the Unfair Trade Practices Act. Carolyn Johnson (NAIC/SSO) responded that the Unfair Trade Practices Act specifically said it did not imply a private cause of action. Mr. Koch said he thought it would be appropriate to include a section in the model to provide for a private cause of action. He suggested either adding language to that effect or inserting a drafting note. The working group decided to add a section authorizing a private cause of action. This would address one of the problems noted in the white paper about insufficient penalties for violations. Mr. Koch suggested a provision such as currently being considered in the draft Title Agents Model Act being prepared by another working group. Tony Higgins (N.C.) asked if this provision would limit regulatory action in any way and the group agreed that it did not.

Mr. Wright asked the working group members if they thought the regulation should address annuity illustrations also. He had been asked this question by several regulators. It was the consensus of the working group to finish the charge it had been