

## **GUIDELINE FOR IMPLEMENTATION OF STATE ORDERLY LIQUIDATION AUTHORITY**

**Drafting Note:** Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 provides for the orderly liquidation of certain financial companies, including qualifying insurance companies, with the Federal Deposit Insurance Corporation (FDIC) generally seeking the appointment as receiver. However, in the case of qualifying insurance companies, the liquidation or rehabilitation of such a financial company will be conducted as provided under state law pursuant to 12 U.S.C. § 5383(e). If at the end of the 60-day period provided for under 12 U.S.C. § 5383(e)(3) the commissioner (or other appropriate regulatory agency) has not filed the appropriate state judicial action to place the insurer into orderly liquidation, the FDIC shall have the authority to stand in the place of the commissioner and file the appropriate judicial action in the appropriate state court to place the insurer into orderly liquidation under the laws and requirements of the state. The following statutory language is not an amendment to the NAIC receivership models, but is intended as a Guideline for use by those states seeking to review their authority under existing state law for purposes of initiating rehabilitation or liquidation proceedings in accordance with the federal statute:

### **[ ] Orderly Liquidation Authority**

In accordance with Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203 with respect to an insurance company that is a covered financial company, as that term is defined under 12 U.S.C. § 5381:

- A. The commissioner may file in the [insert proper court] court of this state a petition for an order of rehabilitation or liquidation on any of the following grounds:
  - (1) Upon a determination and notification given by the Secretary of Treasury (in consultation with the President) that the insurance company is a financial company satisfying the requirements of 12 U.S.C. § 5383(b), and the board of directors (or body performing similar functions) of the insurance company acquiesces or consents to the appointment of a receiver pursuant to 12 U.S.C. § 5382(a)(1)(A)(i), with such consent to be considered as consent to an order of rehabilitation or liquidation; or
  - (2) Upon an order of the United States District Court for the District of Columbia under 12 U.S.C. § 5382(a)(1)(A)(iv)(I) granting the petition of the Secretary of the Treasury concerning the insurance company under 12 U.S.C. § 5382(a)(1)(A)(i); or
  - (3) A petition by the Secretary of the Treasury concerning the insurance company is granted by operation of law under 12 U.S.C. § 5382(a)(1)(A)(v).
- B. Notwithstanding any other provision in this Act or other law, after notice to the insurance company, the receivership court may grant a petition for rehabilitation or liquidation within 24 hours of the filing of a petition pursuant to this section.
- C. If the court does not make a determination on the petition for rehabilitation or liquidation filed pursuant to this section within 24 hours after the filing of the petition, it shall be deemed granted by operation of law upon the expiration of the 24 hour period. At the time that an order is deemed granted under this section, the provisions of [cite to applicable state law addressing rehabilitation or liquidation] shall be deemed to be in effect, and the receiver shall be deemed to be appointed [optional: affirmed] and have all of the applicable powers provided by [refer to applicable state law addressing rehabilitation or liquidation], regardless of whether an order has been entered. The receivership court shall expeditiously enter an order of rehabilitation or liquidation that:

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- (1) Is effective as of date that it is deemed granted by operation of law; and
  - (2) Conforms to [cite to applicable state law addressing rehabilitation or liquidation], as applicable.
- D. Any order of rehabilitation or liquidation made pursuant to this section shall not be subject to any stay or injunction pending appeal.
- E. Nothing in this section shall be construed to supersede or impair any other power or authority of the commissioner or state courts under this Act.

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*Chronological Summary of Actions (all references are to the Proceedings of the NAIC)*

*2011 Proc. 3<sup>rd</sup> Quarter, Vol. I 113, 131, 136, 218-220 (adopted).*

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**This chart is intended to provide readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings related to the NAIC model. Such guidance provides readers with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state’s activity in this area and has determined whether the citation most appropriately fits in the Model Adoption column or Related State Activity column based on the definitions listed below. The NAIC’s interpretation may or may not be shared by the individual states or by interested readers.**

**This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist readers in locating useful information. Readers should consult state law for further details and for the most current information.**

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<b>NAIC MEMBER</b>	<b>RELATED STATE ACTIVITY</b>
Alabama	NO CURRENT ACTIVITY
Alaska	NO CURRENT ACTIVITY
American Samoa	NO CURRENT ACTIVITY
Arizona	NO CURRENT ACTIVITY
Arkansas	NO CURRENT ACTIVITY
California	CAL. INS. CODE § 1011 (1935/2013).
Colorado	NO CURRENT ACTIVITY
Connecticut	NO CURRENT ACTIVITY
Delaware	NO CURRENT ACTIVITY
District of Columbia	NO CURRENT ACTIVITY
Florida	NO CURRENT ACTIVITY
Georgia	NO CURRENT ACTIVITY
Guam	NO CURRENT ACTIVITY
Hawaii	NO CURRENT ACTIVITY
Idaho	NO CURRENT ACTIVITY
Illinois	215 ILL. COMP. STAT. 5/188.2 (1937/2013).
Indiana	NO CURRENT ACTIVITY
Iowa	IOWA CODE ANN. § 507C.17A (2013).
Kansas	NO CURRENT ACTIVITY
Kentucky	NO CURRENT ACTIVITY
Louisiana	LA. REV. STAT. ANN. § 22:2005.1 (2012).
Maine	NO CURRENT ACTIVITY

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<b>NAIC MEMBER</b>	<b>RELATED STATE ACTIVITY</b>
Maryland	NO CURRENT ACTIVITY
Massachusetts	NO CURRENT ACTIVITY
Michigan	NO CURRENT ACTIVITY
Minnesota	NO CURRENT ACTIVITY
Mississippi	NO CURRENT ACTIVITY
Missouri	NO CURRENT ACTIVITY
Montana	NO CURRENT ACTIVITY
Nebraska	NO CURRENT ACTIVITY
Nevada	NO CURRENT ACTIVITY
New Hampshire	NO CURRENT ACTIVITY
New Jersey	NO CURRENT ACTIVITY
New Mexico	NO CURRENT ACTIVITY
New York	NO CURRENT ACTIVITY
North Carolina	NO CURRENT ACTIVITY
North Dakota	NO CURRENT ACTIVITY
Northern Marianas	NO CURRENT ACTIVITY
Ohio	NO CURRENT ACTIVITY
Oklahoma	NO CURRENT ACTIVITY
Oregon	NO CURRENT ACTIVITY
Pennsylvania	NO CURRENT ACTIVITY
Puerto Rico	NO CURRENT ACTIVITY

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<b>NAIC MEMBER</b>	<b>RELATED STATE ACTIVITY</b>
Rhode Island	R.I. GEN. LAWS § 27-14.3-22.1 (2012).
South Carolina	NO CURRENT ACTIVITY
South Dakota	NO CURRENT ACTIVITY
Tennessee	NO CURRENT ACTIVITY
Texas	TEX. INS. CODE ANN. § 443.057(23) (2005/2011).
Utah	UTAH CODE ANN. § 31A-27a-611 (2007).
Vermont	NO CURRENT ACTIVITY
Virgin Islands	NO CURRENT ACTIVITY
Virginia	NO CURRENT ACTIVITY
Washington	NO CURRENT ACTIVITY
West Virginia	NO CURRENT ACTIVITY
Wisconsin	NO CURRENT ACTIVITY
Wyoming	NO CURRENT ACTIVITY

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