American Property Casualty Insurance Association

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House Insurance Committee RFI
Interim Charge 2
InsureTech, Big Data, Regulatory Sandbox, Privacy

The American property Casualty Insurance Association (APCIA) provides the following comments and recommendations regarding the multiple subjects included in Interim Charge 2. Insurance innovation is driven by the need for insurers to partner with their customers and meet consumer expectations for: new and diverse products and services, simpler and speedier solutions; and interaction in a medium that reflects their lifestyle. To meet these consumer requests the legal framework must keep pace. Simultaneously, the insurer must preserve consumer trust in new technology tools. APCIA applauds the Texas legislature for analyzing state insurance laws for gaps and barriers to innovation and we look forward to continued collaboration on this topic. Included below are some initial thoughts and observations.

Artificial Intelligence (AI) – AI has great potential to augment human judgment, improve decision making, and enhance the customer experience. As with any emerging technology, there are issues that need to be considered and evaluated consistent with existing regulatory requirements. For instance, we recognize that there is some sensitivity to the reduced human involvement inherent in AI; however, there are reasonable solutions to address this issue as AI is a new tool or model with the same challenges and issues that the insurance regulatory framework is designed to address. Texas has a legal privacy framework, unfair discrimination laws, and a robust rate and form review process, for instance. If there are any gaps, APCIA is ready to collaboratively address them. It is also important to note, that there is an insurance framework in place to address any issues related to AI algorithms, if more comprehensive legislation is ever pursued, the breadth of the scope and definitions matter as it could create competing and inconsistent requirements as well as duplicative enforcement authority within the state of Texas.

Anti-rebate - Rebate reform is an issue where modernized Texas laws would greatly enhance the customer experience. Anti-rebate laws were introduced more than 100 years ago, after the use of rebates threatened the solvency of life insurance companies. However well intended, they have become a potential barrier to socially beneficial innovation. Insurers look to partner with their policyholders and the public to better understand and reduce risk of loss. A frequently cited example is the ability to provide water detection devices to customers.

State regulators and legislators have begun to see the benefits of value-added services and products and how the current legal framework stifles innovation in this area. As such, a handful of states have developed bulletins or amended state laws to allow insurers and producers to offer for free, or at a reduced cost, a variety of good and services. We applaud the work of these states, but unfortunately, there is no consistency in how the states have approached this issue. Therefore, the National Council of Insurance Legislators has developed a stand-alone Rebate Reform Model Act. Similarly, the National Association of Insurance Commissioners (NAIC) is working to develop amendments to the Unfair Trade Practices Model Act. Importantly, the work of both of these organizations will bring about uniform and consistent guidance for insurers to leverage technology to increase the scope and value of their partnership with customers. Key components to successful rebate reform include allowing the offer of products or services not specified in the insurance policy for free or at a discounted price that educate about, assess, monitor, control or prevent risk to persons, their lives, health or property or assist in the administration of the policy.

We encourage the Texas legislature to implement rebate reform during the 2021 legislative session that is consistent with the model laws.

Short-Term Policies – Cancellation and Non-Renewal Laws

Another area that is ripe for consideration are state cancellation and non-renewal provisions. Most of these laws rely on the premise that insureds expect coverage for an entire year. In the emerging gig and sharing economies, there is significant market demand for coverage terms far less than a year. Sometimes even for only a day or two. As such, the 30 or 60-day cancellation notice requirements make it difficult to comply in these circumstances. See for example, Texas Insurance §§551.051 et seq. We encourage the Texas legislature to consider existing state non-renewal and cancellation laws and as appropriate amend them to include an exception where the term of coverage is shorter than the standard notice period. By example, California has a nonrenewal statute that for certain lines of insurance a nonrenewal notice is not required for a policy issued 60 days or fewer when the insured is notified at issuance that it may not be renewed. If the legislature is amenable, we look forward to working with you to find a workable solution for Texas.

Electronic Commerce

Modernizing laws to allow ease of electronic interaction and transactions with consumers and the state insurance departments has long-been a goal of the insurance industry. The significant shift to remote work brought on by COVID-19 has only emphasized the need for these modifications. APCIA encourages the legislature to take advantage of any and all opportunities to eliminate requirements for wet signatures, allow for ease of electronic delivery, support the use of drones, and consider leveraging technology to engage in various state auditing and exam requirements.

Sandbox

The above are only a few examples of important legislative efforts that can help enhance customer satisfaction and improve risk management. We look forward to continuing to review the Texas legislative code and insurance market evolution for additional opportunities to partner on innovation. Importantly, some innovative solutions may only be in the beginning stages of consideration and to further develop them and determine what legislative changes may be necessary, there should be a flexible testing environment.

Insurance commissioners should be given the flexibility to grant variances, waivers or no-action letters with respect to certain laws, rules or regulations that may block the testing or implementation of innovative new insurance technologies, products or services. This type of regulatory flexibility is a critical element of a regulatory "sandbox". Applicants for such relief would need to demonstrate that the underlying public policy purpose of a law or regulation would be accomplished by alternative means, and commissioners would be authorized to require reasonable consumer protection measures when granting a variance, waiver or no-action letter.

While promoting such flexibility is a critical component of APCIA's innovation strategy, sound regulation also must preserve a level playing field. APCIA supports a number of protections on this front, including required publication of some basic, non-trade secret information about any granted relief so that other participants in the market place are aware that an insurance department is willing to be flexible in a given area of regulation. Further, APCIA believes insurance sandbox legislation should prohibit variances or waivers for any law and regulation governing insurer investments and solvency, licensing and certificate of authority requirements, participation in residual markets and guaranty funds, and the application of any taxes or fees.

Ideally an insurance-specific sandbox would be created as a standalone solution, separate from other financial institutions, due to regulatory inconsistencies between insurance and, for example, banking.

Components of a legislative proposal to establish such a regulatory sandbox should be based on the following:

Purpose
To provide a supervised environment where insurance firms, working in a collaborative relationship with regulators, can test innovative new products, services and technologies.

Guiding Principles for Regulators
- Promote insurance innovations that will benefit personal or business consumers
- Engage proactively with companies testing and implementing insurance innovations
- Establish appropriate consumer protections
- Preserve financial stability and oversight of the insurance industry

Scope

New products, services, technologies and applicants that:
- Offer a good prospect of identifiable benefit to businesses or consumers
- Do not readily fit into existing regulatory framework, making it difficult or costly to get innovation to market
- Have identified any potential consumer risks and proposed mitigation steps
- Will benefit from testing in a live environment

Eligibility
- Licensees and companies that have partnered with licensees
- New or innovative insurance offerings/services in the state's market place
- Multistate offerings/services should be considered for participation if:
    - Other participating states have adopted a regulatory sandbox and applicant has applied in those states
    - Participating supervisors willing to enter into collaborative supervision agreement for the testing period
- Insurance offerings intended to be deployed on a broader scale upon exit from the sandbox
- Applicants invested appropriate resources to understand & address state laws and regulations

Consumer Safeguards
Potential consumer protection "guardrails" that may be employed by the supervisor include:

- Limits on duration of a pilot test
- Defined size range for consumer test pool
- Reasonable consumer disclosures

Sincerely,

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