

## UNAUTHORIZED TRANSACTION OF INSURANCE CRIMINAL MODEL ACT

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### Section 1. Application

This Act relates to criminal penalties for the unlawful transaction of insurance or health coverage.

### Section 2. Definitions

- A. “Authorized insurer” defined. Includes a person that is authorized to transact insurance in this State by a valid certificate of Authority issued by the commissioner of insurance [insert appropriate title if different]. An “unauthorized” insurer is one not so authorized.
- B. “Certificate of authority” defined. Means a license issued by the commissioner of insurance [insert appropriate title if different], authorizing the holder to act as an insurer. [Or, insert reference to existing definition if appropriate].
- C. “Controlling person” defined. Includes a person who has control of a person as defined by Section 1C of the National Association of Insurance Commissioners (NAIC) Insurance Holding Company System Regulatory Act.
- D. “Person” defined. Except as otherwise expressly provided in a particular statute or required by the context, “person” includes a natural person, an individual, corporation, limited liability company, partnership, association, joint stock company, trust, unincorporated organization or any form of business or social organization and any other nongovernmental legal entity or combination thereof.
- E. “Represent or aid” defined. The term “represent or aid” has the meaning provided in [insert reference to state’s applicable insurance code definition].
- F. “Transaction of insurance” defined. The term “transaction of insurance” has the meaning provided by Section 3P of the NAIC Nonadmitted Insurance Model Act.

**Drafting Note:** Cross-reference definitions to your State’s existing insurance code definitions.

### Section 3. Certificate of Authority Required

- A. A person shall not engage in a transaction of insurance in this State unless the person is an authorized insurer or unless the transaction of insurance is exempt under [insert reference to applicable exemptions, such as surplus lines law or the Liability Risk Retention Act of 1986].
- B. A person shall not act as an officer, director or controlling person for a person who is engaged in a violation of Paragraph A.
- C. A person shall not directly or indirectly represent or aid an unauthorized insurer to transact insurance in this state. [Insert reference to applicable exemption in state and/or federal law, such as surplus lines or the Liability Risk Retention Act of 1986; and line and individual procurement exemption laws that permit the placement of policies of unlicensed insurers].

**Drafting Note:** Nothing in this model shall be construed to apply to insurance transactions made in compliance with the provisions of the Surplus Line Law of this state or the Liability Risk Retention Act of 1986.

**Section 4. Penalty for Unauthorized Transaction of Insurance; Penalty for Assisting an Unauthorized Insurer**

In addition to any other penalties provided in the insurance code:

- A. Any person who knowingly engaged in or reasonably should have known he or she was engaged in the unauthorized transaction of insurance as set forth in Subsection A of Section 3 of this Act commits a felony of the [insert reference to state's applicable degree of felony] degree and shall be punished as provided in [insert State's applicable reference to sentencing terms].
- B. Any person who knowingly acted as or reasonably should have known he or she was acting as an officer, director or controlling person as set forth in Subsection B of Section 3 of this Act commits a felony of the [insert reference to State's applicable degree of felony] degree and shall be punished as provided in [insert state's applicable reference to sentencing terms].
- C. Any person who knowingly represented or aided or reasonably should have known he or she was representing or aiding an unauthorized insurer as set forth in Subsection C of Section 3 of this Act commits a felony of the [insert reference to state's applicable degree of felony] degree and shall be punished as provided in [insert state's applicable reference to sentencing terms].

**Drafting Note:** The intent for the penalties in Section 4 is that the degree of the felony (or sentencing) be increased from Subsection C, to Subsection B, to Subsection A, such that Subsection A imposes the most severe penalty of the three subsections.

**Section 5. Penalty for Subsequent Violations**

In addition to any other penalties provided in the Insurance Code:

Any person who has been convicted pursuant to Section 4 of this Act and commits a subsequent violation pursuant to Section 4 of this Act commits a felony of the [insert reference to State's applicable degree of felony] degree and shall be punished as provided in [insert State's applicable reference to sentencing terms].

**Section 6. Liability for Payment of Claims**

In addition to the penalties provided in Sections 4 and 5 of this Act and in addition to any other penalties provided in the Insurance Code:

Any person who violates this Act shall be personally liable, with any other person liable therefore for the payment of any claims arising under any purported coverages or contracts used in violation of this Act.

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*Chronological Summary of Actions (All references are to the Proceedings of the NAIC)*

*2006 Proc. 4<sup>th</sup> Quarter 44, 123-126 (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		ALASKA STAT. § 21.36.360 (felony) (1984/2015).
American Samoa	NO CURRENT ACTIVITY	
Arizona	NO CURRENT ACTIVITY	ARIZ. REV. STAT. ANN. §§ 20-401.01 to 20-401.06 (felony) (1972/1992).
Arkansas	NO CURRENT ACTIVITY	
California	NO CURRENT ACTIVITY	
Colorado	NO CURRENT ACTIVITY	
Connecticut	NO CURRENT ACTIVITY	
Delaware	NO CURRENT ACTIVITY	
District of Columbia	NO CURRENT ACTIVITY	
Florida		FLA. STAT. §§ 626.901 to 626.902 (felony) (2005).
Georgia		GA. CODE ANN. §§ 33-5-1 to 33-5-3 (misdemeanor) (1960).

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Guam	NO CURRENT ACTIVITY	
Hawaii	NO CURRENT ACTIVITY	
Idaho	NO CURRENT ACTIVITY	
Illinois	NO CURRENT ACTIVITY	
Indiana	NO CURRENT ACTIVITY	
Iowa		IOWA CODE §§ 507A.1 to 507A.11 (felony) (1967/2004).
Kansas	NO CURRENT ACTIVITY	
Kentucky	NO CURRENT ACTIVITY	
Louisiana	NO CURRENT ACTIVITY	
Maine	NO CURRENT ACTIVITY	
Maryland		MD. CODE ANN., INS. §§ 27-401 to 27-408 (felony) (1957/2013).
Massachusetts	NO CURRENT ACTIVITY	
Michigan	NO CURRENT ACTIVITY	
Minnesota	NO CURRENT ACTIVITY	
Mississippi	NO CURRENT ACTIVITY	
Missouri	NO CURRENT ACTIVITY	
Montana	NO CURRENT ACTIVITY	
Nebraska		NEB. REV. STAT. §§ 44-2001 to 44-2008 (misdemeanor) (1969).
Nevada	NO CURRENT ACTIVITY	NEV. REV. STAT. §§ 685B.020 to 685B.087 (felony) (1971/2005).
New Hampshire	NO CURRENT ACTIVITY	
New Jersey	NO CURRENT ACTIVITY	

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
New Mexico	NO CURRENT 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	NO CURRENT ACTIVITY	
Pennsylvania	NO CURRENT ACTIVITY	
Puerto Rico	NO CURRENT ACTIVITY	
Rhode Island	NO CURRENT ACTIVITY	
South Carolina		S.C. CODE ANN. §§ 38-25-120 to 38-25-130; 38-25-330 (felony) (1987/1998).
South Dakota	NO CURRENT ACTIVITY	
Tennessee	NO CURRENT ACTIVITY	
Texas		TEX. INS. CODE ANN. §§ 101.101 to 101.106 (felony) (1999/2009).
Utah		UTAH CODE ANN. §§ 31A-15-101 to 31A-15-102 (felony) (1985/2014).
Vermont	NO CURRENT ACTIVITY	
Virgin Islands	NO CURRENT ACTIVITY	
Virginia	NO CURRENT ACTIVITY	
Washington	NO CURRENT ACTIVITY	
West Virginia		W. VA. CODE §§ 33-44-1 to 33-44-13 (felony) (2001).

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Wisconsin	NO CURRENT ACTIVITY	
Wyoming	NO CURRENT ACTIVITY	