

DISCLOSURE OF MATERIAL TRANSACTIONS MODEL ACT

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Section 1. Report

- A. Every insurer domiciled in this state shall file a report with the commissioner disclosing material acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance agreements or material new ceded reinsurance agreements affecting in force life insurance business unless the acquisitions and dispositions of assets or material nonrenewals, cancellations or revisions of ceded reinsurance agreements or material new ceded reinsurance agreements affecting in force life insurance business have been submitted to the commissioner for review, approval or information purposes pursuant to other provisions of the insurance code, laws, regulations, or other requirements.
- B. The report required in Subsection A is due within fifteen (15) days after the end of the calendar month in which any of the foregoing transactions occur.
- C. One complete copy of the report, including any exhibits or other attachments, shall be filed with:
 - (1) The insurance department of the insurer's state of domicile; and
 - (2) The National Association of Insurance Commissioners.

Section 2. Acquisitions and Dispositions of Assets

- A. Materiality.

No acquisitions or dispositions of assets need be reported pursuant to Section 1 if the acquisitions or dispositions are not material. For purposes of this Act, a material acquisition (or the aggregate of any series of related acquisitions during any thirty-day period) or disposition (or the aggregate of any series of related dispositions during any thirty-day period) is one that is non-recurring and not in the ordinary course of business and involves more than five percent (5%) of the reporting insurer's total admitted assets as reported in its most recent statutory statement filed with the insurance department of the insurer's state of domicile.
- B. Scope.
 - (1) Asset acquisitions subject to this Act include every purchase, lease, exchange, merger, consolidation, succession or other acquisition other than the construction or development of real property by or for the reporting insurer or the acquisition of materials for such purpose.
 - (2) Asset dispositions subject to this Act include every sale, lease, exchange, merger, consolidation, mortgage, hypothecation, assignment (whether for the benefit of creditors or otherwise), abandonment, destruction or other disposition.
- C. Information to be Reported.
 - (1) The following information is required to be disclosed in any report of a material acquisition or disposition of assets:

- (a) Date of the transaction;
 - (b) Manner of acquisition or disposition;
 - (c) Description of the assets involved;
 - (d) Nature and amount of the consideration given or received;
 - (e) Purpose of, or reason for, the transaction;
 - (f) Manner by which the amount of consideration was determined;
 - (g) Gain or loss recognized or realized as a result of the transaction; and
 - (h) Names of the persons from whom the assets were acquired or to whom they were disposed.
- (2) Insurers are required to report material acquisitions and dispositions on a non-consolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than \$1,000,000 total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer's capital and surplus.

Section 3. Nonrenewals, Cancellations or Revisions of Ceded Reinsurance Agreements

A. Materiality and Scope.

- (1) No nonrenewals, cancellations or revisions of ceded reinsurance agreements or new ceded reinsurance agreements affecting in force life insurance business need be reported pursuant to Section 1 if the nonrenewals, cancellations or revisions of ceded reinsurance agreements or new ceded reinsurance agreements affecting in force life insurance business are not material. For purposes of this Act, a material nonrenewal, cancellation or revision of a ceded reinsurance agreement or a material new ceded reinsurance agreement affecting in force life insurance business is one that affects:
- (a) As respects property and casualty business, including accident and health business written by a property and casualty insurer:
 - (i) More than fifty percent (50%) of the insurer's total ceded written premium; or
 - (ii) More than fifty percent (50%) of the insurer's total ceded indemnity and loss adjustment reserves.
 - (b) As respects life, annuity, and accident and health business: more than fifty percent (50%) of the total reserve credit taken for business ceded, on an annualized basis, as indicated in the insurer's most recent annual statement.
 - (c) As respects either property and casualty or life, annuity, and accident and health business, either of the following events shall constitute a material revision which must be reported:

- (i) An authorized reinsurer representing more than ten percent (10%) of a total cession is replaced by one or more unauthorized reinsurers; or
 - (ii) Previously established collateral requirements have been reduced or waived as respects one or more unauthorized reinsurers representing collectively more than ten percent (10%) of a total cession.
 - (2) However, no filing shall be required if:
 - (a) As respects property and casualty business, including accident and health business written by a property and casualty insurer: the insurer's total ceded written premium represents, on an annualized basis, less than ten percent (10%) of its total written premium for direct and assumed business, or
 - (b) As respects life, annuity, and accident and health business: the total reserve credit taken for business ceded represents, on an annualized basis, less than ten percent (10%) of the statutory reserve requirement prior to any cession.
- B. Information to be reported.
- (1) The following information is required to be disclosed in any report of a material nonrenewal, cancellation or revision of ceded reinsurance agreements or material new ceded reinsurance agreements affecting in force life insurance business:
 - (a) Effective date of the nonrenewal, cancellation, revision or new agreement;
 - (b) The description of the transaction with an identification of the initiator thereof;
 - (c) Purpose of, or reason for, the transaction; and
 - (d) If applicable, the identity of the replacement reinsurers.
 - (2) Insurers are required to report all material nonrenewals, cancellations or revisions of ceded reinsurance agreements or material new ceded reinsurance agreements affecting in force life insurance business on a non-consolidated basis unless the insurer is part of a consolidated group of insurers which utilizes a pooling arrangement or 100 percent reinsurance agreement that affects the solvency and integrity of the insurer's reserves and the insurer ceded substantially all of its direct and assumed business to the pool. An insurer is deemed to have ceded substantially all of its direct and assumed business to a pool if the insurer has less than \$1,000,000 total direct plus assumed written premiums during a calendar year that are not subject to a pooling arrangement and the net income of the business not subject to the pooling arrangement represents less than five percent (5%) of the insurer's capital and surplus.

Section 4. Confidentiality

- A. All reports obtained by or disclosed to the commissioner pursuant to this Act in the possession or control of the Department of Insurance, 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 without the prior written consent of the insurer to which it pertains. 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. After giving the insurer who would be affected notice and an opportunity to be heard, the commissioner may determine that the interest of policyholders, shareholders or the public will be served by publication of the information subject to Subsection A, in which event the commissioner may publish all or any part in the manner the commissioner may deem appropriate.
- C. 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.
- D. 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, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;
 - (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 and law enforcement 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; and
 - (3) [Optional provision] May enter into agreements governing sharing and use of information consistent with this subsection.

Drafting Note: The language in Subsection D(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.

- 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 D.

Section 5. Effective Date

This Act shall take effect on [insert date].

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

1993 Proc. 18, 136, 276, 302, 304-306 (adopted).

1993 Proc. 2nd Quarter 12, 17, 24-26, 30, 101 (amended and reprinted).

1994 Proc. 3rd Quarter (amended and reprinted).

1999 Proc. 4th Quarter 15, 364, 369, 373-374 (amended).

2000 Proc. 4th Quarter 16, 17, 832, 965, 973-975 (amended and reprinted)