

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 - (5) The insurer is continuing to transact insurance or write business after its license has been revoked or suspended by the commissioner;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).