

## UNAUTHORIZED INSURERS FALSE ADVERTISING PROCESS ACT

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### Section 1. Purpose of Act

- A. The purpose of this act is to subject to the jurisdiction of the Insurance Commissioner of this state and to the jurisdiction of the courts of this state, insurers not authorized to transact business in this state that place in or send into this state any false advertising designed to induce residents of this state to purchase insurance from insurers not authorized to transact business in this state. The legislature declares it is in the interest of the citizens of this state who purchase insurance from insurers that solicit insurance business in this state in the manner set forth in the preceding sentence that these insurers be subject to the provisions of this Act. In furtherance of this state interest, the legislature herein provides a method of substituted service of process upon these insurers and declares that in so doing, it exercises its power to protect its residents and also exercises powers and privileges available to the state by virtue of Public Law 15, 79th Congress of the United States, Chapter 20, 1st Session, S. 340, which declares that the business of insurance and every person engaged therein shall be subject to the laws of the several states. The authority provided herein to be in addition to any existing powers of this state.
- B. The provisions of this Act shall be liberally construed.

### Section 2. Definitions

When used in this Act:

- A. "Commissioner" shall mean the Commissioner of Insurance of this state.

**Drafting Note:** Insert the title of the chief insurance regulatory official wherever the term commissioner appears.

- B. "Unfair Trade Practices Act" shall mean [insert applicable cite] Laws of 19 [insert year], approved [insert month], 19[insert year].
- C. "Resident" shall include a person, partnership or corporation, domestic, alien or foreign.

### Section 3. Notice to Domiciliary Supervisory Official

No unauthorized foreign or alien insurer of the kind described in Section 1 shall make, issue, circulate or cause to be made, issued or circulated, to residents of this state any estimate, illustration, circular, pamphlet or letter, or cause to be made in any newspaper, magazine or other publication or over any radio or television station, any announcement or statement to this state's residents misrepresenting its financial condition or the terms of any contracts issued or to be issued or the benefits or advantages promised thereby, or the dividends or share of the surplus to be received thereon in violation of the Unfair Trade Practices Act, and whenever the commissioner shall have reason to believe that an insurer is engaging in such unlawful advertising, it shall be the duty of the commissioner to give notice of that fact by registered mail to the insurer and to the insurance supervisory official of the domiciliary state of the insurer. For the purpose of this section, the domiciliary state of an alien insurer shall be deemed to be the state of entry or the state of the principal office in the United States.

**Section 4. Action by Commissioner**

If, after thirty (30) days following the giving of the notice mentioned in Section 3, the insurer has failed to cease making, issuing or circulating the false misrepresentations or causing the same to be made, issued or circulated in this state, and if the commissioner has reason to believe that a proceeding in respect to these matters would be to the interest of the public, and that the insurer is issuing or delivering contracts of insurance to residents of this state or collecting premiums on contracts or doing any of the acts enumerated in Section 5, the commissioner shall take action against the insurer under the Unfair Trade Practices Act.

**Section 5. Service Upon Unauthorized Insurer**

- A. Any of the following acts in this state, effected by mail or otherwise, by an unauthorized foreign or alien insurer is equivalent to and shall constitute an appointment by the insurer of the commissioner of insurance and his or her successor or successors in office, to be its true and lawful attorney, upon whom may be served all statements of charges, notices and lawful process in any proceeding instituted in respect to the misrepresentations set forth in Section 3 under the provisions of the Unfair Trade Practices Act, or in any action, suit or proceeding for the recovery of any penalty provided in the Unfair Trade Practices Act, and any such act shall be signification of its agreement that the service of statement of charges, notices or process is of the same legal force and validity as personal service of the statement of charges, notices or process in this state, upon the insurer:
- (1) The issuance or delivery of contracts of insurance to residents of this state;
  - (2) The solicitation of applications for contracts;
  - (3) The collection of premiums, membership fees, assessments or other considerations for contracts;  
or
  - (4) Any other transaction of insurance business,
- B. Service of a statement of charges and notices under the Unfair Trade Practices Act shall be made by a deputy or employee of the Department of Insurance delivering to and leaving with the commissioner or some person in apparent charge of the commissioner's office, two (2) copies thereof. Service of process issued by any court in any action, suit or proceeding to collect any penalty under the Unfair Trade Practices Act provided, shall be made by delivering and leaving with the commissioner, or some person in apparent charge of the commissioner's office, two copies thereof. The commissioner shall forthwith cause to be mailed by registered mail one of the copies of the statement of charges, notices or process to the defendant at its last known principal place of business, and shall keep a record of all statements of charges, notices and process so served. The service of statement of charges, notices or process shall be sufficient, provided they have been so mailed and the defendant's receipt or receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the person mailing the letter showing a compliance are filed with the commissioner in the case of a statement of charges or notices, or with the clerk of the court in which an action is pending in the case of any process, on or before the date the defendant is required to appear or within such further time as may be allowed.
- C. Service of statement of charges, notices and process in a proceeding, action or suit shall in addition to the manner provided in Subsection B of this section be valid if served upon any person within this state who on behalf of such insurer is soliciting insurance, making, issuing or delivering any contract or insurance, or collecting or receiving in this state any premium for insurance and a copy of the statement of charges, notices or process is sent within ten (10) days thereafter by registered mail by or on behalf of the commissioner to the defendant at the last known principal place of business of the defendant, and the defendant's receipt, or the receipt issued by the post office with which the letter is registered, showing the name of the sender of the letter, the name and address of the person to whom the letter is addressed, and the affidavit of the person mailing the letter showing compliance, are filed with the commissioner in the case of a statement of charges or notices, or with the clerk of the court in which the action is pending in the case of a statement of charges or notices, or with the clerk of the court in which the action is pending in the case of any process, on or before the date the defendant is required to appear or within such further time as the court may allow.

- D. No cease or desist order or judgment by [default or a judgment pro confesso] [select appropriate language] under this section shall be entered until the expiration of thirty (30) days from the date of the filing of the affidavit of compliance.
- E. Service of process and notice under the provisions of this Act shall be in addition to all other methods of service provided by law, and nothing in this Act shall limit or prohibit the right to serve a statement of charges, notices or process upon an insurer in any other manner now or hereafter permitted by law.

**Section 6.        Constitutionality**

If any provision of this Act or its application to any person or circumstances is held invalid, the invalidity shall not affect other provisions or application of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

**Section 7.        Short Title**

This Act may be cited as the Unauthorized Insurers False Advertising Process Act.

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

*1960 Proc. II 507-509 (printed).*

*1961 Proc. I 307, 309, 316 (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	CAL. INS. CODE §§ 1620.1 to 1620.7 (1961/1963).	
Colorado	NO CURRENT ACTIVITY	
Connecticut	NO CURRENT ACTIVITY	
Delaware		DEL. CODE ANN. tit. 18, § 2102; §§ 2109 to 2111 (1953/1995).
District of Columbia	NO CURRENT ACTIVITY	
Florida	NO CURRENT ACTIVITY	
Georgia		GA. CODE ANN. § 33-5-2 (1960/1983).
Guam	NO CURRENT ACTIVITY	

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Hawaii		HAW. REV. STAT. §§ 431:8-207 to 431:8-209 (1988).
Idaho		IDAHO CODE ANN. §§ 41-1235 to 41-1237 (1969).
Illinois	215 ILL. COMP. STAT. 5/123.1 (1961/1984).	
Indiana	IND. CODE §§ 27-4-6-1 to 27-4-6-6 (1963/1993).	
Iowa	NO CURRENT ACTIVITY	
Kansas	KAN. STAT. ANN. §§ 40-2415 to 40-2421 (1963).	
Kentucky	NO CURRENT ACTIVITY	
Louisiana	LA. REV. STAT. ANN. §§ 22:1231 to 22:1235 (1966).	
Maine	ME. REV. STAT. ANN. tit. 24-A, § 2102 (1970/1991).	
Maryland	MD. CODE ANN., INS. §§ 27-701 to 27-706 (1957/1997).	
Massachusetts		MASS. GEN. LAWS ch. 175, § 110E (1973/1984).
Michigan	MICH. COMP. LAWS §§ 500.2091 to 500.2093 (1961/1970).	
Minnesota	MINN. STAT. §§ 72A.33 to 72A.39 (1967/1992).	
Mississippi	NO CURRENT ACTIVITY	
Missouri	NO CURRENT ACTIVITY	
Montana	NO CURRENT ACTIVITY	
Nebraska	NEB. REV. STAT. §§ 44-1801 to 44-1806 (1965/1993).	



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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Nevada		NEV. REV. STAT. §§ 685B.090 to 685B.110 (1971).
New Hampshire	N.H. REV. STAT. ANN. §§ 406-A:1 to 406-A:7 (1961).	
New Jersey	N.J. STAT. ANN. §§ 17B:33-9 (1971).	
New Mexico	N.M. STAT. ANN. §§ 59A-15-11 to 59A-15-13 (1985).	
New York	NO CURRENT ACTIVITY	
North Carolina	N.C. GEN. STAT. §§ 58-29-1 to 58-29-25 (1965/1991).	
North Dakota	NO CURRENT ACTIVITY	
Northern Marianas	NO CURRENT ACTIVITY	
Ohio	OHIO REV. CODE ANN. §§ 3901.24 to 3901.26 (1965/1967-1968).	
Oklahoma	NO CURRENT ACTIVITY	
Oregon	NO CURRENT ACTIVITY	
Pennsylvania	NO CURRENT ACTIVITY	
Puerto Rico		P.R. LAWS ANN. tit. 26, §§ 1004 to 1005 (1977).
Rhode Island	NO CURRENT ACTIVITY	
South Carolina	NO CURRENT ACTIVITY	
South Dakota	S.D. CODIFIED LAWS §§ 58-33-47 to 58-33-57 (1966/1982).	
Tennessee	NO CURRENT ACTIVITY	
Texas		TEX. INS. CODE ANN. §§ 547.001 to 547.053 (2005).

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Utah	NO CURRENT ACTIVITY	
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		WYO. STAT. ANN. §§ 26-12-301 to 26-12-303 (1967/1983).

## UNAUTHORIZED INSURERS FALSE ADVERTISING PROCESS ACT

### Proceeding Citations

Cited by the Proceeding of the NAIC

The model was developed in conjunction with efforts by the NAIC to address fraudulent false advertising of insurers not authorized to transact business in a state and provide for actions in a state with respect thereto and for service of process upon such insurer. **1960 Proc. II 151.**

The advisory committee agreed with the objective of the Unauthorized Insurers False Advertising Process Act. It was felt, however, that the bill in its then present form should be edited and polished at the least, and possibly completely revised. Moreover, since the concern of the subcommittee is not limited to the area of false advertising, but reaches all unlawful activities of nonadmitted insurers, it was determined that they should continue their efforts toward reaching more comprehensive solutions. **1960 Proc. II 487.**

One comment mentioned the possibility of meeting some of the problems under consideration by means of interstate compacts. **1960 Proc. II 487.**

The advisory committee raised three questions:

1. Should the Unauthorized Insurers False Advertising Process Act be extended to include, in addition to false advertising, the other unfair trade practices enumerated and prohibited in the Unfair Trade Practices Act?
2. Should the Unauthorized Insurers False Advertising Process Act provide for equitable relief, as well as damages at law, for violations thereof?
3. Would an interstate compact be an appropriate and effective means of strengthening state regulation of direct-mail insurance advertising?

All three of the foregoing issues were answered in the negative. **1961 Proc. I 311.**

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*Chronological Summary of Actions*

*December 1961: Model Adopted*

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**Legislative History**

Cited by the Proceeding of the NAIC

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