

**Comments of the Center for Economic Justice**  
**12/5/06 Draft of New Section of the Unfair Trade Practices Model Act**  
**Prohibiting Underwriting and Rating Life Insurance**  
**on the Basis of Past Travel or Future Lawful Travel Plans**

**Submitted December 18, 2006**

The Center for Economic Justice supports the current draft proposal and thanks the working group for your efforts to protect life insurance consumers.

In the drafting note, we ask your consideration of an additional sentence, either at the end of the drafting note or before the last sentence of the drafting note:

*Informational filings enable the commissioner to perform market analysis and to alert the filing insurer to any issues that may arise during a market conduct investigation or examination.*

This additional sentence clarifies that an informational filing does not create a prior approval requirement and is consistent with the new paradigm for market regulation grounded in market analysis and targeted enforcement.

We also want to raise a concern about the limited penalties available in the Unfair Trade Practices Model Act (UTPA). The penalties for violations, pursuant to section 8 of the UTPA are capped at \$1,000 for each violation and \$100,000 in aggregate “unless the violation was committed flagrantly in a conscious disregard of this Act, in which case the penalty shall be not more than \$25,000 for each violation not to exceed an aggregate penalty of \$250,000.”

Section 8 also provides for suspension or revocation of the insurer’s license if the insurer knew or reasonably should have known that it was in violation of the act. Such penalty has rarely been used and will likely not be used in this circumstance because it runs the risk of harming existing policyholders not affected by travel underwriting.

Section 3 of the UTPA defines the prohibited practices to be unfair trade practices if

- A. It is committed flagrantly and in conscious disregard of this Act or of any rules promulgated hereunder; or
- B. It has been committed with such frequency to indicate a general business practice to engage in that type of conduct.

Consequently, routine use of a consumer’s past travel or future travel plans to condition eligibility or price of a life insurance policy subjects the insurer to a maximum penalty of \$100,000. We do not believe this is a significant deterrent and ask the working group’s consideration of either increasing the penalty amounts in Section 8 of the UTPA – which were last changed in early 1991 – or adding a penalty provision to the new section specifically addressing the prohibited practices of the section.

An additional penalty tool for the commissioner might also be a moratorium on the sale of new policies by insurer for up to three years. Such an approach would penalize the insurer without harming existing policyholders. The language for these penalties would be a new part (G)(5):

- (5) Notwithstanding the provisions of Section 8, if, after a hearing, the commissioner finds that an insurer, person, depository institution or affiliate of a depository institution has violated sections 2, 3 or 4 of this part, the commissioner shall reduce to the findings to writing and shall issue and cause to be served upon the insurer, person, depository institution or affiliate of a depository institution charged with the violation, a copy of the findings in an order requiring the insurer, person, depository institution or affiliate of a depository institution to cease and desist from engaging in the act or practice and the commissioner may, at the commissioner's discretion order:*
- a. payment of a monetary penalty of not more than \$10,000 for each violation, unless the violation was committed flagrantly in a conscious disregard of this Act, in which case the penalty shall be not more than \$50,000 for each violation; and/or*
  - b. a moratorium on sales of new policies for no more than three years.*

Thank you for your consideration.