

## NAIC INSURANCE INFORMATION AND PRIVACY PROTECTION MODEL ACT

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### Preamble

The purpose of this Act is to establish standards for the collection, use and disclosure of information gathered in connection with insurance transactions by insurance institutions, agents or insurance support organizations; to maintain a balance between the need for information by those conducting the business of insurance and the public's need for fairness in insurance information practices, including the need to minimize intrusiveness; to establish a regulatory mechanism to enable natural persons to ascertain what information is being or has been collected about them in connection with insurance transactions and to have access to such information for the purpose of verifying or disputing its accuracy; to limit the disclosure of information collected in connection with insurance transactions; and to enable insurance applicants and policyholders to obtain the reasons for any adverse underwriting decision.

### Section 1. Scope

- A. The obligations by this Act shall apply to those insurance institutions, agents or insurance support organizations which, on or after the effective date of this Act:
  - (1) In the case of life, health and disability insurance:
    - (a) Collect, receive or maintain information in connection with insurance transactions which pertains to natural persons who are residents of this state, or
    - (b) Engage in insurance transactions with applicants, individuals or policyholders who are residents of this state, and

- (2) In the case of property or casualty insurance:
  - (a) Collect, receive or maintain information in connection with insurance transactions involving policies, contracts or certificates of insurance delivered, issued for delivery or renewed in this state, or
  - (b) Engage in insurance transactions involving policies, contracts or certificates of insurance delivered, issued for delivery or renewed in this state.
- B. The rights granted by this Act shall extend to:
  - (1) In the case of life, health or disability insurance, the following persons who are residents of this state:
    - (a) Natural persons who are the subject of information collected, received or maintained in connection with insurance transactions, and
    - (b) Applicants, individuals or policyholders who engage in or seek to engage in insurance transactions, and
  - (2) In the case of property or casualty insurance, the following persons:
    - (a) Natural persons who are the subject of information collected, received or maintained in connection with insurance transactions involving policies, contracts or certificates of insurance delivered, issued for delivery or renewed in this state, and
    - (b) Applicants, individuals or policyholders who engage in or seek to engage in insurance transactions involving policies, contracts or certificates of insurance delivered, issued for delivery or renewed in this state.
- C. For purposes of this section, a person shall be considered a resident of this state if the person's last known mailing address, as shown in the records of the insurance institution, agent or insurance support organization, is located in this state.
- D. Notwithstanding Subsections A and B above, this Act shall not apply to information collected from the public records of a governmental authority and maintained by an insurance institution or its representatives for the purpose of insuring the title to real property located in this state.

**Section 2. Definitions**

As used in this Act:

- A. "Adverse underwriting decision" means:
  - (1) Any of the following actions with respect to insurance transactions involving insurance coverage which is individually underwritten:
    - (a) A declination of insurance coverage;
    - (b) A termination of insurance coverage;
    - (c) Failure of an agent to apply for insurance coverage with a specific insurance institution which the agent represents and which is requested by an applicant;

- (d) In the case of a property or casualty insurance coverage:
  - (i) Placement by an insurance institution or agent of a risk with a residual market mechanism, an unauthorized insurer or an insurance institution which specializes in substandard risks; or
  - (ii) The charging of a higher rate on the basis of information which differs from that which the applicant or policyholder furnished;

**Drafting Note:** The use of the term “substandard” in Section 2A(d)(i) is intended to apply to those insurance institutions whose rates and market orientation are directed at risks other than preferred or standard risks. To facilitate compliance with this Act, Commissioners should consider developing a list of insurance institutions operating in their state which specialize in substandard risks and make it known to insurance institutions and agents.

- (e) In the case of a life, health or disability insurance coverage, an offer to insure at higher than standard rates.
- (2) Notwithstanding Paragraph (1) above, the following actions shall not be considered adverse underwriting decisions but the insurance institution or agent responsible for their occurrence shall nevertheless provide the applicant or policyholder with the specific reason or reasons for their occurrence:
- (a) The termination of an individual policy form on a class or statewide basis;
  - (b) A declination of insurance coverage solely because such coverage is not available on a class or statewide basis; or
  - (c) The rescission of a policy.
- B. “Affiliate” or “affiliated” means a person that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with another person.
- C. “Agent” means [make reference here to every appropriate statutory category of producer, including brokers, authorized to do business in the state. This is necessary because in many states different types of producers, or producers for certain types of insurance institutions are referred to by specific statutory terms in the insurance code.]
- D. “Applicant” means a person who seeks to contract for insurance coverage other than a person seeking group insurance that is not individually underwritten.
- E. “Commissioner” means [insert the appropriate title and statutory reference for the principal insurance regulatory official of the State.]
- F. “Consumer report” means a written, oral or other communication of information bearing on a natural person’s credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living which is used or expected to be used in connection with an insurance transaction.
- G. “Consumer reporting agency” means a person who:
- (1) Regularly engages, in whole or in part, in the practice of assembling or preparing consumer reports for a monetary fee;
  - (2) Obtains information primarily from sources other than insurance institutions; and
  - (3) Furnishes consumer reports to other persons.

- H. "Control," including the terms "controlled by" or "under common control with," means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting securities, by contract other than a commercial contract for goods or nonmanagement services, or otherwise, unless the power is the result of an official position with or corporate office held by the person.
- I. "Declination of insurance coverage" means a denial, in whole or in part, by an insurance institution or agent of requested insurance coverage.
- J. "Individual" means a natural person who:
- (1) In the case of property or casualty insurance, is a past, present or proposed named insured or certificateholder;
  - (2) In the case of life, health or disability insurance, is a past, present or proposed principal insured or certificateholder;
  - (3) Is a past, present or proposed policyowner;
  - (4) Is a past or present applicant;
  - (5) Is a past or present claimant; or
  - (6) Derived, derives or is proposed to derive insurance coverage under an insurance policy or certificate subject to this Act.
- K. "Institutional source" means any person or governmental entity that provides information about an individual to an agent, insurance institution or insurance support organization, other than:
- (1) An agent;
  - (2) The individual who is the subject of the information; or
  - (3) A natural person acting in a personal capacity rather than in a business or professional capacity.
- L. "Insurance institution" means any corporation, association, partnership, reciprocal exchange, inter-insurer, Lloyd's insurer, fraternal benefit society or other person engaged in the business of insurance, including health maintenance organizations, medical service plans and hospital service plans as defined in [insert the applicable section of the State insurance code which defines health maintenance organizations or medical or hospital service plans.] "Insurance institution" shall not include agents or insurance support organizations.
- M. "Insurance support organization" means:
- (1) Any person who regularly engages, in whole or in part, in the practice of assembling or collecting information about natural persons for the primary purpose of providing the information to an insurance institution or agent for insurance transactions, including:
    - (a) The furnishing of consumer reports or investigative consumer reports to an insurance institution or agent for use in connection with an insurance transaction, or
    - (b) The collection of personal information from insurance institutions, agents or other insurance support organizations for the purpose of detecting or preventing fraud, material misrepresentation or material nondisclosure in connection with insurance underwriting or insurance claim activity.

- (2) Notwithstanding Paragraph (1) above, the following persons shall not be considered "insurance support organizations" for purposes of this Act: agents, government institutions, insurance institutions, medical care institutions and medical professionals.
- N. "Insurance transaction" means any transaction involving insurance primarily for personal, family or household needs rather than business or professional needs which entails:
- (1) The determination of an individual's eligibility for an insurance coverage, benefit or payment; or
  - (2) The servicing of an insurance application, policy, contract or certificate.
- O. "Investigative consumer report" means a consumer report or portion thereof in which information about a natural person's character, general reputation, personal characteristics or mode of living is obtained through personal interviews with the person's neighbors, friends, associates, acquaintances or others who may have knowledge concerning such items of information.
- P. "Medical-care institution" means any facility or institution that is licensed to provide health care services to natural persons, including but not limited to: health-maintenance organizations home-health agencies, hospitals, medical clinics, public health agencies, rehabilitation agencies and skilled nursing facilities.
- Q. "Medical professional" means any person licensed or certified to provide health care services to natural persons, including but not limited to, a chiropractor, clinical dietician, clinical psychologist, dentist, nurse, occupational therapist, optometrist, pharmacist, physical therapist, physician, podiatrist, psychiatric social worker or speech therapist.
- R. "Medical record information" means personal information which:
- (1) Relates to an individual's physical or mental condition, medical history or medical treatment; and
  - (2) Is obtained from a medical professional or medical care institution, from the individual, or from the individual's spouse, parent or legal guardian.
- S. "Person" means any natural person, corporation, association, partnership or other legal entity.
- T. "Personal information" means any individually identifiable information gathered in connection with an insurance transaction from which judgments can be made about an individual's character, habits, avocations, finances, occupation, general reputation, credit, health or any other personal characteristics. "Personal information" includes an individual's name and address and "medical record information" but does not include "privileged information".
- U. "Policyholder" means any person who:
- (1) In the case of individual property or casualty insurance, is a present named insured;
  - (2) In the case of individual life, health or disability insurance, is a present policyowner; or
  - (3) In the case of group insurance which is individually underwritten, is a present group certificateholder.
- V. "Pretext interview" means an interview whereby a person, in an attempt to obtain information about a natural person, performs one or more of the following acts:
- (1) Pretends to be someone he or she is not;
  - (2) Pretends to represent a person he or she is not in fact representing;

- (3) Misrepresents the true purpose of the interview; or
- (4) Refuses to identify himself or herself upon request.

W. "Privileged information" means any individually identifiable information that:

- (1) Relates to a claim for insurance benefits or a civil or criminal proceeding involving an individual; and
- (2) Is collected in connection with or in reasonable anticipation of a claim for insurance benefits or civil or criminal proceeding involving an individual; provided, however, information otherwise meeting the requirements of this subsection shall nevertheless be considered "personal information" under this Act if it is disclosed in violation of Section 13 of this Act.

**Drafting Note:** The phrase "in reasonable anticipation of a claim" contemplates that the insurance institution has knowledge of a loss but has not received formal notice of the claim.

X. "Residual market mechanism" means an association, organization or other entity defined or described in Sections(s) [insert those sections of the state insurance code authorizing the establishment of a FAIR Plan, assigned risk plan, reinsurance facility, joint underwriting association, etc.]

**Drafting Note:** Those states having a reinsurance facility may want to exclude it from this definition if the state's policy is not to disclose to insureds the fact that they have been reinsured in the facility.

Y. "Termination of insurance coverage" or "termination of an insurance policy" means either a cancellation or nonrenewal of an insurance policy, in whole or in part, for any reason other than the failure to pay a premium as required by the policy.

Z. "Unauthorized insurer" means an insurance institution that has not been granted a certificate of authority by the Commissioner to transact the business of insurance in this state.

**Drafting Note:** Each state must make sure that this definition is consistent with its surplus lines laws.

### **Section 3. Pretext Interviews**

No insurance institution, agent or insurance support organization shall use or authorize the use of pretext interviews to obtain information in connection with an insurance transaction; provided, however, a pretext interview may be undertaken to obtain information from a person or institution that does not have a generally or statutorily recognized privileged relationship with the person about whom the information relates for the purpose of investigating a claim where, based upon specific information available for review by the Commissioner, there is a reasonable basis for suspecting criminal activity, fraud, material misrepresentation or material nondisclosure in connection with the claim.

**Drafting Note:** Some states may desire to eliminate the exception in this section and thereby prohibit pretext interviews in all instances. Other states may desire to broaden the exception so that pretext interviews can be utilized in underwriting and rating situations as well as claim situations. States may either expand or limit the prohibition against pretext interviews suggested in this section to accommodate their individual needs and circumstances. Deviation from the standard developed here should not seriously undermine efforts to achieve uniform rules for insurance information practices throughout the various states.

### **Section 4. Notice of Insurance Information Practices**

A. An insurance institution or agent shall provide a notice of information practices to all applicants or policyholders in connection with insurance transactions as provided below:

- (1) In the case of an application for insurance, a notice shall be provided no later than:
  - (a) At the time of the delivery of the insurance policy or certificate when personal information is collected only from the applicant or from public records; or

- (b) At the time the collection of personal information is initiated when personal information is collected from a source other than the applicant or public records;
  - (2) In the case of a policy renewal, a notice shall be provided no later than the policy renewal date, except that no notice shall be required in connection with a policy renewal if:
    - (a) Personal information is collected only from the policyholder or from public records; or
    - (b) A notice meeting the requirements of this section has been given within the previous twenty-four (24) months; or
  - (3) In the case of a policy reinstatement or change in insurance benefits, a notice shall be provided no later than the time a request for a policy reinstatement or change in insurance benefits is received by the insurance institution, except that no notice shall be required if personal information is collected only from the policyholder or from public records.
- B. The notice required by Subsection A above shall be in writing and shall state:
- (1) Whether personal information may be collected from persons other than the individual or individuals proposed for coverage;
  - (2) The types of personal information that may be collected and the types of sources and investigative techniques that may be used to collect such information;
  - (3) The types of disclosures identified in Subsections B, C, D, E, F, I, K, L and N of Section 13 of this Act and the circumstances under which such disclosures may be made without prior authorization; provided, however, only those circumstances need be described which occur with such frequency as to indicate a general business practice;
  - (4) A description of the rights established under Sections 8 and 9 of this Act and the manner in which such rights may be exercised; and
  - (5) That information obtained from a report prepared by an insurance support organization may be retained by the insurance support organization and disclosed to other persons.
- C. In lieu of the notice prescribed in Subsection B, the insurance institution or agent may provide an abbreviated notice informing the applicant or policyholder that:
- (1) Personal information may be collected from persons other than the individual or individuals proposed for coverage;
  - (2) Such information as well as other personal or privileged information subsequently collected by the insurance institution or agent may in certain circumstances be disclosed to third parties without authorization;
  - (3) A right of access and correction exists with respect to all personal information collected; and
  - (4) The notice prescribed in Subsection B will be furnished to the applicant or policyholder upon request.
- D. The obligations imposed by this section upon an insurance institution or agent may be satisfied by another insurance institution or agent authorized to act on its behalf.

**Drafting Note:** If permitted under Section 4A, an insurance institution or agent may include the notice in the insurance policy or certificate.

**Section 5. Marketing and Research Surveys**

An insurance institution or agent shall clearly specify those questions designed to obtain information solely for marketing or research purposes from an individual in connection with an insurance transaction.

**Section 6. Content of Disclosure Authorization Forms**

Notwithstanding any other provision of law of this state, no insurance institution, agent or insurance support organization may utilize as its disclosure authorization form in connection with insurance transactions a form or statement which authorizes the disclosure of personal or privileged information about an individual to the insurance institution, agent or insurance support organization unless the form or statement:

- A. Is written in plain language;
- B. Is dated;
- C. Specifies the types of persons authorized to disclose information about the individual;
- D. Specifies the nature of the information authorized to be disclosed;
- E. Names the insurance institution or agent and identifies by generic reference representatives of the insurance institution to whom the individual is authorizing information to be disclosed;
- F. Specifies the purposes for which the information is collected;
- G. Specifies the length of time such authorization shall remain valid, which shall be no longer than:
  - (1) In the case of authorizations signed for the purpose of collecting information in connection with an application for an insurance policy, a policy reinstatement or a request for change in policy benefits:
    - (a) Thirty (30) months from the date the authorization is signed if the application or request involves life, health or disability insurance;
    - (b) One (1) year from the date the authorization is signed if the application or request involves property or casualty insurance;
  - (2) In the case of authorizations signed for the purpose of collecting information in connection with a claim for benefits under an insurance policy,
    - (a) The term of coverage of the policy if the claim is for a health insurance benefit;
    - (b) The duration of the claim if the claim is not for a health insurance benefit; and
- H. Advises the individual or a person authorized to act on behalf of the individual that the individual or the individual's authorized representative is entitled to receive a copy of the authorization form.

**Drafting Note:** The standard established by this section for disclosure authorization forms is intended to supersede any existing requirements a state may have adopted even if such requirements are more specific or applicable to particular authorizations such as medical information authorizations. This section is intended to be the exclusive statutory standard for all authorization forms utilized by insurance institutions, agents or insurance support organizations. This section does not preclude the inclusion of a disclosure authorization in an application form nor invalidate any disclosure authorizations in effect prior to the effective date of this Act. Nor does this section preclude an insurance institution, agent or insurance support organization from obtaining, in addition to its own authorization form which complies with this section, an additional authorization form required by the person from whom disclosure is sought.



**Section 7. Investigative Consumer Reports**

- A. No insurance institution, agent or insurance support organization may prepare or request an investigative consumer report about an individual in connection with an insurance transaction involving an application for insurance, a policy renewal, a policy reinstatement or a change in insurance benefits unless the insurance institution or agent informs the individual:
  - (1) That he or she may request to be interviewed in connection with the preparation of the investigative consumer report; and
  - (2) That upon a request pursuant to Section 8, he or she is entitled to receive a copy of the investigative consumer report.
- B. If an investigative consumer report is to be prepared by an insurance institution or agent, the insurance institution or agent shall institute reasonable procedures to conduct a personal interview requested by an individual.
- C. If an investigative consumer report is to be prepared by an insurance support organization, the insurance institution or agent desiring such report shall inform the insurance support organization whether a personal interview has been requested by the individual. The insurance support organization shall institute reasonable procedures to conduct such interviews, if requested.

**Section 8. Access to Recorded Personal Information**

- A. If any individual, after proper identification, submits a written request to an insurance institution, agent or insurance support organization for access to recorded personal information about the individual which is reasonably described by the individual and reasonably locatable and retrievable by the insurance institution, agent or insurance support organization, the insurance institution, agent or insurance support organization shall within thirty (30) business days from the date such request is received:
  - (1) Inform the individual of the nature and substance of such recorded personal information in writing, by telephone or by other oral communication, whichever the insurance institution, agent or insurance support organization prefers;
  - (2) Permit the individual to see and copy, in person, such recorded personal information pertaining to him or her or to obtain a copy of such recorded personal information by mail, whichever the individual prefers, unless such recorded personal information is in coded form, in which case an accurate translation in plain language shall be provided in writing;
  - (3) Disclose to the individual the identity, if recorded, of those persons to whom the insurance institution, agent or insurance support organization has disclosed such personal information within two (2) years prior to such request, and if the identity is not recorded, the names of those insurance institutions, agents, insurance support organizations or other persons to whom such information is normally disclosed; and
  - (4) Provide the individual with a summary of the procedures by which he or she may request correction, amendment or deletion of recorded personal information.
- B. Any personal information provided pursuant to Subsection A above shall identify the source of the information if such source is an institutional source.

- C. Medical-record information supplied by a medical care institution or medical professional and requested under Subsection A, together with the identity of the medical professional or medical care institution which provided such information, shall be supplied either directly to the individual or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the insurance institution, agent or insurance support organization prefers. If it elects to disclose the information to a medical professional designated by the individual, the insurance institution, agent or insurance support organization shall notify the individual, at the time of the disclosure, that it has provided the information to the medical professional.
- D. Except for personal information provided under Section 10, an insurance institution, agent or insurance support organization may charge a reasonable fee to cover the costs incurred in providing a copy of recorded personal information to individuals.
- E. The obligations imposed by this section upon an insurance institution or agent may be satisfied by another insurance institution or agent authorized to act on its behalf. With respect to the copying and disclosure of recorded personal information pursuant to a request under Subsection A, an insurance institution, agent or insurance support organization may make arrangements with an insurance support organization or a consumer reporting agency to copy and disclose recorded personal information on its behalf.
- F. The rights granted to individuals in this section shall extend to all natural persons to the extent information about them is collected and maintained by an insurance institution, agent or insurance support organization in connection with an insurance transaction. The rights granted to all natural persons by this subsection shall not extend to information about them that relates to and is collected in connection with or in reasonable anticipation of a claim or civil or criminal proceeding involving them.
- G. For purposes of this section, the term "insurance support organization" does not include "consumer reporting agency" except to the extent this section imposes more stringent requirements on a consumer reporting agency than other state or federal law.

**Section 9. Correction, Amendment or Deletion of Recorded Personal Information**

- A. Within thirty (30) business days from the date of receipt of a written request from an individual to correct, amend or delete any recorded personal information about the individual within its possession, an insurance institution, agent or insurance support organization shall either:
  - (1) Correct, amend or delete the portion of the recorded personal information in dispute; or
  - (2) Notify the individual of:
    - (a) Its refusal to make such correction, amendment or deletion;
    - (b) The reasons for the refusal, and
    - (c) The individual's right to file a statement as provided in Subsection C.
- B. If the insurance institution, agent or insurance support organization corrects, amends or deletes recorded personal information in accordance with Subsection A(1) above, the insurance institution, agent or insurance support organization shall so notify the individual in writing and furnish the correction, amendment or fact of deletion to:
  - (1) Any person specifically designated by the individual who may have, within the preceding two (2) years, received such recorded personal information;

- (2) Any insurance support organization whose primary source of personal information is insurance institutions if the insurance support organization has systematically received such recorded personal information from the insurance institution within the preceding seven (7) years; provided, however, that the correction, amendment or fact of deletion need not be furnished if the insurance support organization no longer maintains recorded personal information about the individual; and
  - (3) Any insurance support organization that furnished the personal information that has been corrected, amended or deleted.
- C. Whenever an individual disagrees with an insurance institution's, agent's or insurance support organization's refusal to correct, amend or delete recorded personal information, the individual shall be permitted to file with the insurance institution, agent or insurance support organization:
- (1) A concise statement setting forth what the individual thinks is the correct, relevant or fair information; and
  - (2) A concise statement of the reasons why the individual disagrees with the insurance institution's, agent's or insurance support organization's refusal to correct, amend or delete recorded personal information.
- D. In the event an individual files either statement as described in Subsection C above, the insurance institution, agent or insurance support organizations shall:
- (1) File the statement with the disputed personal information and provide a means by which anyone reviewing the disputed personal information will be made aware of the individual's statement and have access to it; and
  - (2) In any subsequent disclosure by the insurance institution, agent or support organization of the recorded personal information that is the subject of disagreement, clearly identify the matter or matters in dispute and provide the individual's statement along with the recorded personal information being disclosed; and
  - (3) Furnish the statement to the persons and in the manner specified in Subsection B above.
- E. The rights granted to individuals in this section shall extend to all natural persons to the extent information about them is collected and maintained by an insurance institution, agent or insurance support organization in connection with an insurance transaction. The rights granted to all natural persons by this subsection shall not extend to information about them that relates to and is collected in connection with or in reasonable anticipation of a claim or civil or criminal proceeding involving them.
- F. For purposes of this section, the term "insurance support organization" does not include "consumer reporting agency" except to the extent that this section imposes more stringent requirements on a consumer reporting agency than other state or federal law.

## **Section 10. Reasons for Adverse Underwriting Decisions**

- A. In the event of an adverse underwriting decision the insurance institution or agent responsible for the decision shall:
- (1) Either provide the applicant, policyholder or individual proposed for coverage with the specific reason or reasons for the adverse underwriting decision in writing or advise such person that upon written request he or she may receive the specific reason or reasons in writing; and

- (2) Provide the applicant, policyholder or individual proposed for coverage with a summary of the rights established under Subsection B and Sections 8 and 9 of this Act.
- B. Upon receipt of a written request within ninety (90) business days from the date of the mailing of notice or other communication of an adverse underwriting decision to an applicant, policyholder or individual proposed for coverage, the insurance institution or agent shall furnish to such person within twenty-one (21) business days from the date of receipt of such written request:
- (1) The specific reason or reasons for the adverse underwriting decision, in writing, if such information was not initially furnished in writing pursuant to Subsection A(1);
  - (2) The specific items of personal and privileged information that support those reasons; provided, however:
    - (a) The insurance institution or agent shall not be required to furnish specific items of privileged information if it has a reasonable suspicion, based upon specific information available for review by the Commissioner, that the applicant, policyholder or individual proposed for coverage has engaged in criminal activity, fraud, material misrepresentation or material nondisclosure, and
    - (b) Specific items of medical-record information supplied by a medical care institution or medical professional shall be disclosed either directly to the individual about whom the information relates or to a medical professional designated by the individual and licensed to provide medical care with respect to the condition to which the information relates, whichever the insurance institution or agent prefers, and
  - (3) The names and addresses of the institutional sources that supplied the specific items of information pursuant to Subsection B(2); provided, however, that the identity of any medical professional or medical care institution shall be disclosed either directly to the individual or to the designated medical professional, whichever the insurance institution or agent prefers.
- C. The obligations imposed by this section upon an insurance institution or agent may be satisfied by another insurance institution or agent authorized to act on its behalf.
- D. When an adverse underwriting decision results solely from an oral request or inquiry, the explanation of reasons and summary of rights required by Subsection A may be given orally.

**Drafting Note:** The exception in Section 10B(2)(a) to the obligation of an insurance institution or agent to furnish the specific items of personal and privileged information that support the reasons for an adverse underwriting decision extends only to information about criminal activity, fraud, material misrepresentation or material nondisclosure that is privileged information and not to all information.

### **Section 11. Information Concerning Previous Adverse Underwriting Decisions**

No insurance institution, agent or insurance support organization may seek information in connection with an insurance transaction concerning:

- A. Any previous adverse underwriting decision experienced by an individual; or
- B. Any previous insurance coverage obtained by an individual through a residual market mechanism, unless such inquiry also requests the reasons for any previous adverse underwriting decision or the reasons why insurance coverage was previously obtained through a residual market mechanism.

**Section 12. Previous Adverse Underwriting Decisions**

No insurance institution or agent may base an adverse underwriting decision in whole or in part:

- A. On the fact of a previous adverse underwriting decision or on the fact that an individual previously obtained insurance coverage through a residual market mechanism; provided, however, an insurance institution or agent may base an adverse underwriting decision on further information obtained from an insurance institution or agent responsible for a previous adverse underwriting decision;
- B. On personal information received from an insurance support organization whose primary source of information is insurance institutions; provided, however, an insurance institution or agent may base an adverse underwriting decision on further personal information obtained as a result of information received from such insurance support organization.

**Section 13. Disclosure Limitations and Conditions**

An insurance institution, agent or insurance support organization shall not disclose any personal or privileged information about an individual collected or received in connection with an insurance transaction unless the disclosure is:

- A. With the written authorization of the individual, provided:
  - (1) If such authorization is submitted by another insurance institution, agent or insurance support organization, the authorization meets the requirements of Section 6 of this Act; or
  - (2) If such authorization is submitted by a person other than an insurance institution, agent or insurance support organization, the authorization is:
    - (a) Dated;
    - (b) Signed by the individual; and
    - (c) Obtained one (1) year or less prior to the date a disclosure is sought pursuant to this subsection; or
- B. To a person other than an insurance institution, agent or insurance support organization, provided such disclosure is reasonably necessary:
  - (1) To enable such person to perform a business, professional or insurance function for the disclosing insurance institution, agent or insurance support organization and such person agrees not to disclose the information further without the individual's written authorization unless the further disclosure:
    - (a) Would otherwise be permitted by this section if made by an insurance institution, agent or insurance support organization; or
    - (b) Is reasonably necessary for such person to perform its function for the disclosing insurance institution, agent or insurance support organization; or
  - (2) To enable such person to provide information to the disclosing insurance institution, agent or insurance support organization for the purpose of:
    - (a) Determining an individual's eligibility for an insurance benefit or payment; or
    - (b) Detecting or preventing criminal activity, fraud, material misrepresentation or material nondisclosure in connection with an insurance transaction; or

- C. To an insurance institution, agent, insurance support organization, or self-insurer, provided the information disclosed is limited to that which is reasonably necessary:
  - (1) To detect or prevent criminal activity, fraud, material misrepresentation or material nondisclosure in connection with insurance transactions; or
  - (2) For either the disclosing or receiving insurance institution, agent or insurance support organization to perform its function in connection with an insurance transaction involving the individual; or
- D. To a medical care institution or medical professional for the purpose of:
  - (1) Verifying insurance coverage or benefits;
  - (2) Informing an individual of a medical problem of which the individual may not be aware; or
  - (3) Conducting an operations or services audit to verify the individuals treated by the medical professional or at the medical care institution; provided only such information is disclosed as is reasonably necessary to accomplish the foregoing purposes; or
- E. To an insurance regulatory authority; or
- F. To a law enforcement or other governmental authority:
  - (1) To protect the interests of the insurance institution, agent or insurance support organization in preventing or prosecuting the perpetration of fraud upon it; or
  - (2) If the insurance institution, agent or insurance support organization reasonably believes that illegal activities have been conducted by the individual; or
- G. Otherwise permitted or required by law; or
- H. In response to a facially valid administrative or judicial order, including a search warrant or subpoena; or
- I. Made for the purpose of conducting actuarial or research studies, provided:
  - (1) No individual may be identified in any actuarial or research report;
  - (2) Materials allowing the individual to be identified are returned or destroyed as soon as they are no longer needed; and
  - (3) The actuarial or research organization agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, agent or insurance support organization; or
- J. To a party or representative of a party to a proposed or consummated sale, transfer, merger or consolidation of all or part of the business of the insurance institution, agent or insurance support organization, provided:
  - (1) Prior to the consummation of the sale, transfer, merger or consolidation only such information is disclosed as is reasonably necessary to enable the recipient to make business decisions about the purchase, transfer, merger or consolidation; and
  - (2) The recipient agrees not to disclose the information unless the disclosure would otherwise be permitted by this section if made by an insurance institution, agent or insurance support organization; or

- K. To a person whose only use of such information will be in connection with the marketing of a product or service, provided:
  - (1) No medical record information, privileged information or personal information relating to an individual's character, personal habits, mode of living or general reputation is disclosed, and no classification derived from such information is disclosed;
  - (2) The individual has been given an opportunity to indicate that he or she does not want personal information disclosed for marketing purposes and has given no indication that he or she does not want the information disclosed; and
  - (3) The person receiving such information agrees not to use it except in connection with the marketing of a product or service; or
- L. To an affiliate whose only use of the information will be in connection with an audit of the insurance institution or agent or the marketing of an insurance product or service, provided the affiliate agrees not to disclose the information for any other purpose or to unaffiliated persons; or
- M. By a consumer reporting agency, provided the disclosure is to a person other than an insurance institution or agent; or
- N. To a group policyholder for the purpose of reporting claims experience or conducting an audit of the insurance institution's or agent's operations or services, provided the information disclosed is reasonably necessary for the group policyholder to conduct the review or audit; or
- O. To a professional peer review organization for the purpose of reviewing the service or conduct of a medical care institution or medical professional; or
- P. To a governmental authority for the purpose of determining the individual's eligibility for health benefits for which the governmental authority may be liable; or
- Q. To a certificateholder or policyholder for the purpose of providing information regarding the status of an insurance transaction; or
- R. To a lienholder, mortgagee, assignee, lessor or other person shown on the records of an insurance institution or agent as having a legal or beneficial interest in a policy of insurance, provided that:
  - (1) No medical record information is disclosed unless the disclosure would otherwise be permitted by this section; and
  - (2) The information disclosed is limited to that which is reasonably necessary to permit such person to protect its interests in such policy.

**Section 14. Power of Commissioner**

- A. The Commissioner shall have power to examine and investigate into the affairs of every insurance institution or agent doing business in this state to determine whether the insurance institution or agent has been or is engaged in any conduct in violation of this Act.
- B. The Commissioner shall have the power to examine and investigate into the affairs of every insurance support organization acting on behalf of an insurance institution or agent which either transacts business in this state or transacts business outside this state that has an effect on a person residing in this state in order to determine whether such insurance support organization has been or is engaged in any conduct in violation of this Act.

**Section 15. Hearings, Witnesses, Appearances, Production of Books and Service of Process**

- A. Whenever the Commissioner has reason to believe that an insurance institution, agent or insurance support organization has been or is engaged in conduct in this state which violates this Act, or if the Commissioner believes that an insurance support organization has been or is engaged in conduct outside this state which has an effect on a person residing in this state and which violates this Act, the Commissioner shall issue and serve upon such insurance institution, agent or insurance support organization a statement of charges and notice of hearing to be held at a time and place fixed in the notice. The date for such hearing shall be not less than [insert number] days after the date of service.
- B. At the time and place fixed for such hearing the insurance institution, agent or insurance support organization charged shall have an opportunity to answer the charges against it and present evidence on its behalf. Upon good cause shown, the Commissioner shall permit any adversely affected person to intervene, appear and be heard at such hearing by counsel or in person.
- C. At any hearing conducted pursuant to this section the Commissioner may administer oaths, examine and cross-examine witnesses and receive oral and documentary evidence. The Commissioner shall have the power to subpoena witnesses, compel their attendance and require the production of books, papers, records, correspondence and other documents which are relevant to the hearing. A stenographic record of the hearing shall be made upon the request of any party or at the discretion of the Commissioner. If no stenographic record is made and if judicial review is sought, the Commissioner shall prepare a statement of the evidence for use on the review. Hearings conducted under this section shall be governed by the same rules of evidence and procedure applicable to administrative proceedings conducted under the laws of this state.
- D. Statements of charges, notices, orders and other processes of the Commissioner under this Act may be served by anyone duly authorized to act on behalf of the Commissioner. Service of process may be completed in the manner provided by law for service of process in civil actions or by registered mail. A copy of the statement of charges, notice, order or other process shall be provided to the person or persons whose rights under this Act have been allegedly violated. A verified return setting forth the manner of service, or return postcard receipt in the case of registered mail, shall be sufficient proof of service.

**Section 16. Service of Process - Insurance Support Organizations**

For the purpose of this Act, an insurance support organization transacting business outside this state which has an effect on a person residing in this state shall be deemed to have appointed the Commissioner to accept service of process on its behalf; provided the Commissioner causes a copy of such service to be mailed forthwith by registered mail to the insurance support organization at its last known principal place of business. The return postcard receipt for such mailing shall be sufficient proof that the same was properly mailed by the Commissioner.

**Section 17. Cease and Desist Orders and Reports**

- A. If, after a hearing pursuant to Section 15, the Commissioner determines that the insurance institution, agent or insurance support organization charged has engaged in conduct or practices in violation of this Act, the Commissioner shall reduce his or her findings to writing and shall issue and cause to be served upon such insurance institution, agent or insurance support organization a copy of such findings and an order requiring such insurance institution, agent or insurance support organization to cease and desist from the conduct or practices constituting a violation of this Act.
- B. If, after a hearing pursuant to Section 15, the Commissioner determines that the insurance institution, agent or insurance support organization charged has not engaged in conduct or practices in violation of this Act, the Commissioner shall prepare a written report which sets forth findings of fact and conclusions of law. Such report shall be served upon the insurance institution, agent or insurance support organization charged and upon the person or persons, if any, whose rights under this Act were allegedly violated.



- C. Until the expiration of the time allowed under Section 19 of this Act for filing a petition for review or until such petition is actually filed, whichever occurs first, the Commissioner may modify or set aside any order or report issued under this section. After the expiration of the time allowed under Section 19 of this Act for filing a petition for review, if no such petition has been duly filed, the Commissioner may, after notice and opportunity for hearing, alter, modify or set aside, in whole or in part, any order or report issued under this section whenever conditions of fact or law warrant such action or if the public interest so requires.

**Section 18. Penalties**

- A. In any case where a hearing pursuant to Section 15 results in the finding of a knowing violation of this Act, the Commissioner may, in addition to the issuance of a cease and desist order as prescribed in Section 17, order payment of a monetary penalty of not more than [\$500] for each violation but not to exceed [\$10,000] in the aggregate for multiple violations.
- B. Any person who violates a cease and desist order of the Commissioner under Section 17 of this Act may, after notice and hearing and upon order of the Commissioner, be subject to one or more of the following penalties, at the discretion of the Commissioner:
  - (1) A monetary fine of not more than [\$10,000] for each violation;
  - (2) A monetary fine of not more than [\$50,000] if the Commissioner finds that violations have occurred with such frequency as to constitute a general business practice; or
  - (3) Suspension or revocation of an insurance institution's or agent's license.

**Section 19. Judicial Review of Orders and Reports**

- A. Any person subject to an order of the Commissioner under Section 17 or Section 18 or any person whose rights under this Act were allegedly violated may obtain a review of any order or report of the Commissioner by filing in the [insert title] Court of [insert county] County, within [insert number] days from the date of the service of such order or report, a written petition requesting that the order or report of the Commissioner be set aside. A copy of such petition shall be simultaneously served upon the Commissioner, who shall forthwith certify and file in such court a transcript of the entire record of the proceeding giving rise to the order or report which is the subject of the petition. Upon filing of the petition and transcript the [insert title] Court shall have jurisdiction to make and enter a decree modifying, affirming or reversing any order or report of the Commissioner, in whole or in part. The findings of the Commissioner as to the facts supporting any order or report, if supported by clear and convincing evidence, shall be conclusive.
- B. To the extent an order or report of the Commissioner is affirmed, the Court shall issue its own order commanding obedience to the terms of the order or report of the Commissioner. If any party affected by an order or report of the Commissioner shall apply to the court for leave to produce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there are reasonable grounds for the failure to produce such evidence in prior proceedings, the court may order such additional evidence to be taken before the Commissioner in such manner and upon such terms and conditions as the court may deem proper. The Commissioner may modify his or her findings of fact or make new findings by reason of the additional evidence so taken and shall file such modified or new findings along with any recommendation, if any, for the modification or revocation of a previous order or report. If supported by clear and convincing evidence, the modified or new findings shall be conclusive as to the matters contained therein.
- C. An order or report issued by the Commissioner under Section 17 or 18 shall become final:
  - (1) Upon the expiration of the time allowed for the filing of a petition for review, if no such petition has been duly filed; except that the Commissioner may modify or set aside an order or report to the extent provided in Section 17C; or

(2) Upon a final decision of the [insert title] Court if the court directs that the order or report of the Commissioner be affirmed or the petition for review dismissed.

D. No order or report of the Commissioner under this Act or order of a court to enforce the same shall in any way relieve or absolve any person affected by such order or report from any liability under any law of this state.

**Section 20. Individual Remedies**

A. If any insurance institution, agent or insurance support organization fails to comply with Section 8, 9 or 10 of this Act with respect to the rights granted under those sections, any person whose rights are violated may apply to the [insert title] Court of this state, or any other court of competent jurisdiction, for appropriate equitable relief.

B. An insurance institution, agent or insurance support organization which discloses information in violation of Section 13 of this Act shall be liable for damages sustained by the individual about whom the information relates; provided, however, that no individual shall be entitled to a monetary award which exceeds the actual damages sustained by the individual as a result of a violation of Section 13 of this Act.

C. In any action brought pursuant to this section, the court may award the cost of the action and reasonable attorney's fees to the prevailing party.

D. An action under this section must be brought within two (2) years from the date the alleged violation is or should have been discovered.

E. Except as specifically provided in this section, there shall be no remedy or recovery available to individuals, in law or in equity, for occurrences constituting a violation of any provisions of this Act.

**Section 21. Immunity**

No cause of action in the nature of defamation, invasion of privacy or negligence shall arise against any person for disclosing personal or privileged information in accordance with this Act, nor shall such a cause of action arise against any person for furnishing personal or privileged information to an insurance institution, agent or insurance support organization; provided, however, this section shall provide no immunity for disclosing or furnishing false information with malice or willful intent to injure any person.

**Section 22. Obtaining Information Under False Pretenses**

Any person who knowingly and willfully obtains information about an individual from an insurance institution, agent or insurance support organization under false pretenses shall be fined not more than [\$10,000] or imprisoned for not more than one year, or both.

**Section 23. Severability**

If any provisions of this Act or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the Act and the application of such provision to other persons or circumstances shall not be affected thereby.

**Section 24. Effective Date**

- A. This Act shall take effect on [insert a date which allows at least a one year interval between the date of enactment and the effective date].
- B. The rights granted under Sections 8, 9 and 13 of this Act shall take effect on [insert effective date] regardless of the date of the collection or receipt of the information which is the subject of such sections.

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

*1980 Proc. 134, 38, 281, 319, 320-335 (adopted).*

*1981 Proc. 147, 51, 255, 259, 290-313 (revised and reprinted).*

*1982 Proc. 119, 27, 155, 198 (amended).*