

## MODEL LAW ON EXAMINATIONS

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### Prefatory Drafting Comment

This model act reflects a conceptual change with respect to the frequency and scope of on-site financial examinations of insurers. The Act authorizes the commissioner to conduct examinations whenever it is deemed necessary and the commissioner is given the flexibility to decide the scope of the examination. Since criteria for determining when a company should be examined and the scope of that examination and procedures to be employed is a complex matter, the Act requires the commissioner to observe the direction set forth in the *NAIC Examiner's Handbook* with respect to these matters.

The objective of the model act is to direct department resources to companies having or likely to have financial difficulty; however, all companies are required to be examined once every five years, although the scope and extent of that exam will be based on the particular attributes of the company to be examined.

The conceptual change reflected by this model law can be accomplished because over the last several years a variety of additional financial regulatory tools have been developed and implemented including annual independent CPA audits, opinions on insurance reserves by qualified actuaries, annual financial statement analyses and others which alleviate the necessity for comprehensive periodic examinations.

This model act will not diminish the commissioner's authority to conduct examinations but rather will see that examinations are a more effective part of the department financial regulation and surveillance program.

### Section 1. Purpose

The purpose of this Act is to provide an effective and efficient system for examining the activities, operations, financial condition and affairs of all persons transacting the business of insurance in this state and all persons otherwise subject to the jurisdiction of the commissioner. The provisions of the Act are intended to enable the commissioner to adopt a flexible system of examinations that directs resources as may be deemed appropriate and necessary for the administration of the insurance and insurance related laws of this state.

### Section 2. Definitions

The following terms as used in this Act shall have the respective meanings hereinafter set forth:

- A. "Commissioner" means the commissioner of insurance of this state.

**Drafting Note:** The title of the chief insurance regulatory official should be used here and throughout the law.

- B. "Company" means a person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative, regulatory or taxing authority of the commissioner.
- C. "Department" means the department of insurance of this state.
- D. "Examiner" means an individual or firm having been authorized by the commissioner to conduct an examination under this Act.

- E. “Insurer” means [refer to appropriate definition in state insurance code].
- F. “Person” means an individual, aggregation of individuals, trust, association, partnership or corporation, or any affiliate thereof.

### **Section 3. Authority, Scope and Scheduling of Examinations**

- A. The commissioner or any of the commissioner’s examiners may conduct an examination under this Act of any company as often as the commissioner in his or her sole discretion deems appropriate but shall at a minimum, conduct an examination of every insurer licensed in this state not less frequently than once every five (5) years. In scheduling and determining the nature, scope and frequency of the examinations, the commissioner shall consider such matters as the results of financial statement analyses and ratios, changes in management or ownership, actuarial opinions, reports of independent Certified Public Accountants and other criteria as set forth in the *Examiners’ Handbook* adopted by the National Association of Insurance Commissioners and in effect when the commissioner exercises discretion under this section.
- B. For purposes of completing an examination of a company under this Act, the commissioner may examine or investigate any person, or the business of any person, in so far as the examination or investigation is, in the sole discretion of the commissioner, necessary or material to the examination of the company.

**Drafting Note:** In order to force a person outside the state to cooperate with any examination, it may be necessary to obtain judicial enforcement of a subpoena.

- C. In lieu of an examination under this Act of a foreign or alien insurer licensed in this state, the commissioner may accept an examination report on the company as prepared by the insurance department for the company’s state of domicile or port-of-entry state until January 1, 1994. Thereafter, such reports may only be accepted if (1), the insurance department was at the time of the examination accredited under the National Association of Insurance Commissioners’ Financial Regulation Standards and Accreditation Program or (2) the examination is performed under the supervision of an accredited insurance department or with the participation of one or more examiners who are employed by an accredited state insurance department and who, after a review of the examination work papers and report, state under oath that the examination was performed in a manner consistent with the standards and procedures required by their insurance department.

### **Section 4. Conduct of Examinations**

- A. Upon determining that an examination should be conducted, the commissioner or the commissioner’s designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the *Examiners’ Handbook* adopted by the National Association of Insurance Commissioners. The commissioner may also employ such other guidelines or procedures as the commissioner may deem appropriate.
- B. Every company or person from whom information is sought, its officers, directors and agents shall provide to the examiners appointed under Subsection A timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the company being examined. The officers, directors, employees and agents of the company or person must facilitate the examination and aid in the examination so far as it is in their power to do so. The refusal of a company, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension or refusal of, or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the commissioner’s jurisdiction. Any such proceedings for suspension, revocation or refusal of a license or authority shall be conducted pursuant to Section [insert reference to cease and desist statute or other law having a post-order hearing mechanism].

- C. The commissioner or any of the commissioner’s examiners shall have the power to issue subpoenas, to administer oaths and to examine under oath any person as to any matter pertinent to the examination. Upon the failure or refusal of a person to obey a subpoena, the commissioner may petition a court of competent jurisdiction, and upon proper showing, the court may enter an order compelling the witness to appear and testify or produce documentary evidence. Failure to obey the court order shall be punishable as contempt of court. [or “Such subpoenas may be enforced pursuant to the provisions of Section \_\_\_\_\_ of this Code.”]
- D. When making an examination under this Act, the commissioner may retain attorneys, appraisers, independent actuaries, independent certified public accountants or other professionals and specialists as examiners, the cost of which shall be borne by the company that is the subject of the examination.
- E. Nothing contained in this Act shall be construed to limit the commissioner’s authority to terminate or suspend an examination in order to pursue other legal or regulatory action pursuant to the insurance laws of this state. Findings of fact and conclusions made pursuant to an examination shall be prima facie evidence in any legal or regulatory action.
- F. Nothing contained in this Act shall be construed to limit the commissioner’s authority to use and, if appropriate, to make public any final or preliminary examination report, any examiner or company workpapers or other documents, or any other information discovered or developed during the course of an examination in the furtherance of any legal or regulatory action that the commissioner may, in his or her sole discretion, deem appropriate.

**Section 5. Examination Reports**

A. General Description

An examination report shall be comprised of only facts appearing upon the books, records or other documents of the company, its agents or other persons examined, or as ascertained from the testimony of its officers or agents or other persons examined concerning its affairs, and such conclusions and recommendations as the examiners find reasonably warranted from the facts.

B. Filing of Examination Report

No later than sixty (60) days following completion of the examination, the examiner in charge shall file with the department a verified written report of examination under oath. Upon receipt of the verified report, the department shall transmit the report to the company examined, together with a notice that shall afford the company examined a reasonable opportunity of not more than thirty (30) days to make a written submission or rebuttal with respect to any matters contained in the examination report.

C. Adoption of Report on Examination

Within thirty (30) days of the end of the period allowed for the receipt of written submissions or rebuttals, the commissioner shall fully consider and review the report, together with any written submissions or rebuttals and any relevant portions of the examiner’s workpapers and enter an order:

- (1) Adopting the examination report as filed or with modification or corrections. If the examination report reveals that the company is operating in violation of any law, regulation or prior order of the commissioner, the commissioner may order the company to take any action the commissioner considers necessary and appropriate to cure the violation; or
- (2) Rejecting the examination report with directions to the examiners to reopen the examination for purposes of obtaining additional data, documentation or information, and refile pursuant to Subsection A above; or
- (3) Calling for an investigatory hearing with no less than twenty (20) days notice to the company for purposes of obtaining additional documentation, data, information and testimony.

D. Orders and Procedures

- (1) Orders entered pursuant to Subsection C(1) above shall be accompanied by findings and conclusions resulting from the commissioner's consideration and review of the examination report, relevant examiner workpapers and any written submissions or rebuttals. An order shall be considered a final administrative decision and may be appealed pursuant to the [insert name of State Administrative Review Law], and shall be served upon the company by certified mail, together with a copy of the adopted examination report. Within thirty (30) days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.
- (2) A hearing conducted under Subsection C(3) above by the commissioner or authorized representative shall be conducted as a nonadversarial confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the commissioner's review of relevant workpapers or by the written submission or rebuttal of the company. Within twenty (20) days of the conclusion of any such hearing, the commissioner shall enter an order pursuant to Subsection C(1) above.
  - (a) The commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the company limited to the examiner's workpapers that tend to substantiate any assertions set forth in any written submission or rebuttal. The commissioner or the commissioner's representative may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation whether under the control of the department, the company or other persons. The documents produced shall be included in the record and testimony taken by the commissioner or the commissioner's representative shall be under oath and preserved for the record. Nothing contained in this section shall require the department to disclose any information or records that would indicate or show the existence or content of any investigation or activity of a criminal justice agency.
  - (b) The hearing shall proceed with the commissioner or the commissioner's representative posing questions to the persons subpoenaed. Thereafter the company and the department may present testimony relevant to the investigation. Cross examination shall be conducted only by the commissioner or the commissioner's representative. The company and the department shall be permitted to make closing statements and may be represented by counsel of their choice.

E. Publication and Use

- (1) Upon the adoption of the examination report under Subsection C(1) above, the commissioner shall continue to hold the content of the examination report as private and confidential information for a period of [insert number] days except to the extent provided in Subsection B. Thereafter, the commissioner may open the report for public inspection so long as no court of competent jurisdiction has stayed its publication.

**Drafting Note:** The time period may correspond to the amount of time allowed for a party to seek administrative review under state law or it should at a minimum allow a company adequate time, not less than two (2) days following receipt of the adopted report to obtain an equitable stay if provided for under state law.

- (2) Nothing contained in this Code shall prevent or be construed as prohibiting the commissioner from disclosing the content of an examination report, preliminary examination report or results, or any matter relating thereto, to the insurance department of this or any other state or country, or to law enforcement officials of this or any other state or agency of the federal government at any time, so long as the agency or office receiving the report or matters relating thereto agrees in writing to hold it confidential and in a manner consistent with this Act.
- (3) In the event the commissioner determines that regulatory action is appropriate as a result of an examination, he or she may initiate any proceedings or actions provided by law.

F. Privilege for, and Confidentiality of Ancillary Information

- (1) (a) Except as provided in Subsection E above and in this subsection, documents, materials or other information, including, but not limited to, all working papers, and copies thereof, created, produced or obtained by or disclosed to the commissioner or any other person in the course of an examination made under this Act, or in the course of analysis by the commissioner of the financial condition or market conduct of a company 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. The commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as part of the commissioner's official duties.
- (b) Documents, materials or other information, including, but not limited to, all working papers, and copies thereof, in the possession or control of the National Association of Insurance Commissioners and its affiliates and subsidiaries shall be confidential by law and privileged, shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action if they are:
  - (i) Created, produced or obtained by or disclosed to the National Association of Insurance Commissioners and its affiliates and subsidiaries in the course of the National Association of Insurance Commissioners and its affiliates and subsidiaries assisting an examination made under this Act, or assisting a commissioner in the analysis of the financial condition or market conduct of a company; or
  - (ii) Disclosed to the National Association of Insurance Commissioners and its affiliates and subsidiaries under Paragraph (3) of this subsection by a commissioner.
- (c) For the purposes of Paragraph (1)(b), "Act" includes the law of another state or jurisdiction that is substantially similar to this Act.
- (2) Neither the commissioner nor any person who received the documents, material or other information while acting under the authority of the commissioner, including the National Association of Insurance Commissioners and its affiliates and subsidiaries, shall be permitted to testify in any private civil action concerning any confidential documents, materials or information subject to Paragraph (1).
- (3) In order to assist in the performance of the commissioner's duties, the commissioner:
  - (a) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Paragraph (1), with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material, communication or other information;
  - (b) May receive documents, materials, communications or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners 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

- (c) [Optional provision] May enter into agreements governing sharing and use of information consistent with this subsection.

**Drafting Note:** Subsection F(3)(a) assumes that 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.

- (4) 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 Paragraph (3).
- (5) A privilege established under the law of any state or jurisdiction that is substantially similar to the privilege established under this subsection shall be available and enforced in any proceeding in, and in any court of, this state.
- (6) In this subsection “department,” “insurance department,” “law enforcement agency,” “regulatory agency,” and the “National Association of Insurance Commissioners” include, but are not limited to, their employees, agents, consultants and contractors.

## **Section 6. Conflict of Interest**

- A. An examiner may not be appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this Act. This section shall not be construed to automatically preclude an examiner from being:
- (1) A policyholder or claimant under an insurance policy;
- (2) A grantor of a mortgage or similar instrument on the examiner’s residence to a regulated entity if done under customary terms and in the ordinary course of business;
- (3) An investment owner in shares of regulated diversified investment companies; or
- (4) A settlor or beneficiary of a “blind trust” into which any otherwise impermissible holdings have been placed.
- B. Notwithstanding the requirements of this section, the commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though these persons may from time to time be similarly employed or retained by persons subject to examination under this Act.

## **Section 7. Cost of Examinations**

**Drafting Comment:** The NAIC Model State Insurance Department Funding Bill or such funding mechanism as may be currently authorized by law should be incorporated here by reference. Any funding mechanism should assure that the manner in which examinations are funded does not influence the scheduling, scope or conduct of examination.

## **Section 8. Immunity from Liability**

- A. No cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner’s authorized representatives or an examiner appointed by the commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this Act.
- B. No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the commissioner or the commissioner’s authorized representative or examiner pursuant to an examination made under this Act, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.
- C. This section does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in Subsection A.

- D. A person identified in Subsection A shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this Act and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.
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*Chronological Summary of Action (all references are to the Proceedings of the NAIC).*

*1991 Proc. I 9, 14, 26, 27-31 (adopted).*

*1999 Proc. 4<sup>th</sup> Quarter 15, 364, 369, 370-372 (amended).*

*This replaces an earlier model law entitled: Standard Law Relating to Procedures in Examining the Affairs of Insurance Companies  
1956 Proc. II 328, 329-333 (adopted).*

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**This chart is intended to provide readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings related to the NAIC model. Such guidance provides readers with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state’s activity in this area and has determined whether the citation most appropriately fits in the Model Adoption column or Related State Activity column based on the definitions listed below. The NAIC’s interpretation may or may not be shared by the individual states or by interested readers.**

**This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist readers in locating useful information. Readers should consult state law for further details and for the most current information.**

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**KEY:**

**MODEL ADOPTION:** States that have citations identified in this column adopted the most recent version of the NAIC model in a **substantially similar manner**. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

**RELATED STATE ACTIVITY:** Examples of Related State Activity include but are not limited to: older versions of the NAIC model, statutes or regulations addressing the same subject matter, or other administrative guidance such as bulletins and notices. States that have citations identified in this column **only** (and nothing listed in the Model Adoption column) have **not** adopted the most recent version of the NAIC model in a **substantially similar manner**.

**NO CURRENT ACTIVITY:** No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Alabama		ALA. CODE §§ 27-2-20 to 27-2-27 (1971/1993).
Alaska	ALASKA STAT. §§ 21.06.120 to 21.06.170 (1966/2006).	
American Samoa	NO CURRENT ACTIVITY	
Arizona	ARIZ. ADMIN. CODE §§ 20-6-1701 to 20-6-1704 (2005) (portions of model).	ARIZ. REV. STAT. ANN. § 20-142; §§ 20-156 to 20-160 (1954/2014); Circular Letter 92-7 (1992).
Arkansas	ARK. CODE ANN. §§ 23-61-201 to 23-61-303 (1959/2013).	
California	CAL. INS. CODE §§ 730 to 738 (1935/2010).	
Colorado	COLO. REV. STAT. §§ 10-1-201 to 10-1-207 (1992/2014).	
Connecticut	CONN. GEN. STAT. § 38a-14 (1949/2013).	CONN. GEN. STAT. § 38a-8 (1949/2013).
Delaware	DEL. CODE ANN. tit. 18, §§ 318 to 330 (1995/2014).	
District of Columbia	D.C. CODE §§ 31-1401 to 31-1407 (1993/2004).	
Florida		FLA. STAT. §§ 624.316 to 624.322 (1959/2014).
Georgia		GA. CODE ANN. §§ 33-2-11 to 33-2-16 (1960/2012); Dir. 93-RS-1 (1993).

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Guam		22 GUAM CODE ANN. § 15316 (2007) (domestic); .22 GUAM CODE ANN. § 15403 (foreign); 22 GUAM CODE ANN. § 15505 (alien).
Hawaii	HAW. REV. STAT. §§ 431:2-301 to 431:2-308 (1988/2006).	
Idaho	IDAHO CODE ANN. §§ 41-219 to 41-230 (1961/2003).	
Illinois	215 ILL. COMP. STAT. 5/132.1 to 5/132.7 (1991/1995).	
Indiana	IND. CODE §§ 27-1-3.1-1 to 27-1-3.1-18 (1991/2013).	
Iowa	IOWA CODE §§ 507.1 to 507.17 (1965/2013).	
Kansas	KAN. STAT. ANN. §§ 40-222 (1991/2008).	
Kentucky	806 KY. ADMIN. REGS. § 2:120 (1992) (portions of model).	KY. REV. STAT. ANN. §§ 304.2-210 to 304.2-300 (1970/2010).
Louisiana	LA. REV. STAT. ANN. §§ 22:1981 to 22:1982 (1979/2010).	
Maine		ME. REV. STAT. ANN. tit. 24-A, §§ 221 to 228 (1970/1999).
Maryland		MD. CODE ANN., INS. §§ 2-205 to 2-215 (1963/2014); MD. CODE REGS. 31.04.20.01 (2010); 31.12.01.12 (2010/2012).
Massachusetts	MASS. GEN. LAWS ch. 175, § 4 (1993/2014).	
Michigan		MICH. COMP. LAWS § 500.222 (1957/1994).
Minnesota	MINN. STAT. § 60A.031 (1961/1992).	
Mississippi	MISS. CODE ANN. §§ 83-5-201 to 83-5-217 (1992/2012).	
Missouri	MO. REV. STAT. §§ 374.202 to 374.207 (1992/1999).	MO. CODE REGS. ANN. tit. 20, §§ 100-8.002 to 100-8.040 (2008).
Montana	MONT. CODE ANN. §§ 33-1-401 to 33-1-413 (1959/2015).	

**MODEL LAW ON EXAMINATIONS**

<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Nebraska	NEB. REV. STAT. §§ 44-5901 to 44-5910 (1993/2009).	
Nevada		NEV. REV. STAT. §§ 679B.230 to 679B.300 (1971/1997).
New Hampshire	N.H. REV. STAT. ANN. § 400-A:37 (1979/2005).	
New Jersey	N.J. REV. STAT. §§ 17:23-20 to 17:23-26 (1993).	N.J. ADMIN. CODE §§ 11:1-36.1 to 11:1-36.5 (1993/2001).
New Mexico	N.M. STAT. ANN. §§ 59A-4-4 to 59A-4-21 (1985/1999).	
New York		N.Y. INS. LAW §§ 309 to 313 (1984/2014).
North Carolina	N.C. GEN. STAT. §§ 58-2-131 to 58-2-136 (1991/2002).	
North Dakota	N.D. CENT. CODE §§ 26.1-03-19.1 to 26.1-03-19.7 (1993/2003).	
Northern Marianas		4 N. MAR. ISLAND CODE § 7201 (1984).
Ohio		OHIO REV. CODE ANN. §§ 3901.07 to 3901.071 (1978/2014); § 3901.045 (2002); § 3901.36 (1971/2002).
Oklahoma	OKLA. STAT. tit. 36, §§ 309.1 to 309.7 (1991/2012).	
Oregon	OR. REV. STAT. §§ 731.300 to 731.316 (1967/2001).	
Pennsylvania	40 PA. STAT. ANN. §§ 323.1 to 323.8 (1921/1993).	Notice 2010-4 (2010); Notice 2011-5 (2011).
Puerto Rico		P.R. LAWS ANN. tit. 26, §§ 214 to 226 (1996).
Rhode Island	R.I. GEN. LAWS §§ 27-13.1-1 to 27-13.1-7 (1992/2009).	R.I. GEN. LAWS §§ 27-1-11 to 27-1-12 (1896/1956); § 27-13-1 (1896/2009).
South Carolina	S.C. CODE ANN. §§ 38-13-10 to 38-13-60 (1987/1994).	
South Dakota		S.D. CODIFIED LAWS §§ 58-3-1 to 58-3-27 (1966/2014).

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Tennessee	TENN. CODE ANN. §§ 56-1-408 to 56-1-413 (1895/1996).	TENN. CODE ANN. § 56-1-401 (1932); § 56-8-107 (2009).
Texas		TEX. ADMIN. CODE § 7.84 (2010); TEX. INS. CODE ANN. §§ 401.001 to 401.255 (2007).
Utah		UTAH CODE ANN. §§ 31A-2-203 to 31A-2-205 (1985/2004); UTAH ADMIN. CODE r. 590-150-1 to 590-150-4 (1992).
Vermont	VT. STAT. ANN. tit. 8, §§ 3563 to 3576 (1967/1999).	VT. STAT. ANN. tit. 8, § 3561 (2009).
Virgin Islands	V.I. CODE ANN. tit. 22, §§ 101 to 108 (1993).	
Virginia	VA. CODE ANN. §§ 38.2-1317 to 38.2-1321.1 (1986/2001).	
Washington	WASH. REV. CODE ANN. §§ 48.03.010 to 48.03.075 (1947/1993); § 48.02.065 (2001/2005).	WASH. REV. CODE ANN. § 48.02.060 (1947/2009).
West Virginia	W. VA. CODE § 33-20-12 (1957/2006); § 33-2-9 (1957/2006).	W. VA. CODE R. §§ 114-15-1 to 114-15-8 (1987/2008).
Wisconsin	WIS. ADMIN. CODE INS. § 50.50 (1993) (portions of model).	WIS. STAT. §§ 601.43 to 601.45 (1969/1992).
Wyoming	WYO. STAT. ANN. §§ 26-2-116 to 26-2-131 (1925/2001) (model adopted by reference).	

## MODEL LAW ON EXAMINATIONS

### Proceedings Citations

Cited to the Proceedings of the NAIC

Before adoption of the model, hearings were held, presentations were made, and the special committee's work was reviewed. **1990 Proc. II 11.**

A special committee on examination processes recommended adoption of a new model law. The new model replaced in its entirety the Standard Law Relating to Procedures in Examining the Affairs of Insurance Companies adopted by the NAIC in 1956. **1991 Proc. IA 26.**

The Financial Regulation Standards and Accreditation Committee examined the new model on examinations and voted to include it in the policy statement. **1991 Proc. IA 15-16.**

#### Section 1. Purpose

The Committee on Examination Processes was charged with the task for determining whether the focus of examinations currently in practice was still appropriate. They were to hold hearings across the country to obtain broad input and views on the examination process. They also reviewed earlier reports and recommendations. **1991 Proc. IA 60.**

During the course of the hearings, the committee received testimony from nine insurance commissioners, 16 insurance department staff members, nine insurance trade associations, 16 insurance companies, and three accounting firms. The testimony received at the meetings and the recommendations of a special NAIC committee (the Bell-Budd Report) formed the basis of the recommendation of the special committee. **1991 Proc. IA 53-54.** Summaries of the recommendations from the hearings were made a part of the record. **1991 Proc. IA 61-72.** Portions of the Bell-Budd Report were made a part of the record of the Committee on Examination Processes. **1991 Proc. IA 31-49.**

#### Section 2. Definitions

#### Section 3. Authority, Scope and Scheduling of Examinations

A. One of the problem areas identified was the area of scheduling. The discussion of this aspect of the financial condition examination system centered on the need to use a more flexible approach to scheduling examinations than is often utilized under the traditional technical requirement. It was argued that examining every insurer at approximately the same interval was an inefficient allocation of resources. The impact of this misallocation was injurious to solvency regulation because too much time and resources were expended on financially sound insurers while insurers engaging in more volatile lines of business who might have a marginal surplus, or possess some other characteristics that might indicate less financial stability do not receive enough regulatory attention. **1991 Proc IA 54.**

On the other hand, the committee was cautioned that the total absence of a statutory demand for examination at some point in time or under some prescribed conditions could result in an unreasonable delay or absence of financial condition monitoring. In addition, the mere existence of a periodic examination requirement could promote solvency because knowing that financial statement values were going to be examined and tested at a given point in time would discourage insurers from deceiving themselves or others by attempting to portray an inflated image of financial strength. **1991 Proc. IA 54.**

Alternatives to the triennial or periodic examination took several forms. Almost all of them involved the use of other available indicators of financial condition as a means of determining whether or not and to what extent a financial condition examination was necessary. One of the indicators most frequently mentioned was independent CPA audit reports. An abundance of testimony was presented by both industry representatives and regulators that the NAIC's Model Regulation Requiring Annual Audited Financial Reports should be adopted by all states and that a greater reliance on the CPA audit would be a valuable supplement to the examination system. Other existing tools available to produce a more rational system of examination scheduling included quarterly financial statements, IRIS results, independent rating services, the business news media, and internal company changes in management or operations. **1991 Proc. IA 54.**

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### Proceedings Citations

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#### Section 3A (cont.)

None of the above indicators were suggested as a replacement for financial condition examinations. The conferees advocating more flexible examination scheduling categorized these information sources as a supplemental means of identifying and prioritizing the insurers most in need of an on-site financial condition examination. **1991 Proc. IA 54.**

Closely related to the scheduling of examinations is the scope or kind of examination to be conducted. Even under a rigid examination schedule, a comprehensive, multipurpose examination is not always indicated, required, necessary or productive. The same analytical tools used for prioritizing the examination schedule will sometimes indicate some aspect of an insurer's operation or financial statement that raises a question which can only be answered by an on-site exploration. In these cases, a targeted, limited scope examination would be the most efficient and equally effective means of either resolving the issue or revealing the need for a more comprehensive review. **1991 Proc. IA 55.**

The Committee on Examination Processes made a formal recommendation that the current triennial or other periodic examination requirements be supplemented with limited scope, targeted or other examination. Requirements for such examinations should have well-defined criteria that can be used to effectively monitor financial condition and prioritize examination resources to insurers whose financial condition indicates a need for limited scope, targeted or on-site comprehensive examination as the commissioner deems advisable. **1991 Proc. IA 58.**

C. Just before adoption of the model, this subsection was revised to insert the requirement in Paragraph (2) that an examination be performed "under the supervision of an accredited insurance department." Following an explanation and discussion of the proposed amendment, it was adopted. **1991 Proc. IA 26.**

#### Section 4. Conduct of Examinations

A. Numerous comments were received referring to the need for better planning and greater adherence to schedules, activities and goals. A frequent criticism voiced by industry representatives was the inefficient use of time by examiners. **1991 Proc. IA 55.**

One of the formal recommendations of the Committee on Examination Processes was that the *Examiners Handbook* be revised and/or expanded to include criteria and standards that would directly result in greater examination efficiency and effectiveness through the use of a number of suggested techniques. They also recommended the development and utilization of computer audit techniques in the examination process. **1991 Proc. IA 59.**

B. One of the frequent criticisms voiced by regulators was the delay experienced by examiners due to the lack of a timely response by insurer personnel to requests for data, material and information. A common recommendation was a meeting between the examiner-in-charge, the chief examiner and appropriate company representatives. Assignments could be made with regard to work to be performed by company personnel. **1991 Proc. IA 55.**

Examiners were encouraged to make greater use of CPA working papers. Such work papers often contain information that would be available and useful to the examination process. Certification of loss reserves, actuarial evaluations, simultaneous examination of affiliated insurers and development and use of reinsurance standards and specialists were also among the suggestions for improvement in the conduct of financial condition examinations. **1991 Proc. IA 55.**

D. The ability to attract and retain competent examiners was a concern expressed by a number of conferees, and the use of contract examiners was a frequent topic of discussion. The testimony received by the committee did not provide clear direction as to what, if any, changes needed to be made in examination practices or processes with regard to these arrangements. **1991 Proc. IA 56.**

It was suggested that the NAIC Support and Services Office could retain or employ various specialists that states could utilize when particular expertise was needed. **1991 Proc. IA 57.**

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#### Section 4D (cont.)

The formal recommendations of the Committee on Examination Processes included a suggestion to initiate or support and encourage NAIC efforts to address the need for the availability of greater expertise in the form of specialists to enhance regulatory capabilities to examine computer-based operations; evaluate loss reserves and underlying data; analyze reinsurance arrangements and measure their value; and perform other specialized solvency policing tasks that require special training and experience. **1991 Proc. IA 59.**

An examiner association recommended that a model provision be drafted to allow states to employ specialists as part of the examination processes to perform portions of the examination when the expertise is not available within the department and to bill the company directly. Such specialists would include actuaries, reinsurance specialists, and electronic data processing audit specialists. **1991 Proc. IA 51.**

Just before adoption of the model, the committee chair asked for comments from meeting attendees. One person suggested prefacing the word “cost” with “reasonable.” One of the drafters noted that such language had been considered by the drafters and that “usual and customary charges” had been included in an earlier draft. The language was ultimately deleted because any descriptions did not seem to add any specificity to the provision. **1991 Proc. IA 26.**

#### Section 5. Examination Reports

B. The time required to complete an examination is an area of concern. The more time that elapses between the beginning and the end of an examination, the further removed from the “as of” date are the findings. The conferees expressed serious concerns about the time that elapsed between the “as of” date of the examination and the completion of the examination report. The value of the information acquired was a matter of significant concern to the committee. **1991 Proc. IA 56.**

One of the formal recommendation of the Committee on Examination Processes was the development of procedures that would produce examination findings within a specified period following completion of the examination. **1991 Proc. IA 59.**

An examiners organization recommended that a report of examination should be issued within 90 days of the completion of the site work. Further, the issuing of the reports should not exceed 14 months from the “as of” date of the examination. **1991 Proc. IA 51.**

E. The recommendations of the Committee on Examination Processes included a suggestion to develop procedures designed to improve the sharing of information regarding examination findings with all interested regulators. **1991 Proc. IA 59.**

F. 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.**

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#### Section 5F (cont.)

New language was added to Subsection F in 1999 to address the charge on confidentiality of information. The first sentence in Paragraph (1)(a) 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.**

Late in the process Subparagraph (b) 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.**

The working group assigned the task of reviewing this model decided to add language to clarify that the model examination law extended to department market conduct and financial analysis activities. In addition Paragraph (1)(b) extended confidentiality and privilege to information shared with the NAIC and information prepared by the NAIC in conjunction with state insurance department analysis and examination activities. **1999 Proc. 4<sup>th</sup> Quarter 369.**

The drafters discussed whether the 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.**

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 Paragraph (3) 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.**

Paragraph (4) 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 6. Conflict of Interest

#### Section 7. Cost of Examinations

A recommendation from the Committee on Examination Processes was that the funding mechanism be independent from examination scheduling, length and examiner influence in both fact and appearance. **1991 Proc. IA 60.**

#### Section 8. Immunity from Liability

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#### *Chronological Summary of Actions*

*December 1990: Adopted model. Replaces earlier model law entitled Standard Law Relating to Procedures in Examining the Affairs of Insurance Companies adopted in 1956.*

*January 2000: Revised Section 4 to clarify the commissioner's authority in regard to confidential documents.*

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