

## MODEL REGULATION TO DEFINE STANDARDS AND COMMISSIONER'S AUTHORITY FOR COMPANIES DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION

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### Section 1. Authority

This regulation is adopted and promulgated by [title of supervisory authority] pursuant to Section [insert reference to section authorizing the commissioner to adopt regulations and a reference to the state equivalent of the NAIC Insurer's Rehabilitation and Liquidation Model Act and any other section where the term hazardous financial condition or a similar term is used] of the [insert state] Insurance Code.

### Section 2. Purpose

The purpose of this regulation is to set forth the standards which the commissioner may use for identifying insurers found to be in such condition as to render the continuance of their business hazardous to their policyholders, creditors or the general public.

This regulation shall not be interpreted to limit the powers granted the commissioner by any laws or parts of laws of this state, nor shall this regulation be interpreted to supercede any laws or parts of laws of this state.

### Section 3. Standards

The following standards, either singly or a combination of two or more, may be considered by the commissioner to determine whether the continued operation of any insurer transacting an insurance business in this state might be deemed to be hazardous to its policyholders, creditors or the general public. The commissioner may consider:

- A. Adverse findings reported in financial condition and market conduct examination reports, audit reports, and actuarial opinions, reports or summaries;
- B. The National Association of Insurance Commissioners Insurance Regulatory Information System and its other financial analysis solvency tools and reports;
- C. Whether the insurer has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts;
- D. The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus after taksing into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer;
- E. Whether the insurer's operating loss in the last twelve-month period or any shorter period of time, including but not limited to net capital gain or loss, change in non-admitted assets, and cash dividends paid to shareholders, is greater than fifty percent (50%) of the insurer's remaining surplus as regards policyholders in excess of the minimum required;

- F. Whether the insurer's operating loss in the last twelve-month period or any shorter period of time, excluding net capital gains, is greater than twenty percent (20%) of the insurer's remaining surplus as regards policyholders in excess of the minimum required;
- G. Whether a reinsurer, obligor or any entity within the insurer's insurance holding company system, is insolvent, threatened with insolvency or delinquent in payment of its monetary or other obligations, and which in the opinion of the commissioner may affect the solvency of the insurer;
- H. Contingent liabilities, pledges or guaranties which either individually or collectively involve a total amount which in the opinion of the commissioner may affect the solvency of the insurer;
- I. Whether any "controlling person" of an insurer is delinquent in the transmitting to, or payment of, net premiums to the insurer;
- J. The age and collectibility of receivables;
- K. Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of the insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position;
- L. Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry;
- M. Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the commissioner;
- N. Whether management of an insurer either has filed any false or misleading sworn financial statement, or has released false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer;
- O. Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner;
- P. Whether the insurer has experienced or will experience in the foreseeable future cash flow or liquidity problems;
- Q. Whether management has established reserves that do not comply with minimum standards established by state insurance laws, regulations, statutory accounting standards, sound actuarial principles and standards of practice;
- R. Whether management persistently engages in material under reserving that results in adverse development;
- S. Whether transactions among affiliates, subsidiaries or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity or diversity to assure the insurer's ability to meet its outstanding obligations as they mature;
- T. Any other finding determined by the commissioner to be hazardous to the insurer's policyholders, creditors or general public.

**Section 4. Commissioner's Authority**

- A. For the purposes of making a determination of an insurer's financial condition under this regulation, the commissioner may:
  - (1) Disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired or otherwise subject to a delinquency proceeding;

- (2) Make appropriate adjustments including disallowance to asset values attributable to investments in or transactions with parents, subsidiaries or affiliates consistent with the NAIC Accounting Practices And Procedures Manual, state laws and regulations;
  - (3) Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor;
  - (4) Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next twelve-month period.
- B. If the commissioner determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to its policyholders, creditors or the general public, then the commissioner may, upon a determination, issue an order requiring the insurer to:
- (1) Reduce the total amount of present and potential liability for policy benefits by reinsurance;
  - (2) Reduce, suspend or limit the volume of business being accepted or renewed;
  - (3) Reduce general insurance and commission expenses by specified methods;
  - (4) Increase the insurer's capital and surplus;
  - (5) Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;
  - (6) File reports in a form acceptable to the commissioner concerning the market value of an insurer's assets;
  - (7) Limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary;
  - (8) Document the adequacy of premium rates in relation to the risks insured;
  - (9) File, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or in such format as promulgated by the commissioner.
  - (10) Correct corporate governance practice deficiencies, and adopt and utilize governance practices acceptable to the commissioner.
  - (11) Provide a business plan to the commissioner in order to continue to transact business in the state.
  - (12) Notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments, adjust rates for any non-life insurance product written by the insurer that the commissioner considers necessary to improve the financial condition of the insurer.

If the insurer is a foreign insurer the commissioner's order may be limited to the extent provided by statute.

- C. An insurer subject to an order under Subsection B may request a hearing to review that order. The notice of hearing shall be served upon the insurer pursuant to [cite the applicable rules of civil or administrative procedure]. The notice of hearing shall state the time and place of hearing, and the conduct, condition or ground upon which the commissioner based the order. Unless mutually agreed between the commissioner and the insurer, the hearing shall occur not less than ten (10) days nor more than thirty (30) days after notice is served and shall be either in [insert proper county] county or in some other place convenient to the parties designated by the commissioner. The commissioner shall hold all hearings under this subsection privately, unless the insurer requests a public hearing, in which case the hearing shall be public.

#### **Section 5. Judicial Review**

Any order or decision of the commissioner shall be subject to review in accordance with [cite applicable provision of the state administrative code] at the instance of any party to the proceedings whose interests are substantially affected.

**Note:** Consideration should be given to the practice and procedure in each state.

#### **Section 6. Separability**

If any provisions of this regulation be held invalid, the remainder shall not be affected.

#### **Section 7. Effective Date**

This regulation shall become effective [insert date].

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

*1985 Proc. II 11, 23, 243, 244-247 (adopted).*

*2008 Proc. 2nd Quarter 10-86 to 10-91 (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.

<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Alabama	ALA. ADMIN. CODE r. 482-1-101.01 to 482-1-101.04 (1994/2009).	
Alaska	ALASKA ADMIN. CODE tit. 3, §§ 21.500 to 21.520 (1993/2011).	
American Samoa	NO CURRENT ACTIVITY	
Arizona	ARIZ. REV. STAT. ANN. § 20-220.01 (2013).	
Arkansas	54-00-53 ARK. CODE R. § 1 to 7 (1991/2014).	
California	CAL. CODE REGS. tit 10 §§ 2598.1 to 2598.6 (2013).	
Colorado	3 COLO. CODE REGS. §§ 702-3:3-1-7 (1991/2013).	
Connecticut		CONN. AGENCIES REGS. §§ 38a-8-1 to 38a-8-4 (1992) (previous version of model).
Delaware	18 DEL. CODE REGS. § 304-1.0 to 304-7.0 (2017).	
District of Columbia		D.C. CODE §§ 31-2101 to 31-2103 (1993) (previous version of model).
Florida		FLA. AMIN. CODE ANN. r. 690-141.001 to 690-141.006 (1991/1992).

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Georgia	GA. COMP. R. & REGS. 120-2-54 (1993/2013).	
Guam	NO CURRENT ACTIVITY	
Hawaii	HAW. REV. STAT. § 431:15-103.5 (1993/2013) (portions of model).	
Idaho	IDAHO ADMIN. CODE r. 18.01.66.000 to 18.01.66.14 (1993/2011).	
Illinois		ILL. ADMIN. CODE tit. 50, §§ 1250.10 to 1250.40 (1994) (previous version of model).
Indiana	760 IND. ADMIN. CODE 1-53-1 to 1-53-7 (2007/2013).	760 IND. ADMIN. CODE 1-53-1 to 1-53-7 (2007/2013).
Iowa	IOWA ADMIN. CODE r. 191-110.1 to 191-110.8 (2010).	IOWA ADMIN. CODE r. 191-5.23 to 191-5.24 (1991) (previous version of model).
Kansas	KAN. ADMIN. REGS. § 40-1-38 (1992/2009) (portions of model).	
Kentucky	806 KY. ADMIN. REGS. § 3:150 (1991/2009).	
Louisiana	LA. ADMIN. CODE tit. 37, §§ XIII.1301 to XIII.1315 (Regulation 43) (1992/2013).	
Maine	710 ME. CODE R. §§ 1 to 7 (1993/2014) (portions of model).	
Maryland		MD. CODE REGS. §§ 9-101 to 9-104 (1994/1997) (previous version of model).
Massachusetts	MASS. GEN. LAWS ch. 175J, §§ 1 to 10 (1993/2012); 211 MASS. CODE REGS. 150.00 to 150.06 (2011).	
Michigan		MICH. COMP. LAWS § 500.436a (1992) (previous version of model).
Minnesota	MINN. R. 2009.2 (2009).	MINN. STAT. §§ 60G.20 to 60G.22 (1991/2011) (previous version of model).
Mississippi	MISS. CODE R. § 28.000 (2009).	
Missouri	MO. REV. STAT. § 375.539 (2010).	MO. CODE REGS. ANN. tit. 20, § 200-1.010 (1990/1992).



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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Montana		MONT. ADMIN. R. 6.6.3401 to 6.6.3404 (1993) (previous version of model).
Nebraska	210 NEB. ADMIN. CODE § 55 (1991/2010).	Notice 5-24-2010 (2010).
Nevada	NEV. ADMIN. CODE §§ 680A.220 to 680A.228 (1996/2012).	
New Hampshire	N.H. CODE ADMIN. R. ANN. INS. §§ 2901.01 to 2901.03 (1992/2011).	
New Jersey	N.J. ADMIN. CODE §§ 11:2-27.1 to 11:2-27.4 (1992/2014).	
New Mexico	N.M. STAT. ANN. §§ 59A-41-24 to 59A-41-25 (1993/2014).	
New York	NO CURRENT ACTIVITY	
North Carolina	N.C. GEN. STAT. § 58-30-60 (1989/2013).	
North Dakota	N.D. ADMIN. CODE § 45-03-13 (1992/2010).	
Northern Marianas	NO CURRENT ACTIVITY	
Ohio		OHIO ADMIN. CODE § 3901:3-04 (1991/2010); OHIO REV. CODE ANN. § 3903.09 (1982).
Oklahoma	OKLA. ADMIN. CODE §§ 365:25-7-40 to 365:25-7-45 (1992/2009).	
Oregon		OR. ADMIN. R. 836-013-0100 to 836-013-0120 (1993/2010) (previous version of model).
Pennsylvania	31 PA. CODE §§ 160.1 to 160.5 (1993/2012).	
Puerto Rico	P.R. INS. RULE XCIV (2011).	
Rhode Island	R.I. GEN. LAWS §§ 27-14.2-1 to 27-14.2-4 (1992/2010).	
South Carolina	S.C. CODE ANN. § 38-5-120 (1991/2013); § 38-9-330 (2009).	
South Dakota		S.D. CODIFIED LAWS §§ 58-4-39 to 58-4-43 (1992/2013); S.D. ADMIN. R. 20:06:23 (1992) (previous version of model).

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Tennessee	TENN. COMP. R. & REGS. 0780-1-66 (1994/2014).	
Texas	28 TEX. ADMIN. CODE §§ 8.1 to 8.3 (1990/2012).	BULLETIN B-0040-10 (2010).
Utah	UTAH ADMIN. CODE r. 265-1 to 265-7 (2012).	
Vermont	4-3 VT. CODE R. §§ 21:1 to 21:7 (2014).	
Virgin Islands	V.I. CODE ANN. tit. 22, §§ 6-519 to 6-521 (2016).	
Virginia	14 VA. ADMIN. CODE §§ 5-290-10 to 5-290-50 (1992/2013).	VA. CODE ANN. § 38.2-1038 (1986/1991).
Washington	WASH. ADMIN. CODE 284-16-310 to 284-16-320 (1992/2009).	
West Virginia	W. VA. CODE § 33-34-3a (2010).	
Wisconsin	NO CURRENT ACTIVITY	
Wyoming	WYO. STAT. ANN. §§ 26-3-116 (1992/2012); 26-3-132 (1992/2012); 26-3-133 (2012).	

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**Proceedings Citations**

Cited to the Proceedings of the NAIC

A working group was created in February 1984 to consider issues related to assets and liabilities of insurers. **1984 Proc. II 310.** At their first meeting in April the group identified several issues they should consider. Among these were financial reporting statutes and regulations, valuing of assets, and formula type minimum standards. **1984 Proc. II 289.**

One of the first projects of the working group was to consider the propriety of market value reporting. There are situations where it is essential to have market value information, but it is not always easy to obtain. The group concluded it would be appropriate to identify the triggers which would help identify a troubled company which should be reporting market values of assets. **1985 Proc. I 229.**

**Section 1. Authority**

A review of state laws revealed that most had statutes relating to hazardous conditions, many without setting any standards. **1985 Proc. I 180.**

The exposure draft was modified before adoption to specifically refer to the Insurer's Rehabilitation and Liquidation Model Act. **1985 Proc. II 245.**

**Section 2. Purpose**

It was the purpose of the drafters to provide the regulator with a list of proper tests, inquires and events which might indicate serious problems in a company before those problems rose to a level requiring orders of supervision or rehabilitation. **1985 Proc. I 180.**

The second paragraph was added in response to comments heard on the exposure draft. **1985 Proc. II 245.**

**Section 3. Standards**

The drafters believed that any one of the tests in Section 3 or any combination thereof could, in a specific case, cause regulatory concern sufficient to warrant the acts set out in Section 4. The standards and regulatory responses are purposefully qualitative rather than quantitative to provide flexibility in prescribing suitable remedies in specific cases. **1985 Proc. I 180.**

A. The list of standards was modified somewhat in response to comments on the exposure draft. Most of the changes were editorial in nature. **1985 Proc. II 244 - 246.**

**Section 4. Commissioner's Authority**

A. Subsection A was added by the working group after receiving comments on the exposure draft. **1985 Proc. II 246.**

B. The sixth remedy states that the form of reporting market value of an investment portfolio should be in a form acceptable to the commissioner. The drafters believed the proper and orderly manner for this reporting would be to require the company to submit its portfolio to the NAIC Securities Valuation Office, which would then report to the regulator. Such a procedure would avoid the problem of diverse forms and discordant analysis. **1985 Proc. I 180.**

C. The language of the exposure draft was modified to address due process concerns. The working group amended the hearing process language to address these concern, coordinating it with the respective state's administrative provisions. **1985 Proc. II 244.**

**Section 5. Judicial Review**

**Section 6. Separability**

**Section 7. Effective Date**

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*Chronological Summary of Actions*

*June 1985: Model adopted.*