

ADMINISTRATIVE SUPERVISION MODEL ACT

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Section 1. Definitions

As used in this Act:

- A. “Insurer” means and includes every person engaged as indemnitor, surety or contractor in the business of entering into contracts of insurance or of annuities as limited to:
- (1) Any insurer who is doing an insurer business, or has transacted insurance in this state, and against whom claims arising from that transaction may exist now or in the future;
 - (2) Any fraternal benefit society which is subject to the provisions of [insert applicable statute];
 - (3) [List any other specialty type insurer not covered by the general law which should be covered by this Act].
- B. “Exceeded its powers” means the following conditions:
- (1) The insurer has refused to permit examination of its books, papers, accounts, records or affairs by the commissioner, his or her deputies, employees or duly commissioned examiners;
 - (2) A domestic insurer has unlawfully removed from this state books, papers, accounts or records necessary for an examination of the insurer;
 - (3) The insurer has failed to promptly comply with the applicable financial reporting statutes or rules and departmental requests relating thereto;
 - (4) The insurer has neglected or refused to observe an order of the commissioner to make good, within the time prescribed by law, any prohibited deficiency in its capital, capital stock or surplus;
 - (5) The insurer is continuing to transact insurance or write business after its license has been revoked or suspended by the commissioner;
 - (6) The insurer, by contract or otherwise, has unlawfully or has in violation of an order of the commissioner or has without first having obtained written approval of the commissioner if approval is required by law:
 - (a) Totally reinsured its entire outstanding business, or
 - (b) Merged or consolidated substantially its entire property or business with another insurer.

- (7) The insurer engaged in any transaction in which it is not authorized to engage under the laws of this state;
- (8) The insurer refused to comply with a lawful order of the commissioner.
- C. “Consent” means agreement to administrative supervision by the insurer.
- D. [The terms “commissioner” and “department” may need definitions].

Drafting Note: States may wish to compare these definitions with other definitions in their statutes and resolve any conflict.

Section 2. Applicability

The provisions of this Act shall apply to:

- A. All domestic insurers, and
- B. Any other insurer doing business in this state whose state of domicile has asked the commissioner to apply the provisions of this Act as regards such insurer.

Section 3. Notice to Comply with Written Requirements of Commissioner; Noncompliance; Administrative Supervision

- A. An insurer may be subject to administrative supervision by the commissioner if upon examination or at any other time it appears in the commissioner’s discretion that:
 - (1) The insurer’s condition renders the continuance of its business hazardous to the public or to its insureds;
 - (2) The insurer [“has” or “appears to have”] exceeded its powers granted under its certificate of authority and applicable law;
 - (3) The insurer has failed to comply with the applicable provisions of the insurance code;
 - (4) The business of the insurer is being conducted fraudulently; or
 - (5) The insurer gives its consent.
- B. If the commissioner determines that the conditions set forth in Subsection A of this section exist, the commissioner shall:
 - (1) Notify the insurer of his or her determination;
 - (2) Furnish to the insurer a written list of the requirements to abate this determination; and
 - (3) Notify the insurer that it is under the supervision of the commissioner and that the commissioner is applying and effectuating the provisions of the Act. Action by the commissioner shall be subject to review pursuant to applicable state administrative procedures under [insert state’s appropriate administrative appeals procedure statute].
- C. If placed under administrative supervision, the insurer shall have sixty (60) days, or another period of time as designated by the commissioner, to comply with the requirements of the commissioner subject to the provisions of this Act.
- D. If it is determined after notice and hearing that the conditions giving rise to the supervision still exist at the end of the supervision period specified above, the commissioner may extend the period.

- E. If it is determined that none of the conditions giving rise to the supervision exist, the commissioner shall release the insurer from supervision.

Section 4. Confidentiality of Certain Proceedings and Records

- A. Notwithstanding any other provision of law and except as set forth in this section; proceedings, hearings, notices, correspondence, reports, records and other information in the possession of the commissioner or the Department relating to the supervision of any insurer are confidential and 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, except as provided by this section. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.
- B. The personnel of the Department shall have access to these proceedings, hearings, notices, correspondence, reports, records or information as permitted by the commissioner. 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. The commissioner may share the notices, correspondence, reports, records or information with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, if the commissioner determines that the disclosure is necessary or proper for the enforcement of the laws of this or another state of the United States, and provided that the recipient agrees to maintain the confidentiality of the documents, material or other information. No waiver of any applicable privilege or claim of confidentiality shall occur as a result of the sharing of documents, materials or other information pursuant to this subsection.
- D. The commissioner may open the proceedings or hearings or make public the notices, correspondence, reports, records or other information if the commissioner deems that it is in the best interest of the public or in the best interest of the insurer, its insureds, creditors or the general public.
- E. This section does not apply to hearings, notices, correspondence, reports, records or other information obtained upon the appointment of a receiver for the insurer by a court of competent jurisdiction.

Drafting Note: States may want to consider changing this section to require proceedings and records to be public record unless the commissioner deems otherwise. Confidentiality of orders is not included in this section. Some states may want to protect orders from disclosure by including them in this section.

Section 5. Prohibited Acts During Period of Supervision

During the period of supervision, the commissioner or the commissioner's designated appointee shall serve as the administrative supervisor. The commissioner may provide that the insurer may not do any of the following things during the period of supervision, without the prior approval of the commissioner or the appointed supervisor:

- A. Dispose of, convey or encumber any of its assets or its business in force;
- B. Withdraw any of its bank accounts;
- C. Lend any of its funds;
- D. Invest any of its funds;
- E. Transfer any of its property;
- F. Incur any debt, obligation or liability;

- G. Merge or consolidate with another company;
- H. Approve new premiums or renew any policies;
- I. Enter into any new reinsurance contract or treaty;
- J. Terminate, surrender, forfeit, convert or lapse any insurance policy, certificate or contract, except for nonpayment of premiums due;
- K. Release, pay or refund premium deposits, accrued cash or loan values, unearned premiums, or other reserves on any insurance policy, certificate or contract;
- L. Make any material change in management; or
- M. Increase salaries and benefits of officers or directors or the preferential payment of bonuses, dividends or other payments deemed preferential.

Section 6. Review and Stay of Action

During the period of supervision the insurer may contest an action taken or proposed to be taken by the supervisor specifying the manner wherein the action being complained of would not result in improving the condition of the insurer. Denial of the insurer's request upon reconsideration entitles the insurer to request a proceeding under [insert state's appropriate administrative appeals procedure statute].

Section 7. Administrative Election of Proceedings

Nothing contained in this Act shall preclude the commissioner from initiating judicial proceedings to place an insurer in conservation, rehabilitation or liquidation proceedings or other delinquency proceedings, however designated under the laws of this state, regardless of whether the commissioner has previously initiated administrative supervision proceedings under this Act against the insurer.

Section 8. Rules

The commissioner is empowered to adopt reasonable rules necessary for the implementation of this Act.

Section 9. Other Laws; Conflicts; Meetings Between the Commissioner and the Supervisor

Notwithstanding any other provision of law, the commissioner may meet with a supervisor appointed under this Act and with the attorney or other representative of the supervisor, without the presence of any other person, at the time of any proceeding or during the pendency of any proceeding held under authority of this Act to carry out the commissioner's duties under this Act or for the supervisor to carry out his or her duties under this Act.

Section 10. Immunity

There shall be no liability on the part of, and no cause of action of any nature shall arise against, the Insurance Commissioner or the Department of Insurance or its employees or agents for any action taken by them in the performance of their powers and duties under this Act.

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

1990 Proc. 16, 26, 173, 175-178 (adopted).

1999 Proc. 4th Quarter 15, 804, 811-812 (amended).

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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 §§ 27-2-33 to 27-2-39 (1977). |
| Alaska | NO CURRENT ACTIVITY | |
| American Samoa | NO CURRENT ACTIVITY | |
| Arizona | NO CURRENT ACTIVITY | |
| Arkansas | NO CURRENT ACTIVITY | |
| California | CAL. INS. CODE §§ 1077 to 1077.95 (1992). | |
| Colorado | | COLO. REV. STAT. §§ 10-3-401 to 10-3-405 (1963/1992). |
| Connecticut | CONN. GEN. STAT. §§ 38a-962 to 38a-962i (1992). | |
| Delaware | | DEL. CODE ANN. tit. 18, § 5942 (1984/1995). |
| District of Columbia | NO CURRENT ACTIVITY | |
| Florida | FLA. STAT. §§ 624.80 to 624.87 (1989). | FLA. ADMIN. CODE ANN. r. 69O-141.001 to 69O-141.006 (1991/1992). |

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|--------------------|---|---|
| Georgia | GA. CODE ANN. § 33-3-1; §§ 33-3-17 to 33-3-18 (1992); GA. COMP. R. & REGS. 120-2-55 (1993). | |
| Guam | NO CURRENT ACTIVITY | |
| Hawaii | | HAW. REV. STAT. §§ 431:15-101 to 431:15-411 (1987). |
| Idaho | NO CURRENT ACTIVITY | |
| Illinois | NO CURRENT ACTIVITY | |
| Indiana | IND. CODE § 27-9-2-1 to 27-9-2-3 (Portions of the model) (2015). | |
| Iowa | | IOWA CODE §§ 507C.1 to 507C.60 (1984/2014). |
| Kansas | NO CURRENT ACTIVITY | |
| Kentucky | NO CURRENT ACTIVITY | |
| Louisiana | LA. REV. STAT. ANN. §§ 22:731 to 22:737 (1991/1992). | |
| Maine | NO CURRENT ACTIVITY | |
| Maryland | NO CURRENT ACTIVITY | |
| Massachusetts | MASS. GEN. LAWS ch. 175J, §§ 1 to 10 (1993). | |
| Michigan | NO CURRENT ACTIVITY | |
| Minnesota | MINN. STAT. §§ 60G.01 to 60G.09 (1991). | |
| Mississippi | MISS. CODE ANN. §§ 83-1-151 to 83-1-169 (1991). | |
| Missouri | MO. REV. STAT. § 375.1160 (1991). | |

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|--------------------|---|--|
| Montana | | MONT. CODE ANN. §§ 33-2-1301 to 33-2-1394 (1979/2013). |
| Nebraska | NO CURRENT ACTIVITY | |
| Nevada | NO CURRENT ACTIVITY | |
| New Hampshire | N.H. REV. STAT. ANN. §§ 402-M:1 to 402-M:11 (2016). | |
| New Jersey | N.J. STAT. ANN. §§ 17:51A-1 to 17:51A-10 (1993). | |
| New Mexico | | N.M. STAT. § 59A-46-22 (HMO) (1993). |
| New York | NO CURRENT ACTIVITY | |
| North Carolina | N.C. GEN. STAT. § 58-30-62 (1991). | |
| North Dakota | N.D. CENT. CODE §§ 26.1-06.2-01 to 26.1-06.2-10 (1993). | |
| Northern Marianas | NO CURRENT ACTIVITY | |
| Ohio | NO CURRENT ACTIVITY | |
| Oklahoma | OKLA. STAT. tit. 36, §§ 1801 to 1812 (1975/1986) (portions of model). | |
| Oregon | OR. REV. STAT. §§ 734.043 to 734.047 (1993) (portions of model). | |
| Pennsylvania | | 40 PA. STAT. ANN. § 221.11 (1977). |
| Puerto Rico | NO CURRENT ACTIVITY | |
| Rhode Island | R.I. GEN. LAWS §§ 27-14.1-1 to 27-14.1-10 (1991/1999). | |
| South Carolina | S.C. CODE ANN. §§ 38-26-10 to 38-26-110 (1991). | |
| South Dakota | NO CURRENT ACTIVITY | |

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|--------------------|--|--|
| Tennessee | TENN. CODE ANN. §§ 56-9-501 to 56-9-510 (1991/2004). | |
| Texas | | TEX. INS. CODE ANN. §§ 441.001 to 441.008 (2005/2007). |
| Utah | NO CURRENT ACTIVITY | |
| Vermont | | VT. STAT. ANN. tit. 8, §§ 7031 to 7100 (1991/1999). |
| Virgin Islands | NO CURRENT ACTIVITY | |
| Virginia | NO CURRENT ACTIVITY | |
| Washington | WASH. REV. CODE 48.31.400 to 48.31.900 (2005). | |
| West Virginia | W. VA. CODE §§ 33-34-1 to 33-34-11 (1990). | |
| Wisconsin | NO CURRENT ACTIVITY | |
| Wyoming | | WYO. STAT. ANN. § 26-34-123 (HMO) (1995). |

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Proceedings Citations

Cited to the Proceedings of the NAIC

In 1987 a Supervision and Conservation Working Group was appointed and charged with the development of a model act. They decided to pattern the new model after an existing Texas statute on administrative supervision. **1988 Proc. II 198.**

The group made a decision that their charge could best be approached by the development of a separate model rather than revising the Insurers Supervision and Liquidation Model Act. They presented their first draft to the subcommittee to which they reported in December of 1988. **1989 Proc. I 182-183.**

The working group reported that they had reached the conclusion that administrative conservation was not a practical solution in the majority of states due to the disadvantages of such a procedure outweighing the advantages in those states. **1989 Proc. II 228.**

The model was adopted in December of 1989 and the provisions relative to supervision removed from the liquidation model. **1990 Proc. IA 173.**

Section 1. Definitions

Section 2. Applicability

One of the first decisions to be made by the working group drafting the new model was to whom it should apply. It authorized procedures for administrative supervision of domiciled insurers and those foreign insurers “commercially domiciled” in the state. The first draft also contained a definition of that term so that it would apply to a foreign insurer which had 25 percent more premium in the state than in its state of domicile or an insurer writing more than 55 percent of its premium in the state. Administrative conservatorship would apply only to domestic insurers. **1989 Proc. I 182.**

The draft adopted didn’t contain the concept or application to “commercially domiciled” insurers. **1990 Proc. IA 176.**

Section 3. Notice to Comply With Written Requirements of Commissioner; Noncompliance; Administrative Supervision

A. The drafters recommended that “hazardous condition” as defined in the model act should be further clarified by a model regulation. **1990 Proc. IA 173.**

B. The initial draft exposed in December of 1988 outlined the steps a department would need to take to place a company in administrative supervision. The exposure draft varied from the version finally adopted in that the draft provided for an administrative hearing before the commissioner would determine whether to supervise the insurer. In the Paragraph (3) finally adopted, the commissioner could immediately supervise and that action would be subject to administrative review. **1989 Proc. I 182, 184.**

Section 4. Confidentiality of Certain Proceedings and Records

One of the provisions of the exposure draft highlighted in the drafters’ report to the subcommittee was this section requiring confidentiality. The adopted language was substantially the same as that of the draft. **1989 Proc. I 182, 185.**

The working group chair commented that the model act provided that most matters relative to administrative supervision would be withheld from the public record. Although this might be in conflict with the direction of broader public access currently being taken with other model acts, it was felt to be appropriate. The decision was made to keep the matters confidential because of the potential for harm to the insurer and consequently its insureds. **1990 Proc. IA 173.**

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 information. A technical group drafted language, which was forwarded to each of the groups drafting amendments to models. The Third Party Administrator Statute was one of the models identified for which regulators needed to consider the clarifying language. **1999 Proc. 1st Quarter 6, 10.**

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Section 4 (cont.)

A. Amendments to Subsection A were adopted by the Insolvency Subcommittee with little discussion. **1999 Proc. 4th Quarter 804.**

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 revisions to 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.**

Section 5. Prohibited Acts During Period of Supervision

Section 6. Review and Stay of Action

Section 7. Administrative Election of Proceedings

The exposure draft was more extensive than the provision finally adopted. It contained another paragraph emphasizing the discretion of the commissioner to choose to act under this law or any other applicable law. That first paragraph was deleted from the model. **1989 Proc. I 187.**

Section 8. Rules

The exposure draft contained a provision permitting the commissioner to draft rules. The only change from the exposure draft was to empower the “commissioner” rather than the “department.” **1989 Proc. I 182, 188.**

Section 9. Other Laws; Conflicts; Meetings Between the Commissioner and the Supervisor

Section 10. Immunity

One of the provisions of the exposure draft highlighted in the drafters’ report to the subcommittee was this section providing immunity to the department. It was adopted without change from the language exposed. **1989 Proc. I 182, 188.**

Chronological Summary of Actions

December 1989: Adopted.

January 2000: Amended Section 4 to clarify the confidentiality provisions.