

**PARTICIPATION IN THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS (NAIC)
INSURANCE REGULATORY INFORMATION SYSTEM MODEL ACT**

Table of Contents

Section 1.	Scope
Section 2.	Filing Requirements
Section 3.	Immunity
Section 4.	Confidentiality
Section 5.	Revocation of Certificate of Authority
Section 6.	Effective Date

Section 1. Scope

The provisions of this Act shall apply to all domestic, foreign and alien insurers who are authorized to transact business in this state.

Section 2. Filing Requirements

- A. Each domestic, foreign and alien insurer who is authorized to transact insurance in this state shall annually on or before March 1 of each year file with the National Association of Insurance Commissioners (NAIC) a copy of its annual statement convention blank, along with such additional filings as prescribed by the Commissioner for the preceding year. The information filed with the NAIC shall be in the same format and scope as that required by the Commissioner and shall include the signed jurat page and the actuarial certification. Any amendments and addendums to the annual statement filing subsequently filed with the Commissioner shall also be filed with the NAIC.
- B. Foreign insurers that are domiciled in a state which has a law substantially similar to Subsection A of this section shall be deemed in compliance with this section.

Section 3. Immunity

In the absence of actual malice, members of the NAIC, their duly authorized committees, subcommittees, and task forces, their delegates, NAIC employees, and all others charged with the responsibility of collecting, reviewing, analyzing and disseminating the information developed from the filing of the annual statement convention blanks shall be acting as agents of the Commissioner under the authority of this Act and shall not be subject to civil liability for libel, slander or any other cause of action by virtue of their collection, review, and analysis or dissemination of the data and information collected from the filings required hereunder.

Section 4. Confidentiality

- A. All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the department by the NAIC's Insurance Regulatory Information System and in the possession or control of the Department of Insurance shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action. However, the commissioner is authorized to use the documents, materials or other information in the furtherance of any regulatory or legal action brought as a part of the commissioner's official duties.
- B. Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to Subsection A.

- C. In order to assist in the performance of the commissioner's duties, the commissioner:
- (1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Subsection A, with other state, federal, and international regulatory agencies, with the NAIC and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information;
 - (2) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the NAIC and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and
 - (3) [Optional provision] May enter into agreements governing sharing and use of information consistent with this subsection.

Drafting Note: The language in Subsection C(1) assumes the recipient has the authority to protect the applicable confidentiality or privilege, but does not address the verification of that authority, which would presumably occur in the context of a broader information sharing agreement.

- D. No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Subsection C.

Section 5. Revocation of Certificate of Authority

The Commissioner may suspend, revoke or refuse to renew the Certificate of Authority of any insurer failing to file its annual statement when due or within any extension of time which the Commissioner, for good cause, may have granted.

Section 6. Effective Date

This Act will be effective immediately.

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

1985 Proc. I 19, 37, 179, 326, 343 (adopted).

1986 Proc. II 12, 17, 204, 333, 306-361 (amended and reprinted).

1999 Proc. 4th Quarter 15, 364, 369, 378 (amended).

**PARTICIPATION IN THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS (NAIC)
INSURANCE REGULATORY INFORMATION SYSTEM (IRIS) MODEL ACT**

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

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

**PARTICIPATION IN THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS (NAIC)
INSURANCE REGULATORY INFORMATION SYSTEM (IRIS) MODEL ACT**

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**PARTICIPATION IN THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS (NAIC)
INSURANCE REGULATORY INFORMATION SYSTEM (IRIS) MODEL ACT**

KEY:

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

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

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

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Alabama	ALA. ADMIN. CODE r. 102 (1994).	
Alaska		ALASKA STAT. § 21.09.200 (1966/2002); § 21.06.060 (2002/2010).
American Samoa	NO CURRENT ACTIVITY	
Arizona	ARIZ. REV. STAT. ANN. § 20-234 (1991/1996).	
Arkansas	ARK. CODE ANN. § 23-63-216 (1991/2013).	
California	CAL. INS. CODE §§ 930 to 934 (1992/2005).	
Colorado	COLO. REV. STAT. § 10-3-208 (1991/1997).	
Connecticut	CONN. GEN. STAT. § 38a-53a (1992/2007).	BULLETIN FS-4-2014 (2014).
Delaware	DEL. CODE ANN. tit. 18, § 526 (1953/1998).	
District of Columbia	D.C. CODE §§ 31-1901 to 31-1904 (1993/2004).	
Florida		FLA. STAT. § 624.4241 (1985/1986).
Georgia	GA. CODE ANN. § 33-3-21.3 (1991).	

**PARTICIPATION IN THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS (NAIC)
INSURANCE REGULATORY INFORMATION SYSTEM (IRIS) MODEL ACT**

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Guam	NO CURRENT ACTIVITY	
Hawaii	HAW. REV. STAT. §§ 431:3-302 to 431:3-304 (1988/2003).	
Idaho		IDAHO CODE ANN. § 41-335 (1991/2004).
Illinois	215 ILL. COMP. STAT. 5/136 (1985/2009).	
Indiana		IND. CODE § 27-1-20-33 (1992/1999).
Iowa	IOWA ADMIN. CODE r. § 191-5.26 (1991/1999).	
Kansas		KAN. STAT. ANN. § 40-225 (1927/1997).
Kentucky	KY. REV. STAT. ANN. § 304.2-205 (1986/1998).	KY. REV. STAT. ANN. § 304.2-150 (1986/1994).
Louisiana	LA. REV. STAT. ANN. § 22:1469 (1991).	
Maine	ME. REV. STAT. ANN. tit. 24-A, § 414 (1992).	
Maryland		MD. CODE REGS. § 31.04.04.02 (1994).
Massachusetts	MASS. GEN. LAWS. ANN. ch. 175, § 25 (1993).	
Michigan	MICH. COMP. LAWS § 500.438a (1992/1994).	
Minnesota	MINN. STAT. §§ 60A.91 to 60A.94 (1991).	
Mississippi	MISS. CODE ANN. §§ 83-5-301 to 83-5-309 (1994).	
Missouri	MO. REV. STAT. § 375.041 (1986/1992).	MO. CODE REGS. ANN. tit. 20, § 200-1.030 (2010).
Montana	MONT. CODE ANN. §§ 33-2-1502 to 33-2-1504 (1993).	

**PARTICIPATION IN THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS (NAIC)
INSURANCE REGULATORY INFORMATION SYSTEM (IRIS) MODEL ACT**

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Nebraska	NEB. REV. STAT. §§ 44-322 to 44-322.01 (1913/2003).	
Nevada	NEV. REV. STAT. § 680A.270 (1971/2003) (portions of model).	NEV. ADMIN. CODE § 680A.160 (1991/2003).
New Hampshire	N.H. REV. STAT. ANN. §§ 400-A:36-a to 400-A:36-c (1988/1995).	
New Jersey	N.J. STAT. ANN. §§ 17:23B-1 to 17:23B-3 (1993).	
New Mexico		N.M. STAT. ANN. § 59A-5-29 (1984/1993).
New York	NO CURRENT ACTIVITY	
North Carolina	N.C. GEN. STAT. §§ 58-4-1 to 58-4-20 (1985/1999).	
North Dakota	N.D. CENT. CODE §§ 26.1-03-11.1 to 26.1-03-11.3 (1987/2001).	
Northern Marianas	NO CURRENT ACTIVITY	
Ohio	OHIO REV. CODE ANN. § 3901.42 (1986).	
Oklahoma	OKLA. STAT. tit. 36, § 311 (1986/2004).	
Oregon	OR. REV. STAT. §§ 731.730 to 731.737 (1993/2001).	
Pennsylvania	40 PA. STAT. § 3-601 (1993/1994).	
Puerto Rico	P.R. RULE LX (1987).	
Rhode Island	R.I. GEN. LAWS §§ 27-12.1-1 to 27-12.1-5 (1991/1996).	
South Carolina	S.C. CODE ANN. § 38-13-85 (1988/1993).	

**PARTICIPATION IN THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS (NAIC)
INSURANCE REGULATORY INFORMATION SYSTEM (IRIS) MODEL ACT**

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
South Dakota	S.D. CODIFIED LAWS § 58-6-80 (1992) (portions of model).	
Tennessee	TENN. CODE ANN. §§ 56-44-101 to 56-44-104 (1991/1995).	
Texas	TEX. INS. CODE ANN. 802.051 to 802.056 (2003).	
Utah	UTAH CODE ANN. § 31A-4-113.5 (1992/2003) (portions of model).	
Vermont	VT. STAT. ANN. tit. 8, §§ 3569 to 3572 (1991/1995).	
Virgin Islands	V.I. CODE ANN. tit. 22, §§ 230 to 230b (1993).	
Virginia	VA. CODE ANN. § 38.2-1306.1 (1987/2001); § 38.2-1300 (1986/2009).	VA. CODE ANN. § 38.2-4307.1 (1990/2000) (HMOs).
Washington	WASH. REV. CODE ANN. § 48.05.400 (1987).	
West Virginia	W. VA. CODE § 33-4-14 (1957/1992).	
Wisconsin		WIS. ADMIN. CODE INS. § 50.25 (1993).
Wyoming	WYO. STAT. ANN. §§ 26-3-201 to 26-3-204 (1987/2004).	

**PARTICIPATION IN THE NATIONAL ASSOCIATION
OF INSURANCE COMMISSIONERS (NAIC)
INSURANCE REGULATORY INFORMATION SYSTEM MODEL ACT**

Proceedings Citations

Cited to the Proceedings of the NAIC

In 1976, the NAIC assumed responsibility for data compilation and report production for a system to give early warning of insurers with solvency problems. Tests were developed to lessen the complexity, improve accuracy and retain effectiveness in measurement. **1977 Proc. I 163.**

In 1984, work commenced on the development of a model act to ensure all companies were contained in the data base. Other issues to be considered by the drafters included analyses of the legal feasibility of the possibility of limiting report applications to those of an exclusively regulatory nature, and other elements which might be necessary to assure the appropriateness of such an approach. **1984 Proc. II 387.**

Section 1. Scope

This section is identical to that proposed in the first draft. It was designed to be a simple and concise model to provide all states with the necessary grounds for requiring their insurers to participate in IRIS. **1984 Proc. II 400.**

Section 2. Filing Requirement

The initial draft considered contained a specific provision for payment of reasonable fees directly to the NAIC. This provision was not in the act adopted. **1984 Proc. II 400.**

Section 3. Immunity

Between the time of the initial draft and adoption of the model, this section was added. **1985 Proc. I 343.**

Section 4. Confidentiality

It was the recommendation of the working group in 1984 that the NAIC should not release the IRIS financial ratios. They were designed to be a tool for regulators in detecting financially troubled companies or companies trending in that direction. The very nature of computerized ratio analysis and selection will always result in some level of misclassification. If the reports were made public, the committee saw the potential for misuse as a real danger. They did say, however, that since the NAIC was one of the first regulatory bodies to develop a computerized data base of financial information for its regulated entities, it follows that the NAIC should be in the forefront in making this data accessible and available to the public. Like the annual statement, disclosure and accessibility to data can inject further discipline into the insurance marketplace. **1985 Proc. I 328-329.**

In 1986, the NAIC again considered its position on confidentiality of ratio results and the contents of the examiner team synopses. The task force voted to amend the model act to include a new Section 4 on confidentiality. **1986 Proc. II 333.**

In the winter of 1989, the NAIC voted to release the statistical phase of IRIS with the usual ranges for each company denoted, including aggregate, cumulative data such as the five-year trend report but to maintain the confidentiality of the examiner team analysis. Public ratios must be accompanied by instructions detailing the proper use of data and cautioning against inappropriate conclusions. **1990 Proc. I 68.**

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. 1st 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. 2nd Quarter 149.**

**PARTICIPATION IN THE NATIONAL ASSOCIATION
OF INSURANCE COMMISSIONERS (NAIC)
INSURANCE REGULATORY INFORMATION SYSTEM MODEL ACT**

Proceedings Citations

Cited to the Proceedings of the NAIC

Section 4 (cont.)

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. 2nd Quarter 150.**

The revised model was very close to the standardized language, except that the specific language describing the confidential information in the model was included without the standardized language referring to “documents, materials or other information.” **1999 Proc. 3rd Quarter 200.**

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

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

B. 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. 4th Quarter 16.**

C. 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. 4th Quarter 16.**

The provisions of Subsection C 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. 4th Quarter 16.**

D. Subsection D 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 subsection 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. 4th Quarter 16.**

Section 5. Revocation of Certificate of Authority

The initial draft presented for consideration by the task force had this language exactly as adopted. **1984 Proc. II 400.**

**PARTICIPATION IN THE NATIONAL ASSOCIATION
OF INSURANCE COMMISSIONERS (NAIC)
INSURANCE REGULATORY INFORMATION SYSTEM MODEL ACT**

Proceedings Citations

Cited to the Proceedings of the NAIC

Section 6. Effective Date

Chronological Summary of Actions

December 1984: Model adopted.

June 1986: Added section on confidentiality of results.

January 2000: Amended Section 4 to clarify provisions related to confidentiality.

**PARTICIPATION IN THE NATIONAL ASSOCIATION
OF INSURANCE COMMISSIONERS (NAIC)
INSURANCE REGULATORY INFORMATION SYSTEM MODEL ACT**

Proceedings Citations

Cited to the Proceedings of the NAIC

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