

CRIMINAL SANCTIONS FOR FAILURE TO REPORT IMPAIRMENT MODEL BILL

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Section 1. Definitions

- A. “Commissioner” means the Commissioner of Insurance or the equivalent of the state of domicile of any insurer.

Drafting Note: Unnecessary to define “commissioner” in the many states with an existing basic definition.

- B. “Insurer” means any insurance company or other insurer licensed to do business in this state.

Drafting Note: Generally, the term “insurer” rather than “company” is used in this type of situation in most states and would seem preferred here. There are insurers who are not companies and it seems more accurate to do it this way. Since the word “insurer” is defined in most codes, the definition can be omitted when not required.

- C. “Impaired” is a financial situation in which the assets of an insurer are less than the sum of the insurer’s minimum required capital, minimum required surplus and all liabilities as determined in accordance with the requirements for the preparation and filing of the annual statement of an insurer under Section [insert applicable section].

Drafting Note: Minimum required capital was used in accordance with our discussion. It is essential that there be clear understanding of the meaning of the terms and the only possible standard of sufficient clarity appears to be the statutory method which is incorporated in most, if not all, state laws. This definition should be reviewed by each state in relation to the minimum capital and surplus required to continue operating in that state, particularly with respect to the problems of newly organized companies.

- D. “Chief executive officer” is the person, irrespective of the title used, designated by the board of directors or trustees of an insurer as the person charged with the responsibility of administering and implementing the insurer’s policies and procedures.

Section 2. Duty to Notify

- A. Whenever an insurer is impaired, its chief executive officer shall immediately notify the commissioner in writing of the impairment and shall also immediately notify in writing all of the board of directors or trustees of the insurer.

Drafting Note: The model law was changed to require notice only to the domiciliary state. A duty to notify fifty states seems too much, particularly with the stiff penalty. Would this be fifty crimes and is this an extraterritorial problem? The domiciliary state should be responsible.

- B. Any officer, director or trustee of an insurer shall notify the person serving as chief executive officer of the impairment of the insurer in the event the officer, director or trustee knows or has reason to know that the insurer is impaired.

Section 3. Penalty

- A. Any person who violates Section 2 of this Act shall, upon conviction thereof, be fined not more than \$50,000 or be imprisoned for not more than one year, or both.

- B. Any person who does any of the following shall be guilty of a felony and upon conviction thereof, punished by imprisonment in the penitentiary for not more than five (5) years:
 - (1) Conceals any property belonging to an insurer; or
 - (2) Transfers or conceals in contemplation of a state insolvency proceeding his own property or property belonging to an insurer; or
 - (3) Conceals, destroys, mutilates, alters or makes a false entry in any document which affects or relates to the property of an insurer or withholds any such document from a receiver, trustee or other officer of a court entitled to its possession; or
 - (4) Gives, obtains or receives a thing of value for acting or forbearing to act in any court proceedings; and any such act or acts results in or contributes to an insurer becoming impaired or insolvent.

Chronological Summary of Action (all references are to the Proceedings of the NAIC).

1973 Proc. II 18, 21, 370, 394, 400-401 (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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KEY:

MODEL ADOPTION: States that have citations identified in this column adopted the most recent version of the NAIC model in a **substantially similar manner**. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

RELATED STATE ACTIVITY: Examples of Related State Activity include but are not limited to: older versions of the NAIC model, statutes or regulations addressing the same subject matter, or other administrative guidance such as bulletins and notices. States that have citations identified in this column **only** (and nothing listed in the Model Adoption column) have **not** adopted the most recent version of the NAIC model in a **substantially similar manner**.

NO CURRENT ACTIVITY: No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Alabama	NO CURRENT ACTIVITY	
Alaska	NO CURRENT ACTIVITY	
American Samoa	NO CURRENT ACTIVITY	
Arizona	NO CURRENT ACTIVITY	
Arkansas	NO CURRENT ACTIVITY	
California	NO CURRENT ACTIVITY	
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	

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Idaho	NO CURRENT ACTIVITY	
Illinois	NO CURRENT ACTIVITY	
Indiana	NO CURRENT ACTIVITY	
Iowa	NO CURRENT ACTIVITY	
Kansas	NO CURRENT ACTIVITY	
Kentucky	NO CURRENT ACTIVITY	
Louisiana	NO CURRENT ACTIVITY	
Maine	NO CURRENT ACTIVITY	
Maryland	MD. ANN. CODE art. 9, § 231; § 14, § 119 (1991/1997).	
Massachusetts	NO CURRENT ACTIVITY	
Michigan	NO CURRENT ACTIVITY	
Minnesota	NO CURRENT ACTIVITY	
Mississippi	NO CURRENT ACTIVITY	
Missouri	MO. REV. STAT. § 375.537 (1991).	
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	

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
North Dakota	NO CURRENT ACTIVITY	
Northern Marianas	NO CURRENT ACTIVITY	
Ohio	OHIO REV. CODE ANN. §§ 3999.36 to 3999.38 (1991).	
Oklahoma	NO CURRENT ACTIVITY	
Oregon	NO CURRENT ACTIVITY	
Pennsylvania	NO CURRENT ACTIVITY	
Puerto Rico	NO CURRENT ACTIVITY	
Rhode Island	R.I. GEN. LAWS §§ 27-47-1 to 27-47-3 (1991).	
South Carolina	NO CURRENT ACTIVITY	
South Dakota	NO CURRENT ACTIVITY	
Tennessee	NO CURRENT ACTIVITY	
Texas	NO CURRENT ACTIVITY	
Utah	NO CURRENT ACTIVITY	
Vermont	NO CURRENT ACTIVITY	
Virgin Islands	NO CURRENT ACTIVITY	
Virginia	NO CURRENT ACTIVITY	
Washington	NO CURRENT ACTIVITY	
West Virginia	W. VA. CODE R. §§ 33-35-1 to 33-35-3 (1990).	
Wisconsin	NO CURRENT ACTIVITY	
Wyoming	NO CURRENT ACTIVITY	

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Proceedings Citations Cited to the Proceedings of the NAIC

The model was developed in response to a concern over the broad approach taken by certain existing law. **1973 Proc. I 154.** The committee was directed to draft a model bill that embodied an unequivocal definition of the crime covered, a pinpointing of responsibility and a severe penalty in accordance with felony statutes. **1973 Proc. II 400.**

Section 1. Definitions

The subcommittee voted to adopt the bill, subject to the requirement that a footnote be added to the definition of impairment in Section 1C. The minimum required capital and surplus set forth in the definition of impairment refers to the requirements of any state adopting this law where the insurance company is licensed. **1973 Proc. II 394.**

Section 2. Duty to Notify

Section 3. Penalty

Some concern was expressed over the content of Section 3B. The chair of the drafting task force expressed the opinion that it was not particularly important for the group to decide whether the subsection was necessary or not. Considerable discussion ensued concerning the degree of knowledge of impairment which should be required by law, the severity of the penalty, the definition of impairment as it applied to life insurance companies and their operations, and a possible ambiguity in Section 3B. **1973 Proc. II 394.**

The majority of the drafters felt that the criminal law may or may not be sufficient to cover the acts referred to but, either way, it would be useful to incorporate the penalty into the statute. The minority view was that Section 3B served no useful purpose since the acts covered were already taken care of by the criminal code. **1973 Proc. II 400.**

Chronological Summary of Actions

June 1973: Model adopted.

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Proceedings Citations
Cited to the Proceedings of the NAIC

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