

INSURANCE FRAUD PREVENTION MODEL ACT

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Section 1. Purpose

The [insert name for state's legislature] finds that the business of insurance involves many transactions that have potential for fraud, abuse and other illegal activities. This Act is intended to permit full utilization of the expertise of the commissioner to investigate and discover fraudulent insurance acts more effectively, halt fraudulent insurance acts and assist and receive assistance from state, local and federal law enforcement and regulatory agencies in enforcing laws prohibiting fraudulent insurance acts.

Section 2. Definitions

As used in this Act:

- A. "Business of insurance" means the writing of insurance or the reinsuring of risks by an insurer, including acts necessary or incidental to writing insurance or reinsuring risks and the activities of persons who act as or are officers, directors, agents or employees of insurers, or who are other persons authorized to act on their behalf.
- B. "Commissioner" means the commissioner of insurance, the commissioner's designees or the department of insurance.

Drafting Note: Use the title of the chief insurance regulatory official wherever the term "commissioner" appears.

- C. "Fraudulent insurance act" means an act or omission committed by a person who, knowingly and with intent to defraud, commits, or conceals any material information concerning, one or more of the following:
 - (1) Presenting, causing to be presented or preparing with knowledge or belief that it will be presented to or by an insurer, a reinsurer, broker or its agent, false information as part of, in support of or concerning a fact material to one or more of the following:
 - (a) An application for the issuance or renewal of an insurance policy or reinsurance contract;
 - (b) The rating of an insurance policy or reinsurance contract;
 - (c) A claim for payment or benefit pursuant to an insurance policy or reinsurance contract;
 - (d) Premiums paid on an insurance policy or reinsurance contract;

- (e) Payments made in accordance with the terms of an insurance policy or reinsurance contract;
 - (f) A document filed with the commissioner or the chief insurance regulatory official of another jurisdiction;
 - (g) The financial condition of an insurer or reinsurer;
 - (h) The formation, acquisition, merger, reconsolidation, dissolution or withdrawal from one or more lines of insurance or reinsurance in all or part of this state by an insurer or reinsurer;
 - (i) The issuance of written evidence of insurance; or
 - (j) The reinstatement of an insurance policy;
- (2) Solicitation or acceptance of new or renewal insurance risks on behalf of an insurer reinsurer or other person engaged in the business of insurance by a person who knows or should know that the insurer or other person responsible for the risk is insolvent at the time of the transaction;
 - (3) Removal, concealment, alteration or destruction of the assets or records of an insurer, reinsurer or other person engaged in the business of insurance;
 - (4) Willful embezzlement, abstracting, purloining or conversion of monies, funds, premiums, credits or other property of an insurer, reinsurer or person engaged in the business of insurance;
 - (5) Transaction of the business of insurance in violation of laws requiring a license, certificate of authority or other legal authority for the transaction of the business of insurance; or
 - (6) Attempt to commit, aiding or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subsection.
- D. "Insurance" means a contract or arrangement in which one undertakes to:
- (1) Pay or indemnify another as to loss from certain contingencies called "risks," including through reinsurance;
 - (2) Pay or grant a specified amount or determinable benefit to another in connection with ascertainable risk contingencies;
 - (3) Pay an annuity to another; or
 - (4) Act as surety.
- E. "Insurer" means a person entering into arrangements or contracts of insurance or reinsurance and who agrees to perform any of the acts set forth in Subsection D of this section. A person is an insurer regardless of whether the person is acting in violation of laws requiring a certificate of authority or regardless of whether the person denies being an insurer.

Drafting Note: A state may include other persons, such as fraternal benefit societies, medical and hospital service corporations, health maintenance organizations, certain types of self insurers, "county mutuals" or other types of insurance entities in the definition of insurer. In some cases, it may be necessary to amend other laws to bring these entities within the Act since the portions of state law applicable to these entities may provide that no other portion of the insurance code applies to these entities without a specific reference to the other provision.

- F. “NAIC” means the National Association of Insurance Commissioners.
- G. “Person” means an individual, a corporation, a partnership, an association, a joint stock company, a trust, an unincorporated organization, or any similar entity or any combination of the foregoing.
- H. “Policy” means an individual or group policy, group certificate, contract or arrangement of insurance or reinsurance affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state.
- I. “Reinsurance” means a contract, binder of coverage (including placement slip) or arrangement under which an insurer procures insurance for itself in another insurer as to all or part of an insurance risk of the originating insurer.

Section 3. Fraudulent Insurance Acts, Interference and Participation of Convicted Felons Prohibited

- A. A person shall not commit a fraudulent insurance act.
- B. A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this Act or investigations of suspected or actual violations of this Act.
- C.
 - (1) A person convicted of a felony involving dishonesty or breach of trust shall not participate in the business of insurance.
 - (2) A person in the business of insurance shall not knowingly or intentionally permit a person convicted of a felony involving dishonesty or breach of trust to participate in the business of insurance.

Section 4. Fraud Warning Required

- A. Claim forms and applications for insurance, regardless of the form of transmission, shall contain the following statement or a substantially similar statement:

“Any person who knowingly presents a false or fraudulent claim for payment of a loss or benefit or knowingly presents false information in an application for insurance is guilty of a crime and may be subject to fines and confinement in prison.”
- B. The lack of a statement as required in Subsection A of this section does not constitute a defense in any prosecution for a fraudulent insurance act.
- C. Policies issued by unauthorized insurers [use the term “unlicensed” or “nonadmitted” insurers in accordance with the terminology used in the state insurance code] shall contain a statement disclosing the status of the insurer to do business in the state where the policy is delivered or issued for delivery or the state where coverage is in force. The requirement of this subsection may be satisfied by a disclosure specifically required by [insert reference to insurance code provisions. Excess and surplus lines statutes and risk retention and purchasing group statutes are likely to be cited here in nearly every state].
- D. The requirements of this section shall not apply to reinsurance claims forms or reinsurance applications.

Section 5. Investigative [and Prosecutive] Authority of the Commissioner

The commissioner may investigate suspected fraudulent insurance acts and persons engaged in the business of insurance.

- A. The commissioner may investigate [and prosecute] suspected fraud.
- B. The commissioner may employ and designate attorneys to specifically prosecute or assist in the prosecution of violations of this Act.

- C. Funds allocated for insurance fraud prevention may be expended by the commissioner, at his or her discretion, to prosecution authorities for the purpose of insurance fraud enforcement as identified in this Act.
- D. The commissioner may negotiate with an attorney representing the state to prosecute violations of the Act, to provide technical and litigation assistance to the Department of Insurance, and to allocate resources for the purpose of insurance fraud prosecution as identified in this Act.

Drafting Note: This section may be used to establish a source of funding exclusively dedicated for prosecution of insurance fraud and to establish a method to specially designate insurance department attorneys as state or federal insurance fraud prosecutors.

Section 6. Mandatory Reporting of Fraudulent Insurance Acts

- A. A person engaged in the business of insurance having knowledge or a reasonable belief that a fraudulent insurance act is being, will be or has been committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.
- B. Any other person having knowledge or a reasonable belief that a fraudulent insurance act is being, will be or has been committed may provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

Section 7. Immunity from Liability

- A. There shall be no civil liability imposed on and no cause of action shall arise from a person's furnishing information concerning suspected, anticipated or completed fraudulent insurance acts, if the information is provided to or received from:
 - (1) The commissioner or the commissioner's employees, agents or representatives;
 - (2) Federal, state, or local law enforcement or regulatory officials or their employees, agents or representatives;
 - (3) A person involved in the prevention and detection of fraudulent insurance acts or that person's agents, employees or representatives; or
 - (4) The NAIC or its employees, agents or representatives.
- B. Subsection A of this section shall not apply to statements made with actual malice. In an action brought against a person for filing a report or furnishing other information concerning a fraudulent insurance act, the party bringing the action shall plead specifically any allegation that Subsection A of this section does not apply because the person filing the report or furnishing the information did so with actual malice.
- C. This section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in Subsection A of this section.

Section 8. Confidentiality

- A. Documents, materials or other information in the possession or control of the Department of Insurance that are provided pursuant to Section 6 of this Act or obtained by the commissioner in an investigation of suspected or actual fraudulent insurance acts 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. 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. 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. 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; provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information; and
 - (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 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.

Drafting Note: The language in Subsection C(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.

- D. Nothing in this section shall prohibit the commissioner from providing information to or receiving information from any local, state, federal or international law enforcement authorities, including any prosecuting authority; or from complying with subpoenas or other lawful process in criminal actions; or as may otherwise be provided in this Act.
- 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 C.

Section 9. Creation and Purpose of the Insurance Fraud Unit

- A. The [insert name of state] insurance fraud unit is established within the [insert designation of organization, such as department of insurance]. The commissioner shall appoint the full-time supervisory and investigative personnel of the insurance fraud unit, who shall be qualified by training and experience to perform the duties of their positions. The commissioner shall also appoint clerical and other staff necessary for the insurance fraud unit to carry out its duties and responsibilities under this Act.
- B. It shall be the duty of the insurance fraud unit to:
 - (1) Initiate independent inquiries and conduct independent investigations when the insurance fraud unit has cause to believe that a fraudulent insurance act may be, is being or has been committed;
 - (2) Review reports or complaints of alleged fraudulent insurance activities from federal, state and local law enforcement and regulatory agencies, persons engaged in the business of insurance, and the public to determine whether the reports require further investigation and to conduct these investigations; and
 - (3) Conduct independent examinations of alleged fraudulent insurance acts and undertake independent studies to determine the extent of fraudulent insurance acts.
- C. The insurance fraud unit shall have the authority to:
 - (1) Inspect, copy or collect records and evidence;
 - (2) Serve subpoenas;

- (3) Administer oaths and affirmations;
- (4) Share records and evidence with federal, state or local law enforcement or regulatory agencies;
- (5) Execute search warrants and arrest warrants for criminal violations of this Act;
- (6) Arrest upon probable cause without warrant a person found in the act of violating or attempting to violate a provision of this Act;

Drafting Note: If the insurance fraud unit has only civil authority, the state should omit Paragraphs (5) and (6) from Subsection C.

- (7) Make criminal referrals to prosecuting authorities; and
- (8) Conduct investigations outside of this state. If the information the insurance fraud unit seeks to obtain is located outside this state, the person from whom the information is sought may make the information available to the insurance fraud unit to examine at the place where the information is located. The insurance fraud unit may designate representatives, including officials of the state in which the matter is located, to inspect the information on behalf of the insurance fraud unit, and the insurance fraud unit may respond to similar requests from officials of other states.

Section 10. Other Law Enforcement or Regulatory Authority

This Act shall not:

- A. Preempt the authority or relieve the duty of other law enforcement or regulatory agencies to investigate, examine and prosecute suspected violations of law;
- B. Prevent or prohibit a person from disclosing voluntarily information concerning insurance fraud to a law enforcement or regulatory agency other than the insurance fraud unit; or
- C. Limit the powers granted elsewhere by the laws of this state to the commissioner or the insurance fraud unit to investigate and examine possible violations of law and to take appropriate action against wrongdoers.

Section 11. Insurer Antifraud Initiatives

Insurers shall have antifraud initiatives reasonably calculated to detect, prosecute and prevent fraudulent insurance acts. Antifraud initiatives may include:

- A. Fraud investigators, who may be insurer employees or independent contractors; or
- B. An antifraud plan submitted to the commissioner. Antifraud plans submitted to the commissioner shall be privileged and confidential and shall not be a public record and shall not be subject to discovery or subpoena in a civil or criminal action.

Section 12. Regulations

The commissioner may promulgate regulations deemed necessary by the commissioner for the administration of this Act.

Section 13. Penalties

A person who violates this Act is subject to the following:

- A. Suspension or revocation of license or certificate of authority, civil penalties of up to \$[insert amount] per violation, or both. Suspension or revocation of license or certificate of authority and imposition of civil penalties shall be pursuant to an order of the commissioner issued under [insert reference to statutes relating to hearings conducted by the commissioner]. The commissioner's order may require a person found to be in violation of this Act to make restitution to persons aggrieved by violations of this Act; or

- B. A person convicted of a violation of Section 3 of this Act by a court of competent jurisdiction [states should insert here classifications for misdemeanor and felony penalties which match provisions in their penal codes for theft offenses]. A person convicted of a violation of Section 3 of this Act shall be ordered to pay restitution to persons aggrieved by the violation of this Act. Restitution shall be ordered in addition to a fine or imprisonment, but not in lieu of a fine or imprisonment; and
- C. A person convicted of a felony violation of this Act pursuant to Subsection B of this section shall be disqualified from engaging in the business of insurance.

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

1995 Proc. 2nd Quarter 2, 36, 59, 61-66 (adopted).

1999 Proc. 4th Quarter 15, 1231, 1233, 1243, 1244-1245 (amended).

2001 Proc. 1st Quarter 17, 741, 746-747 (amended).

2003 Proc. 1st Quarter 798, 799-800 (amended and adopted by task force).

2003 Proc. 2nd Quarter 832 (adopted by parent committee).

2003 Proc. 3rd Quarter 14 (adopted by Plenary).

This model replaces and incorporates three earlier models:

Model Insurance Fraud Statute

1980 Proc. II 22, 25, 176, 181 (adopted).

Model Legislation Creating a Fraud Unit in a State Department of Insurance

1980 Proc. II 22, 25, 176, 179-180 (adopted).

Model Immunity Act

1983 Proc. II 16, 22, 25, 30 (adopted).

1990 Proc. I 6, 30, 840, 872, 891-893 (amended and reprinted).