

Adopted by the Financial Condition (E) Committee, Dec. 15, 2022
Adopted by the Receivership and Insolvency (E) Task Force, Dec. 14, 2022

REQUEST FOR NAIC MODEL LAW DEVELOPMENT

This form is intended to gather information to support the development of a new model law or amendment to an existing model law. Prior to development of a new or amended model law, approval of the respective Parent Committee and the NAIC's Executive Committee is required. The NAIC's Executive Committee will consider whether the request fits the criteria for model law development. Please complete all questions and provide as much detail as necessary to help in this determination.

Please check whether this is: **New Model Law** or **Amendment to Existing Model**

1. Name of group to be responsible for drafting the model:

Receivership Law (E) Working Group of the Receivership and Insolvency (E) Task Force to complete the drafting.

Note that Model #540 is currently being amended to address restructuring mechanisms, per the request for model law development adopted by NAIC Executive (EX) Committee on August 11, 2022. The Task Force hopes to consider the adoption of further amendments for this request within a similar timeframe.

2. NAIC staff support contact information:

Jane Koenigsman
jkoenigsman@naic.org
816-783-8145

3. Please provide a brief description of the proposed new model or the amendment(s) to the existing model. If you are proposing a new model, please also provide a proposed title. If an existing model law, please provide the title, attach a current version to this form and reference the section(s) proposed to be amended.

- ***Property and Casualty Insurance Guaranty Association Model Act (#540)***

As presented by the National Conference of Insurance Guaranty Funds (NCIGF), cyber security insurance coverage is trending into the admitted market. Consequently, NCIGF anticipates the insurance insolvency resolution system will be presented with claims and other issues related to this coverage. These policy obligations may flow both from standalone cyber policies, endorsements, or from coverages that may be found to exist in commercial general liability and other lines of business typically written for business entities. For this reason, policymakers need to determine how such coverages will be handled should an insurer writing this business become insolvent. While each jurisdiction will need to decide whether, and within what parameters, cyber claims will be covered, we offer for consideration and guidance recommended amendments to the NAIC Property and Casualty Insurance Guaranty Association Act (NAIC Model 540). Policy makers should also consider how such claims will be handled before guaranty funds and associations (hereinafter "guaranty funds") are triggered – for example in a rehabilitation proceeding. Likewise, current insolvency processes and transition to the guaranty funds will need to be changed and enhanced to deal with this unique line of business and especially its demanding claims administration standards.

4. Does the model law meet the Model Law Criteria? **Yes** or **No (Check one)**

(If answering no to any of these questions, please reevaluate charge and proceed accordingly to address issues).

- a. Does the subject of the model law necessitate a national standard and require uniformity amongst all states?** **Yes** or **No (Check one)**

If yes, please explain why:

This proposed change is needed to ensure cyber insurance policyholders in all states are provided with guaranty fund coverage for this trending line of business.

- b. Does Committee believe NAIC members should devote significant regulator and Association resources to educate, communicate and support this model law?

Yes or No (Check one)

5. What is the likelihood that your Committee will be able to draft and adopt the model law within one year from the date of Executive Committee approval?

1 2 3 4 5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary:

NCIGF has provided a proposal of suggested amendments for consideration. Proposed amendments include a definition of cyber insurance, coverage limitations and updates to other references.

6. What is the likelihood that a minimum two-thirds majority of NAIC members would ultimately vote to adopt the proposed model law?

1 2 3 4 5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary: See previous discussion.

7. What is the likelihood that state legislatures will adopt the model law in a uniform manner within three years of adoption by the NAIC?

1 2 3 4 5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary:

At this juncture, the amendments being considered are simple and because they have the potential to address future policyholder protection for this line of business, we believe such changes will be widely supported by all parties.

8. Is this model law referenced in the NAIC Accreditation Standards? If so, does the standard require the model law to be adopted in a substantially similar manner?

No reference in Accreditation Standards.

9. Is this model law in response to or impacted by federal laws or regulations? If yes, please explain.

No.

Draft: Nov. 16, 2022

Adopted by the Market Regulation and Consumer Affairs (D) Committee, Dec. 14, 2022
Adopted by the Antifraud (D) Task Force, Nov. 16, 2022

REQUEST FOR NAIC MODEL LAW DEVELOPMENT

This form is intended to gather information to support the development of a new model law or amendment to an existing model law. Prior to development of a new or amended model law, approval of the respective Parent Committee and the NAIC's Executive Committee is required. The NAIC's Executive Committee will consider whether the request fits the criteria for model law development. Please complete all questions and provide as much detail as necessary to help in this determination.

Please check whether this is: New Model Law or Amendment to Existing Model

1. Name of group to be responsible for drafting the model:

Market Regulation Consumer Affairs (D) Committee/Antifraud (D) Task Force/Improper Marketing of Health Insurance (D) Working Group

2. NAIC staff support contact information:

Market Regulation and Consumer Affairs (D) Committee – Tim Mullen
Antifraud (D) Task Force – Greg Welker
Improper Marketing of Health Insurance (D) Working Group – Greg Welker

3. Please provide a brief description of the proposed new model or the amendment(s) to the existing model. If you are proposing a new model, please also provide a proposed title. If an existing model law, please provide the title, attach a current version to this form and reference the section(s) proposed to be amended.

Proposed are amendments to the *Unfair Trade Practices Act* (#880):

Section 2: Definitions
Section 3: Unfair Trades Practices Prohibited
Section 4: Unfair Trade Practices Defined

The Improper Marketing of Health Insurance (D) Working Group is charged to (1) coordinate with regulators, both on a state and federal level, to provide assistance monitoring the improper marketing of health plans and coordinate appropriate enforcement actions, as needed, with other NAIC Committees, Task Forces, and Working Groups; and (2) review existing NAIC Models and Guidelines that address the use of lead generators for sales of health insurance products and to identify models and guidelines that need to be updated or developed to address current marketplace activities.

In order to achieve this goal and provide regulation over lead generators, the Working Group is requesting the review the above-mentioned Model #880, Sections 2, 3, and 4.

Section 2: There is currently no definition for Health Insurance Lead Generator. This section will be amended to include a definition of Health Insurance Lead Generator.

Section 3: This section will be amended to prohibit a Health Insurance Lead Generator, as defined in Section 2, from engaging in an unfair trade practice.

Section 4: This section will be amended to define what marketing-related activity of Health Insurance Lead Generators are unfair trade practices. These amendments will provide states the means to regulate lead generators and gain a level of consumer protection that is not currently in place.

4. Does the model law meet the Model Law Criteria? Yes or No (Check one)

(If answering no to any of these questions, please reevaluate charge and proceed accordingly to address issues).

- a. Does the subject of the model law necessitate a national standard and require uniformity amongst all states? Yes or No (Check one)

If yes, please explain why: One of the initial efforts at developing state legislation in response to the McCarran-Ferguson Act of 1945 was the development of trade practices legislation and the adoption of the NAIC's Unfair Trade Practices Act in 1947. Health Insurance Lead Generators impact consumers in every jurisdiction. Insurance regulatory authority over Health Insurance Lead Generators and defining prohibited practices of Health Insurance Lead Generators need to be clarified.

- b. Does Committee believe NAIC members should devote significant regulator and Association resources to educate, communicate and support this model law?

Yes or No (Check one)

5. What is the likelihood that your committee will be able to draft and adopt the model law within one year from the date of Executive Committee approval?

1 2 3 4 5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary:

6. What is the likelihood that a minimum two-thirds majority of NAIC members would ultimately vote to adopt the proposed model law?

1 2 3 4 5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary:

7. What is the likelihood that state legislatures will adopt the model law in a uniform manner within three years of adoption by the NAIC?

1 2 3 4 5 (Check one)

High Likelihood

Low Likelihood

Explanation, if necessary:

8. Is this model law referenced in the NAIC Accreditation Standards? If so, does the standard require the model law to be adopted in a substantially similar manner?

No

9. Is this model law in response to or impacted by federal laws or regulations? If yes, please explain.

No