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## **PIANH 2010 legislative session expected to focus on fingerprinting, rebating and credit underwriting proposals**

Judging by what the New Hampshire Insurance Department has released as far as their legislative proposals for the upcoming 2010 legislative session, Granite State producers can expect to see their association involved in a number of producer-specific issues, including requiring fingerprints with producer license applications, a renewed look at the anti-rebating prohibitions and using credit scores in underwriting.

**Producer licensing: fingerprinting.** The New Hampshire Insurance Department is contemplating the introduction of a proposal which incorporates fingerprinting and background checks in its producer licensing system. The proposal would amend [Chapter 402-J](#) to require any individual applying for a resident insurance producer license to provide their fingerprints, in order for the department to receive national criminal history records from the Federal Bureau of Investigation's Criminal Justice Information Services Division. The applicant also would be required to pay the fee associated with obtaining the national criminal history records information, which is unknown at this time.

- **Reciprocity:** The proposal, as currently drafted, is silent whether or not a producer may use fingerprints obtained for another license or another state to satisfy this requirement.
- **Renewals:** The proposal, as currently drafted, also is silent on the issue of whether the application applies to renewals as well as initial applications for producers. Although, New Hampshire law stipulates that an insurance producer license shall remain in effect unless revoked or suspended as long as the fee set forth in RSA 400-A:29 is paid and educational requirements for resident individual producers are met by the due date.

More states do not require complete criminal checks involving fingerprinting on insurance producers than do. Only 17 states currently require producers to submit fingerprints to obtain their insurance license, according to the organization of state insurance regulators, the National Association of Insurance Commissioners (NAIC). More than 30 state insurance regulators are not authorized by their legislatures to obtain fingerprints. They still perform criminal background checks but they are not the more extensive ones that can be obtained using fingerprints. States that collect fingerprints use them to electronically obtain background reports from state or federal databases, or both, depending on their authorization. These crime reports are more thorough than what regulators can obtain using just Social Security numbers, dates of birth or other information. For instance, fingerprints are required for an FBI search. The states that use finger-

printing say that it makes a difference. In a recent *Insurance Journal* survey of 26 state insurance departments, each of the 11 states participating that use fingerprinting reported that the tool has definitely helped them identify producer hopefuls who have served prison time or had notable run-ins with the law.

States that have encountered obstacles to getting needed legislation or authorization cite a lack of support from some in the insurance producer and insurer community for specific provisions, a concern over cost of implementation, and a focus on other regulatory priorities. In a March report, the NAIC, which has for years worked to get all states on board with fingerprinting resident applicants and conducting state and federal criminal background checks, found that "the primary barrier to this legislative change is lack of support from the state and local industry organizations." The reasons for opposition to the legislation "seem to focus on generalized privacy concerns, perceived lack of need and uncertainty about applicability to existing producers." Producers maintain that they actually support criminal background checks but that they want it done right as part of a more sensible and streamlined overall licensing system. Increasingly, they have come to believe that this can't be done right by the states. What riles agents and others in the industry are the duplication and lack of reciprocity and uniformity of the overall licensing system of which fingerprinting discrepancies are just a part. According to the GAO study, the fact that states are not on the same page on fingerprinting is one of the key challenges that continues to undermine true reciprocity and uniformity, something that has been a goal of Congress, NAIC, states and the industry since at least 1999 when Gramm-Leach-Bliley was enacted, in part, to encourage a more modern and efficient process. The lack of full-licensing reciprocity is not for lack of trying by the NAIC. The NAIC has produced modernization plans that call for full implementation of an electronic fingerprint system as part of the licensing process. The NAIC has repeatedly urged Congress and the states to pass legislation to give insurance commissioners the authority to conduct criminal checks using fingerprints. The department is hoping that the proposal is acceptable to PIANH producers.

**Rebating exemptions.** Anti-rebating laws on the books in New Hampshire (RSA 402:39) are designed to protect consumers and provide market stability by prohibiting insurers and producers from offering inducements directly or indirectly to purchase insurance to some but not all policyholders. Rebates are "side deals" that are not included within the terms of the insurance policy and, therefore, are not guaranteed or available to all policyholders. Reducing premiums is a well-known type of rebating, but giving or promising "any other thing of value whatsoever" also is considered a rebate under the language of the New Hampshire anti-rebating law. Rebates can result in an unfair market advantage for those insurers or insurance producers that can afford to or are willing to offer the most generous or desirable rebates. In addition, there is the potential for market

instability as rebates may result in consumers shopping for new coverage mid-term or upon renewal in order to benefit from bigger and better rebate offers.

The State Insurance Department posted guidance on its Web site for insurance producers ([http://www.nh.gov/insurance/producers/documents/reb\\_laws.pdf](http://www.nh.gov/insurance/producers/documents/reb_laws.pdf)). The four-page document provides copies of applicable statutes as well as questions and answers to give further guidance in determining whether an item or service is an illegal rebate.

PIANH is working with the department as they look to update these requirements. In fact, the department has recently introduced a proposal (LSR2405), which would add a new paragraph of exceptions to the anti-rebating law (402:41), which incorporates the giving of a promotional item or items to a consumer in connection with marketing of contracts of insurance provided the item or items have a fair market value of \$25 or less per consumer, per year; and raffles or drawings, conducted in connection with the marketing or promotion of property and casualty insurance products, if the total prize value for all raffles or drawings in a 12-month period do not exceed \$1,000; there is no participation cost to entrants; and if the raffle is open to consumers who are not policyholders, meaning the consumer is not required to purchase a policy in order to be eligible to enter the raffle or receive a raffle prize.

**Credit underwriting.** The department also has introduced a proposal (LSR 2404) that seeks to govern the practice of underwriting on the basis of credit information. This proposal would prohibit an insurer from canceling, refusing to write or refusing to renew a policy of automobile insurance solely on the basis of credit information obtained from a credit rating, a credit history or a credit-scoring model, without consideration of any other applicable and permitted underwriting factors independent of credit information.

**Miscellaneous.** A number of the other NHID proposals could potentially impact property and casualty policies and producers and PIANH will monitor and track these during the upcoming session. Among the proposals of interest are measures to apply technical changes to the Insurance Law relative to premium refunds, continuing education, countersignatures and claim forms (LSR 2410), and; guarantee limits (LSR 2101).