

It's Time for an Update

State-based commercial insurance regulation belongs in the 1940s, not in today's competitive, evolving market.

by Leigh Ann Pusey

The business world is producing innovative products at an accelerating pace. Drones are being deployed daily in cutting-edge commercial applications. Self-driving motor vehicles are being tested for both commercial and personal use. IBM's Watson artificially intelligent computer system is finding its way into hospital surgical suites. Traditional business models are dying fast and blockchain technology could threaten many more. All of these revolutionary technologies will require insurance. Yet, the pace of innovation in the commercial insurance space continues to be impeded by plodding regulation put in place during the 1940s, when today's innovations were still science-fiction fantasy.

Insurance is regulated by the individual states. Most states have rules requiring their insurance department to review policy forms and rates prior to the sale of a new or revised insurance product. This state filing requirement includes insurance products sold to business customers. So, when a property/casualty insurer seeks to innovate and customize an insurance policy to meet the evolving needs of its business customers, a series of state government agencies must review—and in many cases, preapprove—the policy wording.

Yes, state government agencies across the country read every word of business-to-business transactions. This process frequently slows down the introduction of new and innovative insurance products by six months or more, as insurance companies wait to hear from the numerous state agencies reviewing their products and pricing. This delay is especially common for insurance products designed to cover interstate commerce conducted by insured businesses with locations in multiple states.

Some states have sought to change this regulatory paradigm and have taken steps toward reform. Arkansas and Florida have exempted a broad swath of commercial insurance products from filing

requirements. Other states, including New York and New Jersey, have adopted lists of “special risks” that are excepted



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from policy form and rate filing. And, Illinois has not regulated any property/casualty insurance rates, other than workers' compensation, since 1971. All these states have vibrant, competitive commercial insurance markets. But, while these reforms certainly are welcome, even these efforts have created a patchwork quilt of state rules.

Widespread state review of policy forms and rates dates back to the 1940s, when Congress formally delegated insurance regulation to the states in reaction to a Supreme Court ruling that insurance is interstate commerce. Seeking to defend state regulation in the wake of potential federal intrusion,

the states took a major role in setting insurance rates and reviewing policy forms. But, the 1940s was a different era, a time when insurance company competition actually was limited by state regulation in the name of preserving company solvency. Nowadays, the majority of U.S. regulators also recognize the need to adopt public policy goals that promote the growth of healthy, competitive private markets able to quickly meet the advancing needs of American businesses.

But, even skeptical state regulators should question why highly specialized commercial insurance products—products not commonly purchased by small, Main Street businesses—require this type of regulatory intervention. Think about it. Why should state regulators review liability policies sold to banks? Or to lawyers? Or to corporate boards of directors? Should insurance companies wait months before they can customize coverage to meet the needs of emerging industries and technologies? Do 50 state agencies need to expend valuable resources, hire staff and incur additional pension liabilities, to protect banks, lawyers and corporations entering into business-to-business insurance transactions?

The answer to these questions is obvious. This type of regulation is a relic of a bygone era and no longer necessary or desirable for the protection of the public. Doing away with this form of regulation will create more competition and more choices, providing fuel for American businesses as they boldly push our economy into new frontiers.

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