

IMPROPER TERMINATION PRACTICES MODEL ACT

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Section 1. Purpose

The purpose of this Act is to protect policyholders from improper terminations of insurance coverage and to set forth standards for the regulation and disposition of terminations of policies or certificates of insurance. Nothing in this Act shall be construed to create or imply a private cause of action for violation of this Act except that a named insured may appeal the termination of the named insured's policy pursuant to Section 16.

Section 2. Scope

This Act shall apply to all insurers issuing or renewing in this state any policy or certificate of insurance as defined in Section 3I.

Section 3. Definitions

For the purposes of this Act:

- A. "Cancellation" or "canceled" means the termination of a policy by an insurer prior to the expiration date of the policy.
- B. "Concealed or misrepresented a material fact or circumstance" means falsification or omission of a material fact that, had the insurer known the truth, it would not have insured the risk; would not have issued the policy; would have charged a higher premium, other than an incidental amount, for insuring the risk; or would not have issued a policy in as large an amount or under the same terms.

Drafting Note: States may wish to include the words "intentionally or knowingly" in the first sentence before the word "concealed" and modify a similar provision in Section 9B(2).

- C. "Improper termination" means a termination which violates any section of this Act or regulations promulgated thereunder.
- D. "Insurer" means a person, reciprocal exchange, interinsurer, Lloyd's insurer, or other legal entity licensed to engage in the business of insurance in this state.

- E. “Lapse” means a policy which expires by its own terms on the policy expiration date unless premiums are received by the insurer for succeeding policy periods on or before the policy expiration date.
- F. “Nonpayment of premium” means failure of the named insured to discharge, when due, any obligations in connection with the payment of premium. “Premium” means the payment that is due for a policy. “Premium” includes audit premium due on the preceding policy and additional premium due on retrospectively rated policies, but does not include membership dues or other consideration required to be a member of an organization in order to be eligible for the policy.
- G. “Nonrenewal” means the termination of a policy by an insurer at the expiration date of the policy.
- H. “Policy delivered or issued for delivery in this state” shall include but not be limited to all binders of insurance, whether written or oral, and all applications bound for future delivery.
- I. “Policy” or “certificate” means a contract of insurance, except allocated and unallocated annuities, life, accident and health, fidelity, suretyship, mortgage guaranty, boiler and machinery, reinsurance, umbrella if the underlying coverages have been terminated, ocean marine policies, dealers policies written as inland marine insurance under the Nationwide Inland Marine Definition and contracts of insurance procured pursuant to the excess and surplus lines laws of this state. For purposes of this Act, “policy” or “certificate” does not include contracts issued to a commercial insured having:
 - (1) Total insured property values of \$5 million or more;
 - (2) Total annual gross revenues of \$10 million or more; or
 - (3) Total annual premiums in excess of \$25,000 written under a single policy.

Drafting Note: States may wish to include a provision allowing the commissioner to adjust these amounts annually by regulation to reflect changes in the Consumer Price Index (CPI).

Drafting Note: States that have worker’s compensation laws addressing terminations may wish to exempt worker’s compensation from this Act. States may wish to exclude other coverages from the provisions of this model, including insurance on accounts receivable.

- J. “Producer” means a person who solicits, negotiates, effects, procures, delivers, renews, continues or binds policies of insurance to which this Act applies on risks residing, located or to be performed in this state.
- K. “Renewal” or “to renew” means the issuance and delivery by an insurer of a policy for the same or similar coverage superseding at the end of the policy period a policy previously issued and delivered by the same insurer or the issuance and delivery of a certificate or notice extending the term of a policy beyond its policy period or term. A policy shall not be considered “renewed” if the insurer imposes a substantial increase in deductibles or a substantial reduction in coverage at renewal.
- L. “Rescission” or “rescinded” means the unilateral action by an insurer to declare an insurance contract void from its inception as though it never existed.
- M. “Residual market mechanism” means an arrangement, either expressly authorized or mandated by law, involving participation by insurers in the equitable apportionment among them of insurance which may be afforded applicants who are unable to obtain insurance through the voluntary market.
- N. “Termination” or “terminated” means any practice or act by an insurer which has the effect of discontinuing an insurance policy including cancellation, nonrenewal, and rescission.

Section 4. Termination Provisions

- A. A policy shall not be delivered or issued for delivery in this state unless it contains provisions setting out the manner in which the policy may be terminated.
- B. If a policy or certificate is used as evidence of financial responsibility for a license or permit, and a statute or regulation requires that notice of termination of the policy or certificate be provided to the government agency that issued the license or permit, the time period for advance notice of the termination shall be the longer of the time period required by this Act or the time period required by the statute or regulation that establishes the financial responsibility requirement.

Drafting Note: Some states prohibit revealing the existence of arson or fraud investigations to persons who are targets of these investigations. In these states, it may be appropriate to modify the requirement that the termination notices required by this Act provide specific reasons for termination if there is information available for review by the commissioner alleging that the insured contributed to the loss by arson or fraud. The state may wish to allow a more general reason for the termination to be given in these situations.

Drafting Note: A state may require that the termination notices required by this Act also be provided in a language other than English where appropriate.

Section 5. Unfair Discrimination in Termination Provisions

- A. An insurer shall not terminate a policy because of the insured's race, color, creed, national origin, ancestry, gender, sexual orientation or marital status.
- B. An insurer shall not terminate a policy because of the insured's age or disability, or because of the geographic location or age of the insured risk, unless the action is the result of the application of sound underwriting and actuarial principles related to actual or reasonably anticipated loss experience.

Section 6. Termination of Lines of Insurance

An insurer shall not terminate all or substantially all of a line of the insurer's business for the purpose of withdrawing from a market in this state without notifying the commissioner of the action, as well as the reasons for the action, at least one year before the termination of any policy due to the withdrawal is effective, unless the insurer has filed a plan of action for the orderly cessation of the insurer's business within a shorter time period and received approval from the commissioner.

Section 7. Rescission

Nothing in this Act limits an insurer's right to rescind a policy if an insured or an applicant for insurance has intentionally or knowingly concealed or misrepresented a material fact or circumstance concerning the risk assumed by the insurer. However, a policy or policy renewal shall not be rescinded after the policy has been in effect for 180 days or one policy period, whichever is greater.

Section 8. Notice of Cancellation

- A. A notice of cancellation shall not be effective unless mailed or delivered by the insurer to the first named insured's last known address. The information contained on the notice of cancellation shall also be either mailed, delivered or electronically transmitted to the producer of record's last known address. The insurer shall maintain proof of mailing of the notice to the first named insured's last known address.
- B. All notices of cancellation of insurance shall be mailed or delivered at least thirty (30) days prior to the effective date of cancellation during the first sixty (60) days of coverage. After the coverage has been effective for sixty-one (61) days or more, or if the policy is a renewal, all notices shall be mailed or delivered at least forty-five (45) days prior to the effective date of cancellation. However, where cancellation is for one of the reasons permitted in Sections 9B or 9C, at least ten (10) days notice of cancellation shall be given. All notices shall clearly state the specific reason or reasons for cancellation.

Section 9. Cancellation—Reasons

- A. After a policy has been in effect for sixty (60) days or more, or if the policy is a renewal, it may be canceled with forty-five (45) days notice, for one or more of the following reasons:
- (1) An insured violated any terms or conditions of the policy to the detriment of the insurer;
 - (2) The risk originally accepted has increased, and, if the increased risk had been present at the time the policy was originally issued, the insurer would have increased the premium originally charged, other than an incidental amount, or declined to issue the policy;
 - (3) A determination by the commissioner that continuation of the policy would threaten the financial solvency of the insurer;
 - (4) A determination by the commissioner that the continuation of the policy could place the insurer in violation of the insurance laws of this state; or
 - (5) The failure to repair or rehabilitate an insured property or relevant portion thereof within a reasonable period of time as required in Section 10.
- B. After a policy has been in effect for sixty (60) days or more, or if the policy is a renewal, it may be canceled with ten (10) days notice, for one or more of the following reasons:
- (1) Nonpayment of premium;
 - (2) The policy was obtained because an insured concealed or misrepresented a material fact or circumstance;
 - (3) With regard to a policy of automobile insurance, the driver's license of any insured or any driver who lives with the insured or who customarily uses a covered vehicle has been suspended or revoked or is under a suspension or revocation for moving violations at any time during the twelve-month period immediately preceding the notice of cancellation; or

Drafting Note: States with named driver exclusion laws or provisions may wish to include a similar provision in this subsection.

- (4) Fraud in the submission of a claim.

Drafting Note: If there are provisions in other statutes setting forth other prohibited reasons for cancellation and a state wishes to continue those other prohibited reasons, reference to those provisions should be made in this subsection so that cancellations based on these other prohibited reasons will be subject to the procedures of this Act.

- C. In addition to the reasons stated in Sections 9B(1), (2) and (4), a property insurance policy, or a policy renewal, may be canceled with ten (10) days notice if the insured property is found to have one or more of the following conditions:
- (1) Permanent repairs have not commenced within sixty (60) days after satisfactory adjustment of a loss, unless the delay is beyond the insured's control or the failure to repair does not increase the risk assumed;
 - (2) Buildings that have been unoccupied sixty (60) consecutive days, or vacant thirty (30) consecutive days, except buildings that have a seasonal occupancy, buildings that are actively advertised as "for rent," or buildings that are undergoing construction, repair or reconstruction, and are properly secured against unauthorized entry;
 - (3) Buildings on which, because of their physical condition, there is an outstanding order to vacate or an outstanding demolition order; or that have been declared unsafe in accordance with applicable law; or

- (4) The risk originally accepted has increased to the degree that it would have increased the premium charged, other than an incidental amount, or affected the insurer's decision to issue the policy.
- D. During the first sixty (60) days of a policy, the policy shall not be canceled for the reason that the insured has made a valid claim.

Section 10. Time for Repairs or Rehabilitation Prior to Cancellation

Notwithstanding Section 9, after a property insurance policy covering property that is capable of being repaired or rehabilitated has been in effect for sixty-one (61) days or more, except in the situation of a constructive total loss, an insurer shall not give notice of cancellation based on the condition of the property without allowing the first named insured a reasonable period of time in which to repair defects in the insured property or relevant portion of the property. The repair or rehabilitative efforts shall be in compliance with applicable local building codes. The notice of need for repair or rehabilitation shall be from the insurer and shall be itemized and specific with regard to the defect to be repaired and the time period in which to complete the repairs. The notice may be sent to the first named insured at any time during the policy term.

Section 11. Refund of Premium Upon Cancellation

- A. A policy shall not be canceled on other than a pro-rata basis unless the policy form provides for another basis.
- B. A producer shall not recommend, suggest or advise the insured to request cancellation of any policy, if the request will cause the policy to be canceled on other than a pro-rata basis, unless the producer first advises the insured in writing of the additional cost of the cancellation.

Section 12. Notice of Renewal or Nonrenewal

- A. At least forty-five (45) days before the end of the policy term, an insurer shall mail or deliver to the last known address of the first named insured a renewal policy, an offer to renew the current policy or a notice of nonrenewal. The information in the renewal policy, the offer to renew or the notice of nonrenewal shall be mailed, delivered or transmitted electronically to the producer of record's last known address. Proof of mailing or delivery to the first named insured's last known address shall be maintained by the insurer.
 - (1) A notice of nonrenewal shall clearly state the specific reason or reasons for the nonrenewal.
 - (2) An offer to renew the policy shall state the renewal premium and the date the premium is due. The renewal premium shall be based on the known exposure as of the date of the offer to renew. The premium on the renewal policy may be subsequently amended to reflect any change in exposure not considered in the offer to renew.
 - (3) If the renewal premium is not received by the due date or the policy expiration date, whichever is later, the policy lapses.
- B. If an insurer fails to comply with the notice requirements of this section, the policy shall be extended on the same terms and conditions for another policy term or until the effective date of similar insurance procured by the insured, whichever is earlier. The insurer may make continued coverage contingent upon the payment of premium.
- C. Any policy with a policy period or term of less than six (6) months or any policy with no fixed expiration date shall be considered as if written for successive policy periods or terms of six (6) months for the purpose of any nonrenewal or renewal notice required by this Act.
- D. Renewal of a policy does not constitute a waiver or estoppel with respect to grounds for cancellation that existed before the effective date of the renewal.

- E. A written binder of insurance issued for a term of sixty (60) days or less, which contains on its face a specific inception and expiration date and which has been furnished to the insured, shall not be subject to the nonrenewal requirements of this Act.
- F. An insurer shall not fail to renew a policy that has been in effect for at least five (5) years unless:
 - (1) The nonrenewal is based on at least one of the reasons set forth in Section 9 of this Act; or
 - (2) A notice of nonrenewal is mailed or delivered to the last known address of the first named insured at least ninety (90) days before the end of the policy term, subject to all other provisions in this Section.

Section 13. Liability of Insurers or Producers Regarding Statements Made in Notices or Information

- A. For a communication giving notice of or specifying the reasons for a termination or for any statement made in connection with an attempt to discover or verify the existence of conditions that would be a reason for a termination under this Act, there shall be no liability on the part of and no cause of action shall arise against:
 - (1) An insurer or its authorized representatives, producers or employees;
 - (2) A licensed insurance producer or broker; or
 - (3) A person furnishing information to an insurer as to reasons for a termination or declination.
- B. Subsection A of this section shall not apply to statements not made in good faith.

Section 14. Notice to Insured as to Eligibility for Residual Market Mechanism Coverage

- A. If a policy is canceled for a reason other than nonpayment of premium or is nonrenewed, and similar coverage is available through a residual market mechanism in this state, the insurer shall notify the first named insured of the insured's possible eligibility for insurance from the residual market mechanism.
- B. The notice required by Subsection A of this section shall accompany or be included in the notice of cancellation or nonrenewal.
- C. If the residual market mechanism limits its operations to a geographic area or areas within this state, the notice required by Subsection A of this section shall not be required if the risk is not located in the geographic area or areas served by the residual market mechanism.

Section 15. Notice; Right to Appeal

Insurers shall include a statement prominently displayed in bold-face type on all notices of termination advising the insured of the insured's right to appeal the termination to the commissioner.

Section 16. Improper Termination—Appeal

- A. A policy that has been canceled for one or more of the reasons permitted by Section 9A or nonrenewed may be appealed by the named insured by giving written notice to the commissioner at least twenty-five (25) days prior to the effective date of the termination. The notice shall clearly state the reason or reasons for the appeal.
- B. A policy that has been canceled for one or more of the reasons permitted by Section 9B or 9C may be appealed by the named insured by giving written notice to the commissioner prior to the effective date of the cancellation. The notice shall clearly state the reason or reasons for the appeal.

- C. If a named insured timely appeals the termination of a policy, coverage under that policy shall remain in effect until the effective date specified in the order entered by the commissioner in the matter, pursuant to Section 16E or 16F. Coverage shall only remain in effect, however, so long as the named insured pays the premium due on the policy.
- D. The commissioner may decide not to hold a hearing if the commissioner determines:
 - (1) The appeal was not made in good faith;
 - (2) There is no violation of the Act even if the facts alleged by the named insured to support the appeal are true; or
 - (3) The notice of termination, on its face, does not comply with the provisions of the Act.
- E. If the commissioner does not hold a hearing, the commissioner shall issue a written order within ten (10) days after receipt of the named insured's appeal that decides the matter.
- F. If the commissioner decides to hold a hearing, the hearing shall be held within twenty (20) days after receipt of the named insured's appeal. The commissioner shall give the parties at least ten (10) days notice of the hearing. Within twenty (20) days after the conclusion of the hearing, the commissioner shall issue a written order that decides the matter.
- G. When the commissioner issues a written order that decides an appeal, if the commissioner finds for the named insured, the commissioner shall order the insurer to rescind its notice of termination. If the commissioner finds for the insurer, the commissioner shall order that the termination be effective:
 - (1) Twenty (20) days from the date of the order, when the policy was canceled for one of the reasons permitted by Section 9A or nonrenewed; or
 - (2) Ten (10) days from the date of the order when the policy was canceled for one of the reasons permitted by Sections 9B or 9C.
- H. Costs of the hearing may be assessed against the losing party but shall not exceed \$50.

Section 17. Proof of Mailing

- A. Unless expressly otherwise provided, a notice of termination required to be given to a person by this Act may be given by mailing notice, postage prepaid, addressed to the person to be notified, at the person's last known address.
- B. Where proof of mailing of notice to a person is required, the following constitute proof of mailing:
 - (1) A true copy of the notice mailed which may be a physical duplicate of the original notice reproduced through photocopy, carbon copy or generation from electronic records;
 - (2) A declaration made under penalty of perjury (as defined in Section [insert section] of the Code) attesting to the accuracy of the copy; and
 - (3) One of the following evidencing that notice was mailed:
 - (a) A declaration made under penalty of perjury (as defined in Section [insert section] of the Code) or an affidavit (as defined in Section [insert section] of the Code) executed by the person who deposited the notice into the mail, setting forth the date notice was mailed and the name and last known address of the person to whom notice was mailed;

- (b) A document or list of mailed letters setting forth the date notice was mailed and the name and last known address of the person to whom notice was mailed, accompanied by either a declaration made under penalty of perjury (as defined in Section [insert section] of the Code) or an affidavit (as defined in Section [insert section] of the Code) executed by the person who deposited the notice into the mail, attesting to the accuracy of the document;
- (c) A United States Certificate of Mailing (U. S. Post Office Form 3817 or 3877) for the notice mailed;
- (d) A United States Postal Service certified mailing receipt, signed by or on behalf of the person to whom the notice is addressed; or
- (e) An evidence of receipt by or on behalf of the person to whom the notice is addressed from a reputable mail delivery service.

Section 18. Improper Termination Practice—Definition; Hearing

- A. It is an improper termination practice for any insurer to commit any acts in violation of this Act that are:
 - (1) Committed flagrantly and in conscious disregard of this Act or any rules promulgated under this Act; or
 - (2) Committed with such frequency as to indicate a general business practice to engage in that type of conduct.
- B. Whenever the commissioner finds that an insurer doing business in this state is engaging in any improper termination practice as defined in Section 18A and that a hearing on the matter would be in the public interest, the commissioner shall issue and serve upon the insurer a notice of hearing, which shall contain a statement of charges, a location for the hearing, and a hearing date that shall be not less than ten (10) days nor more than twenty (20) days from the date of the notice.

Section 19. Improper Termination Practice—Penalty

- A. If, after a hearing pursuant to Section 18 of this Act, the commissioner finds that the insurer has engaged in an improper termination practice, the commissioner shall reduce the findings to writing and shall issue and cause to be served upon the insurer charged with the violation, a copy of the findings and an order requiring the insurer to cease and desist from engaging in the act or practice and the commissioner may, at the commissioner's discretion, order one or both of the following:
 - (1) Payment of a civil penalty of not more than \$1,000 for each violation, but not to exceed an aggregate civil penalty of \$100,000, unless the violation was committed flagrantly and in conscious disregard of this Act, in which case the civil penalty shall not be more than \$25,000 for each violation not to exceed an aggregate civil penalty of \$250,000; or
 - (2) Suspension or revocation of the insurer's license if the insurer knew or reasonably should have known that it was in violation of this Act.

Section 20. Separability Provision

If any provision of this Act, or the application of the provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of the provision to person or circumstances other than those as to which it is held invalid, shall not be affected.

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

1995 Proc. 3rd Quarter 5, 19, 143, 155-161 (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	NO CURRENT ACTIVITY	
Alaska	NO CURRENT ACTIVITY	
American Samoa	NO CURRENT ACTIVITY	
Arizona	NO CURRENT ACTIVITY	
Arkansas	NO CURRENT ACTIVITY	
California		CAL. INS. CODE § 481.5 (1976/2006).
Colorado	NO CURRENT ACTIVITY	
Connecticut	NO CURRENT ACTIVITY	
Delaware	NO CURRENT ACTIVITY	
District of Columbia	NO CURRENT ACTIVITY	
Florida	NO CURRENT ACTIVITY	
Georgia	NO CURRENT ACTIVITY	
Guam	NO CURRENT ACTIVITY	
Hawaii	NO CURRENT ACTIVITY	

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Idaho	NO CURRENT ACTIVITY	
Illinois	NO CURRENT ACTIVITY	
Indiana		IND. CODE §§ 27-1-31-1 to 27-1-31-3 (1987/2003).
Iowa	NO CURRENT ACTIVITY	
Kansas	NO CURRENT ACTIVITY	
Kentucky	NO CURRENT ACTIVITY	
Louisiana	NO CURRENT ACTIVITY	
Maine	NO CURRENT ACTIVITY	
Maryland	NO CURRENT ACTIVITY	
Massachusetts	NO CURRENT ACTIVITY	
Michigan		MICH. ADMIN. CODE r. 500.1514 (1981).
Minnesota	NO CURRENT ACTIVITY	
Mississippi	NO CURRENT ACTIVITY	
Missouri	NO CURRENT ACTIVITY	
Montana	NO CURRENT ACTIVITY	
Nebraska	NO CURRENT ACTIVITY	
Nevada	NO CURRENT ACTIVITY	
New Hampshire	NO CURRENT ACTIVITY	
New Jersey		N.J. ADMIN. CODE § 11:1-20.2 (1985/2006); §§ 11:2-29.1 to 11:2-29.10 (1991/2005); § 11:1-20.7 (1987/2006).
New Mexico	NO CURRENT ACTIVITY	

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
New York	NO CURRENT ACTIVITY	
North Carolina	NO CURRENT ACTIVITY	
North Dakota	NO CURRENT ACTIVITY	
Northern Marianas	NO CURRENT ACTIVITY	
Ohio	NO CURRENT ACTIVITY	
Oklahoma	NO CURRENT ACTIVITY	
Oregon		OR. REV. STAT. § 84.070 (2001/2014) (electronic cancellations); OR. ADMIN. R. 836-085-0010 to 836-085-0045 (1985/2005).
Pennsylvania	NO CURRENT ACTIVITY	
Puerto Rico	NO CURRENT ACTIVITY	
Rhode Island		R.I. GEN. LAWS §§ 27-29-17 to 27-29-17.4 (2003) (commercial lines).
South Carolina		S.C. CODE ANN. §§ 38-75-1110 to 38-75-1240 (2005).
South Dakota	NO CURRENT ACTIVITY	
Tennessee	NO CURRENT ACTIVITY	
Texas		TEX. INS. CODE ANN. § 551.113 (2005/2013).
Utah	NO CURRENT ACTIVITY	
Vermont	NO CURRENT ACTIVITY	
Virgin Islands	NO CURRENT ACTIVITY	
Virginia		VA. CODE ANN. § 38.2-231 (1986/20015); § 38.2-2114 (1991/2013).

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Washington	NO CURRENT ACTIVITY	
West Virginia	NO CURRENT ACTIVITY	
Wisconsin	NO CURRENT ACTIVITY	
Wyoming	NO CURRENT ACTIVITY	

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Proceeding Citations

Cited to the Proceedings of the NAIC

A small group of regulators was assigned the task of incorporating provisions for cancellation or termination of property and casualty insurance policies into the Unfair Trade Practices Act. The chair reported that the group had done its best, but the group was concerned that trying to incorporate the provisions in the Unfair Trade Practices Act might be inappropriate. The provisions drafted by the group related to improper termination practices and prescribed that companies comply with specific requirements related to the methods and procedures they used when terminating a policy and called for specific methods of redress where companies failed to comply. **1993 Proc. 2nd Quarter 171.**

The chair of the drafting group noted that the Unfair Trade Practices Act defined specific practices whereby a company's failure to comply constituted an unfair trade practice. The drafting group members agreed that there was a need to separate improper termination provisions from the Unfair Trade Practices Act to create a clear distinction between these related, yet specifically different, issues and to focus on consumer treatment and market practices of insurers. Therefore, the group recommended that the parent committee request a new charge to study and make recommendations regarding the development of an NAIC Improper Termination Practices Model Act for property and casualty insurance. **1993 Proc. 2nd Quarter 171.**

One regulator expressed his concern over including language for improper termination practices provisions in the Unfair Trade Practices Act, where it could conflict with other state laws on terminations. He stated that the Unfair Trade Practices Act should provide a mechanism for authorizing termination laws within states and establish an enforcement mechanism that provided penalties for violation of such laws. However, he did not believe that the specific improper termination practices should be included in the Unfair Trade Practices Act. The chair expressed his agreement and added that there had previously been a recommendation for development of a separate improper termination practices model act, but that the Executive Committee had not given the parent committee a charge to develop these practices as a separate model because of the concern over the inclusion of life and accident and health insurance termination practices within it. **1993 Proc. 2nd Quarter 210.**

The chair noted that prior to 1990 the Unfair Trade Practices Act had included provisions related to unfair claims settlement practices. However, the NAIC separated provisions dealing with unfair claims settlement into a new Unfair Claims Settlement Practices Model Act in June 1990 to clarify the distinction between general unfair trade practices and more specific unfair claims settlement issues and to focus on market conduct practices and market conduct regulation. He indicated that, for a similar reason, there was a need to keep separate the provisions related to improper termination practices. **1993 Proc. 2nd Quarter 211.**

The chair reported at the next quarterly NAIC meeting that the Executive Committee gave approval to separate improper termination practices provisions from the NAIC Unfair Trade Practices Model Act and to develop a separate Improper Termination Practices Model Act. **1993 Proc. 3rd Quarter 129.**

The model was adopted by the parent committee in March 1994, but when it came up for consideration by the Executive Committee, the chair of the committee requested that the model be returned to the committee for further technical changes. **1995 Proc. 1st Quarter 52.** Adoption by the entire membership took place after several rounds of technical amendments. **1995 Proc. 3rd Quarter 19.**

Section 1. Purpose

A consumer representative suggested that Section 1 should indicate that the purpose of the Act was to protect consumers. The drafting group agreed to add language to indicate also that the purpose was to protect policyholders from improper terminations of insurance coverage. **1994 Proc. 2nd Quarter 175.**

The drafters agreed to move the sentence that stated, "Nothing herein shall be construed to create or imply a private cause of action for violation of this Act" to Section 1 of the model as was done in the NAIC Unfair Trade Practices Model Act. A consumer advocate stated that this sentence should not be included in the model act at all because consumers should be allowed to bring a private cause of action in the event that they had been improperly terminated. She added that allowing a private cause of action was a strong tool for consumers to ensure companies adhered to the requirements of the Act. The chair indicated that regulators have the responsibility to take actions against companies for violations of the Act, but individuals should not be able to file suits for individual termination violations. **1993 Proc. 4th Quarter 142.**

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Section 1 (cont.)

An interested party expressed his concern over including reference to the private cause of action in this section. He explained that this sentence inappropriately duplicated a similar provision in the Unfair Trade Practices Act and that, since this model was structurally differently from the Unfair Trade Practices Act, the private cause of action issue required different treatment. **1994 Proc. 1st Quarter 145.**

A state consumer advocate stated her desire to remove the reference to the private cause of action. She indicated the deletion was needed because consumers still would take action but they would do so by filing lawsuits against the state rather than a direct private cause of action against the company. The chair suggested modifying the language in this section to indicate that there was a specific right under Section 16 of the model for insureds to appeal individual terminations to the commissioner and seek redress. NAIC staff noted that this was an issue where some states might take a different position since the insurance policy represented a contract between the company and the insured. Insureds were being told that their only remedy was an administrative hearing and that they could not go to court to have the contract enforced. **1994 Proc. 2nd Quarter 175.**

A consumer advocate added that a tension or conflict existed in the model and asked why the model should only allow the commissioner to enforce the provisions when the consumer should be allowed to take action on his or her own. The state advocate added that consumers could move faster than the commissioner in situations where it was clear that the company was not complying with the contractual provisions of the policy. After further discussion, the group agreed to incorporate the chair's recommended change to indicate that the named insured could appeal the termination of the policy pursuant to Section 16 of the model. Another regulator stated that his state believed that the draft should be silent with regard to the private cause of action and that individual states should decide whether to incorporate it or not. **1994 Proc. 2nd Quarter 175.**

A regulator said that his state did not believe that the Act provided adequate protection for the consumer and suggested that the Act specifically allow for a private cause of action. Another regulator added that each state would have to decide when it adopted the model whether it wished to remain silent on the private cause of action or specifically allow for it. The chair indicated that the Act allowed for individuals to appeal the termination of their policies and that, in the event that a policy was improperly terminated, the individual would have the policy in force. **1994 Proc. 3rd Quarter 209.**

The issue of a private cause of action continued to be raised. At a later meeting a regulator recommended that the statement be removed or be put in a drafting note so that states could determine independently whether they wish to include such a provision. The chair indicated that the statement was consistent with a similar provision in the NAIC Model Unfair Trade Practices Act and suggested that the statement remain in the model. A consumer advocate responded that leaving the statement in the model sent a message that the NAIC had made a determination that a private cause of action should not be allowed. She indicated that such a determination should be left to the states' discretion. The chair responded that the purpose of drafting the Improper Termination Practices Model Act was to provide a mechanism for regulators to regulate insurer termination practices and that to infer that a private cause of action would be allowed under the model would not be an appropriate method of regulating. He indicated that the model allowed regulators to reverse an improper termination action taken by a company without treating it as a business practice. A regulator also indicated his desire to remove this sentence from Section 1. A motion to remove the provision from Section 1 failed. **1994 Proc. 4th Quarter 202.**

Section 2. Scope

When discussion on the model first began, interested parties suggested exclusions for specific lines. One trade association representative indicated that several of her member companies were specialty writers in the area of jewelry and furs and had requested that commercial inland marine insurance be exempted from the provisions. She also requested that references to workers' compensation insurance be removed since there were already workers' compensation laws that include termination provisions in force in many jurisdictions. **1993 Proc. 3rd Quarter 131.**

At a later drafting session, the group decided to remove the specific exceptions from this section and simply to reference the definition of policy in Section 3. **1994 Proc. 1st Quarter 145.**

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Section 2 (cont.)

A representative of a life insurance trade association stated that it had been her understanding that this model was only to apply to property and casualty insurance, but it appeared that the provisions of several sections applied to other companies as well because the definition of “insurer” did not exclude life, accident and health and other non-property and casualty companies. She suggested that the exemptions and the definition of “policy” or “certificate” also be incorporated into the definition of “insurer” to solve this dilemma. The chair responded that it was not the intent of the group that the model should include non-property and casualty insurers. **1994 Proc. 4th Quarter 195.**

Section 3. Definitions

During the drafting process, the definitions of “policy of automobile insurance,” “policy of fire and extended coverage insurance” and “all other policies of personal lines” were deleted. These definitions were needed when the model distinguished between personal and commercial lines. **1994 Proc. 1st Quarter 145.**

B. A consumer advocate suggested that the group consider modifying the language in the definition of “concealed or misrepresented a material fact or circumstance” to qualify that the insurer would have charged a “significantly” higher premium for insuring the risk. After some discussion, the group agreed to indicate that the insurer “would have charged a higher premium, other than an incidental amount, for insuring the risk.” There was also a discussion regarding how the word “material” would be interpreted. It was agreed that because the model allowed the insured to appeal the termination, the circumstances and conditions under which insurers would use misrepresentation of a material fact would be subject to review at the hearing. **1994 Proc. 4th Quarter 202.**

G. The group agreed that a definition of “nonrenewal” or “to nonrenew” was needed to be consistent with other sections of the model. **1994 Proc. 1st Quarter 145.**

I. An interested party indicated that the draft model failed to include a definition of “policy.” Yet, in many sections of the model, the word policy was used. The chair agreed and indicated that he would develop a definition of “policy.” **1993 Proc. 3rd Quarter 131.**

The subgroup agreed to modify the definition of the policy to state that the “policy or certificate means any contract of insurance except allocated and unallocated annuities, life, accident and health, fidelity, suretyship, mortgage guaranty, boiler and machinery, reinsurance, excess and surplus lines, ocean marine policies and dealers’ policies written as inland marine insurance under the nationwide marine definition.” **1993 Proc. 4th Quarter 142.**

Attention was given to the recommendation that policies issued to large commercial insureds be exempted from the provisions of the model and, therefore, the definition of “policy” or “certificate” was modified to exclude policies issued to insureds having total insured property values of \$5 million or more, total annual gross revenues of \$10 million or more, or total annual premiums in excess of \$25,000 written under a single policy. A regulator suggested that a drafting note be added to allow the commissioner to adjust these amounts based on changes in the Consumer Price Index. **1994 Proc. 3rd Quarter 209.**

The drafting group agreed to insert in Subsection I a clarification that for purposes of the Act, policy or certificate did not include contracts issued to a “commercial” insured meeting the specific exemptions outlined in that section. This was done in order to clarify that where individual consumers had insured property values of \$5 million or more, annual gross revenues of \$10 million or more, or annual premiums of \$25,000 written under a single policy, the provisions of the Act would apply. **1994 Proc. 4th Quarter 202.**

An interested party stated that he had previously suggested that an exclusion be provided for “insurance on accounts receivable” because of the difficulty in complying with the provisions of the model related to that line of coverage. The chair suggested a drafting note at the end of Section 3I stating that “states may wish to exclude other coverages from the provisions of this model, including insurance on accounts receivable.” The group unanimously agreed to incorporate this drafting note. **1995 Proc. 1st Quarter 194.**

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Section 3I (cont.)

One participant expressed concern over the provisions of Section 3I because umbrella and admitted excess policies were only exempted from the provisions of the model in the event that the underlying coverages had been terminated. He stated that in several cases, particularly with large commercial insureds, it was possible that the insurer writing the excess or umbrella coverage had no notice of the termination of the underlying coverages. He believed that insurers would like the opportunity to issue a conditional notice of nonrenewal to these insureds, stating that the excess or umbrella coverages would only be renewed as long as the underlying coverages remained in force. He also expressed concern over the applicability of this section to excess and umbrella policies issued over a self-insured retention. The chair reminded him that large commercial risks were exempted under the provisions in Section 3I. The group discussed the issue and it was agreed that most umbrella policies had as a condition of the policy the requirement that underlying coverages must remain in force and that those provisions of the contract, along with the Section 3I exclusion, should protect insurers. **1995 Proc. 1st Quarter 195.**

K. An interested party requested that the definition of “renewal” or “to renew” include language to allow policies renewed with or transferred to an affiliated insurer to qualify as a renewal. After some discussion, the subgroup decided not to change this definition because of concerns that blocks of business would be moved from one insurer to another without any notice to the consumer. A regulator also expressed concern over the differences in service levels between affiliated companies within the same group. **1994 Proc. 1st Quarter 145.**

A state consumer advocate suggested that the definition of “renewal” needed to be clarified so that changes in deductibles or coverages that substantially altered the policy did not constitute a renewal of the same or similar coverage. The subgroup agreed to incorporate this recommendation. **1994 Proc. 2nd Quarter 176.**

A representative of an insurance trade association indicated that the definition of “renewal” or “to renew” in Subsection K should allow insurers to transfer risks from one company to an affiliate company. The chair stated that this had been discussed previously and the practical problem with this recommendation was that the insurance commissioner did not have the authority to say that contract law did not apply to insurance contracts. Essentially, insureds should be given notice when their insurance contracts were terminated and, by transferring the policy to an affiliated company, the insurer was in effect terminating one contract and issuing another contract. The group agreed that the insured should be given notice when an insurer took this type of action. **1994 Proc. 3rd Quarter 209.**

Section 4. Termination Provisions

Early in the drafting, there was significant discussion concerning the standards for citing a company for engaging in an improper termination practice. There was also concern over how to establish these provisions so that individual improper terminations as well as improper termination practices could be addressed. **1993 Proc. 4th Quarter 142.**

Section 4 had previously referenced cancellation provisions and the group agreed that it should be modified to reference termination provisions since terminations included cancellations, nonrenewals, lapses or rescissions. **1994 Proc. 2nd Quarter 176.**

NAIC staff pointed out that during a prior drafting session, the provision regarding evidence of financial responsibility was moved to Section 8 where it would apply only to cancellation notices. He indicated that the requirement should apply to both cancellations and nonrenewals. After discussion, the group agreed to move this provision to Section 4 where it would apply to all terminations. **1994 Proc. 4th Quarter 202.**

Section 5. Unfair Discrimination in Termination Provisions

Section 9 of the model outlined permitted reasons for cancellation of a policy. The drafters agreed to separate the provisions that referenced reasons that were generally prohibited under the Unfair Trade Practices Act from the other provision of this section. Therefore, a new Section 5 entitled “Unfair Discrimination in Termination Provisions” was added. A consumer advocate suggested that this section also prohibit terminations on the basis of age or disability, or on the basis of geographic

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Section 5 (cont.)

location or age of the insured risk. The drafting group agreed to do so in order to recognize that these factors could still be considered when viewing the overall risk, but that a policy was not to be terminated “solely” for one of these reasons. **1994 Proc. 2nd Quarter 176.**

A. There was some discussion regarding why sexual orientation was added to the model because all the other unfair discrimination provisions mirror those in the NAIC Unfair Trade Practices Act and sexual orientation was not in that model. The chair stated that perhaps some consideration should be given to adding sexual orientation to the unfair discrimination provisions in the Unfair Trade Practices Act. He suggested that it be left in this model and a recommendation made to the parent committee that it give consideration to incorporating sexual orientation into the unfair discrimination provisions in the Unfair Trade Practices Act. **1994 Proc. 3rd Quarter 210.**

At the group’s next meeting, the chair stated that the drafting group identified one issue of controversy that its parent committee needed to address. The drafters incorporated the requirement that insurers could not terminate a policy because of the insured’s sexual orientation. He stated that the inclusion of sexual orientation was unique to the Improper Termination Practices Model Act and that during its discussions the group agreed that other NAIC models including unfair discrimination provisions also should be modified to incorporate such a provision, out of concern that the NAIC be consistent in the provisions in its model acts. **1994 Proc. 3rd Quarter 201.**

B. A consumer advocate indicated that the word “solely” should be removed from Subsection B because it was extraneous and could potentially cause confusion. Mr. Rogers responded that the problem with removing “solely” would be that the group’s intent was to allow for companies to consider age, disability, geographic location or age of the insured risk in its termination decisions if other factors also were considered. He stated that the intent was that insurers could not terminate *solely* for those reasons. The consumer advocate responded that he understood the group’s intent, but believed that the inclusion of the word still caused problems. **1994 Proc. 2nd Quarter 174.**

Section 6. Termination of Lines of Insurance

Modifications to the draft were made to clarify that “terminate any line of insurance” meant termination of all or substantially all of any type of an insurers’ business for the purpose of withdrawing from the market in the state. A drafting note was inserted suggesting that states needed to clarify whether insurers withdrawing were required to file an orderly plan of withdrawal with the commissioner. **1994 Proc. 2nd Quarter 176.**

A representative from an insurance trade association expressed her concern over the provisions of Section 6 and wondered why the provision was even included in the model. She said that the section offended insurance companies and that if the group kept the provision in the model, it would be necessary to define what “a market” meant in the context of terminating any line of insurance. The chair responded that there was a definite need to have a provision to prohibit companies from terminating all or substantially all of any type of business being written without providing notification to the insurance commissioner. He added that the model contained a corrective action under which the commissioner could disallow the termination in the event that the insurer failed to comply with the withdrawal provision. The interested party responded that she did not believe that it was appropriate to include this provision in the model but that, if the group wished to develop a separate withdrawal model, her organization would be willing to work on it. **1994 Proc. 2nd Quarter 174-175.**

There was discussion regarding the appropriateness of including Section 6 in the model and the time period allowed for notice. The chair clarified that the purpose was so regulators had the ability to require that when an insurer terminated lines of business improperly in an effort to withdraw from writing that line of business, all the policies that were terminated were improper terminations and were subject to the provisions of the Act. He added that, in situations where there was a substantial market disruption, the 180-day notices gave regulators an opportunity to fashion solutions. The language was modified to clarify the intent of the group regarding notification to the commissioner in the event that an insurer sought to withdraw from writing any line of business. **1994 Proc. 3rd Quarter 209.**

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Section 6 (cont.)

The chair indicated that this section would allow an insurer to notify the commissioner 180 days prior to the termination of any policy if the insured intended to withdraw from the market. He stated that, while responsible companies were filing orderly plans of withdrawal with the commissioner, he would prefer that this section require the approval of the commissioner as was previously stated in the drafting note to this section. A regulator expressed his concern over including this provision in the model and suggested that the approval of the commissioner not be required. The chair recommended a compromise provision whereby an insurer would not have to obtain the approval of the commissioner if terminations did not begin for at least one year but, if the insurer filed an orderly plan of withdrawal for a shorter time period, the approval of the commissioner would be required. The group agreed to modify this section to incorporate the chair's recommendation. Several interested parties stated their opposition to incorporation of any withdrawal provision in the model. **1994 Proc. 4th Quarter 202-203.**

Section 7. Rescission

A representative from the insurance industry stated that he had problems with a number of areas in the model, but particularly related to Section 7. He stated that the provisions in this section would make a property and casualty insurance policy incontestable after 60 days and that this became an invitation to fraud, particularly with regard to commercial lines of insurance. He stated that the existence of this provision as it applied to commercial coverage would result in increased fraud, which would significantly increase costs of insurance. He emphasized that an insurer's ability to rescind a policy served as a material disincentive to fraud in the commercial marketplace and urged the group to consider a carve-out for some of the more sophisticated commercial lines from the Act or from this section. **1994 Proc. 2nd Quarter 174.**

A regulator stated that he believed that an insurer should be allowed to rescind a policy only under the circumstance where the insured "intentionally or knowingly" concealed or misrepresented material facts or circumstances. He indicated that there was a fine line between intent to defraud on the part of the insured and unintentional failures to provide information. The chair added that there were two significant issues in this section. The first was the 90-day time frame under which a policy could be rescinded and the second was whether there was an intent to defraud. During discussion, several members of the group expressed a desire to extend the time period to one year or one policy period, whichever was less. Other members of the group felt that the 90-day time period was adequate as long as no declaration of intent was included. The group agreed to modify the language in this section to indicate that there must have been an intentional or knowing concealment or misrepresentation of facts and that the time period under which the policy could be rescinded would be 180 days or one policy period, whichever was greater. The chair added that it would be important to advise the parent committee that there was a difference of opinion on this issue and let that group decide this provision prior to adoption. **1994 Proc. 4th Quarter 203.**

An interested party expressed his disagreement with the provisions in Section 7 because he believed that at no time should an insured be able to benefit if he had concealed or misrepresented a material fact. Another interested party expressed her concern with the incorporation in Section 7 of the phrase "intentionally or knowingly," because she believed that the company should be able to rescind the policy under any circumstance where an insured concealed or misrepresented a material fact. **1994 Proc. 4th Quarter 195.**

When the model was moved up the parent committee, one commissioner requested a clarification regarding the provisions of Section 7 and Section 9B(2) with regard to concealment or misrepresentation. She expressed her concern that these provisions conflicted. The chair of the drafting group responded that, with regard to Section 7 governing rescissions, the working group had taken the position that after a policy was in effect for 180 days or one policy period, the company's ability to rescind should be limited. He indicated that the provisions of Section 9B(2) allowed insurers to cancel policies where the insured had concealed or misrepresented a material fact or circumstance. **1995 Proc. 1st Quarter 186.**

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Section 8. Notice of Cancellation

B. The chair of the parent committee stated that at the committee's meeting in June, several modifications were made to the Improper Termination Practices Model Act. Subsequent to that meeting, it was determined that two additional technical corrections were needed. He outlined the first error in Section 8B which related to the need to identify that the 10-day notice requirement referred to both Sections 9B and 9C. **1995 Proc. 3rd Quarter 169.**

Section 9. Cancellation—Reasons

A. An interested party indicated that the insurance industry continued to be concerned over the requirement for a 60-day notice of cancellation after the coverage has been effective for 60 days or more or if the policy was a renewal. She indicated that many states had a 30-day notice requirement. The chair stated that the group had discussed this issue at previous meetings and, while some states had a 30-day notice requirement, a more liberal 60-day notice requirement would provide the best consumer protection and allow consumers the time needed to shop for new coverage in the event of a cancellation. **1993 Proc. 4th Quarter 142.**

During the drafting process, several modifications were suggested for this section, including clarifying that one of the reasons allowed for cancellations would be that the risk originally accepted has increased to the degree that it would have affected the insurer's decision to underwrite the policy or the premium charged. In addition, The group discussed whether the fact that a building did not have heat, water, sewer or public lighting was a valid condition under which a policy could be canceled. The group agreed to modify the text to reflect that the risk originally accepted has increased to the degree that it would have affected the insurer's decision whether to underwrite the policy or the premium charged. **1994 Proc. 2nd Quarter 176.**

Several times during the drafting process, discussion took place on the amount of time to include in various provisions of the model. An interested party suggested that the group consider modifying the provisions of Section 9B to allow for 60 days notice. The chair responded that the group had previously considered a 60-day notice but had discussed this issue extensively and had agreed that 45 days for all termination notices would be appropriate. An interested party emphasized his concern that a longer time period was needed, particularly on commercial cancellations where the insured would need an extended time period to attempt to secure replacement coverage. **1994 Proc. 4th Quarter 203.**

B. A consumer representative remarked that he was concerned about the provision of Section 9B applying to any driver in the household. He indicated that he would like a named driver exclusion because the provision as written created hardships when the insurance policy was canceled because one driver in the household had a license suspension or revocation. The chair responded that this had been discussed previously and the group determined that it would be difficult to incorporate a named driver exclusion because courts had not traditionally upheld such exclusions. **1994 Proc. 2nd Quarter 174.**

A regulator pointed out that several states allowed for named driver exclusions and that insurers should not be allowed to cancel a policy because of the driving record of any one driver on the policy. The chair suggested that a drafting note be added to indicate that states with named driver exclusions should consider adding such a provision to this section. **1994 Proc. 3rd Quarter 210.**

A consumer advocate stated her concern that Section 9B(3) was too broad because there were many reasons under which a revocation or suspension of a driver's license could occur that were unrelated to the driving ability of the insured. After some discussion, the group agreed to modify this section to clarify that the provision applied when the license was under a suspension or revocation for moving violations at any time during the 12-month period immediately preceding the notice of cancellation. **1994 Proc. 4th Quarter 203.**

When the model was moved up the parent committee, one commissioner requested a clarification regarding the provisions of Section 7 and Section 9B(2) with regard to concealment or misrepresentation. She expressed her concern that these provisions conflicted. The chair of the drafting group responded that, with regard to Section 7 governing rescissions, the working group had taken the position that after a policy was in effect for 180 days or one policy period, the company's ability to rescind should be limited. He indicated that the provisions of Section 9B(2) allowed insurers to cancel policies where the insured had concealed or misrepresented a material fact or circumstance. **1995 Proc. 1st Quarter 186.**

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Section 9 (cont.)

C. An interested party indicated that in Section 9C, a valid reason for cancellation was when a building had been unoccupied for 60 consecutive days. She recommended that buildings that had been vacant for 60 consecutive days also be included. **1993 Proc. 3rd Quarter 131.**

The drafting group agreed that if an insured had been given an opportunity to repair or rehabilitate a property as required in Section 10 and failed to do so, the insurer should be allowed to cancel the policy. **1994 Proc. 1st Quarter 145.**

The group agreed that buildings that were being actively advertised as “for rent” would not qualify as vacant under provisions of this section and should be exempted. **1994 Proc. 4th Quarter 203.**

A regulator observed that Section 9C was drafted to be specific to property insurance policies, but that the provisions of Sections 9B(1), (2) and (4) also applied to property insurance policies. He expressed concern that by having separate provisions in Section 9C, someone might argue that the other provisions in Section 9B do not apply. He suggested that the model be modified to clarify that the provisions in Sections 9B(1), (2) and (4) also applied. The subcommittee agreed that this change should be made. **1995 Proc. 3rd Quarter 169.**

Section 10. Time for Repairs or Rehabilitation Prior to Cancellation

The drafting group considered an exception for situations where constructive total loss had occurred as recommended by an interested party and agreed to incorporate the exception into this section. **1994 Proc. 4th Quarter 204.**

An interested party indicated that the provisions of Section 10 that required insurers to provide the insureds with a reasonable period of time in which to repair defects could be a problem because “reasonable period of time” was not defined. A consumer advocate suggested that a minimum period of time be included in this provision. He suggested the “reasonable period” test be retained and that language to include a period of “not less than 90 days” be incorporated as the minimum reasonable period of time. A regulator opined that there may be some situations in which 90 days was too much time to give the insured to correct certain types of risk hazards and that in other cases 90 days may not be a sufficient amount of time for the insured to effectuate repairs. The chair asked whether Section 9C(4) would cover most situations where the condition was so hazardous that it modified the risk that was originally assumed by the insurer. It was agreed that for property policies, there was a potential ambiguity about the insurer’s duty in cancellation situations between Section 9C(4) and Section 10. It was further agreed that Section 10 was intended to supersede Section 9C(4) where the property was capable of being repaired or rehabilitated, except in constructive total losses. After further discussion, it was agreed that inserting the words, “Notwithstanding Section 9,” at the beginning of Section 10 would address most of the concerns expressed. **1995 Proc. 1st Quarter 195.**

Section 11. Refund of Premium Upon Cancellation

A. A consumer advocate expressed his concern over the approval of policy forms that might contain a provision for refund of premium upon termination on other than a pro-rata basis, unless the policy form provided for another basis. In order to address his concerns, the group agreed to insert the words “as permitted by state law” in this subsection. **1993 Proc. 4th Quarter 142.**

Section 12. Notice of Renewal or Nonrenewal

A. A regulator said that the provision requiring a specific explanation of the reasons for nonrenewal was too subjective and did not require the disclosure of an exact reason for nonrenewal. For example, many companies would indicate a reason of “credit history,” but they failed to explain that the real reason for the nonrenewal was that the credit history showed a bankruptcy. He stated that there was need for greater specificity in this provision. The chair said his state’s code required that the company must provide a “clear and specific” explanation of the reasons for nonrenewal. The committee agreed that this language would be acceptable. **1993 Proc. 3rd Quarter 131.**

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Section 12 (cont.)

F. A regulator expressed concern over insurers having the ability to nonrenew a policyholder at renewal for any reason. He suggested that a new Section 12F be incorporated to prohibit insurers from nonrenewing a policy that has been in effect for at least four years unless the nonrenewal was based on one of the reasons set forth in Section 9. After some discussion, the chair stated that this was an issue of philosophical difference among regulators. He stated that, while he was not supportive of such a provision, there seemed to be sufficient interest among members of the drafting group to incorporate it. An interested party indicated that insurers would be opposed to the provision because it would restrict an insurer's ability to manage its business in an effective manner. He added that insurers had assumed that no provision would be added under which nonrenewals would be restricted for any reason. **1994 Proc. 4th Quarter 204.**

A consumer advocate added that there was a need to distinguish between when companies could use claims as the basis for cancellation or nonrenewal and when other reasons were used. She stated that consumers should be protected from nonrenewal in the event that they filed a claim on their policies and suggested that the committee consider language that had been previously submitted. The chair responded that at an earlier meeting the group discussed the suggestion and did not agree to incorporate it because the position of the group at that time was that companies could nonrenew for any non-prohibited reason, as long as the company advised the insured of that reason. He added that, because the group's position had changed with the agreement to incorporate the suggested nonrenewal restriction, it went well beyond what had previously been suggested. **1994 Proc. 4th Quarter 204.**

At the next meeting of the group, the chair said that several modifications had been made to the model act. He indicated that the most significant outstanding issue was with regards to the new provision in Section 12F regarding nonrenewal. He stated that in discussions with regulators and others he believed that the provisions would serve the best interests of insurance consumers and further suggested that the subsection be modified to state that "an insurer shall not fail to renew a policy which has been in effect for at least five years unless the nonrenewal is based on at least one of the reasons set forth in Section 9 of this Act or the insurer has furnished the insured a 90-day notice of its intention not to renew." He believed that such a provision was necessary because, after a policy has been in effect for five years, an insurer should have an extraordinary reason to nonrenew or at least provide the insured with at least a 90-day notice of its intention to nonrenew. **1999 Proc. 4th Quarter 194.**

A consumer advocate stated that she had suggested a nonrenewal provision that would provide that consumers with claims over which they have no control, such as weather-related losses, or where the consumer has a number of claims over a certain period of time would be protected from nonrenewal. She added that she also suggested that an insurer be required to notify an insured who had two claims in less than three years that the insurer may decline to renew the policy if the insured filed a third claim during the three-year period. She suggested that the group consider her recommendation rather than modifying the language in 12F. A regulator stated that many consumers expressed fear of making claims or of having too many claims over which they have no control because they believed they might be nonrenewed by insurers. He expressed support for the recommended language in lieu of the current provision of Section 12F. **1994 Proc. 4th Quarter 194.**

The chair said that he was intrigued with the recommendation for the notice after a second claim and asked if it might not be better to state that an insurer could not nonrenew unless it gave notice after the second claim. The consumer advocate responded that, if the choice was to have that type of provision or no provision, she would favor moving in that direction but that she still preferred the full text of her suggested language. A regulator reiterated his support for a new Section 13 instead of the language in Section 12F. During discussion, another regulator indicated that he felt that a more general provision such as that suggested by the chair would be preferable. **1994 Proc. 4th Quarter 194.**

A representative from an industry trade association stated that she had concerns about sending letters to insureds saying that if they have one more claim they could be nonrenewed because that communication could be considered threatening. Another interested party indicated that he had a philosophical problem with the recommended change to the model because during the two years this model was in development, it had always been assumed that companies would not be limited as to the reasons under which they could nonrenew a policy. **1994 Proc. 4th Quarter 194.**

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Section 12F (cont.)

A consumer advocate suggested that the word “or” at the end of proposed Section 12F(1) be changed to “and.” The chair stated that such a modification would not be in keeping with the drafter’s intent. The advocate stated that she recalled that in prior meetings it was agreed that several alternatives would be provided for the language to be incorporated into this section depending upon how states wish to address nonrenewals. She believed that there were three separate alternatives including the proposed language, a provision which would prohibit nonrenewals after a policy has been in force for four years, and a provision which she had previously suggested related to limitations on nonrenewals related to claims history. She urged the drafting group to forward the final model to the parent committee with these alternatives. The chair acknowledged that at the group’s meeting in November 1994, the group had agreed to include several alternatives. However, the group discussed this issue in December 1994 and had agreed to develop compromise language that would be incorporated as the only alternative in the model to be presented to the parent committee. **1995 Proc. 1st Quarter 194.**

When the model was moved up to the parent committee, the same consumer advocate urged that group to re-evaluate the proposed language for Section 12F. She indicated that she does not think the provision that was adopted was a compromise. She urged the committee to take a fresh look at the nonrenewal of policies for claims activity and the incorporation of a standardized way to deal with situations where insureds had claims over a period of time. She had provided the group with proposed language to limit an insurer’s ability to nonrenew for claims activity and one state had proposed language that would prohibit companies from nonrenewing any policy after it has been in force for five years, unless the nonrenewal was based on one of the reasons in Section 9. The working group chair responded that the group had discussed the proposed language during its meeting in November 1994, and had agreed at that time to consider alternatives. However, subsequent to that meeting the chair proposed compromise language that was acceptable to the group and most interested parties and that was incorporated into the model. He reiterated to the parent committee that the group had considered the proposed language and had rejected it as not in keeping with the intent of the group with regard to nonrenewals. **1995 Proc. 1st Quarter 186.**

A consumer advocate stated that he continued to be concerned regarding the nonrenewal provision because he believed consumers should be protected from terminations unless the company withdrew from the market. He stated that, by adopting this model, the NAIC gave the appearance that, for property and casualty insurance, consumers should have no protection from termination. He urged the NAIC to look at this issue to ensure that consumers were guaranteed renewal. An interested party stated that there were no prohibitions against nonrenewals in the model because the insurance contract was a contractual relationship between the insurer and the insured for a set period of time. **1995 Proc. 1st Quarter 186-187.**

Section 13. Liability of Insurers or Producers Regarding Statements Made in Notices or Information

The drafters discussed the provisions of Section 12 with regard to statements made by insurers in any written notice of cancellation or nonrenewal as to the reasons for cancellation or nonrenewal. It was suggested that companies should be encouraged to be as frank as they could because it would be in the public’s interest to have as much knowledge as possible regarding the reasons for cancellation or nonrenewal. The group agreed that there should be immunity for companies making the required disclosure and further agreed to clarify its intent by indicating that immunity was available to insurers that made statements “in good faith.” **1994 Proc. 2nd Quarter 176.**

Section 14. Notice to Insured as to Eligibility for Residual Market Mechanism Coverage

The group discussed the provisions in two sections regarding notice to insureds as to eligibility for automobile insurance plans and Fair Access to Insurance Requirements (FAIR) plans. NAIC staff suggested that, since such arrangements could generally be classified as residual market mechanisms, the section be reworked to reflect eligibility for any residual market mechanism available to the insured. He suggested language to reflect this recommendation and the group agreed to incorporate it in place of two sections in the earlier draft. **1994 Proc. 2nd Quarter 177.**

Section 15. Notice; Right to Appeal

The drafting group recognized that the notice of right to appeal in Section 15 failed to indicate that insurers should notify insureds of the procedure under which appeal could be filed. It was agreed to incorporate language to clarify that insurers provide that notice. **1994 Proc. 2nd Quarter 177.**

IMPROPER TERMINATION PRACTICES MODEL ACT

Proceeding Citations

Cited to the Proceedings of the NAIC

Section 16. Improper Termination—Appeal

A. A consumer advocate indicated that Subsection A required the named insured who wished to appeal the reasons for termination to provide a written request for a hearing at least 20 days prior to the termination. He stated that the 30-day notice prior to the effective date of cancellation allowed a fairly short time frame within which the insured would receive the notice and make the decision to request a hearing. **1993 Proc. 4th Quarter 142.**

A state consumer advocate stated her desire to remove the reference to the private cause of action in Section 1. She indicated the deletion was needed because consumers still would take action but instead they would do so by filing lawsuits against the state rather than a direct private cause of action against the company. The chair suggested modifying the language in this section to indicate that there was a specific right under Section 16 of the model for insureds to appeal individual terminations to the commissioner and seek redress. After further discussion, the group agreed to incorporate the chair's recommended change to indicate that the named insured could appeal the termination of the policy pursuant to Section 16 in the model. **1994 Proc. 2nd Quarter 175.**

Section 17. Proof of Mailing

B. The chair of the parent group noted that a modification had been made at the Summer National Meeting to change the word “and” to “or” at the end of Section 17B(2). He stated that after the meeting it was recognized that the word should not have been changed and a reversal of that action was made. **1995 Proc. 3rd Quarter 169.**

Section 18. Improper Termination Practice—Definition; Hearing

Section 19. Improper Termination Practice—Penalty

An interested party expressed concern because the penalty provisions in Section 19 did not incorporate a progressive penalty methodology as was done in the Unfair Trade Practices Act and the Unfair Claims Settlement Practices Act. He suggested that the penalty provisions of those models be used as a template for the penalty section of the Improper Termination Practices Model Act. The drafting group agreed to incorporate language suggested by interested parties. **1994 Proc. 3rd Quarter 210.**

Section 20. Separability Provision

Chronological Summary of Actions

December 1995: Model adopted.

IMPROPER TERMINATION PRACTICES MODEL ACT

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