

Licensure of Insurance Producers: The Gramm-Leach-Bliley Act, the NAIC Producer Licensing Model Act, and Florida Law



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In November 1999, Congress passed the Gramm-Leach-Bliley Act. Subtitle C of the Act preempts certain producer licensing laws of States, unless the National Association of Insurance Commissioners determines a majority of the States has achieved uniformity or reciprocity in producer licensing by November 12, 2002.

The National Association of Insurance Commissioners has adopted the Producer Licensing Model Act for States to use in satisfying the uniformity and reciprocity provisions of the Gramm-Leach-Bliley Act. Thirty-six States have passed a version of this Model Act, while one state, Texas, has enacted uniformity or reciprocity legislation that is not based on the Model Act. Many of the most populous States have not enacted the Model Act or other uniformity or reciprocity legislation in response to the Gramm-Leach-Bliley Act. In addition to Florida, these include California, New York, Pennsylvania, Michigan and Ohio.

The primary purpose of this staff report is to provide policymakers with information for use in exploring available options in response to the producer licensing requirements of the Gramm-Leach-Bliley Act. This staff report examines the uniformity and reciprocity provisions of the Gramm-Leach-Bliley Act, compares Florida's licensing regulations to those proposed in the Model Act, includes State responses to the Gramm-Leach-Bliley Act, and identifies several of the options available to Florida policymakers.

Please do not hesitate to contact the committee staff if you have questions or comments concerning this staff report.

Sincerely,

Leslie Waters, Chair
Committee on Insurance

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EXECUTIVE SUMMARY

PURPOSE. The primary purpose of this report is to provide policymakers with information for use in exploring available options under the producer licensing provisions of the Gramm-Leach-Bliley Act.

THE GRAMM-LEACH-BLILEY ACT. Under the Gramm-Leach-Bliley Act, certain producer (“agent”) licensing regulatory authority will be preempted to the National Association of Registered Agents and Brokers, unless the National Association of Insurance Commissioners (NAIC) finds a majority of States has achieved uniformity or reciprocity by November 12, 2002.

Thirty-seven States have enacted legislation in response to the Gramm-Leach-Bliley Act, but the NAIC has not yet determined the number achieving uniformity or reciprocity. Many of the most populous States have not enacted legislation.

Although Florida’s response may influence whether or not a majority is attained, preemption will occur regardless of the way in which Florida responds if the NAIC does not certify the necessary majority of States.

IMPLEMENTATION THROUGH THE NAIC MODEL ACT. The NAIC adopted the Producer Licensing Model Act (Model Act) for State use in satisfying the Gramm-Leach-Bliley Act.

Scope. A Model Act drafting note recommends the repeal or revision of inconsistent laws. But, the Gramm-Leach-Bliley Act includes a savings clause for “consumer protection” laws.

License Types. The classifications used in the Model Act may affect the number of licenses obtained by Florida producers. The Model Act and Florida rely on similar grounds for denying, nonrenewing, or revoking licenses.

Licensing Requirements. “Insurance producers” include individuals and entities. Also, by not distinguishing “agents” from other insurer representatives, these other representatives may have to be licensed as producers.

Resident producers. Unlike Florida, residency, credit and character reports, and fingerprints are not expressly required.

Nonresident producers. Applicants must be licensed in good standing in their home State. Florida limits their authority to that in their home State and requires fingerprinting.

Continuing Education. The Model Act is silent.

POLICY OPTIONS. Responses available to Florida include the following:

“No Action.” Retain existing law without change.

“Model Act Only.” Enact the Model Act in its entirety, replacing all existing laws.

“Model Act + Florida Law.” Enact the Model Act in its entirety, preserving selected features of Florida law.

“Non-Model Act.” Enact uniformity or reciprocity legislation not based on the Model Act.

I. INTRODUCTION

Enacted by Congress in November 1999, the Gramm-Leach-Bliley Act¹ became law on November 12, 1999. Insurance producer licensing reforms are contained in Subtitle C of the Gramm-Leach-Bliley Act. An “insurance producer” is defined as any insurance agent, broker, or other person who “solicits, negotiates, effects, procures, delivers, renews, continues or binds policies of insurance.”² Under the Gramm-Leach-Bliley Act, all States must surrender certain regulatory authority over producer licensing to the National Association of Registered Agents and Brokers,³ unless a majority of the States⁴ achieves uniformity or reciprocity by November 12, 2002.⁵ The stated purpose of the National Association of Registered Agents and Brokers is to “provide a mechanism through which uniform licensing, appointment,

continuing education, and other insurance producer sales qualification requirements and conditions can be adopted and applied on a multistate basis, while preserving the rights of States ... to prescribe and enforce laws and regulations with regard to insurance-related consumer protection and unfair trade practices.”⁶

The National Association of Insurance Commissioners (NAIC) has adopted the Producer Licensing Model Act (Model Act) designed for use by States choosing to implement the uniformity and reciprocity provisions of the Gramm-Leach-Bliley Act. Nothing in the Gramm-Leach-Bliley Act requires States to enact the Model Act or precludes States from satisfying the uniformity or reciprocity requirements by means other than enactment of the Model Act.

However, the NAIC, together with State insurance regulators, will determine if a majority of the States satisfies the requirements for uniformity or reciprocity.⁷

The primary purpose of this report is to provide policymakers with information to assist them in exploring available options under the multistate producer licensing reforms included in the Gramm-Leach-Bliley Act. This report examines the uniformity and reciprocity provisions of the Gramm-Leach-Bliley Act, compares Florida’s licensing regulations to those proposed in the

¹ Pub.L. 106-102, 113 Stat. 1422.

² Pub.L. 106-102, s. 336(3).

³ The National Association of Registered Agents and Brokers would be under the supervision and oversight of the National Association of Insurance Commissioners (NAIC) and governed by a board of directors composed of seven members serving three-year terms. Insurance producers licensed in good standing in their home State would be eligible for membership. Membership would entitle the producer to licensure in each State in which the producer pays fees. Membership would be renewed annually. The National Association of Registered Agents and Brokers would establish an office to receive and investigate consumer and State insurance regulator complaints against members.

⁴ The Gramm-Leach-Bliley Act defines the term “State” to include “any State, the District of Columbia, any territory of the United States, Puerto Rico, Guam, American Samoa, the Trust Territory of the Pacific Islands, the Virgin Islands, and the Northern Mariana Islands” [Pub.L. 106-102, s. 336(4)]. According to the NAIC, a majority of States and territories is twenty-nine.

⁵ If, at any time after compliance, the necessary uniformity or reciprocity ceases to exist, the National Association of Registered Agents and Brokers would take effect two years after uniformity or reciprocity ceases to exist [Pub.L. 106-102, s. 321(e)].

⁶ Pub.L. 106-102, s. 323.

⁷ This arrangement raises a question concerning the constitutionality of Congress delegating to an association of state insurance regulators the authority to determine whether or not a section of federal law will take effect. The NAIC determination is subject to challenge in the “appropriate United States District Court” [Pub.L. 106-102, s. 321(d)(1)].

Model Act (See Appendix “A”), includes State responses to the Gramm-Leach-Bliley Act, and identifies several of the options available to Florida policymakers.

II. UNIFORMITY AND RECIPROCITY REQUIREMENTS UNDER THE GRAMM-LEACH-BLILEY ACT

The effect of the Gramm-Leach-Bliley Act on State compliance with the uniformity or reciprocity requirements and the degree of change entailed could depend on the interpretation of the scope, effect and interplay of two of its provisions referencing “consumer protection” laws. While a Model Act drafting note recommends “that any statute or regulation inconsistent with this act be repealed or amended,” the Gramm-Leach-Bliley Act saves from “alteration or amendment,” “any law . . . which purports to . . . establish consumer protections . . . ,” unless inconsistent with a specific uniformity or reciprocity requirement in the Gramm-Leach-Bliley Act.⁸ Furthermore, the Gramm-Leach-Bliley Act, in describing the purpose of the National Association of Registered Agents and Brokers as providing “uniform . . . producer sales qualification requirements and conditions . . . ,” preserves “the right of States to . . . prescribe and enforce laws and regulations with regard to insurance-related consumer protection.”⁹

⁸ Pub. Law 106-102, s. 321(f).

⁹ Pub. Law 106-102, s. 323. The California Insurance Commissioner argues that the uniformity and reciprocity requirements of the Gramm-Leach-Bliley Act do not extend to State laws establishing consumer protections. Letter from the California Insurance Commissioner to the NAIC, May 14, 2001.

Uniformity. Under the Gramm-Leach-Bliley Act, States would achieve the necessary uniformity if a majority:

- Establishes uniform standards relating to the integrity, personal qualifications, education, training, and experience of insurance producers;
- Establishes uniform continuing education requirements;
- Establishes uniform ethics course requirements; and
- Does not impose regulations upon nonresident licensed producers limiting their activities on the basis of their place of residence or business.¹⁰

Reciprocity. States would achieve reciprocity under the Gramm-Leach-Bliley Act if a majority:

- Permits producers licensed in their home State¹¹ to obtain licenses in other States to sell insurance to the same extent permitted in their home

¹⁰ Under the express terms of the Gramm-Leach-Bliley Act, countersignature requirements for nonresident producers are not “deemed to have the effect of limiting or conditioning a producer’s activities because of its residence or place of operations. . . .” Therefore, States may impose or retain countersignature requirements, yet satisfy the uniformity requirement (Pub.L. 106-102, s. 321). A property, casualty, or surety insurance policy may not be issued in Florida unless the policy is issued through or by a Florida-resident agent or “countersigned” by a resident agent (s. 624.425, F.S.).

¹¹ The Gramm-Leach-Bliley Act and the Model Act define “home state” differently. Under the Gramm-Leach-Bliley Act “home State” means the State where the producer is licensed and maintains its principal place of residence, while the Model Act broadens the definition by defining the term to also include the State where the producer has his or her principal place of business.

State, if the producer's home State also awards licenses on a reciprocal basis, without requiring nonresidents to do anything more than request licensure, submit a copy of the license application filed in the producer's home State, provide proof the producer is licensed in good standing in his or her home State, and pay any required fees;

- Accepts satisfaction of the continuing education requirements in an insurance producer's home State as satisfying the nonresident State's continuing education requirements, if the home State also recognizes the continuing education requirements of the nonresident State; and
- Does not impose any requirement upon nonresident licensed producers limiting or conditioning their activities because of their place of residence or business.¹²

III. PREEMPTION OF STATE PRODUCER LICENSING LAWS UNDER THE GRAMM-LEACH-BLILEY ACT

Under the Gramm-Leach-Bliley Act, the National Association of Registered Agents and Brokers will be activated and certain producer licensing laws in all States will be preempted, unless the NAIC finds a majority of States has achieved uniformity or reciprocity by November 12, 2002. In this circumstance, preemption will occur

¹² Under the express terms of the Gramm-Leach-Bliley Act, countersignature requirements for nonresident producers are not "deemed to have the effect of limiting or conditioning a producer's activities because of its residence or place of operations...." Therefore, a State may impose or retain a countersignature requirement, yet satisfy the uniformity requirement (Pub.L. 106-102, s. 321).

regardless of whether or not the NAIC finds Florida has achieved the necessary uniformity or reciprocity. States would continue to license, supervise, and discipline producers.

According to insurers, particularly those with multistate operations, uniformity and reciprocity, regardless of how it is achieved, could produce increased operational efficiencies, reduced paperwork, and cost-savings for these insurers, their agents, and their policyholders. Producers qualifying for membership in the National Association of Registered Agents and Brokers could receive a license to sell insurance in any State.

According to agent representatives in Florida, preemption could jeopardize Florida's fingerprinting and continuing education requirements, among other requirements they characterize as "consumer protections." However, these could be included in the uniform standards adopted by the National Association of Registered Agents and Brokers; preserved under the "consumer protection" savings clause in the Gramm-Leach-Bliley Act, the scope and effect of which has not yet been determined; implied from other express licensing requirements included in the Model Act; or included by the NAIC in revised criteria in line with existing Florida requirements.

IV. IMPLEMENTATION THROUGH THE NAIC MODEL ACT

States may chose to achieve uniformity or reciprocity under the Gramm-Leach-Bliley Act by adopting the Model Act (See Appendix "A").

A NAIC working group is formulating a list of guidelines for use in determining State compliance with the Gramm-Leach-Bliley Act uniformity or reciprocity requirements. The NAIC will review State submissions and discuss any differences with them. In some cases, States may be asked to amend their enactment.

Scope. The Model Act governs the qualifications and procedures for licensing an “insurance producer.” An “insurance producer” is defined under the Model Act as an individual or business entity required to be licensed under the laws of the particular State to “sell, solicit, or negotiate insurance.”¹³

A Model Act drafting note recommends “that any statute or regulation inconsistent with this act be repealed or amended.” However, the Gramm-Leach-Bliley Act, which the Model Act is designed to implement, saves consumer protection regulations from alteration or amendment, unless inconsistent with a specific uniformity or reciprocity requirement in the Gramm-Leach-Bliley Act.¹⁴

License Types. The Model Act uses different license classifications than those used in Florida. It classifies insurance producer licenses under one or more of seven lines of authority, plus “any other line permitted under State laws or regulations.” Administratively, Florida utilizes many more license classifications.¹⁵ Those not captured

under one of the seven lines of authority presumably could be captured under the “any other line” category.

The license classifications in the Model Act may affect the number of licenses a Florida producer must obtain to transact certain lines of insurance. For example, rather than having to obtain a single license as a general lines agent under Florida law, a producer transacting property and casualty insurance might be required to secure two or three different licenses: one as a property producer, another as a casualty producer, or a third as a personal lines producer. Similarly, rather than securing a single license to sell life insurance and variable annuities, a producer under the Model Act might be required to obtain two distinct licenses: one as a life producer and another as a variable life and variable annuity producer.

Certain types of licenses issued in Florida are not expressly referenced in the Model Act. These include bail bond agent, title agent, limited surety agent, and warranty agent licenses. Presumably, these licensees could be captured under the “any other line” category within the Model Act, unless otherwise considered to be outside the scope of the act.

Licensing Requirements. The Model Act sets forth specific licensing requirements for insurance producers, both resident and nonresident.

Although Florida generally licenses only individuals as agents, entities may be licensed as warranty agents or limited lines agents for certain coverages. Under

¹³ Model Act, s. 1. The Model Act does not apply to surplus lines agents or brokers.

¹⁴ Pub.L. 106-102, s. 321(f).

¹⁵ According to the Department of Insurance, it issues 61 different types of insurance company representative licenses for those within the scope of the Model Act.

This would not include such insurance company representatives as adjusters, among others.

the Model Act, Florida could retain the option of not issuing producer licenses to business entities.

Furthermore, the Model Act makes no distinction between an “agent,” “customer representative,” “limited customer representative,” or “service representative.”¹⁶ To the extent that these “representatives” either “sell, solicit or negotiate insurance,” they would be required to be licensed as an “insurance producer” under the Model Act. They would then be required to meet the same licensing requirements as “agents” under Florida law.

Residents. The Model Act requires resident applicants for licensure to be at least eighteen years old, pay fees set by the State, and pass an examination. Under the Model Act, applicants also must not have committed “any act that is a ground for denial, suspension or revocation.” On its face, the Model Act requirements differ from those under Florida law. For example, Florida also requires applicants to submit a credit and character report and fingerprints. However, these requirements could be implied from the express licensing requirement in the Model Act that applicants must not have committed “any act that is a ground for denial . . .”

¹⁶ “Customer representatives” are appointed by general lines agents or agencies to assist them in insurance transactions from the offices of the agents or agencies. They work under the direct supervision of the appointing agent and may not leave the office to sell insurance. “Limited customer service representatives” are customer representatives restricted to private passenger motor vehicle insurance transactions. “Service representatives” are directly employed and appointed by insurers or managing general agents to assist in negotiating and effecting insurance when accompanied by a general lines agent. In practice, service representatives work in an insurance company’s main office or regional office, rather than in an insurance agency.

of a license. They also might be preserved as “consumer protection” laws within the savings provision of the Gramm-Leach-Bliley Act. If so, then Florida could retain these requirements and still achieve uniformity or reciprocity.

Additionally, under the Model Act, the decision to require pre-licensing education is left to the discretion of the State insurance regulator. Pre-licensing education is required in Florida, except for warranty agents and certain limited lines agents. This requirement could be retained.

The Model Act requires applicants to use the Uniform Application, an application which differs from the application used in Florida. Differences include an entry for county of residence in the Florida application to aid in the distribution of certain license fees to counties and an entry used for directing premium tax revenues to the appropriate jurisdictions.

Nonresidents. Under the Model Act, nonresident producers applying for licensure must be licensed in good standing in their home State and pay any required fees. No other requirements are specified. As in the case of resident licensure, the requirements of the Model Act, on its face, differ from those under Florida law. While Florida requires the nonresident applicant to be licensed and in good standing in their home State and pay any required fees, Florida also requires applicants to submit fingerprints and prohibits nonresident agents from having a pecuniary interest in any insurance agent or insurance agency in

Florida¹⁷ and requires them to be accompanied by a resident general lines agent to solicit, negotiate or effect insurance contracts in Florida. Again, if these qualify as “consumer protection” laws under the savings provision of the Gramm-Leach-Bliley Act, then Florida likewise might be able to maintain these requirements and still achieve uniformity or reciprocity.

Continuing Education. The Model Act does not address continuing education for producers to maintain licenses, despite being included as a requirement for achieving uniformity or reciprocity in the Gramm-Leach-Bliley Act.¹⁸ In Florida, for both resident and nonresident agents, the general requirement is twenty-eight hours every two years.¹⁹

License Denial, Nonrenewal or Revocation. Florida law and the Model Act generally rely on the same grounds for denying, nonrenewing or revoking the license of an insurance agent.

Countersignature. A property, casualty, or surety insurance policy may not be issued in Florida unless the policy is issued through or by a resident agent or countersigned by a resident agent.²⁰ The

Gramm-Leach-Bliley Act expressly recognizes State countersignature requirements as protected consumer protection laws. They are deemed to not violate uniformity or reciprocity requirements. Consequently, the Model Act does not speak to State countersignature laws.

V. THE RESPONSE OF THE STATES

According to the NAIC, as of September 30, 2001, thirty-seven States, accounting for 60 percent of the insurance producer population, have enacted uniformity or reciprocity legislation in response to the Gramm-Leach-Bliley Act. All²¹ but one, Texas,²² have enacted some form of the

beneficiary; policies issued by an insurer whose agents represent only that insurer and other members of an insurer group under common ownership, if the insurer is transferring a policy from one member of the insurer group to another member of the insurer group or a Florida resident agent is the agent of record and the application has been lawfully submitted to the insurer.

²¹ According to the NAIC, these thirty-six States are Alabama, Alaska, Arizona, Arkansas, Colorado, Connecticut, Delaware, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, North Carolina, North Dakota, Oklahoma, Oregon, Rhode Island, South Dakota, Utah, Virginia, Washington, and Wyoming.

²² 2001 Texas General Laws 703. Texas did not base its law on the Model Act. Texas requires separate examinations for certain agents and allows the Insurance Commissioner to levy fines against agents for particular violations. Texas also differentiates between temporary licenses and emergency licenses: temporary licenses being issued to applicants awaiting appointment and emergency licenses being issued in the event of the death or disability of the agent. Nonresidents not licensed as resident agents in their home State could be licensed as nonresident agents in Texas and are required to pass a written examination, complete the same continuing education requirements required of resident insurance agents, and submit a copy of their criminal history records. The Insurance Commissioner may enter into reciprocal agreements with other States, and the Texas Department of Insurance may waive the nonresident licensure requirements if the waiver is necessary to promote reciprocal licensing among the majority of the States.

¹⁷ Section 626.741, F.S. They may, however, operate out of an office within an insurance agency located in Florida.

¹⁸ Pub.L. 106-102, s. 321(b)(2) requires “uniform continuing education...”

¹⁹ In Florida, continuing education is not required of title agents and limited lines agents. Certain other licensees with specified designations or a certain amount of experience have fewer required hours of continuing education.

²⁰ Section 624.425, F.S. Pursuant to s. 624.426, F.S., the only policies exempt from this requirement are the following: reinsurance contracts; policies covering rolling stock of railroad companies doing general freight and passenger business; U.S. Customs surety bonds issued by a corporate surety, approved by the U.S. Department of Treasury with the United States as

Model Act. Many of the most populous States have not enacted the Model Act or other uniformity or reciprocity legislation in response to the Gramm-Leach-Bliley Act. In addition to Florida, these include California,²³ New York, Pennsylvania, Michigan and Ohio.

The NAIC has not yet determined the number qualifying as part of the majority of States necessary to prevent preemption by the National Association of Registered Agents and Brokers.

VI. POLICY OPTIONS

The policy options available range from taking no action to replacing Florida's current agent licensing system with a non-Model Act based approach. In deciding which course to pursue, policymakers may want to consider the way in which the NAIC interprets certain provisions of the Gramm-Leach-Bliley Act and the extent and way in which other States respond. But, regardless of whether or not Florida acts, even to the point of enacting the Model Act in its entirety, if the NAIC finds a majority of States has not achieved uniformity or reciprocity, then certain producer licensing laws in all States will be preempted. However, Florida's status may influence whether or not the majority necessary to avoid preemption is attained.

“No Action.” The Legislature could choose to take no action, which would leave the existing regulatory system intact.

If Florida takes no action, Florida will likely not be counted among the majority

²³ Legislation is pending in California which is not based on the Model Act.

of States having achieved uniformity or reciprocity under the Gramm-Leach-Bliley Act necessary to avoid preemption (unless the NAIC were to revise its criteria in line with existing Florida requirements).

If the Legislature chooses not to take action, but a majority is certified and preemption avoided, Florida could continue to require applicants to submit fingerprints and complete continuing education, among other requirements agents argue protect the public and policyholders.

With this option, it is unclear how Florida's existing reciprocity agreements with other States might be affected, particularly those that have enacted the Model Act or other uniformity or reciprocity legislation.²⁴ This could affect the ability of Florida resident agents to become licensed in these States beyond November 12, 2002.

“Model Act Only.” Enact the Model Act, in its entirety, replacing all existing

²⁴Whether or not the Florida Legislature enacts the Model Act, Florida enjoys reciprocity with thirty-nine States. According to the Department of Insurance, States with which Florida has reciprocity that have enacted some form of the Model Act or other legislation designed to satisfy the Gramm-Leach-Bliley multistate licensing requirements have agreed to honor the agreement through at least November 12, 2002. It is unclear whether or not these agreements will be honored beyond that date. The eleven with which Florida does not enjoy reciprocity are Arkansas, Georgia, Hawaii, Kentucky, Louisiana, New Mexico, New York, South Carolina, Tennessee, West Virginia, and Wisconsin. According to the Department of Insurance, Florida lacks reciprocity with these States because their pre-licensing and continuing education requirements are less stringent than those of Florida. Of these eleven States, five (Arkansas, Georgia, Hawaii, Kentucky, and Louisiana) have enacted a form of the Model Act, and Wisconsin reportedly is planning to act by rule. The remaining States (New Mexico, New York, South Carolina, Tennessee, and West Virginia) have not enacted the Model Act.

relevant laws. Under this option, Florida would replace all agent licensing requirements with those in the Model Act. Florida presumably would be included among those States considered by the NAIC to have satisfied the uniformity or reciprocity requirements of the Gramm-Leach-Bliley Act.

Fingerprinting and continuing education requirements, and restrictions on nonresident agents, such as the prohibition against nonresident lines agents having a pecuniary interest in an agency or agent in the State, could be casualties under this option.

Florida may retain its pre-licensing education, training and experience requirements under the option allowed under the Model Act.

“Model Act + Florida Law.” Enact a hybrid, combining the Model Act in its entirety, with selected features of Florida law. Florida could adopt the Model Act and, simultaneously, retain certain regulatory requirements such as fingerprinting and continuing education under Florida licensing laws either through the “consumer protection” savings clause of the Gramm-Leach-Bliley Act or implied from certain express licensing requirements in the Model Act. Policymakers would need to determine which requirements to preserve. If this option is selected, Florida might not receive NAIC certification as one of the States achieving uniformity or reciprocity unless found to be within the consumer protection laws within the savings clause of the Gramm-Leach-Bliley Act.

Florida may retain its pre-licensing education, training and experience

requirements under the option allowed under the Model Act.

“Non-Model Act.” Enact uniformity or reciprocity legislation not based on the Model Act. Like Texas has done, and California and other States are contemplating, Florida could “chart its own course.” Florida may still achieve the reciprocity and uniformity necessary to comply with the Gramm-Leach-Bliley Act.

Depending on the interpretation of the consumer protection savings clause under the Gramm-Leach-Bliley Act, Florida could enact uniformity or reciprocity legislation independent of the Model Act, and retain requirements such as fingerprinting and continuing education.

**APPENDIX “A”: PRODUCER LICENSING: PROVISIONS
UNDER FLORIDA LAW AND THE NAIC MODEL ACT**

I. Scope

	Florida Statutes	Model Act
	Chapter 626 applies to insurance company representatives. (s. 626.022)	The Model Act governs the “qualifications and procedures” for licensing “insurance producers.” An “insurance producer” is defined as a person licensed to “sell, solicit, or negotiate insurance.” A drafting note recommends “that any statute or regulation inconsistent with this act be repealed or amended.” (ss. 1 and 2)
<p>Comments: Section 321(f) of the Gramm-Leach-Bliley Act (Pub.L. 106-102) states that “no provision of this section [requiring uniformity or reciprocity] shall be construed as requiring that any law . . . which purports to . . . establish consumer protections . . . be altered or amended in order to satisfy the [required] uniformity or reciprocity . . . , unless inconsistent with a specific [uniformity or reciprocity] requirement [in the Gramm-Leach-Bliley Act].” Furthermore, section 323 of the Gramm-Leach-Bliley Act describes the purpose of the National Association of Registered Agents and Brokers as providing “uniform . . . producer sales qualification requirements and conditions . . . , while preserving the right of States to . . . prescribe and enforce laws and regulations with regard to insurance-related consumer protection” The scope and effect of the “consumer protection” savings clause has yet to be determined.</p>		

II. License Types

	Florida Statutes	Model Act
A. Lines of authority: property and casualty insurance		
1. Property	General lines agent (ss. 626.041, .311)	Property producer or Personal lines producer (s. 7)
2. Casualty	General lines agent (ss. 626.041, .311)	Casualty producer or Personal lines producer (s. 7)
3. Marine	General lines agent (ss. 626.041, .311)	Property producer or Casualty producer or Personal lines producer (s. 7)
4. Surety	General lines agent (ss. 626.041, .311)	Casualty producer or Personal lines producer (s. 7)

	Florida Statutes	Model Act
B. Lines of authority: life, annuities, and health		
1. Life	Life agent including variable annuities Life agent including variable annuities and health (ss. 626.051, .311)	Life producer or Variable life and variable annuity producer (s. 7)
2. Variable annuities	Life agent including variable annuities Life agent including variable annuities and health (ss. 626.051, .311)	Variable life and variable annuity producer (s. 7)
3. Health	General lines agent, if included in the appointment by an insurer for property, casualty, or surety Life agent including variable annuities and health Health agent (ss. 626.041, .051, .062, .311)	Accident and health or sickness producer (s. 7)
C. Lines of authority: limited lines		
1. Credit	Credit agent Credit property agent Credit life or disability agent (s. 626.321)	Credit producer (s. 7)
2. Motor vehicle physical damage	Motor vehicle physical damage agent (s. 626.321)	Limited lines producer (ss. 2 and 7)
3. Industrial fire or burglary	Industrial fire or burglary agent (s. 626.321)	Limited lines producer (ss. 2 and 7)
4. Personal accident	Personal accident agent (s. 626.321)	Accident and health or sickness producer (s. 7)
5. Baggage and motor vehicle excess liability	Baggage and motor vehicle excess liability agent (s. 626.321)	Limited lines producer (ss. 2 and 7)
6. Crop hail and multi-peril crop	Crop hail and multi-peril crop agent (s. 626.321)	Limited lines producer (ss. 2 and 7)
7. In-transit storage personal property	In-transit storage personal property agent (s. 626.321)	Limited lines producer (ss. 2 and 7)
D. Other lines of authority		
1. Bail bonds	Professional bail bond agent (s. 648.27)	No licensure provision
2. Limited sureties	Limited surety agent (s. 648.27)	No licensure provision

	Florida Statutes	Model Act
3. Warranties	Home warranty agent; service warranty agent; auto warranty agent (ss. 634.171, .317, .419)	No licensure provision
4. Title insurance	Transact title insurance agent; title insurance agency (s. 626.841)	No licensure provision
E. Other licensees		
1. Customer representative	Assist general lines agent or agency from the office or agency in same lines as the appointing general lines agent, excluding bail bonds, and life and variable annuities (s. 626.072)	No licensure provision
2. Limited customer representative	Assist general lines agent or agency from the office or agency in private passenger auto only (s. 626.072)	No licensure provision
3. Service representative	Assist general lines agent (employed by an insurer or managing general agent) (s. 626.091)	No licensure provision
<p>Comments: Under the Model Act, producers may be licensed under one or more of seven different lines of authority, plus “any other line of insurance permitted under State laws or regulations.” Differences in the license classifications under the Model Act could affect the number of licenses Florida producers must obtain. Those licensed under Florida law for which the Model Act does not make provision ostensibly could be captured under the “any other line” category.</p> <p>Depending on the interpretation of the definition of “insurance producer” under the Model Act, those licensed under Florida law as a customer representative, limited customer representative, or service representative could be required to meet the same licensing requirements as an “agent” under Florida law.</p>		

III. Licensing Requirements

	Florida Statutes	Model Act
Residents		
A. Application form		
	Form prescribed and furnished by the Department of Insurance (s. 626.161)	Uniform Application (across States and across lines) (s. 6)
B. Conditions		
1. Age	18 (ss. 626.731, .7351, .7355, .785, .831, .8414; 634.171, .317, .419; 648.34)	18 (s. 6)

	Florida Statutes	Model Act
2. Pre-licensing education and experience	Required, except for warranty agents and certain limited lines agents (ss. 626.732, .785, .7851, .831, .8311, .8417; ss. 634.171, .317, .419)	Optional (discretion of the insurance regulator) (s. 6)
3. Fees	Application filing fee: \$50; Licensing fee: \$5; Examination fee: \$56; Fingerprint processing fee: \$64 (ss. 624.501; 626.171, .231, .271, .281; Rule 4-211.005, F.A.C.)	Required; fee as set by States (s. 6)
4. Examination	Required, except for certain licensees with specified professional designations. Required for limited lines licensees such as industrial fire agents, motor vehicle physical damage agents, and crop hail agents. Not required for certain other limited lines licensees or warranty agents. (ss. 626.221, 231, .731, .7351, .783, .785, .831, .8414; ss. 634.171, .317, .419)	Required (s. 6)
5. Credit and character report	Must have a credit and character report on file with the first appointing insurer (s. 626.521)	Not an express licensure requirement
6. Fingerprints	Required, except for warranty agents (s. 626.601)	Not an express licensure requirement
7. Bonding	Required of title agencies only (s. 626.865)	Not an express licensure requirement
8. Residency	Must be a Florida resident and have a place of business located in the State (ss. 626.731, .7351, .785)	Not an express licensure requirement
9. Employment restrictions	Life agents and health agents may not be employed by the U.S. Department of Veterans Affairs. Life agents may not be a funeral director, direct disposer, or have a connection with a funeral establishment, except to be licensed to sell pre-need contracts under Chapter 497, F.S. Life agents may sell limited insurance policies covering burial insurance not to exceed \$7,500. (ss. 626.785, .788, .831)	Not an express licensure requirement

	Florida Statutes	Model Act
C. Continuing education		
1. Standards	Generally, 28 hours of basic or higher-level courses every 2 years. Continuing education is not required for title agents and limited lines agents. Certain licensees with specified designations or a certain length of experience have fewer required hours. (s. 626.2815)	Not an express licensure requirement
2. Penalties for noncompliance	Appointments are not renewed by the Department of Insurance. Licensees may apply for an extension.	Not applicable
<p>Comments: The Gramm-Leach-Bliley Act requires States to establish uniform criteria regarding the “education, training, and experience” of producers and uniform continuing education requirements. Yet, despite these requirements, the Model Act makes pre-licensing education optional and makes no provision for uniform continuing education.</p> <p>Unlike Florida, the Model Act does not include fingerprinting, credit and character reports, and continuing education among the express licensing requirements. However, fingerprinting and credit and character reports might be implied from the requirement that an applicant not have committed “any act that is a ground for denial [of a license].”</p>		
Nonresidents		
A. Application form		
	Form prescribed and furnished by the Department of Insurance (s. 626.161)	Submit application from home State or complete a Uniform Application (s. 8)
B. Conditions		
1. Fees	Application filing fee: \$50; Licensing fee: \$5; Examination fee: \$56; Fingerprint processing fee: \$64 (ss. 624.501; 626.032, .741, .792, .831; Rule 4-211.005, F.A.C.)	Required; fees as set by States (s. 8)
2. Home state license	Must have license in good standing in home State (ss. 626.741, .792, .831)	Must have license in good standing in home State (s. 8)
3. Examination	Not required because required in home State. (ss. 626.221, .741, .792, .831)	Not an express licensure requirement
4. Credit and character report	Must have a credit and character report on file with the first appointing insurer (s. 626.521)	Not an express licensure requirement
5. Fingerprints	Required (s. 626.601)	Not an express licensure requirement

	Florida Statutes	Model Act
6. Employment restrictions	May not have a pecuniary interest in an agent or agency in the State. May not solicit, negotiate, or effect insurance contracts unless accompanied by a resident general lines agent. (ss. 626.741, .792)	Not an express licensure requirement
C. Continuing education		
1. Standards	Generally, 28 hours of basic or higher-level courses every 2 years. Continuing education completed in home State can apply in Florida. Certain licensees with specified designations or education have fewer required hours of continuing education.	Not an express licensure criteria
2. Penalties for noncompliance	Appointments are not renewed by the Department of Insurance. Licensees may apply for an extension.	Not applicable
D. Reciprocity		
	Home State must recognize licensees from Florida (ss. 626.741, .792, .831)	Insurance regulator must waive requirements for nonresident producers licensed in good standing in home State, if home State offers licenses to Florida residents on the same basis. (ss. 8 and 16)
E. Scope of authority		
	Limited to specific lines of authority granted by home State (ss. 626.741, .792, .831)	Not defined
<p>Comments: Florida currently enjoys reciprocity with thirty-nine States. The Gramm-Leach-Bliley Act requires States to accept, in satisfaction of their continuing education requirements, a non-resident producer's satisfaction of their home State's requirements, in order to achieve the necessary reciprocity. Yet, the Model Act makes no provision for continuing education.</p>		

IV. Denial, Nonrenewal or Revocation of License

	Florida Statutes	Model Act
A. Character and qualifications		
	Lack of qualifications, knowledge, or competence; or lack of fitness or trustworthiness to engage in the insurance business (s. 626.611). Failure to pass an examination required for licensure (ss. 626.611, .621, .6215). Moving out of the State (ss. 626.611, .621, .6215).	Demonstrating incompetence, or untrustworthiness in the conduct of business; having an insurance producer license denied, suspended, or revoked in another State; failure to pay child support obligations; or failure to pay State income tax. (s. 12)
B. Specific conduct		
1. Misrepresentation, application and examination	Material misstatement or misrepresentation in obtaining or attempting to obtain license or appointment (s. 626.611). Cheating on an examination required for licensure (ss. 626.611, .621, .6215).	Providing incorrect, misleading, incomplete, or materially untrue information in the license application; obtaining or attempting to obtain a license through misrepresentation. Improperly using notes or reference materials to complete an examination (s. 12)
2. Failure to comply with laws and regulations	Use of license or appointment to circumvent the insurance code; willful failure to comply with the insurance code. (ss. 626.611, .621, .6215). Unlawful rebating or unlawful sharing of commissions. (ss. 626.611, .621, .6215).	Violating the insurance code, or violating any regulation, subpoena, or order of the insurance commissioner. (s. 12)
3. Transactional misconduct	Fraudulent or dishonest practices; misrepresentation of an insurance product; willful overinsurance of a risk; misrepresentation of the terms and coverage of an insurance product (ss. 626.611, .621, .6215).	Intentionally misrepresenting the terms of an insurance contract or application; using fraudulent, coercive, or dishonest practices; forging another's name on an insurance application or to any document related to an insurance transaction; knowingly accepting insurance business from an unlicensed individual. (s. 12)
4. Financial misconduct	Misappropriation of money (ss. 626.611, .621, .6215)	Financial irresponsibility in the conduct of business; improperly withholding, misappropriating, or converting any money or property received when transacting insurance. (s. 12)

	Florida Statutes	Model Act
5. Criminal conduct	Felony conviction; pleading guilty or nolo contendere to a felony or crime punishable by imprisonment of 1 year or more (ss. 626.611, .621, .6215)	Felony conviction (s. 12)
6. Fraud and unfair trade practices	Fraudulently obtaining a license; engaging in twisting; engaging in unfair methods of competition or unfair or deceptive acts (ss. 626.611, .621, .6215)	Fraudulently obtaining a license; having admitted or been found to have committed an unfair trade practice or fraud (s. 12)
Comments: Florida law and the Model Act are similar in regard to the grounds for denial, nonrenewal, or revocation of licenses. One distinction of note: Florida law bars those who have entered a plea of guilty or nolo contendere to a felony.		

V. Appointments

Florida Statutes	Model Act
A. Requirements	
At least one appointment is required to sell, solicit, or negotiate insurance (ss. 626.311, .451, .7353)	Appointment is required to sell, solicit, or negotiate insurance. (s. 14) (Optional section in the Model Act.)
B. Process	
1. Initial appointment Notify the Department of Insurance no later than 45 days after the appointment (ss. 626.361, .381)	Notify regulating entity within 15 days from the date the appointment is executed (s. 14)
2. Renewal Every 24 months on appointee's birthday (s. 626.381)	This is optional with States (s. 14)
3. Insurer notice of termination Notify the Department of Insurance within 30 days (s. 626.471)	Notify the regulating entity within 30 days (s. 14)
C. Fees	
\$60, paid by the appointing individual or entity (s. 624.501; s. 626.322, .381)	Required, paid by the insurer; amount not specified (s. 14)

VI. Commissions

Florida Statutes	Model Act
A. Receipt	
Must be licensed and appointed to receive commissions (ss. 626.838, .794)	Must be licensed to receive commissions (s. 13)
B. Rebating	
Generally prohibited (s. 626.572)	Not addressed
C. Sharing	
Agents may share commissions with other agents holding the same license and may share in an incorporated insurance agency (ss. 626.753, .794, .838)	Not addressed

VII. Temporary Licenses

Florida Statutes	Model Act
A. Purpose	
To allow a temporary licensee to continue or wind up the business affairs of a licensed agent who has died or become disabled; or to allow the licensee to complete education requirements or take the examination (ss. 626.7355, .739, .790, .791; 648.355)	To allow a temporary licensee to continue or complete the business affairs of a licensed producer who has died or become disabled; to allow for the sale of the business; or in any other circumstance where the insurance regulator deems that the public interest will best be served by the issuance of a temporary license (s. 11)
B. Conditions for issue	
Must be employee, family member, business associate, or personal representative of an agent who dies or becomes disabled (s. 626.739) Must have applied for license if pending completion of education requirements or examination (ss. 626.740, .790, .791)	Must be surviving spouse or court-appointed representative of a licensee who dies or becomes mentally or physically disabled to allow for the sale of the business owned by the licensee (s. 11)
C. Duration of license	
4 months (ss. 626.739, .790), 90 days (s. 626.7355), 6 months (ss. 626.740, .790), or 1 year (s. 648.355), depending on line of authority	180 days for all license types (s. 11)

Florida Statutes	Model Act
<p>Comments: Temporary licensees generally are issued for the purposes of continuing or completing the affairs of licensees who have died or become disabled. Florida law also allows those applying for a license to obtain a temporary license while completing certain education requirements. The Model Act would give the insurance regulator the authority to issue licenses in other situations where “the public interest will best be served by the issuance of a temporary license.” Presumably, then, Florida could continue to issue temporary licenses to those working to complete education requirements. The Department of Insurance implements its authority to issue temporary licenses by administering twenty-four different types of temporary licenses.</p>	

VIII. Licensing Exemptions

Florida Statutes	Model Act
<p>Certain insurer or producer employees not receiving commissions or life or health insurer employee when accompanied by a licensed agent (ss. 626.0428, .112)</p>	<p>Certain insurer or producer employees if not receiving commissions or if performing specific functions not related to business of insurance (s. 4)</p>
<p>Consulting actuary to an insurer (ss. 626.051, .062)</p>	<p>Not specifically exempt</p>
<p>Persons providing information or performing specific functions under group plans; or mass marketing property and casualty insurance (s. 626.041)</p>	<p>Persons providing information or performing specific functions under group plans; or mass marketing property and casualty insurance where no commission is paid (s. 4)</p>
<p>Salaried full-time employee advising employer or persons advising employers on employees benefit plans (ss. 626.041, .051, .062)</p>	<p>Salaried full-time employee advising employer, if not selling or soliciting insurance or receiving commissions, or employers when administering employee benefit plans (s. 4)</p>
<p>Certified public accountants acting within the scope of license and not receiving commissions (s. 626.022)</p>	<p>Not specifically exempt</p>
<p>Not exempt</p>	<p>Nonresidents selling, soliciting, or negotiating commercial property and casualty insurance exempt, if risks are located in more than one State and the person is licensed in the State where the business is principally located (s. 4)</p>

IX. Definitions

Florida Statutes	Model Act
<p>“Agent.” A person authorized to transact insurance. (s. 626.031)</p> <p> [“Sell.” Not defined</p> <p> “Solicit.” Not defined</p> <p> “Negotiate.” Not defined]</p>	<p>“Insurance producer.” Person required by law to be licensed to “sell, solicit, or negotiate insurance.” (s. 2)</p> <p> [“Sell.” To exchange a contract of insurance by any means, for money or it’s equivalent, on behalf of an insurance company (s. 2)</p> <p> “Solicit.” Attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company (s. 2)</p> <p> “Negotiate.” Act of conferring directly with or offering advice directly to a purchaser or prospective purchaser of a particular contract of insurance concerning any of the substantive benefits, terms, or conditions of the contract, provided that the person sells insurance or obtains insurance from insurers for purchasers (s. 2)]</p>
<p>“Health Agent.” An agent representing a health maintenance organization or transacting health insurance (s. 626.062)</p>	<p>“Accident and Health or Sickness Producer.” An insurance producer authorized to sell insurance coverage for sickness, bodily injury, or accidental death; benefits for disability income (s. 7)</p>
<p>“Home state.” Not defined</p>	<p>“Home state.” State or territory of the U.S. in which a producer maintains a principal place or residence or business and is licensed (s. 2)</p>
<p>“License.” Document issued by the Department of Insurance authorizing a person to be appointed to transact insurance or adjust claims for classes of insurance identified (s. 626.103)</p>	<p>“License.” Document issued by the insurance regulator authorizing a person to act as an insurance producer for specific lines of insurance (s. 2)</p>
<p>“Life agent.” An agent transacting all classes of life insurance and variable annuities (s. 626.051)</p>	<p>“Life producer.” An insurance producer selling insurance coverage on human lives including: benefits of endowment and annuities; benefits in the event of death or dismemberment by accident; and benefits for disability income (s. 7)</p>

Florida Statutes	Model Act
<p>“Limited lines agent.” An agent authorized to transact a limited class of business, including motor vehicle physical damage and mechanical breakdown insurance; industrial fire insurance or burglary insurance; personal accident insurance; baggage and motor vehicle excess liability insurance; credit life or disability insurance; credit insurance; credit property insurance; crop hail and multi-peril crop insurance; or in-transit and storage personal property insurance</p> <p>“[Credit producer.” Not defined]</p>	<p>“Limited lines producer.” A person authorized to sell limited lines insurance (as defined by State). (s. 2)</p> <p>[“Credit producer.” An insurance producer authorized to sell limited line credit insurance. (s. 7)]</p>
<p>“Personal lines producer.” Not defined</p>	<p>“Personal lines producer.” An insurance producer authorized to sell property and casualty insurance coverage for primarily noncommercial purposes. (s. 7)</p>
<p>“General lines agent.” An agent transacting property, marine, casualty or surety insurance, except bail bonds. May transact health insurance, if health is included in the appointment by an insurer for property, casualty, or surety (s. 626.041)</p>	<p>“Property producer.” An insurance producer authorized to sell insurance coverage for direct or consequential loss or damage to property of any kind (s. 7)</p> <p>“Casualty producer.” An insurance producer authorized to sell insurance coverage for legal liability for death, injury, or disability or damage to real or personal property (s. 7)</p>
<p>“Resident.” An individual domiciled and residing in Florida (s. 626.102)</p>	<p>“Resident.” Not defined</p>
<p>“Variable life and variable annuity producer.” Not defined</p>	<p>“Variable life and variable annuity producer.” An insurance producer authorized to sell variable life insurance contracts and variable annuities (s. 7)</p>
<p>Comments: Many of the terms used in Florida law are not defined in the Model Act and vice versa. For example, the Model Act defines “insurance producer,” while Florida law does not employ that term and refers to those authorized to transact insurance as “agents.” Florida generally licenses only individuals as agents, although entities can be licensed as warranty agents or limited lines agents for certain coverages. Florida licenses insurance agencies in very narrow circumstances generally related to the past conduct of the owners, directors, or officers of the agency.</p>	

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