

## “When Does an Insurtech Need a Producer’s License?”

By Joe Chvasta, JD, CPCU

The Insurtech market’s global revenue reached \$5.5 billion in 2019 and is projected to double by 2025. (1) Insurtech products are mainly being purchased by individual consumers. Life insurance represents the largest segment with nearly one-half of all 2019 global written premiums for Insurtech, followed by accident and health at 23% and then property and casualty.

With a consumer base, Insurtechs are using technology in innovative ways that improve the customer experience. Innovations by Insurtechs in the purchase of insurance include mobile applications, chatbots and artificial intelligence. Mobile applications are a key distribution channel for Insurtechs with most websites designed for use with the smallest screen, also known as “mobile first technology.” Chatbots and artificial intelligence are being used to suggest coverage and offer price comparisons between internal and external products, which is a regulatory concern. In addition to reaching consumers directly through their websites, Insurtechs are also forming relationships with online insurance brokers and partners with whom they bundle services with or offer rewards programs.

Whether an Insurtech is reaching customers directly through their efforts or through a partner’s, the question remains whether their actions require an insurance producer’s license. As producer licensing is done at the state level, an Insurtech will need to follow the licensing requirements of each state where they sell insurance. While there are differences between the states in producer licensing, there is a starting point for discussion, the Producer Licensing Model Act (PLMA) or Model 218. Either the PLMA or similar legislation has been adopted by each of the 50 states and the District of Columbia.

The PLMA in Section 3 provides that a person, who is defined as an individual or a business entity, “shall not sell, solicit or negotiate insurance in this state for any class or classes of insurance unless the person is licensed for that line of authority in accordance with this Act.” The three undertakings requiring a producer license, to “sell,” “solicit,” and “negotiate,” are defined by the PLMA as follows:

“Sell” means to exchange a contract of insurance by any means, for money or its equivalent, on behalf of an insurance company.

“Solicit” means attempting to sell insurance or asking or urging a person to apply for a particular kind of insurance from a particular company.

“Negotiate” means the 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 engaged in that act either sells insurance or obtains insurance from insurers for purchasers.

The terms “sell” and “negotiate” are generally understood in the context of insurance as “sell” involving the exchange of money and “negotiate” including either selling or obtaining insurance for a purchaser. “Solicit” is the more difficult requirement to satisfy as it includes an “attempt” to sell insurance and this especially is a potential pitfall for Insurtechs who are using artificial intelligence and chatbots.

There are exemptions under the Model Act's requirement of producer licensing to "sell," "solicit," and "negotiate" insurance but they may not be enough to help Insurtechs using artificial intelligence and chatbots. Regulators have concluded that describing coverage, quoting insurance rates and offering product recommendations require licensing of the person performing these activities and the PLMA does not change these standards. Instead, the PLMA in Section 4. B. (1) provides exemptions for administrative tasks by employees of an insured or producer which are not directly related to the selling of policies if they do not receive a commission. This includes administrative and clerical acts not directly related to the sale, securing information for a group policy, administration of employee benefit plans, employees inspecting or rating risks, non-residents selling in multiple states who are producers in the state of the insured's principal place of business, employees who counsel their employer on their insurance interests and "advertising without the intent to solicit insurance," PLMA Section 4. B. (1)- (7). The exemptions establish that even otherwise exempt tasks are not met if commission is paid to persons or entities. The advertising exemption from producer licensing is potentially the most valuable exemption for Insurtechs and their partners. Advertising includes "communications in printed publications or other forms of electronic mass media" provided that the person does not sell, solicit, or negotiate insurance, PLMA 4. B. (5).

The question is when an advertisement by an Insurtech is not a solicitation. Generally, it depends on whether there is activity on the website beyond a summary of information. In New York, for example, "the mere maintenance of a passive web site that is accessible to New York residents containing information about specific insurance products or services does not constitute solicitation."<sup>2</sup> Allowing a hypertext link delineated as an advertisement to a licensed insurance producer or licensed insurer is also not a solicitation. On the other hand, an advertisement on the Insurtech's own website becomes a solicitation when it gives the customer a presentation of coverage or a quote or goes beyond a mere recommendation to a licensed producer. Regulators have subjected Insurtechs to the same review as other insurance companies when determining if producer licensing is required. For example, a Massachusetts Insurtech which provided online quotes was fined for the sale of insurance while unlicensed. Until regulators say otherwise, if the Insurtech website offers price or coverage comparisons, quotes or presentations of coverage, it is a solicitation and the Insurtech will require its own producer licensing.

Regulators have fined Insurtech companies that used their partners to sell, solicit, or negotiate insurance when the partners were not licensed producers. A human resources software company was fined by multiple states for paying commissions to its unlicensed partner for selling its software which enrolled people in insurance and employee benefit plans. The partner's activities went beyond the exemption which allows a person to secure and furnish information for the purpose of enrolling individuals under plans. The company's founder and president announced that the company would do more than any insurance broker for its customers. As a result of the actions by the states, the software company changed its business model and only sold insurance products through licensed producers.

Artificial intelligence and chatbots are increasingly being used by Insurtechs to reach consumers, however we still do not know how regulators will view chatbots and artificial intelligence for purposes of producer licensing. Is it considered advertising or is it considered soliciting which requires a producer's license? A

lot may depend on how much information is requested and more so how much information about pricing and coverage the Insurtech's website provides. The role of chatbots and artificial intelligence to deliver information about insurance products is currently under review by the NAIC's Producer Licensing Task Force who intends to issue a white paper. The Task Force has advised that data input, algorithms and the output of recommendations are potential issues warranting discussion. Insurtech companies need to know from regulators how much information a chat bot can deliver before it is a presentation of coverage which requires the involvement of producer licensing. Moreover, Insurtechs need guidance on whether artificial intelligence can deliver quotes and coverage presentations in any form, something which is not allowed by insurance company employees unless they are licensed.

The NAIC and state regulators must issue clear guidelines as to whether Insurtechs will be treated differently than traditional insurance companies and producers when using artificial intelligence and chatbots to receive and deliver information from consumers. Until then, an Insurtech using these technologies should become licensed as a producer in every state where it does business and it should require its employees and brokers who are engaged in selling, soliciting and negotiating insurance to do the same.

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1. (Business Wire, 4/16/20)

2. NY Dept of Financial Services Circular Letter No. 5 (2001), February 1, 2001. Note by only listing the insurance products it is considered an advertisement and not a solicitation and this omits the need for a producer's license. However, the insurance company must still be licensed to sell its products in New York.