

CRIMINAL SANCTIONS FOR FAILURE TO REPORT IMPAIRMENT MODEL BILL

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Section 1. Definitions

- A. “Commissioner” means the Commissioner of Insurance or the equivalent of the state of domicile of any insurer.

Drafting Note: Unnecessary to define “commissioner” in the many states with an existing basic definition.

- B. “Insurer” means any insurance company or other insurer licensed to do business in this state.

Drafting Note: Generally, the term “insurer” rather than “company” is used in this type of situation in most states and would seem preferred here. There are insurers who are not companies and it seems more accurate to do it this way. Since the word “insurer” is defined in most codes, the definition can be omitted when not required.

- C. “Impaired” is a financial situation in which the assets of an insurer are less than the sum of the insurer’s minimum required capital, minimum required surplus and all liabilities as determined in accordance with the requirements for the preparation and filing of the annual statement of an insurer under Section [insert applicable section].

Drafting Note: Minimum required capital was used in accordance with our discussion. It is essential that there be clear understanding of the meaning of the terms and the only possible standard of sufficient clarity appears to be the statutory method which is incorporated in most, if not all, state laws. This definition should be reviewed by each state in relation to the minimum capital and surplus required to continue operating in that state, particularly with respect to the problems of newly organized companies.

- D. “Chief executive officer” is the person, irrespective of the title used, designated by the board of directors or trustees of an insurer as the person charged with the responsibility of administering and implementing the insurer’s policies and procedures.

Section 2. Duty to Notify

- A. Whenever an insurer is impaired, its chief executive officer shall immediately notify the commissioner in writing of the impairment and shall also immediately notify in writing all of the board of directors or trustees of the insurer.

Drafting Note: The model law was changed to require notice only to the domiciliary state. A duty to notify fifty states seems too much, particularly with the stiff penalty. Would this be fifty crimes and is this an extraterritorial problem? The domiciliary state should be responsible.

- B. Any officer, director or trustee of an insurer shall notify the person serving as chief executive officer of the impairment of the insurer in the event the officer, director or trustee knows or has reason to know that the insurer is impaired.

Section 3. Penalty

- A. Any person who violates Section 2 of this Act shall, upon conviction thereof, be fined not more than \$50,000 or be imprisoned for not more than one year, or both.

- B. Any person who does any of the following shall be guilty of a felony and upon conviction thereof, punished by imprisonment in the penitentiary for not more than five (5) years:

- (1) Conceals any property belonging to an insurer; or

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- (2) Transfers or conceals in contemplation of a state insolvency proceeding his own property or property belonging to an insurer; or
- (3) Conceals, destroys, mutilates, alters or makes a false entry in any document which affects or relates to the property of an insurer or withholds any such document from a receiver, trustee or other officer of a court entitled to its possession; or
- (4) Gives, obtains or receives a thing of value for acting or forbearing to act in any court proceedings; and any such act or acts results in or contributes to an insurer becoming impaired or insolvent.

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

1973 Proc. II 18, 21, 370, 394, 400-401 (adopted).