

## 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].

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

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

*1993 Proc. 2<sup>nd</sup> Quarter 12, 17, 24-26, 30, 101 (amended and reprinted).*

*1994 Proc. 3<sup>rd</sup> Quarter (amended and reprinted).*

*1999 Proc. 4<sup>th</sup> Quarter 15, 364, 369, 373-374 (amended).*

*2000 Proc. 4<sup>th</sup> Quarter 16, 17, 832, 965, 973-975 (amended and reprinted)*

## **DISCLOSURE OF MATERIAL TRANSACTIONS MODEL ACT**

**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.

<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Alabama	ALA. CODE § 27-2A-1 (1996).	
Alaska	ALASKA STAT. § 21.09.300 (1995).	
American Samoa	NO CURRENT ACTIVITY	
Arizona	NO CURRENT ACTIVITY	
Arkansas	ARK. CODE ANN. §§ 23-63-1401 to 23-63-1406 (1995).	
California	CAL. INS. CODE §§ 1185 to 1187 (1995).	
Colorado	COLO. CODE REGS. § 3-1-13 (1996/2006).	
Connecticut	CONN. GEN. STAT. §§ 38a-67 to 38a-67a (1995/1998).	
Delaware	18 DEL. CODE REGS. § 306 (1995/2003).	
District of Columbia	D.C. CODE §§ 31-1001 to 31-1003 (1996/2005).	
Florida	FLA. STAT. § 624.4435 (1997).	

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Georgia	GA. CODE ANN. §§ 33-54-1 to 33-54-3 (1995).	
Guam	NO CURRENT ACTIVITY	
Hawaii	HAW. CODE R. §§ 16-170-1 to 16-170-3 (1997/2009).	
Idaho	IDAHO CODE ANN. §§ 41-345 to 41-347 (1995/2004).	
Illinois	215 ILL. COMP. STAT. 5/141.4 (1995).	
Indiana	IND. CODE §§ 27-2-18-1 to 27-2-18-13 (1995).	
Iowa	IOWA CODE §§ 521D.1 to 521D.4 (1994).	
Kansas	KAN. STAT. ANN. §§ 40-2,156 to 40-2,159 (1994/1997).	
Kentucky	KY. REV. STAT. ANN. § 304.24-415 (1996).	
Louisiana	LA. REV. STAT. ANN. § 22:1451.3 (1995).	
Maine	ME. REV. STAT. ANN. tit. 24-A, § 423-C (1995).	
Maryland	NO CURRENT ACTIVITY	
Massachusetts	NO CURRENT ACTIVITY	
Michigan	MICH. ADMIN. CODE r. 500.51 to 500.54 (1996).	
Minnesota	MINN. STAT. §§ 60A.135 to 60A.137 (1995).	
Mississippi	MISS. CODE ANN. § 83-5-351 (1996).	

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Missouri	MO. CODE REGS. ANN. tit. 20, § 200-1.039 (1996).	
Montana	MONT. CODE ANN. §§ 33-3-701 to 33-3-704 (1995).	
Nebraska	NEB. REV. STAT. §§ 44-6301 to 44-6306 (1994).	
Nevada	NEV. ADMIN. CODE §§ 681B.300 to 681B.335 (1996/2002).	
New Hampshire	N.H. REV. STAT. ANN. §§ 403-C:1 to 403-C:3 (1996).	
New Jersey	N.J. STAT. ANN. §§ 11:1-39.1 to 11:1-39.6 (1995/2007).	
New Mexico	N.M. STAT. ANN. §§ 59A-34-44 to 59A-34-46 (1993).	
New York	NO CURRENT ACTIVITY	
North Carolina	N.C. GEN. STAT. §§ 58-10-55 to 58-10-65 (1996).	
North Dakota	N.D. CENT. CODE §§ 26.1-10.1-01 to 26.1-10.1-03 (1995/2003).	
Northern Marianas	NO CURRENT ACTIVITY	
Ohio	OHIO REV. CODE ANN. §§ 3901.67 to 3901.70 (1995/2002).	
Oklahoma	OKLA. STAT. tit. 36, §§ 310A.1 to 310A.3 (1997).	
Oregon	OR. ADMIN. R. 836-011-0430 to 836-011-0460 (1995).	
Pennsylvania		31 PA. CODE §§ 27.1 to 27.5 (1998).
Puerto Rico	NO CURRENT ACTIVITY	

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Rhode Island	R.I. GEN. LAWS §§ 27-56-1 to 27-56-4 (1995).	
South Carolina	S.C. CODE ANN. §§ 38-13-400 to 38-13-420 (1995).	
South Dakota	S.D. CODIFIED LAWS §§ 58-5-143 to 58-5-153 (1995/2000).	
Tennessee	NO CURRENT ACTIVITY	
Texas	TEX. INS. CODE ANN. § 21.49-8 (1995).	
Utah	UTAH CODE ANN. §§ 31A-5-701 to 31A-5-703 (1996).	
Vermont	VT. STAT. ANN. tit. 8, §§ 8101 to 8103 (1994).	
Virgin Islands	NO CURRENT ACTIVITY	
Virginia	VA. CODE ANN. § 38.2-1301.1 (1994/2001).	
Washington	WASH. REV. CODE ANN. §§ 48.05.510 to 48.05.900 (1995).	
West Virginia	W. VA. CODE §§ 33-39-1 to 33-39-4 (1996/2003).	
Wisconsin	NO CURRENT ACTIVITY	
Wyoming	WYO. STAT. ANN. §§ 26-3-401 to 26-3-403 (1994).	

## DISCLOSURE OF MATERIAL TRANSACTIONS MODEL ACT

### Proceedings Citations

Cited to the Proceedings of the NAIC

A working group was formed in the summer of 1991 to consider reporting by insurers of significant transactions and events. **1991 Proc. IIA 361.**

The group's charge was to develop a statutory reporting requirement similar to the Securities and Exchange Commission's (SEC) Form 8-K. It was determined that many of the SEC's Form 8-K requirements were currently addressed by other NAIC models or the annual statement instructions but there was a general lack of uniformity among the different states regarding the reporting of acquisition or disposition of assets, and it was agreed that some uniform standards should be established. **1992 Proc. IA 320.**

The group felt some urgency to complete its charge in a timely fashion because this project was incorporated into the 1991 solvency agenda as an important component of financial regulation. **1992 Proc. IA 222.**

After adoption of the model in December of 1992, the Financial Regulation Standards and Accreditation Committee considered whether to incorporate the model in the standards. A representative from an association stated that his association opposed including the current model in the standards, but had met with the chair of the group that had developed it and they had mutually agreed upon changes to the model. The chair noted that the changes included a confidentiality provision and added clarification as to which reinsurance agreements were affected. The chair said he had informally met with the drafters of the model and they had agreed with the changes. The Financial Regulation Standards Committee decided to return the model to the Executive Committee to make the changes. **1993 Proc. 1<sup>st</sup> Quarter 63.**

### Section 1. Report

The study group discussed the possibility of amending the annual statement instructions to include a uniform reporting rule. Several issues were identified that would have to be addressed in connection with development of this new provision: (1) Would companies be required to file only with their domiciliary state or with all states in which they are licensed? (2) How would the concept of significance be delineated in the language? (3) Does the NAIC have the legal authority to require this through the Annual Statement Instructions? **1992 Proc. IA 320.**

A. It was suggested that it would be appropriate to add reference to holding company information filings to the list of exempt filings in Section 1A. **1993 Proc. IA 303.**

One of the comments on Section 1 was that it was unclear as to whether the reports were required to be filed only with the state of domicile or all states where the company is licensed. The chair suggested changing "authorized to do business" in Section 1A to "domiciled." **1993 Proc. IA 303.**

As a result of an extensive fraud scheme uncovered in the late 1990s, a task force was established to gather input on possible improvements to regulatory programs and practices. One of the recommendations was to review the Disclosure of Material Transactions Model Act to determine whether significant reinsurance transactions should require prior notification or approval. **2000 Proc. 2<sup>nd</sup> Quarter 1075.**

Interested parties expressed concern that a justifiable regulatory desire to avoid a repeat of apparently fraudulent acts should not result in rules of general application that unduly interfered with the legitimate day-to-day transactions of law-abiding insurers and reinsurers. **2000 Proc. 3<sup>rd</sup> Quarter 1059.**

The charge to review the model arose out of concerns that there were significant reinsurance transactions by what turned out to be insurers controlled by perpetrators of fraud that were not reviewed and approved by regulators. **2000 Proc. 4<sup>th</sup> Quarter 969.**

One of the states with an insurer victimized by the fraud adopted new legislation addressing significant reinsurance transactions. The new language required prior written approval of the commissioner to enter into or modify a reinsurance treaty if the transaction equaled 50% of the insurer's surplus to policyholders. **2000 Proc. 4<sup>th</sup> Quarter 969.**

## DISCLOSURE OF MATERIAL TRANSACTIONS MODEL ACT

### Proceedings Citations

Cited to the Proceedings of the NAIC

#### Section 1A (cont.)

An interested party stated that the disclosure model as it existed applied only to material nonrenewals, cancellations or revisions of existing ceded reinsurance contracts and did not apply to new reinsurance contracts that otherwise met the materiality thresholds of Section 3. **2000 Proc. 4<sup>th</sup> Quarter 970.**

Regulators were urged by interested parties to balance the desire to avoid a repetition of the fraud against a proposed rule of general application that could increase costs for insurers. The interested parties pointed out that there was no evidence to suggest that there was a widespread pattern of similar transactions resulting in significant losses to other life insurers, and therefore no evidence to suggest that the problem is likely to reoccur. **2000 Proc. 4<sup>th</sup> Quarter 972.**

If, despite the recommendation of interested parties that no change be made, the task force still wanted to act, regulators were urged to require disclosure (but not prior approval) of material new ceded reinsurance agreements affecting in force life insurance business. **2000 Proc. 4<sup>th</sup> Quarter 972.**

The amendment added to Subsection A required disclosure but not approval of new reinsurance agreements. **2000 Proc. 4<sup>th</sup> Quarter 973.**

#### Section 2. Acquisition and Dispositions of Assets

A proposal was considered to add two reporting requirements to the draft: (1) significant changes in the insurer's reinsurance program, and (2) change in location of an insurer's offices. **1992 Proc. IIA 222.**

The proposal for inclusion of movement of the home office in the reporting requirements was later withdrawn. **1992 Proc. II 221.**

A. Before the model was added to the accreditation standards, several amendments were made. The word "related" was added to Subsection A to limit the acquisitions and dispositions described, and a phrase was added to limit the material transaction to one that is non-recurring and not in the ordinary course of business. **1993 Proc. 2<sup>nd</sup> Quarter 25.**

C. Paragraph (2) was revised to clarify the wording. The amendment was considered to be nonsubstantive. **1993 Proc. 2<sup>nd</sup> Quarter 25.**

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

Early comments received on the proposal included the expression of the desire to include reinsurance transactions in the model. After some discussion, the group reached a consensus that reinsurance would be covered as the proposal was drafted. However, the next draft contained specific language related to reinsurance. **1992 Proc. IA 319.**

In the proposal under consideration there was a requirement to disclose cancellations or revisions of ceded reinsurance programs. The group also discussed whether or not the provision related to reinsurance should have a threshold related to changes in surplus. It was decided that this model should have a threshold similar to the concept in the model on fronting under development by another working group. **1992 Proc. IIA 222.**

A. A paragraph was added when the model was amended in 1993 to refer specifically to the filing of the report. The change was considered to be nonsubstantive. **1993 Proc. 2<sup>nd</sup> Quarter 26, 28.**

In September 1994, the provisions of Section 3A and 3B were combined in one subsection which rearranged and clarified them. The drafters of the revisions said it improved the readability of the model without affecting the substantive content. **1994 Proc. 3<sup>rd</sup> Quarter 18, 47-48.**

In 2000 regulators decided to amend Paragraph (1) to add references to ceded reinsurance agreements and material new ceded reinsurance agreements affecting in force life insurance business. **2000 Proc. 4<sup>th</sup> Quarter 974.**

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Cited to the Proceedings of the NAIC

#### Section 3 (cont.)

B. Paragraph (2) was revised to clarify the wording. The amendment was considered to be nonsubstantive. **1993 Proc. 2<sup>nd</sup> Quarter 26, 28.**

The amendments considered in late 2000 also revised Subsection B to make reference to reinsurance agreements. **2000 Proc. 4<sup>th</sup> Quarter 974.**

#### Section 4. Confidentiality

The original model contained a paragraph on confidentiality, added to the original model as Section 1D, designed to respond to industry concerns. **1993 2<sup>nd</sup> Quarter 24.**

In March 1999 the NAIC president said there was a need to share information among state, federal and international regulators and to clarify existing law. He suggested charges for several NAIC committees to address freedom of information and subpoena efforts to obtain confidential information and documents and to achieve a coordinated approach that protects regulatory information. A technical group drafted language, which was forwarded to each of the groups drafting amendments to models. **1999 Proc. 1<sup>st</sup> Quarter 6, 10.**

A working group was appointed to review financial-related model acts and to revise, where necessary, the confidentiality sections of these models. **1999 Proc. 2<sup>nd</sup> Quarter 149.**

The main purposes for the new language were: (1) to solidify existing law on confidentiality of sensitive documents that were in the possession of the regulator; (2) to provide a strong platform for states to use in entering into confidentiality agreements with state, federal and international regulators; and (3) to keep sensitive regulatory information out of the hands of private civil litigants, thus preventing abuse of the discovery process. **1999 Proc. 2<sup>nd</sup> Quarter 150.**

A. A new Section 4 was added in 1999 to address the charge on confidentiality of information. The first sentence of the standard language said the documents, materials or other information should be confidential by law and privileged. This sentence received extensive attention and the wording was carefully chosen to provide the maximum protection for highly sensitive information. The drafters chose to include both “privileged” and “confidential” to ensure the preservation of any applicable legal privilege and to indicate a high degree of intent to protect the documents from public disclosure. Members of the group from various jurisdictions noted court rulings holding that omission of one or more words or phrases contained in that sentence could result in unintended disclosure. **1999 Proc. 4<sup>th</sup> Quarter 16.**

The working group had an extended discussion about whether it was appropriate to include the standard language referring to “documents, materials or other information.” The group agreed that its charge was not to expand the model language beyond what the model had originally maintained as confidential and agreed not to expand it. Thus the working group chose to refer to “reports” instead. **1999 Proc. 3<sup>rd</sup> Quarter 199.**

Late in the process Subsection A was amended to clarify that the provisions applied only to documents, materials or information in the possession or control of the Department of Insurance. Some industry commentators expressed concern that otherwise the provision might be misinterpreted to include information in the possession of a private entity that happened to have been shared with the Department of Insurance. **1999 Proc. 4<sup>th</sup> Quarter 16.**

B. In addition to the standardized language, a subsection was added giving the commissioner authority to make otherwise confidential reports public if the commissioner found that the information was in the best interests of the policyholders, shareholders or the public. **1999 Proc. 3<sup>rd</sup> Quarter 199.**

One regulator asked whether publication of such information would constitute an official act of the commissioner as contemplated in Subsection A, and thus this language would not be necessary. The chair responded that the language addresses specific publication of certain information and gives insurers specific rights in the case of possible publication. The working group agreed to insert the language. **1999 Proc. 3<sup>rd</sup> Quarter 199.**

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### Proceedings Citations

Cited to the Proceedings of the NAIC

#### Section 4 (cont.)

C. The drafters discussed whether confidentiality should apply to documents only, or instead to the broader phrase, “documents, materials or other information.” The broader language was chosen to protect not only information in tangible form, such as a paper document or a computer hard drive, but also information that may be personal knowledge. The group noted that the reason to choose the broader phrase was to avoid the situation where, for example, examination work papers were protected, but an attempt was made to take an oral deposition of an examiner that would reveal the same sensitive information. **1999 Proc. 4<sup>th</sup> Quarter 16.**

D. The question of the commissioner’s ability or discretion to disclose the confidential information received extensive discussion. The drafters expressed concern that the commissioner not be placed in the position of possessing crucial information but be unable to use it to carry out his or her duties. **1999 Proc. 4<sup>th</sup> Quarter 16.**

The provisions of Subsection D received extensive discussion on several occasions, particularly the provisions concerning the sharing of information with the NAIC, and its affiliates or subsidiaries. Regulators expressed a strong need to retain specific language in this area to ensure the ability of the NAIC to maintain confidential data for support of solvency, antifraud and other regulatory areas. The language referring to affiliates or subsidiaries was added to address the potential that one or more databases might be maintained by a related NAIC entity. **1999 Proc. 4<sup>th</sup> Quarter 16.**

E. Subsection E was added to clarify that persons providing information to the commissioner do not waive any existing privilege or confidentiality protection by doing so. This provision was added in response to industry comments. The paragraph was further amended to clarify that neither disclosing the information to the commissioner nor the transmission of the information by the commissioner to another regulator or law enforcement official would create a waiver. **1999 Proc. 4<sup>th</sup> Quarter 16.**

#### Section 5. Effective Date

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#### *Chronological Summary of Action*

*December 1992: Adopted model.*

*June 1993: Added Section 1D to address confidentiality issue and revised Section 2C and 3C to clarify reporting by a consolidated group of insurers.*

*September 1994: Technical amendments to Section 3 to aid readability.*

*January 2000: Added Section 4 to strengthen confidentiality provisions.*

*March 2001: Provisions added to require disclosure of a ceded reinsurance agreement.*