

INSURANCE FRAUD PREVENTION MODEL ACT

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Section 1. Purpose

The [insert name for state's legislature] finds that the business of insurance involves many transactions that have potential for fraud, abuse and other illegal activities. This Act is intended to permit full utilization of the expertise of the commissioner to investigate and discover fraudulent insurance acts more effectively, halt fraudulent insurance acts and assist and receive assistance from state, local and federal law enforcement and regulatory agencies in enforcing laws prohibiting fraudulent insurance acts.

Section 2. Definitions

As used in this Act:

- A. "Business of insurance" means the writing of insurance or the reinsuring of risks by an insurer, including acts necessary or incidental to writing insurance or reinsuring risks and the activities of persons who act as or are officers, directors, agents or employees of insurers, or who are other persons authorized to act on their behalf.
- B. "Commissioner" means the commissioner of insurance, the commissioner's designees or the department of insurance.

Drafting Note: Use the title of the chief insurance regulatory official wherever the term "commissioner" appears.

- C. "Fraudulent insurance act" means an act or omission committed by a person who, knowingly and with intent to defraud, commits, or conceals any material information concerning, one or more of the following:
 - (1) Presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by an insurer, a reinsurer, broker or its agent, false information as part of, in support of or concerning a fact material to one or more of the following:
 - (a) An application for the issuance or renewal of an insurance policy or reinsurance contract;

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- (b) The rating of an insurance policy or reinsurance contract;
 - (c) A claim for payment or benefit pursuant to an insurance policy or reinsurance contract;
 - (d) Premiums paid on an insurance policy or reinsurance contract;
 - (e) Payments made in accordance with the terms of an insurance policy or reinsurance contract;
 - (f) A document filed with the commissioner or the chief insurance regulatory official of another jurisdiction;
 - (g) The financial condition of an insurer or reinsurer;
 - (h) The formation, acquisition, merger, reconsolidation, dissolution or withdrawal from one or more lines of insurance or reinsurance in all or part of this state by an insurer or reinsurer;
 - (i) The issuance of written evidence of insurance; or
 - (j) The reinstatement of an insurance policy;
- (2) Solicitation or acceptance of new or renewal insurance risks on behalf of an insurer reinsurer or other person engaged in the business of insurance by a person who knows or should know that the insurer or other person responsible for the risk is insolvent at the time of the transaction;
 - (3) Removal, concealment, alteration or destruction of the assets or records of an insurer, reinsurer or other person engaged in the business of insurance;
 - (4) Willful embezzlement, abstracting, purloining or conversion of monies, funds, premiums, credits or other property of an insurer, reinsurer or person engaged in the business of insurance;
 - (5) Transaction of the business of insurance in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of insurance; or
 - (6) Attempt to commit, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.
- D. "Insurance" means a contract or arrangement in which one undertakes to:
- (1) Pay or indemnify another as to loss from certain contingencies called "risks," including through reinsurance;
 - (2) Pay or grant a specified amount or determinable benefit to another in connection with ascertainable risk contingencies;
 - (3) Pay an annuity to another; or
 - (4) Act as surety.

- E. “Insurer” means a person entering into arrangements or contracts of insurance or reinsurance and who agrees to perform any of the acts set forth in Subsection D of this section. A person is an insurer regardless of whether the person is acting in violation of laws requiring a certificate of authority or regardless of whether the person denies being an insurer.

Drafting Note: A state may include other persons, such as fraternal benefit societies, medical and hospital service corporations, health maintenance organizations, certain types of self insurers, “county mutuals” or other types of insurance entities in the definition of insurer. In some cases, it may be necessary to amend other laws to bring these entities within the Act since the portions of state law applicable to these entities may provide that no other portion of the insurance code applies to these entities without a specific reference to the other provision.

- F. “NAIC” means the National Association of Insurance Commissioners.
- G. “Person” means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, or any similar entity or any combination of the foregoing.
- H. “Policy” means an individual or group policy, group certificate, contract or arrangement of insurance or reinsurance affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state.
- I. “Reinsurance” means a contract, binder of coverage (including placement slip) or arrangement under which an insurer procures insurance for itself in another insurer as to all or part of an insurance risk of the originating insurer.

Section 3. Fraudulent Insurance Acts, Interference and Participation of Convicted Felons Prohibited

- A. A person shall not commit a fraudulent insurance act.
- B. A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this Act or investigations of suspected or actual violations of this Act.
- C. (1) A person convicted of a felony involving dishonesty or breach of trust shall not participate in the business of insurance.
- (2) A person in the business of insurance shall not knowingly or intentionally permit a person convicted of a felony involving dishonesty or breach of trust to participate in the business of insurance.

Section 4. Fraud Warning Required

- A. Claim forms and applications for insurance, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

“Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.”

- B. The lack of a statement as required in Subsection A of this section does not constitute a defense in any prosecution for a fraudulent insurance act.

- C. Policies issued by unauthorized insurers [use the term “unlicensed” or “nonadmitted” insurers in accordance with the terminology used in the state insurance code] shall contain a statement disclosing the status of the insurer to do business in the state where the policy is delivered or issued for delivery or the state where coverage is in force. The requirement of this subsection may be satisfied by a disclosure specifically required by [insert reference to insurance code provisions. Excess and surplus lines statutes and risk retention and purchasing group statutes are likely to be cited here in nearly every state].
- D. The requirements of this section shall not apply to reinsurance claims forms or reinsurance applications.

Section 5. Investigative [and Prosecutive] Authority of the Commissioner

The commissioner may investigate suspected fraudulent insurance acts and persons engaged in the business of insurance.

- A. The commissioner may investigate [and prosecute] suspected fraud.
- B. The commissioner may employ and designate attorneys to specifically prosecute or assist in the prosecution of violations of this Act.
- C. Funds allocated for insurance fraud prevention may be expended by the commissioner, at his or her discretion, to prosecution authorities for the purpose of insurance fraud enforcement as identified in this Act.
- D. The commissioner may negotiate with an attorney representing the state to prosecute violations of the Act, to provide technical and litigation assistance to the Department of Insurance, and to allocate resources for the purpose of insurance fraud prosecution as identified in this Act.

Drafting Note: This section may be used to establish a source of funding exclusively dedicated for prosecution of insurance fraud and to establish a method to specially designate insurance department attorneys as state or federal insurance fraud prosecutors.

Section 6. Mandatory Reporting of Fraudulent Insurance Acts

- A. A person engaged in the business of insurance having knowledge or a reasonable belief that a fraudulent insurance act is being, will be or has been committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.
- B. Any other person having knowledge or a reasonable belief that a fraudulent insurance act is being, will be or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

Section 7. Immunity from Liability

- A. There shall be no civil liability imposed on and no cause of action shall arise from a person’s furnishing information concerning suspected, anticipated or completed fraudulent insurance acts, if the information is provided to or received from:

- (1) The commissioner or the commissioner's employees, agents or representatives;
 - (2) Federal, state, or local law enforcement or regulatory officials or their employees, agents or representatives;
 - (3) A person involved in the prevention and detection of fraudulent insurance acts or that person's agents, employees or representatives; or
 - (4) The NAIC or its employees, agents or representatives.
- B. Subsection A of this section shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that Subsection A of this section does not apply because the person filing the report or furnishing the information did so with actual malice.
- C. This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in Subsection A of this section.

Section 8. Confidentiality

- A. Documents, materials or other information in the possession or control of the Department of Insurance that are provided pursuant to Section 6 of this Act or obtained by the commissioner in an investigation of suspected or actual fraudulent insurance acts shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.
- B. Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to Subsection A.
- C. In order to assist in the performance of the commissioner's duties, the commissioner:
- (1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Subsection A, with other state, federal and international regulatory agencies, with the NAIC and its affiliates and subsidiaries; provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information; and
 - (2) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates and subsidiaries, and from regulatory officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the

understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information.

Drafting Note: The language in Subsection C(1) assumes the recipient has the authority to protect the applicable confidentiality or privilege, but does not address the verification of that authority, which would presumably occur in the context of a broader information-sharing agreement.

- D. Nothing in this section shall prohibit the commissioner from providing information to or receiving information from any local, state, federal or international law enforcement authorities, including any prosecuting authority; or from complying with subpoenas or other lawful process in criminal actions; or as may otherwise be provided in this Act.
- E. No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Subsection C.

Section 9. Creation and Purpose of the Insurance Fraud Unit

- A. The [insert name of state] insurance fraud unit is established within the [insert designation of organization, such as department of insurance]. The commissioner shall appoint the full-time supervisory and investigative personnel of the insurance fraud unit, who shall be qualified by training and experience to perform the duties of their positions. The commissioner shall also appoint clerical and other staff necessary for the insurance fraud unit to carry out its duties and responsibilities under this Act.
- B. It shall be the duty of the insurance fraud unit to:
 - (1) Initiate independent inquiries and conduct independent investigations when the insurance fraud unit has cause to believe that a fraudulent insurance act may be, is being or has been committed;
 - (2) Review reports or complaints of alleged fraudulent insurance activities from federal, state and local law enforcement and regulatory agencies, persons engaged in the business of insurance, and the public to determine whether the reports require further investigation and to conduct these investigations; and
 - (3) Conduct independent examinations of alleged fraudulent insurance acts and undertake independent studies to determine the extent of fraudulent insurance acts.
- C. The insurance fraud unit shall have the authority to:
 - (1) Inspect, copy or collect records and evidence;
 - (2) Serve subpoenas;
 - (3) Administer oaths and affirmations;
 - (4) Share records and evidence with federal, state or local law enforcement or regulatory agencies;

- (5) Execute search warrants and arrest warrants for criminal violations of this Act;
- (6) Arrest upon probable cause without warrant a person found in the act of violating or attempting to violate a provision of this Act;

Drafting Note: If the insurance fraud unit has only civil authority, the state should omit Paragraphs (5) and (6) from Subsection C.

- (7) Make criminal referrals to prosecuting authorities; and
- (8) Conduct investigations outside of this state. If the information the insurance fraud unit seeks to obtain is located outside this state, the person from whom the information is sought may make the information available to the insurance fraud unit to examine at the place where the information is located. The insurance fraud unit may designate representatives, including officials of the state in which the matter is located, to inspect the information on behalf of the insurance fraud unit, and the insurance fraud unit may respond to similar requests from officials of other states.

Section 10. Other Law Enforcement or Regulatory Authority

This Act shall not:

- A. Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine and prosecute suspected violations of law;
- B. Prevent or prohibit a person from disclosing voluntarily information concerning insurance fraud to a law enforcement or regulatory agency other than the insurance fraud unit; or
- C. Limit the powers granted elsewhere by the laws of this state to the commissioner or the insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

Section 11. Insurer Antifraud Initiatives

Insurers shall have antifraud initiatives reasonably calculated to detect, prosecute and prevent fraudulent insurance acts. Antifraud initiatives may include:

- A. Fraud investigators, who may be insurer employees or independent contractors; or
- B. An antifraud plan submitted to the commissioner. Antifraud plans submitted to the commissioner shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

Section 12. Regulations

The commissioner may promulgate regulations deemed necessary by the commissioner for the administration of this Act.

Section 13. Penalties

A person who violates this Act is subject to the following:

- A. Suspension or revocation of license or certificate of authority, civil penalties of up to \$[insert amount] per violation, or both. Suspension or revocation of license or certificate of authority and imposition of civil penalties shall be pursuant to an order of the commissioner issued under [insert reference to statutes relating to hearings conducted by the commissioner]. The commissioner's order may require a person found to be in violation of this Act to make restitution to persons aggrieved by violations of this Act; or
- B. A person convicted of a violation of Section 3 of this Act by a court of competent jurisdiction [states should insert here classifications for misdemeanor and felony penalties which match provisions in their penal codes for theft offenses]. A person convicted of a violation of Section 3 of this Act shall be ordered to pay restitution to persons aggrieved by the violation of this Act. Restitution shall be ordered in addition to a fine or imprisonment, but not in lieu of a fine or imprisonment; and
- C. A person convicted of a felony violation of this Act pursuant to Subsection B of this section shall be disqualified from engaging in the business of insurance.

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

1995 Proc. 2nd Quarter 2, 36, 59, 61-66 (adopted).
1999 Proc. 4th Quarter 15, 1231, 1233, 1243, 1244-1245 (amended).
2001 Proc. 1st Quarter 17, 741, 746-747 (amended).
2003 Proc. 1st Quarter 798, 799-800 (amended and adopted by task force).
2003 Proc. 2nd Quarter 832 (adopted by parent committee).
2003 Proc. 3rd Quarter 14 (adopted by Plenary).

This model replaces and incorporates three earlier models:

Model Insurance Fraud Statute
1980 Proc. II 22, 25, 176, 181 (adopted).

Model Legislation Creating a Fraud Unit in a State Department of Insurance
1980 Proc. II 22, 25, 176, 179-180 (adopted).

Model Immunity Act
1983 Proc. II 16, 22, 25, 30 (adopted).
1990 Proc. I 6, 30, 840, 872, 891-893 (amended and reprinted).

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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		ALA. CODE §§ 36-19-40 to 36-19-44 (1979) (Arson); §§ 27-12A-1 to 27-12A-42 (1975/2013).
Alaska		ALASKA STAT. §§ 21.36.360 to 21.36.410 (1984/2011).
American Samoa	NO CURRENT ACTIVITY	
Arizona		ARIZ. REV. STAT. ANN. § 20-458; § 20-463; §§ 20-466 to 20-466.04 (1954/2002).
Arkansas	ARK. CODE ANN. §§ 23-66-501 to 23-66-512 (1997/2013).	ARK. CODE R. § 66 (1997); § 67 (1997).
California		CAL. INS. CODE §§ 1871 to 1879.8 (1989/2014); §§ 13000 to 13004 (1985/1987); CAL. CODE REGS. tit.10, §§ 2698.30 to 2698.41 (2003/2005); §§ 2698.70 to 2698.77 (2000) (Fraud Interdiction Program); Emergency Article 2.

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Colorado		COLO. REV. STAT. §§ 10-4-1001 to 10-4-1009 (1993/2013); §§ 10-1-128 to 10-1-129 (2003/2010); § 10-3-207.5 (2010/2012); 3 COLO. CODE REGS. § 702-6:6-5-1 (2003/2013); BULLETIN 5-96 (1996); BULLETIN 01-01 (2001); BULLETIN 03-03; BULLETIN 04-03 (2003).
Connecticut		CONN. GEN. STAT. §§ 53-440 to 53-445 (1987/1993) (Health insurance fraud).
Delaware		DEL. CODE ANN. tit. 18, §§ 2401 to 2414 (1994).
District of Columbia		D.C. CODE §§ 22-3225.01 to 22-3225.13 (1998/2002).
Florida		FLA. STAT. §§ 626.9541 (1982/2014); §§ 626.989 to 626.9891 (1976/1998); Memorandum dated 9/15/06 (2006).
Georgia		GA. CODE ANN. § 33-1-9 (1960/2003); §§ 33-1-16 to 33-1-17 (1990/1995); GA. COMP. R. & REGS. 120-2-72 (2005/2013).
Guam	NO CURRENT ACTIVITY	
Hawaii		HAW. REV. STAT. §§ 431:2-204 (1987/1998); §§ 432:2-A to 432:2-J (2009); HAW. CODE R. § 386-98 (1963/1996) (Workers' comp.).
Idaho		IDAHO CODE ANN. §§ 41-290 to 41-298 (1981/2005).
Illinois		215 ILL. COMP. STAT. 5/132.7; 5/155.23 to 5/155.24; 5/401.5 (1985/2001); 740 ILL. COMP. STAT. 92/1 to 92/45 (2002).
Indiana		IND. CODE § 27-1-3-22 (1986/1992).

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Iowa		IOWA CODE §§ 507E.1 to 507E.8 (1994).
Kansas		KAN. STAT. ANN. §§ 40-2,118 to 40-2,119 (1985/2011); BULLETIN 2006-2 (2006).
Kentucky		KY. REV. STAT. ANN. §§ 304.47-011 to 304.47-080 (1994/2002); 806 KY. ADMIN. REGS. 47:010 to 47:030 (1995/2014).
Louisiana		LA. REV. STAT. ANN. §§ 22:1241 to 22:1247.1 (1992/2004); §§ 22:3201 to 22:3205 (2004); § 22:1801 (2006/2010); § 22:572:1 (2006/2010); LA. ADMIN. CODE tit. 37, §§ XI.2301 to XI.2311 (Rule 23) (2000); BULLETIN 9-3-2010 (2010).
Maine	ME. REV. STAT. ANN. tit. 24-A, §§ 2186 to 2187 (1998).	ME. REV. STAT. ANN. tit. 24-A, §§ 2178 to 2179 (1979/1991); ME. REV. STAT. ANN. tit 24-A, § 4143 (2003) (Fraternal); 02-031-920 ME. CODE R. §§ 1-5 (1999).
Maryland		MD. CODE ANN., INS. §§ 2-401 to 2-408 (1992/2014); §§ 27-401 to 27-408 (1992/2009); §§ 27-801 to 27-804 (1992/2014); MD. CODE REGS. 31.04.15.01 to 31.04.15.06 (1996); BULLETIN 24-2009 (2009).
Massachusetts		MASS. GEN. LAWS ch. 175H, §§ 1 to 8 (1988) (Health care claims).
Michigan		MICH. COMP. LAWS §§ 500.4501 to 500.4511 (1996).
Minnesota		MINN. STAT. §§ 60A.951 to 60A.955 (1994/2003); § 45.0135 (2002/2009).
Mississippi	NO CURRENT ACTIVITY	

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Missouri		MO. REV. STAT. §§ 375.144 to 375.146 (1961/2005); §§ 375.991 to 375.994 (1990/2005).
Montana		MONT. CODE ANN. §§ 33-1-1201 to 33-1-1211 (1995/2013); §§ 33-1-1301 to 33-1-1303 (1997).
Nebraska		NEB. REV. STAT. §§ 44-3,134 to 44-3,142 (1987/1997); §§ 44-6601 to 44-6608 (1995/2002); BULLETIN CB-87 (1995).
Nevada		NEV. REV. STAT. §§ 679B.630 to 679B.700 (1983/2001); § 679B.159 (1985); §§ 686A.290 to 686A.291 (1983/2001).
New Hampshire		N.H. REV. STAT. ANN. §§ 402.82 (1991); §§ 417.23 to 417.30 (1993/2000); § 400-A:36-b (1988/1994); BULLETIN No. 99-012-AB (1999).
New Jersey		N.J. REV. STAT. §§ 17:33A-1 to 17:33A-30 (1983/2010); §§ 2C:21-4.4 to 2C:21-4.7 (2003); N.J. ADMIN. CODE §§ 11:16-1.1 to 11:16-6.12 (1986/2014).
New Mexico		N.M. STAT. ANN. §§ 59A-16C-1 to 59A-16C-16 (1998/2005).
New York		N.Y. INS. LAW §§ 401 to 409 (1984/2011); N.Y. COMP. CODES R. & REGS. tit. 11, §§ 86.1 to 86.5 (1991/2003); Off. Gen Couns. 6-20-2006 (2006).
North Carolina		N.C. GEN. STAT. §§ 58-2-160 to 58-2-163 (1985/1995).
North Dakota	N.D. CENT. CODE §§ 26.1-02.1-01 to 26.1-02.1-11 (1993/2013).	N.D. CENT. CODE §§ 26.1-02-24.1 to 26.1-02-24.2 (1987/2001); N.D. ADMIN. CODE § 45-15-01-01 (2004).

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Northern Marianas	NO CURRENT ACTIVITY	
Ohio		OHIO REV. CODE ANN. § 3901.03 (1953/1998); § 3901.44 (1988/2002); § 3901.045 (2002); §§ 3905.49 to 3905.491 (1986/2000); § 3999.31 (1986/1998); §§ 3999.41 to 3999.42 (1998).
Oklahoma		OKLA. STAT. tit. 36, §§ 361 to 363 (1999/2012); §§ 1219.1 to 1219.3 (2000) (Health care fraud prevention).
Oregon		BULLETIN 98-5 (1998) (About fraud warning).
Pennsylvania		40 PA. CONS. STAT. §§ 3-901 to 3-901.1 (1986); §§ 25-1101 to 25-1207 (2002); 77-1-1203 (1993); §§ 75-1811 to 75-1812 (1990/1992); 31 PA. CODE §§ 119.22 to 119.26 (1993).
Puerto Rico	NO CURRENT ACTIVITY	
Rhode Island	R.I. GEN. LAWS §§ 27-54.1-1 to 27-54.1-6 (2010).	R.I. GEN. LAWS §§ 27-49-1 to 27-49-6 (1992/2002) (Motor vehicle fraud); §§ 31-50-1 to 31-50-6 (1993/1996) (Office of Automobile Theft and Insurance Fraud); §§ 27-54-1 to 27-54-10 (1994/1997); BULLETIN 2010-3 (2010); BULLETIN 2010-6 (2010).
South Carolina		S.C. CODE ANN. § 38-55-170 (1987/1993); § 38-43-245 (1988); §§ 38-55-510 to 38-55-590 (1994).
South Dakota		S.D. CODIFIED LAWS §§ 58-4A-1 to 58-4A-17 (1999/2013); §§ 58-33-37 to 58-33-37.1 (1996/1999); §§ 58-33-75 to 58-33-82 (1993).

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Tennessee		TENN. CODE ANN. §§ 56-53-101 to 56-53-112 (2001); TENN. CODE ANN. §§ 56-47-101 to 56-47-112 (1996) (Workers' Compensation).
Texas		TEX. CODE ANN. §§ 701.001 to 701.154 (2005/2013); §§ 702.001 to 702.006 (2005); §§ 704.001 to 704.054 (2005); § 32.55 (1993); §§ 35.01 to 35.04 (1995).
Utah		UTAH CODE ANN. §§ 31A-31-101 to 31A-31-110 (1994/2013).
Vermont	NO CURRENT ACTIVITY	
Virgin Islands	NO CURRENT ACTIVITY	
Virginia		VA. CODE ANN. § 38.2-229 (1986); §§ 52-36 to 52-44 (1999).
Washington		WASH. REV. CODE ANN. §§ 48.30A.005 to 48.30A.900 (1995/2005).
West Virginia	W. VA. CODE §§ 33-41-1 to 33-41-12 (1997/2005).	W. VA. CODE R. §§ 114-71-1 to 114-71-3 (2005); Informational Letter 154 (2005).
Wisconsin		WIS. STAT. § 895.486 (1996).
Wyoming	NO CURRENT ACTIVITY	

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Proceedings Citations

Cited to the Proceedings of the NAIC

In early 1994 the Special Committee on Antifraud appointed a working group to draft a new model law. Several associations reported to the committee that they were in the process of drafting proposals. **1994 Proc. 1st Quarter 56–57.**

The charge of the working group was to review and update three existing NAIC model laws: the Model Law for Creating a Fraud Unit, the Model Insurance Fraud Statute and the Model Immunity Act. The group was to place particular emphasis on the structure of the fraud bureau or acceptable alternative structures, and on sources of funding. Review of the existing statutory requirements and current model acts produced a list of items that needed to be addressed by the working group. **1994 Proc. 2nd Quarter 60–61.**

Section 1. Purpose

The working group considered a comment that the model should not apply to reinsurers because reinsurance transactions are between sophisticated parties and are based on good faith and fair dealing. The working group declined to exempt reinsurers since there seem to be plenty of instances in which reinsurers claim that fraud exists. **1995 Proc. 2nd Quarter 66.**

Another comment received was that the model should apply to domestic insurers only since otherwise it might expose someone to penalties for committing the same act in different jurisdictions. The working group found that committing the same act in another jurisdiction is a separate violation and could be subject to penalty. **1995 Proc. 2nd Quarter 66.**

Section 2. Definitions

A. One association suggested that this definition might conflict with other definitions in the insurance code. The working group agreed that was possible, but did not make any change. The definition is based on 18 U.S.C. § 1033 (f)(1).

C. One regulator opined that the definition of fraud should be expanded from that contained in the Immunity Act to include internal or financial fraud. The definition of “fraudulent insurance act” from the Immunity Act served as the starting point for the model definition. **1994 Proc. 2nd Quarter 61.**

When the Model Immunity Act was originally drafted, it was the intent of the Task Force to include financial fraud in the areas of insurance and reinsurance in the definition of a fraudulent insurance act. When the original draft was reviewed by the Conference of Insurance Legislators, modifications were made that limited the definition to claims fraud. The model draft would expand the definition to include financial fraud and also provide immunity from civil liability for insurance regulators exchanging information with other departments of insurance. **1988 Proc. II 804.**

As revised in 1989, the definition was broadened by eliminating references to claims fraud, and adding the list of possible sources of violation. Thus the definition of fraudulent insurance act was expanded beyond claims fraud to applications, claims, payments, and false information regarding the financial condition of insurers or reinsurers. **1990 Proc. I 891-892.**

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Section 2C (cont.)

A representative from a fraud coalition suggested that both claims fraud and insurance industry fraud should be defined as insurance fraud. He acknowledged that some members of his coalition felt there was already sufficient scrutiny of insurer fraud. **1994 Proc. 3rd Quarter 78-79.**

In response to comments received on the draft, the definition was reworded to eliminate the term “oral or written communication” to deal with information presented through electronic media. **1995 Proc. 1st Quarter 92.**

One regulator suggested the definition of fraudulent insurance act should include specifically the transaction of unauthorized insurance. The working group agreed to add Paragraph (5) to address this concern. **1995 Proc. 1st Quarter 87.**

One insurance company comment suggested that a broad definition of fraud would require reporting of far more instances of fraud than can be investigated, therefore life and health insurers should be exempted from reporting. The drafters declined to follow this suggestion. **1995 Proc. 2nd Quarter 66.**

The working group had hesitated to include the word “material” because of questions about defining the term. However, upon recognizing that the courts find it easy to define what is material, and that it is easier to justify the immunity granted in Section 7 if communications relate to material facts, the working group decided to include the reference to “material” facts. **1995 Proc. 2nd Quarter 67.**

One company commented that acts of insurers should not be included because insurers are regulated under the unfair trade practice laws. The working group declined to make this change because trade practice statutes are civil in nature, and do not deal with all of the issues in the law on insurance fraud. **1995 Proc. 2nd Quarter 67.**

A comment was considered that suggested Paragraph (5) was too harsh because honest mistakes can be made in transacting unauthorized insurance due to the complex definitions of insurance in the states. The working group declined to make a change since the definition already requires the intent to defraud. **1995 Proc. 2nd Quarter 67.**

D. An industry association expressed concern that the definition of insurance was broad enough to encompass hold harmless agreements in commercial contracts. The working group agreed this was correct, but noted that a line of cases interprets the definitions approximately in these situations. **1995 Proc. 1st Quarter 87.**

E. Comments suggested the definition should be as broad as possible, so the working group took out specific entities and added reinsurance. It was decided to rely on a drafting note to let states know that they must select the types of entities they want to include within the definition. **1995 Proc. 1st Quarter 87.**

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Section 3. Fraudulent Insurance Acts, Interference and Participation of Convicted Felons Prohibited

Early drafts contained a prohibition on resisting arrest, but this was deleted as unnecessary. State law already prohibits resisting arrest. **1995 Proc. 1st Quarter 88.**

Section 4. Fraud Warning Required

A. As originally drafted, there was a requirement for the statement on checks and drafts, but this was removed in recognition of the space limitation on checks and drafts. An amendment was made to limit the warning to claim forms and applications, and language was added stating that the warning is required regardless of the method of transmission in order to deal with electronic processing media. **1995 Proc. 1st Quarter 88.**

A representative from a fraud coalition suggested giving a six-month lead time to implement the fraud warning requirement. The working group did not make the change, leaving it to state legislatures to make their own decisions on lead time necessary for their states. **1995 Proc. 1st Quarter 88.**

One regulator suggested the section address placement and conspicuous size of the warning, but the working group decided to leave that to be dealt with by individual states through the commissioner's authority to promulgate regulations. **1995 Proc. 2nd Quarter 68.**

A reinsurance association suggested that reinsurance agreements do not directly affect insurers' relationships with consumers of direct insurance products. Therefore the purposes served by the inclusion of a fraud warning on claim forms and applications would not be applicable to reinsurance. The working group acknowledged there were differences between a direct writer and an insurer, but decided to apply the warning requirement to reinsurance transactions. **1995 Proc. 2nd Quarter 60-61.**

B. A fraud coalition suggested adding Subsection B to eliminate a questionable defense. **1995 Proc. 1st Quarter 89.**

C. Several comments were received on this subsection suggesting the requirement would make a fraud warning too commonplace, or would require costly reprinting, or is unclear. The working group declined to remove or modify the requirement, using the reasoning that it warns insureds and others that this is an issue. **1995 Proc. 1st Quarter 89.**

Several commented that the requirement was vague and difficult to understand. The working group agreed to limit the application of the subsection to unauthorized insurers. The rationale for this subsection was to create an affirmative representation as to the insurer's status in the state. If the insurer does not disclose its status correctly, that becomes another claim that may be made against an insurer transacting business illegally, and failure to make this disclosure becomes another ground for an injunction against an unauthorized insurer. **1995 Proc. 2nd Quarter 68.**

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Section 4C (cont.)

A reinsurer questioned how this provision would apply to reinsurers since it is unclear what is an “application” in the context of reinsurance. The working group recognized that, for unauthorized reinsurers, failure to include the disclosure would not affect the annual statement credits or reductions from liability since that is controlled by a state’s credit for reinsurance law. **1995 Proc. 2nd Quarter 68.**

D. An individual from a reinsurance trade association asked regulators to consider exempting reinsurance applications and claims forms from printed fraud warnings. The working group adopted changes to the model that exclude reinsurance in a new Subsection D. **2001 Proc. 1st Quarter 746.**

Section 5. Investigative [and Prosecutive] Authority of the Commissioner

The purpose of this section is to make the commissioner’s authority clear. **1995 Proc. 1st Quarter 89.**

One regulator suggested that this section should authorize the commissioner to investigate suspected fraudulent insurance acts and any person who was a party to the acts, as well as to provide or receive assistance to and from law enforcement authorities. The model included nothing that would prevent cooperating with law enforcement agencies, so the working group decided change was not necessary. **1995 Proc. 2nd Quarter 68.**

The four subsections and the drafting note were added in the 2001 amendments. **2001 Proc. 1st Quarter 747.**

The amendments specifically address the need for prosecutorial resources. **2001 Proc. 1st Quarter 17, 746.**

Section 6. Mandatory Reporting of Fraudulent Insurance Acts

A comment received on the draft suggested that a minimum threshold for mandatory reporting and the penalty connected with it should be established. **1994 Proc. 4th Quarter 76.**

A. The first draft contained only a provision similar to Subsection B. A regulator suggested that the working group explore the possibility of imposing reporting requirements on all professional licensees of a state. Otherwise the public was required to report, but not the industry. **1994 Proc. 4th Quarter 76.**

After the section was redrafted, the regulators decided that a different level of responsibility should be placed on licensees of the insurance department than on the general public. The working group agreed that insurers should be required to report fraudulent acts while others should be permitted to report them. **1995 Proc. 1st Quarter 89.**

As first drafted, an insurer contended that this section would require insurers to report the belief that a fraudulent insurance act was being committed even when there was no evidence to support

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Section 6A (cont.)

this belief. The insurer suggested it would allow false, unfounded or malicious reports. The working group decided to require reporting by a person having a *reasonable* belief a fraudulent act was being committed. **1995 Proc. 2nd Quarter 69.**

Section 7. Immunity from Liability

A. The drafters started with the immunity provision in the earlier Model Immunity Act. When the group received comments on that draft, it was suggested that immunity be extended to include immunity for those submitting information when they communicate with other parties or agencies where they are required to report. **1994 Proc. 4th Quarter 76.**

The first draft of the Model Immunity Act was one paragraph long and stated that no person should be liable for any reports or information given to the department relating to insurance fraud, and that the department would not be liable for actions in investigating fraudulent insurance or reinsurance activities. **1983 Proc. I 847.**

The section was completely revamped when amended in 1969. **1990 Proc. I 892.**

One commenter suggested that this section might grant immunity to a person who committed insurance fraud, but reported the fraud. The working group dealt with this by adding a reference to “civil” liability arising from a person’s furnishing information. That phrase made it clear that immunity applied only to legal claims arising from communication to the person listed in Paragraphs (1) to (4), not legal claims for other things, such as restitution for having committed a fraudulent insurance act. **1995 Proc. 2nd Quarter 69.**

B. In response to comments, the last sentence of Subsection B was added so that for any action alleging statements made with malice, the malicious nature of the statements should be pleaded with specificity. The working group added the sentence in order that the grant of immunity would have some benefit, since use of the “notice pleading” would deprive persons reporting fraud from the benefit of immunity by forcing them to engage in discovery. **1995 Proc. 1st Quarter 89-90.**

An insurer commented that granting a person the right to bring a suit to determine whether Section 7A applies negates the immunity granted by Section 7. The working group declined to make changes because the model creates no right to file suit—that comes from state law. The working group was satisfied with the exemption for statements made with actual malice, and found no need to have perjury, falsifying evidence or withholding material evidence added to the model, as the insurer suggested. **1995 Proc. 2nd Quarter 69.**

Section 8. Confidentiality

In March 1999 the NAIC president said there was a need to share information among state, federal and international regulators and to clarify existing law. He suggested charges for several NAIC committees to address freedom of information and subpoena efforts to obtain confidential information and documents and to achieve a coordinated approach that protects regulatory

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Section 8 (cont.)

information. A technical group drafted language, which was forwarded to each of the groups drafting amendments to models. The Insurance Fraud Prevention Model Act was one of the models identified for which regulators needed to consider the clarifying language. **1999 Proc. 1st Quarter 6, 10.**

Amendments to the Fraud Prevention Model Act were adopted with little discussion by the appropriate task force and little deviation from the standard language. **1999 Proc. 4th Quarter 1232.**

A. The existing section on confidentiality was deleted and a new section drafted in 1999 to address the charge on confidentiality of information. The first sentence in the additional language said the documents, materials or other information should be confidential by law and privileged. This sentence received extensive attention and the wording was carefully chosen to provide the maximum protection for highly sensitive information. The drafters chose to include both “privileged” and “confidential” to ensure the preservation of any applicable legal privilege and to indicate a high degree of intent to protect the documents from public disclosure. Members of the group from various jurisdictions noted court rulings holding that omission of one or more words or phrases contained in that sentence could result in unintended disclosure. **1999 Proc. 4th Quarter 16.**

Late in the process Subsection A was amended to clarify that the provisions applied only to documents, materials or information in the possession or control of the Department of Insurance. Some industry commentators expressed concern that otherwise the provision might be misinterpreted to include information in the possession of a private entity that happened to have been shared with the Department of Insurance. **1999 Proc. 4th Quarter 16.**

B. The drafters discussed whether the confidentiality should apply to documents only, or instead to the broader phrase, “documents, materials or other information.” The broader language was chosen to protect not only information in tangible form, such as a paper document or a computer hard drive, but also information that may be personal knowledge. The group noted that the reason to choose the broader phrase was to avoid the situation where, for example, examination work papers were protected, but an attempt was made to take an oral deposition of an examiner that would reveal the same sensitive information. **1999 Proc. 4th Quarter 16.**

C. The question of the commissioner’s ability or discretion to disclose the confidential information received extensive discussion. The drafters expressed concern that the commissioner not be placed in the position of possessing crucial information but be unable to use it to carry out his or her duties. **1999 Proc. 4th Quarter 16.**

The provisions of Subsection C received extensive discussion on several occasions, particularly the provisions concerning the sharing of information with the NAIC, and its affiliates or subsidiaries. Regulators expressed a strong need to retain specific language in this area to ensure the ability of the NAIC to maintain confidential data for support of solvency, antifraud and other regulatory areas. The language referring to affiliates or subsidiaries was added to address the potential that one or more databases might be maintained by a related NAIC entity. **1999 Proc. 4th Quarter 16.**

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Section 8C (cont.)

The working group discussing the Fraud Prevention Model Act decided to insert the word “official” in Paragraph (3) of the draft. **1999 Proc. 4th Quarter 1233.**

D. In the fall of 2002, a regulator proposed amendments to Section 8 of the model to liberalize the information sharing and confidentiality provisions so that formal agreements would not be required for fraud efforts. The goal of the language added in early 2000 was to allow the commissioner to provide prosecutors with information concerning fraud. However, the statute had created barriers for the sharing of information. **2002 Proc. 3rd Quarter 863-864.**

The changes that were suggested struck references to law enforcement in Subsection C(3) and added a new Subsection D that would provide for information sharing with law enforcement and prosecutorial authorities. **2002 Proc. 3rd Quarter 864.**

No comments were received on the draft, so it was adopted early in 2003 by the task force. **2003 Proc. 1st Quarter 798.**

Adoption by the parent committee was accomplished during the second quarter. **2003 Proc. 2nd Quarter 832.**

When the model came before the Plenary, the presenter of the item noted that the revisions were drafted in response to federal legislation on the confidentiality of information. It was designed to correct a problem that appeared in some state laws. **2003 Proc. 3rd Quarter 14.**

E. Subsection E was added to clarify that persons providing information to the commissioner do not waive any existing privilege or confidentiality protection by doing so. This provision was added in response to industry comments. The subsection was further amended to clarify that neither disclosing the information to the commissioner nor the transmission of the information by the commissioner to another regulator or law enforcement official would create a waiver. **1999 Proc. 4th Quarter 16.**

Section 9. Creation and Purpose of the Insurance Fraud Unit

As the drafting group began work, one regulator opined that one of the most difficult issues that a state would face in attempting to pass legislation to create a fraud unit was an understanding by the legislature as to the issues, need and funding for a unit. He suggested a statement of position and recommendation should be developed that can be utilized by the states in presenting the model law to their legislatures. **1994 Proc. 2nd Quarter 61.**

The NAIC first drafted a model establishing a fraud unit in 1980. The task force to consider the issue of fraud was created in June of 1979. **1979 Proc. II 38.**

One of the first activities of the special committee appointed was to form a group to study the feasibility of designing a model law for the creation of a state insurance department antifraud unit. The task force was charged with exploring the funding, law enforcement powers and parameters of operation of such a unit. **1980 Proc. I 206.**

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Section 9 (cont.)

The Antifraud Subcommittee recommended immediate adoption of the following resolution:

RESOLVED, that the National Association of Insurance Commissioners urge each commissioner to appoint personnel, to the extent feasible and to the extent funds are available, to discover, investigate, and bring to the attention of the appropriate local, state, and federal law enforcement officials, incidents of insurance fraud; to maintain liaison with such officials and the (EX7) Antifraud Subcommittee, on a continuing basis and to report the results of such activity to the subcommittee on a continuing basis.

The resolution was adopted by the NAIC that same week. **1980 Proc. I 207.**

Several problems were identified for consideration by the drafting group.

1. The need for statutory immunity protecting state officials from suit in the use of regulatory information;
2. The need for an identification system for agents and brokers who change their names;
3. The need for a requirement that companies who have been victimized by fraud, report such activity to the state insurance department;
4. The need for a statute prohibiting agents whose licenses have been revoked or suspended from renewing their activities with another agency. **1980 Proc. I 207.**

According to a letter written by the chair of the Antifraud Subcommittee, the impetus for the appointment of the group was increased concern about the prevention, detection and persecution of fraudulent activities against legitimate insurance companies and agents, as well as the perpetuation of such fraud by unscrupulous agents and companies. **1980 Proc. I 208.**

In endorsing the creation of an antifraud unit in each insurance department, the task force emphasized that the creation of an antifraud unit consisted of only one facet of an overall regulatory response to the problem of insurance fraud. **1980 Proc. II 179.**

The task force that developed the model act observed that there had been a historical lack of commitment on the part of the states to the problem of insurance fraud. **1981 Proc. I 171.**

A. A representative from a fraud coalition said his organization had begun drafting a model that contained a number of principles. The draft recommended that the fraud unit be part of the department of insurance, and have the authority to initiate its own investigations and inquiries, as well as investigate complaints from the public. **1994 Proc. 3rd Quarter 78-79.**

C. One regulator questioned early in the process whether the issue of peace officer status for fraud unit employees would be addressed in the proposed model law. It was the consensus of the group that this issue would be left to the individual states. **1994 Proc. 2nd Quarter 61.**

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Section 9C (cont.)

The working group asked for comments before they began drafting the model act. A representative from a fraud coalition suggested that fraud unit investigators should have law enforcement powers, such as the authority to issue subpoenas, execute search warrants and make arrests. **1994 Proc. 3rd Quarter 79.**

One regulator suggested adding other state insurance fraud units to Paragraph (4). The working group decided it was not necessary since another state's fraud unit was either a law enforcement or regulatory agency. **1995 Proc. 2nd Quarter 70.**

Section 10. Other Law Enforcement or Regulatory Authority

Section 11. Insurer Antifraud Initiatives

An insurer urged the drafters not to require full-time investigators as insurer employees when third parties could provide services as needed. The working group took the approach of requiring insurers to take steps to detect, prevent and assist in the prosecution of fraudulent insurance acts. However, the working group left insurers flexibility in structuring antifraud efforts. **1995 Proc. 2nd Quarter 70.**

Section 12. Regulations

Section 13. Penalties

In order to expressly address the due process rights of anyone found to have violated the law, a reinsurance association recommended the opening sentence be amended to add "after notice and hearing." The working group did not think a change was necessary because due process is already provided under existing state administrative procedures. **1995 Proc. 2nd Quarter 61.**

C. One association commented that it seemed particularly harsh for someone who had violated the Act to be subject to banishment for life from working in the insurance or reinsurance business. The association suggested a drafting note or added text to clarify the extreme circumstances under which this penalty might be used. The working group decided to reword the section to indicate that Subsection C was not an option, but a mandatory penalty. **1995 Proc. 2nd Quarter 61.**

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Chronological Summary of Actions

June 1980: Adopted separate models creating a fraud unit and defining insurance fraud as a felony.

June 1983: Adopted model providing immunity for reporting insurance fraud.

December 1989: Revised immunity model to broaden scope.

September 1995: Combined the three aspects of fraud legislation into one model and expanded the provisions.

January 2000: Adopted new Section 8 to provide clearer guidelines on confidentiality of information.

June 2001: Expanded Section 5 by addition of Subsections A through D. Section 4D was added.

September 2003: Revised Section 8 to liberalize information sharing and confidentiality provisions.