

## AUTHORIZATION FOR CRIMINAL HISTORY RECORD CHECK MODEL ACT

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### Section 1. Purpose and Scope

The purpose of this Act is to set forth the requirements for states to obtain access to the Criminal Justice Information Services Division of the Federal Bureau of Investigation (FBI) criminal history record information and secure information or reports from the Criminal Justice Information Services Division of the FBI.

The scope of this Act is to set forth the applicability of the criminal history record check to applicants for a home state insurance producer license.

### Section 2. Definitions

When used in this Act:

- A. “Applicant” means a natural person applying for any of the following:
- (1) An initial home state license as an insurance producer;
  - (2) An additional line of authority under an existing home state insurance producer license where a criminal history record check has not been obtained; or
  - (3) A resident insurance producer license under change of home state provisions.

**Drafting Note:** This Act shall not apply to a person applying for renewal or continuation of a home state insurance producer license or a non-resident insurance producer license.

- B. “Fingerprints” means an impression of the lines on the finger taken for the purpose of identification. The impression may be electronic or in ink converted to an electronic format.
- C. “Insurance commissioner” or “commissioner” means the official in any state that is responsible for regulation of the business of insurance.

**Drafting Note:** Use the title of the chief insurance regulatory official wherever the term “Insurance commissioner” or “commissioner” appears.

- D. “Insurance producer” means a natural person required to be licensed under the laws of this state to sell, solicit or negotiate insurance.
- E. “Home State” means the District of Columbia and any state or territory of the United States in which an insurance producer maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance producer.

### Section 3. Authorization of the Insurance Commissioner

- A. In order to make a determination of license eligibility, the commissioner is authorized to require fingerprints of applicants and submit such fingerprints and the fee required to perform the criminal history record checks to the state identification bureau (or state department of justice or other public state agency) and the FBI for state and national criminal history record checks.

**Drafting Note:** The FBI requires that fingerprints be submitted to the state Department of Law Enforcement, Public Safety or Criminal Justice for a check of state records before the fingerprints are submitted to the FBI for a criminal history record check. The FBI recommends all fingerprint submissions be in an electronic format. Public Law 92-544 requires specific parameters to submit fingerprints and obtain criminal history record information. The FBI has approved the language in Section 3A to authorize a state identification bureau to submit fingerprints on behalf of its applicants in conjunction with licensing and employment.

- B. The commissioner shall require a criminal history record check on each applicant in accordance with this Act. The commissioner shall require each applicant to submit a full set of fingerprints (including a scanned file from a hard copy fingerprint) in order for the insurance commissioner to obtain and receive National Criminal History Records from the FBI Criminal Justice Information Services Division.
- C. The insurance commissioner may contract for the collection and transmission of fingerprints authorized under this Act. If the commissioner does so, the commissioner may order the fee for collecting and transmitting fingerprints to be payable directly to the contractor by the applicant. The insurance commissioner may agree to a reasonable fingerprinting fee to be charged by the contractor.
- D. The insurance commissioner is authorized to receive criminal history record information in lieu of the state identification bureau (or state department of justice or other public state agency) that submitted the fingerprints to the FBI.

**Drafting Note:** This provision does not permit the sharing of criminal history record information with the NAIC or other insurance commissioners as such sharing of information is prohibited by 28 CFR 20.33.

#### **Section 4. Confidentiality**

The commissioner shall treat and maintain an applicant's fingerprints and any criminal history record information obtained under the Act as confidential and shall apply security measures consistent with the Criminal Justice Information Services Division of the Federal Bureau Investigation standards for the electronic storage of fingerprints and necessary identifying information and limit the use of records solely to the purposes authorized in this Act. The fingerprints and any criminal history record information shall not be subject to subpoena, other than one issued in a criminal action or investigation, and shall be confidential by law and privileged, and shall not be subject to discovery or admissible in evidence in any private civil action.

#### **Section 5. Regulations**

The insurance commissioner may, in accordance with [insert appropriate reference to state law], promulgate regulations as are necessary for the administration of this Act.

#### **Section 6. Effective Date**

This Act shall take effect [insert date].

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

*2006 Proc. 2<sup>nd</sup> Quarter 40, 83-89 (adopted).*

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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. ADMIN. CODE r. 482-1-146 (2009).
Alaska		ALASKA STAT. § 21.27.040 (2006); ALASKA ADMIN. CODE tit. 3, § 23-010 (1973/1989).
American Samoa	NO CURRENT ACTIVITY	
Arizona		ARIZ. REV. STAT. ANN. § 20-142 (1977/2002); § 20-340.04 (2001/2002) (bail bonds); BULLETIN 2007-3 (2007).
Arkansas	NO CURRENT ACTIVITY	
California		CAL. CODE REGS. tit. 10, § 2175.4 (2003).
Colorado		COLO. REV. STAT. § 10-3-112 (2002); § 10-15-103 (1995/2013).
Connecticut		CONN. GEN. STAT. § 38a-660 (1988/2001) (bail bonds).
Delaware		DEL. CODE ANN. tit. 18, § 1706 (1974/2013); AGENT’S BULLETIN 5 (1997).
District of Columbia		D.C. CODE ANN. § 31-1131.06a (2008).

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Florida		FLA. STAT. § 624.34 (1988/2003); § 626.211 (1959/2006); § 626.291 (1959/2004); § 626.8732 (1988/2004) (adjusters); §§ 648.34 to 648.355 (1955/2004) (bail bonds).
Georgia		GA. CODE ANN. § 33-23-5.1 (2008/2009).
Guam	NO CURRENT ACTIVITY	
Hawaii		HAW. REV. STAT. § 431:7-101 (1987/2009) (fees for check); § 431:2-201 (1987/2009); § 431:2-204 (1987/2009); § 431:2-209 (1987/2009).
Idaho		IDAHO CODE ANN. § 41-1007 (2001); § 41-1009 (2001); § 41-1011 (2001).
Illinois		215 ILL. COMP. STAT. § 5/401 (1937/2000).
Indiana	NO CURRENT ACTIVITY	
Iowa	NO CURRENT ACTIVITY	
Kansas		KAN. STAT. ANN. § 40-4905 (2001).
Kentucky	NO CURRENT ACTIVITY	
Louisiana		LA. REV. STAT. ANN. § 22:1546 (2009) (previous version of model).
Maine	NO CURRENT ACTIVITY	
Maryland		MD. CODE REGS. 31.03.12.04 to 31.03.12.05 (2018).
Massachusetts		BULLETIN B-2001-14 (2014).
Michigan		MICH. COMP. LAWS § 500.249a (1956/1970).
Minnesota	NO CURRENT ACTIVITY	
Mississippi	NO CURRENT ACTIVITY	
Missouri		MO. CODE REGS. ANN. tit. 20, § 700-6.100 (2000/2006).
Montana		MONT. CODE ANN. § 33-17-220 (2003/2013).

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Nebraska	NO CURRENT ACTIVITY	
Nevada		NEV. REV. STAT. § 683A.251 (2001/2005); § 692B.070 (1971); § 692B.190 (1971); § 697.173 (1997) (bail bonds); § 697.180 (1971/2003) (bail bonds); NEV. ADMIN. CODE § 683A.272 (2002/2004).
New Hampshire		BULLETIN 2-10-92 (1992); BULLETIN 5-20-96 (1996).
New Jersey		N.J. ADMIN. CODE § 11:1-28.6 (2001); § 11:1-28.7 (1971); § 17:17-10 (2003); 17:22A-32 (1950/2003); § 17B:18-42 (1971/2003); § 11:17-2.3 (1993/2003); § 11:17-2.11 (1988/2003); § 11:17-2.12 (2002); § 11:1-37.17 (2002) (adjusters); § 11:17-2.15 (1998/2003); § 11:17-7 Form C (1993); N.J. STAT. ANN. § 17:22B-6 (1993/1994); BULLETIN 2002-27 (2002).
New Mexico		N.M. STAT. ANN. § 59A-11-2 (1984/2003); § 59A-11-14 (1984/2001).
New York		N.Y. INS. LAW. § 1102 (1984/2003); 6802 (1984/2003) (bail bonds); §§ 7802 to 7803 (1993/2003) (viatical settlement producers); § 2108 (1984/2014) (adjusters).
North Carolina		N.C. GEN. STAT. § 58-7-37 (2001/2013); § 58-89A-60 (2004/2013); § 58-71-50 (1963/2009) (bail bonds); 11 N.C. ADMIN. CODE § 8.0911 (1992).
North Dakota		N.D. CENT. CODE ANN. § 26.1-26-13.3 (2001).
Northern Marianas	NO CURRENT ACTIVITY	
Ohio		OHIO REV. CODE ANN. § 3905.051 (2010).
Oklahoma		OKLA. STAT. tit. 59, § 1305 (1965/2003) (bail bonds).
Oregon		OR. ADMIN. R. 836-071-0110 (1990/2012); 836-072-0010 (2012).

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Pennsylvania	NO CURRENT ACTIVITY	
Puerto Rico	NO CURRENT ACTIVITY	
Rhode Island	NO CURRENT ACTIVITY	
South Carolina		S.C. CODE ANN. REGS. 69-23 (1984/1988).
South Dakota	NO CURRENT ACTIVITY	
Tennessee		TENN. CODE ANN. § 56-1-107 (2004); § 40-11-317 (2006) (bail bonds).
Texas		TEX. INS. CODE ANN. § 4056.051 (2003/2005); § 4056.053 (2003/2005); 28 TEX. ADMIN. CODE §§ 1.501 to 1.509 (2006/2010); §§ 19.709 to 19.710 (1985/2006) (adjusters).
Utah		UTAH CODE ANN. § 31A-3-105 (2010); § 31A-25-203 (1985/2006); § 31A-26-203 (1985/2012) (adjusters).
Vermont	NO CURRENT ACTIVITY	
Virgin Islands	NO CURRENT ACTIVITY	
Virginia		ADMINISTRATIVE LETTER 2002-8 (2002).
Washington		WASH. REV. CODE ANN. § 48.06.040 (2012); § 48.15.070 (2017); § 48.17.090 (2009); § 48.56.030 (2002); § 308-19-102 (2005) (bail bonds); WASH. ADMIN. CODE § 284-97-020 (2011).
West Virginia	W. VA. CODE § 33-12-37 (2007).	W.VA. CODE § 33-41-8a (2005); W.VA. REGS. §§ 114-2A-1 to 114-2A-7 (2008).
Wisconsin	NO CURRENT ACTIVITY	
Wyoming	NO CURRENT ACTIVITY	

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The Producer Licensing Working Group received industry comments regarding the need to defer the adoption of the model until the infrastructure was in place for electronic fingerprinting and the centralized storage of the prints. A regulator said that the Group was focusing on both fingerprints for producers as well as directors and officers to eliminate potential duplication by another working group. This regulator stressed that the Group is addressing directors and officers at the request of the Financial Condition (E) Committee and will coordinate its development of the fingerprint process for directors and officers with the E Committee. Interested parties expressed concerns regarding the fingerprinting of directors and officers without the necessary technology and database in place. The Group was in the process of obtaining information from the FBI regarding its data submission requirements. The Group anticipates that an electronic fingerprint pilot program will be initiated in early 2005. **2004 Proc. 3<sup>rd</sup> Quarter 1042-1043.**

A regulator reported that the Subgroup and the Working Group will need to defer the adoption of the model until the National Treatment and Coordination (E) Working Group reviewed the model with regards to the fingerprinting of directors and officers. **2005 Proc. 1<sup>st</sup> Quarter 492.**

The Market Regulation and Consumer Affairs (D) Committee did not meet due to the cancellation of the 2005 Fall National Meeting. **2005 Proc. 3<sup>rd</sup> Quarter 12.**

The Working Group adopted the model. **2005 Proc. 4<sup>th</sup> Quarter 878.**

The Market Regulation and Consumer Affairs (D) Committee adopted the Authorization for Criminal History Record Check Model Act. **2006 Proc. 1<sup>st</sup> Quarter 17, 657.**

The Executive/Plenary Committee adopted a revised draft of the Authorization for Criminal History Record Check Model Act [Model]. This model is designed to provide states with the ability to collect fingerprints on insurance entities and submit those fingerprints to state law enforcement as well as the Federal bureau of Investigation (FBI). The Act applies to a natural person applying for any of the following: (1) an initial home state license as an insurance producer; (2) an additional line of authority under an existing home state insurance producer license where a criminal history record check has not been obtained; or (3) a resident insurance producer license under a change of home state provisions. The revised draft deleted the following provisions: (1) a National Association of Insurance Commissioners (NAIC) centralized fingerprint repository; (2) the fingerprinting of directors and officers, and (3) a fingerprinting exemption for producers who fulfilled the requirements of the United States Securities Exchange Commission (SEC) and are licensed and in good standing with the National Association of Securities Dealers (NASD). **2006 Proc. 2<sup>nd</sup> Quarter.**

### Section 1. Purpose & Scope

A regulator said that the model was designed to provide states with the ability to collect fingerprints on “insurance entities” and submit these fingerprints to the appropriate state law enforcement agency and the FBI. This regulator stated that while earlier drafts provided for the establishment a central repository of fingerprints to be established, the current draft does not do this because fingerprint checks are required to be submitted to a state agency prior to being submitted to the FBI. **2003 Proc. 1<sup>st</sup> Quarter 309.**

A regulator indicated that the Subgroup would need to decide if the draft model should include many outstanding issues. **2004 Proc. 1<sup>st</sup> Quarter 858.**

The Working Group discussed whether the intent should be specified to indicate criminal record as permitted to: 1) all insurance entities of the state, 2) only resident producer licensees of the state, or 3) non-resident producer licensees of the state. The chair of the Alert Subgroup indicated that the company licensing regulators and industry would be very much in support of the development of this model and the repository to contain all insurance fingerprints, not just those of producers. **2004 Proc. 1<sup>st</sup> Quarter 858.**

A regulator updated the Working Group on changes made to Section 1, Purpose and Scope. This Section was modified to include language referencing that the check is applicable to residents and controlling persons, directors and officers. **2004 Proc. 3<sup>rd</sup> Quarter 1110.**

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#### Section 1 (cont.)

The Working Group reviewed the possibility of adding a NASD exemption to the model. A NIPR representative reported that the NAIC and NASD Information Sharing Agreement are very close of being completed. This representative anticipated that by the end of the month the proposal will be definitive with screen shots that will display what insurance regulators will have the ability to view from the NASD system on the SPLD. **2004 Proc. 3<sup>rd</sup> Quarter 1110.**

A regulator stated the purpose of the draft model was to provide a background check, including a fingerprint card, as documented in the uniform standards, which the Working Group adopted in December 2002. **2004 Proc. 3<sup>rd</sup> Quarter 1109.**

A regulator reported that the Frequently Asked Questions Document on the fingerprint pilot would not be released because some stated did not have an opportunity to review the document. **2005 Proc. 2<sup>nd</sup> Quarter 711.**

A regulator expressed opposition to the model because the creation of a centralized repository does not add any value. After discussion, a commissioner asked if there was support if the committee deleted the repository language from the Act. Another commissioner said that the issue of the repository needed to be discussed among the NAIC members at the Executive/Plenary level. **2006 Proc. 1<sup>st</sup> Quarter 677.**

A regulator made a motion to delete the NASD exemption from the model. An interested party stressed that this issue had been previously resolved and that the NASD exemption was critical to obtaining that party's support. The Committee took a roll call vote and the NASD exemption was retained. **2006 Proc. 1<sup>st</sup> Quarter 677.**

An interested party said that the D Committee should not consider adopting the model without more commissioner involvement and consensus. After discussion, a commissioner entertained a motion for the D Committee to adopt the model, as revised. No member of the D Committee moved for the adoption of the model. **2006 1<sup>st</sup> Quarter 678.**

An interested party suggested replacing the drafting note regarding the optional nature of fingerprinting officers and directors with language within the text of the model. This interested party also suggested adding the exemption regarding officers and directors: "An officer and director of an insurer submitting an application for a certificate of authority to expand into another state if the officer's or director's fingerprints have been submitted to another state." A commissioner motioned to add a new Subsection D(4) and to modify the drafting note to Subsection 2A(3) and (4). This motion was adopted. **2006 1<sup>st</sup> Quarter 678.**

#### Section 2. Definitions

A regulator updated the Working Group on revisions made to Section 2, Definitions. The definition of insurance commissioner was modified to include the term "commissioner." **2004 Proc. 3<sup>rd</sup> Quarter 1110.**

A Commissioner introduced a referral to consider Subsection 2(A). The Commissioner stated that the model provides for state access to the national criminal database maintained by the Criminal Justice Information Services Division of the FBI. **2005 Proc. 1<sup>st</sup> Quarter 66.**

An interested party requested additional time to submit comments to the National Treatment & Coordination Working Group. Another interested party expressed concern about additional requirements for obtaining a certificate authority. A regulator commented that the intent was a once and done approach. This regulator added that the Subgroup was seeking feedback on the effective date of the fingerprint requirement concerning directors and officers. **2005 Proc. 1<sup>st</sup> Quarter 66.**

ging Section 2A(2)(b) to read "an application for a certificate of authority to expand into another state." This regulator also indicated that the Item 2 lead in should read "an officer or director of the insurer that submits to the commissioner." **2005 Proc. 2<sup>nd</sup> Quarter 257.**

An interested party stated that there was a fundamental difference between the submission of producer fingerprints and officer and director fingerprints. This party tried to make the point that the submission of fingerprints by officers or directors was voluntary. A Commission informed this party that it was not a voluntary process if state law required this submission.

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#### Section 2 (cont.)

The interested party responded that the industry viewed this database as a convenience to the officers and directors, including the ability of the officers and directors to authorize release of their fingerprints for any purpose, not just for company licensing applications. The Commissioner stated that the NAIC was reviewing these issues but this discussion was focused on facilitating a database for company licensing applications. **2005 Proc. 2<sup>nd</sup> Quarter 257.**

An interested party asked whether the NAIC was going to create a centralized database for fingerprints when only a limited number of states require them for company licensing purposes. A regulator stated that the intent was to allow for the incorporation of officers and directors into the fingerprint database. A Commissioner clarified that this database was to avoid replication of efforts for the states. **2005 Proc. 2<sup>nd</sup> Quarter 257.**

A regulator indicated that Section 2A(3) should specify that the requirement is for a controlling entity or person, not just a controlling entity. This regulator also suggested that Section 2A(3) should apply to a controlling entity or person that intends to control or is controlling a domestic insurer. The Working Group supported both suggestions. **2005 Proc. 2<sup>nd</sup> Quarter 182.**

A regulator pointed out the need for a clarification in the definition of “Commissioner” in Section 2E. The discussion also resulted in the decision that a criminal history record may not be shared, but the fingerprint itself may be shared. An interested party expressed concern regarding the commissioner’s discretion in requesting fingerprints from officers and directors. Several regulators indicated that they were supportive of the need for this type of discretion. **2005 Proc. 2<sup>nd</sup> Quarter 182.**

Per the May 18, 2005 National Treatment and Coordination (EX) Working Group minutes, the Working Group adopted a motion recommending the inclusion of directors and officers in the definition of an applicant. The Group referred the recommendation to the Producer Licensing Working Group. **2005 Proc. 4<sup>th</sup> Quarter 896.**

The Working Group agreed to include Alaska’s and Pennsylvania’s comments adding the word “resident” to section 2A(c). The Working Group also agreed to modify the drafting notes for Section 2A(3) and edit language in Section 2A(4) for clarification purposes. The Group added “commonwealth of the United States” to Section 1. **2005 Proc. 4<sup>th</sup> Quarter 895.**

A regulator suggested amending Subsection 2A(2) to say “all officers, directors and controlling persons of an insurer that submit to the commissioner.” **2006 Proc. 1<sup>st</sup> Quarter 677.**

#### Section 3. Authorization of the Insurance Commissioner

An interested party was in support of a home state submission requirement of fingerprints for producers under Section 3, Submission of Personal Information. This party proposed modifying Section 3 to read: “[a]n application for an initial home state license.” This party also requested that the model include a NASD exception due to the fact that these individuals have already met the fingerprint registration requirements under NASD. **2004 Proc. 1<sup>st</sup> Quarter 858-859.**

An interested party suggested amending Subsections 3C and 4D to accept NASD criminal history checks that were previously completed on life insurers. Another interested party gave an overview of his firm’s business model for fingerprinting applicants, indicating that the implementation of the state fingerprinting process would be redundant and expensive. An agency representative gave an overview of the NASD Electronic Fingerprinting Program (EFP). A regulator asked how a state would duplicate efforts of security registrations when they are also licensed to sell insurance. Another regulator asked the NASD to confirm that it retains electronic fingerprints for an indefinite period. The NASD representative did not know whether the NASD could share the prints with the NAIC. The representative also clarified any possible exception for felonies. **2004 Proc. 2<sup>nd</sup> Quarter 998-999.**

The Group added a second sentence to Subsection 4A: “The commissioner shall require each applicant to submit a full set of digital fingerprints in order...” An interested party commented that Subsection A(2)(b) is unreasonable and explained that a repository system needed to be in place prior to the adoption of the model for officers and directors. A regulator commented that six (6) states require fingerprints and numerous states require background checks for officers and directors. This model is intended to alleviate some of the burden on the industry. In addition, the states need the model to obtain access to the FBI

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#### Section 3 (cont.)

databases. Another regulator explained that the repository is a phased approach and officers and directors will be added later. A regulator requested that the national Treatment (EX) Working Group review the model for company licensure processes. **2004 Proc. 3<sup>rd</sup> Quarter 1110-1111.**

A regulator updated the Working Group on revisions made to Section 3. The title of the Section, “Authorization of the Insurance Department,” was changed to “Authorization of the Insurance Commissioner.” The Group took comments pertaining to the language “secure or require documents of information.” The comments centered on an argument that this language was no longer necessary for this section of the model. A regulator recommended removing Subsection 3A and replacing it with “[i]n order to make a determination, the commissioner is authorized to require fingerprints of officers and submit such fingerprint to the state identification bureau (or state department of justice public state agency) and the FBI for state and national criminal checks.” A regulator inquired whether this proposed language would capture the officers and directors. Another regulator suggested that the drafting note in Section 3 be retained in Section 4, Requirements for Submission of Fingerprints. This regulator indicated that the drafting note would be clarified to indicate that the language was approved by the FBI. **2004 Proc. 3<sup>rd</sup> Quarter 1110.**

A regulator gave a report on the progress of the fingerprint file repository. This regulator indicated that the pilot states would adopt the requirements within the next month. The pilot states agreed that the project is ready to request funding from the NAIC and NIPR. Another regulator reported on his continued communications with the FBI. **2004 Proc. 3<sup>rd</sup> Quarter 1109-1110.**

A regulator reported that the Working Group discussed the current status of outstanding Frequently Asked Questions. **2004 Proc. 3<sup>rd</sup> Quarter 1043.**

A regulator presented the following attestation language: “As part of the resident licensing process pursuant to applicable state law, resident applicant acknowledges that the submission of his or her fingerprint record will be submitted to a secured centralized repository maintained by the National Association of Insurance Commissioners (“NAIC”) as authorized by the state department pursuant to a Memorandum of Understanding between participating state insurance departments and the NAIC. The resident applicant acknowledges the fingerprint record will be stored at the NAIC and transmitted to law enforcement agencies for the purpose of determining applicant’s qualification for licensure.” This regulator pointed out that the model provides states the authority to collect and transmit fingerprints to the NAIC for storage. The Working Group adopted this attestation. **2005 Proc. 1<sup>st</sup> Quarter 492.**

A regulator reported that the NAIC was ready to initiate the pilot program for the collection and retention of fingerprints in a secure, centralized repository. Another regulator reported that the FBI prohibits the sharing of criminal history record information but does not prohibit the sharing of fingerprints. In addition, the SPLD would contain an indicator on whether a fingerprint was taken and submitted to the secure NAIC repository. An interested party questioned when the decision was made to have the prints submitted to the NAIC. This party said that this information should be available on the public Producer Database (PDB). Another interested party said that this information should not be made publically available on the PDB. **2005 Proc. 1<sup>st</sup> Quarter 492.**

The Working Group deleted the word “permanent” from Subsection 3B. A regulator explained that a formal Frequently Asked Questions document on the fingerprint pilot project would be distributed at the Summer National Meeting. **2005 Proc. 2<sup>nd</sup> Quarter 733.**

A regulator suggested deleting Subsection 4C(2) of this draft because it was inequitable for producers seeking a property and casualty license. An interested party responded that a state should provide respect and deference to the SEC. Another regulator suggested clarifying 4C. The Working Group should also review the NASD standards for licensing and disciplinary action. A regulator made a motion to retain Subsection 4C(2). The Working Group passed this motion. **2005 Proc. 2<sup>nd</sup> Quarter 733.**

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#### Section 3 (cont.)

A regulator questioned the necessity of a repository if fingerprints would only be used for resident licensing. Another regulator responded that the repository would be used in case a producer wanted to add a new line of authority or change his/her permanent state of residency. **2005 Proc. 2<sup>nd</sup> Quarter 733.**

An interested party questioned the appropriateness of the permanent retention of fingerprints. A regulator stated that the permanent retention was designed to meet the goal of a once and done approach. Another regulator said that fingerprints for producers would be removed after a producer's license was inactive for over 12 months. The interested party reiterated his belief that fingerprint submission should be voluntary and that the NIPR should control their collection and retention. A regulator said that Subsection 3B should address both the withdrawal of fingerprints and the limitations on their use. **2005 Proc. 2<sup>nd</sup> Quarter 732.**

An interested party questioned which entity required a fee. A regulator stated that the fee was for the state Department of Justice and the FBI. Another regulator suggested the phrase "required under Section 3 of this Act" be changed to "authorized under Section 3 of this Act" to be consistent with the language of Section 3. The Working Group adopted these changes. **2005 Proc. 2<sup>nd</sup> Quarter 711.**

A regulator pointed out suggested language from the FBI that would enable states to collect fingerprints in both paper and electronic methods. This language would: (1) add a definition of "fingerprint," (2) delete the word "electronic" from Subsections 3A and 4A, (3) add the phrase "and the fee required to perform the criminal history record check" to Subsection 3A, and (4) add the phrase "required under Section 3 of this Act" to Subsection 3B. **2005 Proc. 2<sup>nd</sup> Quarter 711.**

A regulator reported that the Working Group adopted a motion adding language that was suggested by the FBI. This new language will enable states to collect fingerprints in a manner consistent with P.L. 92-544. **2005 Proc. 2<sup>nd</sup> Quarter 693.**

An interested party recommended deleting the term "permanent" from Section 3B of the model. The Group discussed potential differences in retention requirements. A regulator indicated that criminal enforcement authorities permanently hold fingerprints. A Commissioner indicated that, because the term "retention" does not specify a defined retention time, it would accommodate any specific retention time. The Commissioner referred this issue back to the Producer Licensing Subgroup. **2005 Proc. 2<sup>nd</sup> Quarter 258.**

An interested party proposed amending the language in Section 3B to replace NAIC with NIPR as to the agent housing and controlling the fingerprint database. Several regulators responded that such an amendment would not be appropriate. One regulator stated that the fingerprints would be retained at the NAIC because it was a supporting arm of the state-based regulatory system. The fingerprint is owned by the state and, as part of its administrative duties for the state, the NAIC would store the fingerprints on behalf of the state insurance departments. There will be a number of controls in place limiting who can access and utilize the fingerprints. **2005 Proc. 2<sup>nd</sup> Quarter 257-258.**

A regulator pointed out that the current draft of the model required the applicant to submit electronic fingerprints, and the definition of applicant included the expansion application for certificate of authority. A Commissioner indicated that a drafting note should be included indicating that the fingerprint requirement for company licensing was an optional item. A regulator stated that this drafting note would be acceptable to them because they were deferring the company licensing issues to the National Treatment and Coordination (EX) Working Group. **2005 Proc. 2<sup>nd</sup> Quarter 257.**

The National Treatment and Coordination (EX) Working Group discussed the issue regarding submission requirements of directors and officers. In response to a request for industry comments, an interested party stated that fingerprinting for company licensing purposes would remain a state specific requirement. A regulator stated that this model was not a mandate for fingerprinting for company licensing, rather it is intended as the tool to allow the states to work on only one piece of legislation as the fingerprint database is being developed, and to accommodate those states that are already requiring fingerprints. **2005 Proc. 2<sup>nd</sup> Quarter 256-257.**

## AUTHORIZATION FOR CRIMINAL HISTORY RECORD CHECK MODEL ACT

### Proceedings Citations

Cited to the Proceedings of the NAIC

#### Section 3 (cont.)

An interested party reminded the Working Group of its concerns regarding the privacy and confidentiality of the information collected in relation to this model. Other interested parties were interested in where the repository of officers and directors fingerprints would be located. This was important to the industry when deciding whether they would support the inclusion of officers and directors in the model act. **2005 Proc. 2<sup>nd</sup> Quarter 182-183.**

A regulator informed the Fingerprint Subgroup that the Producer Licensing Working Group received a copy of a proposal to bifurcate the Authorization for Criminal History Record Check Model Act into a model for producers and another for company officers. **2005 Proc. 2<sup>nd</sup> Quarter 180.**

The Antifraud (D) Task Force heard a report that the Fingerprint Subgroup of the Producer Licensing Working Group was continuing discussions on the Authorization for Criminal History Record Check Model Act. **2005 Proc. 3<sup>rd</sup> Quarter 13.**

The Antifraud (D) Task Force did not meet due to the cancellation of the 2005 Fall National Meeting. **2005 Proc. 3<sup>rd</sup> Quarter 13.**

The D Committee adopted a motion adding language suggested by the FBI enabling states to collect fingerprints in a manner consistent with P.L. 92-544. **2005 Proc. 3<sup>rd</sup> Quarter 12.**

A regulator asked to consider bifurcating the model act between producers, directors and officers. This regulator asked for previous minutes on this topic. Another regulator stated that it was the vision of the National Treatment and Coordination (EX) Working Group to wait until the Producer Licensing (D) Working Group had completed their model in this area and, if applicable, partner with them for one model to present to state legislatures on requiring fingerprinting and criminal history checks as part of the insurance licensing process. **2005 Proc. 4<sup>th</sup> Quarter 896.**

The Working Group included a drafting note indicating that Sections 3A and 4 would be needed to participate in the central repository. **2005 Proc. 4<sup>th</sup> Quarter 896.**

The Group accepted comments on Pennsylvania's suggestion to delete the reference to the Department of Justice/Public Safety Agency from Section 5: Receipt of Criminal History Information. **2005 Proc. 4<sup>th</sup> Quarter 896.**

The Working Group agreed to combine Subsection (C)(3) with (C)(2). The Group then discussed including the NASD exemption into Subsection C. A regulator suggested collecting the past minutes that discussed this exemption before making a decision. **2005 Proc. 4<sup>th</sup> Quarter 896.**

The Group discussed at length the role of the central repository. A regulator stated that it was important that the model not go beyond its intended scope, and, thus, any fingerprint that is collected for an investigation of trustworthiness is performed for the reasons set out in the model's definition of applicant. The Group then agreed to add Alaska's suggested language for a new Subsection B that would further define the purpose of the fingerprint collection. The current draft's Subsection B was changed to Subsection C. **2005 Proc. 4<sup>th</sup> Quarter 895.**

An interested party questioned whether the NAIC could keep the fingerprint information confidential and said that the NIPR would be in a better position to do this. Other interested parties expressed concerns regarding the fingerprint repository. A regulator reviewed suggestions for Subsections 4C and 4D. Another regulator made a motion to incorporate this language. After discussion, the change was not made to the model. **2005 Proc. 4<sup>th</sup> Quarter 878.**

A regulator would not discuss the bifurcation of the model. An interested party suggested adding "or other" to Subsection 3A as well as requested that "fingerprint records" be replaced with "fingerprints and necessary identifying information." The Working group agreed to make this change. **2005 Proc. 4<sup>th</sup> Quarter 877.**

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#### Section 3 (cont.)

An interested party opposed the adoption of any model that included the NAIC control of a centralized repository. However, this regulator expressed support for a model that exempted the fingerprinting of officers and directors as well as placed the control of any centralized fingerprint repository with the National Insurance Producer Registry (NIPR). A regulator stated that the collection of fingerprints by regulators is the same as the collection of other applicant information and should be viewed the same way. It would be inappropriate for states to collect fingerprints under their regulatory authority and then release this information to the control of a non-regulatory association. In response, the interested party contended that the NIPR owned the producer data and approved funding for the creation of a centralized repository in 2004. The NIPR should control this data to provide law-abiding citizens the ability to control the use of these prints. This control is lost if the NAIC controls the repository. The regulator responded that the data in the State Producer Licensing Database (SPLD) is state data. Another regulator strongly disagreed with the interested party and stated that there was never an understanding or agreement that the NIPR would control the newly created fingerprint repository. **2005 Proc. 4<sup>th</sup> Quarter 803.**

An interested party questioned why allowing regulator access to the FBI database necessitated the creation of a centralized database. This party supported including the fingerprinting of officers and directors, because the issue arose in response to a scandal. A regulator stated that there was a need for a centralized repository, because the “once and done” approach was for the collection of fingerprints, not for checking individual’s backgrounds. **2005 Proc. 4<sup>th</sup> Quarter 802.**

An interested party expressed concerns about including officers and directors in the fingerprint collection process as well as with the NAIC controlled repository. Another interested party stated that the Uniform Certificate of Authority Application included an enhanced biographical affidavit to conduct more in-depth background checks in lieu of the implementation of a fingerprint requirement for officers and directors. A regulator stated that the collection of fingerprints for officers and directors was optional. **2005 Proc. 4<sup>th</sup> Quarter 802.**

#### Section 4. Confidentiality

A regulator expressed concern over a statute reference in a drafting note that prohibits states from sharing criminal history record information with each other. Another regulator said that while states cannot share criminal history information, a state could still note that an application was denied because of “history.” **2003 Proc. 1<sup>st</sup> Quarter 309.**

A regulator expressed concern with the ability for the expansion state insurance commissioner to receive information. Another regulator indicated that if one has an identification number known as an ORI, one has the authority to access the fingerprint report. Under federal statute, there is no ability to transfer. An expansion state would only be able to obtain the report if it has its own ORI. **2005 Proc. 2<sup>nd</sup> Quarter 258.**

#### Section 5. Regulations

The Working Group accepted comments on Pennsylvania’s suggestion to reference the administration of the Act. **2005 Proc. 4<sup>th</sup> Quarter 896.**

#### Section 6. Effective Date

The Working Group discussed suggested changes regarding the effective date of the model. A regulator made a motion to adopt the suggested change that would mandate that Subsection 3A and Section 4 would not become effective until a state participated in the centralized repository under Section 3. Several regulators did not support this motion. **2005 Proc. 2<sup>nd</sup> Quarter 711.**

The Group accepted Pennsylvania’s recommendation to include “This Act shall take effect [insert date].” **2005 Proc. 4<sup>th</sup> Quarter 896.**

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*Chronological Summary of Actions*

*June 2006: Model adopted.*