

17:23-20

LEGISLATIVE HISTORY CHECKLIST
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(Insurance Dept.---implement system for
examining operations & financial condition of
insurance companies)

NJSA: 17:23-20

LAWS OF: 1993 CHAPTER: 236

BILL NO: A77

SPONSOR(S) Kramer and others

DATE INTRODUCED: February 1, 1993

COMMITTEE: ASSEMBLY: Insurance

SENATE: Commerce

AMENDED DURING PASSAGE: Yes Amendments during passage
First print enacted denoted by superscript numbers

DATE OF PASSAGE: ASSEMBLY: May 13, 1993

SENATE: June 28, 1993

DATE OF APPROVAL: August 9, 1993

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: ASSEMBLY: Yes

SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See newspaper clippings--~~attached~~

"Governor signs stricter scrutiny for insurance companies in state." Star Ledger, Aug. 1991
Attached: Model law on examinations, promulgated by National Association of Insurance Commissioners. 1991

KBG:pp

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[FIRST REPRINT]
ASSEMBLY, No. 77

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 1, 1993

By Assemblymen KRAMER, GAFFNEY, Zecker,
DiGaetano, Assemblywoman Crecco,
Assemblyman Penn, Assemblywoman Wright,
Assemblymen Augustine, Gibson, Geist,
Assemblywoman Heck, Assemblymen Kavanaugh,
Felice, Wolfe and Assemblywoman Haines

1 AN ACT concerning the examination of insurers.

2

3 BE IT ENACTED *by the Senate and General Assembly of the*
4 *State of New Jersey:*

5 1. The purpose of this act is to provide an effective and
6 efficient system for examining the activities, operations,
7 financial condition and affairs of all persons transacting the
8 business of insurance in this State and all persons otherwise
9 subject to the jurisdiction of the commissioner. The provisions of
10 this act are intended to enable the commissioner to adopt a
11 flexible system of examinations which directs resources as may
12 be deemed appropriate and necessary for the administration of
13 the insurance and insurance related laws of this State.

14 2. As used in this act:

15 "Commissioner" means the Commissioner of Insurance.

16 "Company" means any insurer or other person engaging in or
17 proposing or attempting to engage in any transaction or kind of
18 insurance or surety business and any person or group of persons
19 who may otherwise be subject to the administrative, regulatory
20 or taxing authority of the commissioner.

21 "Department" means the Department of Insurance.

22 "Examiner" means any individual or firm authorized by the
23 commissioner to conduct an examination under this act.

24 "Insurer" means any corporation, association, partnership,
25 reciprocal exchange, interinsurer, Lloyd's insurer or other person
26 engaged in the business of insurance pursuant to Subtitle 3 of
27 Title 17 of the Revised Statutes (C.17:17-1 et seq.), or Subtitle 3
28 of Title 17B of the New Jersey Statutes (C.17B:17-1 et seq.).

29 "Person" means any individual, aggregation of individuals,
30 trust, association, partnership or corporation, or any affiliate
31 thereof.

32 3. a. The commissioner or any of his examiners may conduct
33 an examination of the assets and liabilities, method of conducting
34 business and all other affairs of any company as often as the
35 commissioner in his sole discretion deems appropriate but shall at
36 a minimum, conduct an examination of every insurer licensed in
37 this State not less frequently than once every five years. In
38 scheduling and determining the nature, scope and frequency of
39 the examinations, the commissioner shall consider such matters
40 as the results of financial statement analyses and ratios, changes
41 in management or ownership, actuarial opinions, reports of

EXPLANATION--Matter enclosed in bold-faced brackets [thus] in the
above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:
1 Assembly AIN committee amendments adopted March 29, 1993.

1 independent certified public accountants and other criteria as set
2 forth in the Examiners' Handbook adopted by the National
3 Association of Insurance Commissioners and in effect when the
4 commissioner exercises discretion under this section.

5 b. For purposes of completing an examination of any company
6 under this act, the commissioner may examine or investigate any
7 person, or the business of any person, insofar as such examination
8 or investigation is, in the sole discretion of the commissioner,
9 necessary or material to the examination of the company.

10 c. In lieu of an examination under this act of any foreign or
11 alien insurer licensed in this State, the commissioner may accept
12 an examination report on the company as prepared by the
13 insurance department or other regulatory agency for the
14 company's state of domicile or port-of-entry state until
15 January 1, 1994. Thereafter, such reports may only be accepted
16 if:

17 (1) the insurance department or other regulatory agency was
18 at the time of the examination accredited under the National
19 Association of Insurance Commissioners' Financial Regulation
20 Standards and Accreditation Program; or

21 (2) the examination is performed under the supervision of an
22 accredited insurance department or other regulatory agency or
23 with the participation of one or more examiners who are
24 employed by such an accredited state insurance department or
25 other regulatory agency and who, after a review of the
26 examination workpapers and report, state under oath that the
27 examination was performed in a manner consistent with the
28 standards and procedures required by their insurance department
29 or other regulatory agency.

30 d. The reasonable expenses of any examination and any
31 proceedings conducted under this act shall be fixed and
32 determined by the commissioner, and he shall collect them from
33 the company examined, which shall pay them on a presentation of
34 an account of the expenses on such form as determined by the
35 commissioner. If any company, after the examination, is
36 adjudged insolvent by a court of competent jurisdiction, the
37 expense of the examination, if unpaid, shall be ordered out of the
38 assets of the company.

39 4. a. Upon determining that an examination should be
40 conducted, the commissioner or the commissioner's designee
41 shall issue an examination warrant appointing one or more
42 examiners to perform the examination and instructing them as to
43 the scope of the examination. In conducting the examination, the
44 examiner shall observe those guidelines and procedures set forth
45 in the Examiners' Handbook adopted by the National Association
46 of Insurance Commissioners. The commissioner may also employ
47 such other guidelines or procedures as the commissioner may
48 deem appropriate.

49 b. Every company or person from whom information is sought,
50 including its officers, directors and agents, shall provide, to the
51 examiners appointed under subsection a. of this section, timely,
52 convenient and free access at all reasonable hours at its offices
53 to all books, records, accounts, papers, documents and any or all
54 computer or other recordings relating to the property, assets,

1 business and affairs of the company being examined. The
2 officers, directors, employees and agents of the company or
3 person shall facilitate the examination and aid in the examination
4 so far as it is in their power to do so. The commissioner may,
5 after notice and opportunity for a hearing, suspend, revoke or
6 refuse to renew any license or authority held by the company to
7 engage in an insurance or other business subject to the
8 commissioner's jurisdiction, if the company, by its officers,
9 directors, employees or agents, refuses to submit to examination
10 or to comply with any reasonable request of the examiners.

11 c. The commissioner or any of his examiners shall have the
12 power to issue subpoenas, to administer oaths and to examine
13 under oath any person as to any matter pertinent to the
14 examination. Upon the failure or refusal of any person to obey a
15 subpoena, the commissioner may petition a court of competent
16 jurisdiction, and upon proper showing, the court may enter an
17 order compelling the witness to appear and testify or produce
18 documentary evidence. Failure to obey the court order shall be
19 punishable as contempt of court.

20 d. When making an examination under this act, the
21 commissioner may retain attorneys, appraisers, independent
22 actuaries, independent certified public accountants or other
23 professionals and specialists as examiners, the cost of which shall
24 be borne by the company which is the subject of the examination.

25 e. Nothing contained in this act shall be construed to limit the
26 commissioner's authority to terminate or suspend any
27 examination in order to pursue other legal or regulatory action
28 pursuant to the insurance laws of this State. Findings of fact and
29 conclusions made pursuant to any examination shall be prima
30 facie evidence in any legal or regulatory action.

31 f. Nothing contained in this act shall be construed to limit the
32 commissioner's authority to use ¹[and, if appropriate, to make
33 public]¹ any final or preliminary examination report, any
34 examiner or company workpapers or other documents, or any
35 other information discovered or developed during the course of
36 any examination in the furtherance of any legal or regulatory
37 action which the commissioner may, in his sole discretion, deem
38 appropriate.

39 5. a. All examination reports shall be comprised of only facts
40 appearing upon the books, records, or other documents of the
41 company, its officers, directors, employees or agents or other
42 persons examined, or as ascertained from the testimony of its
43 officers, directors, employees, agents or other persons examined
44 concerning its affairs, and such conclusions and recommendations
45 as the examiners find reasonable warranted from the facts.

46 b. No later than 60 days following completion of the
47 examination, the examiner in charge shall file with the
48 department a verified written report of examination under oath.
49 Upon receipt of the verified report, the department shall
50 transmit a copy of the report to the company examined, together
51 with a notice which shall afford the company examined a
52 reasonable opportunity of not more than 30 days to make a
53 written submission or rebuttal with respect to any matters
54 contained in the examination report.

1 c. Within 30 days of the end of the period allowed for the
2 receipt of written submissions or rebuttals, the commissioner
3 shall fully consider and review the report, together with any
4 written submissions or rebuttals, and any relevant portions of the
5 examiner's workpapers and either:

6 (1) Adopt the examination report as filed or with modification
7 or corrections. If the examination report reveals that the
8 company is operating in violation of any law, regulation or prior
9 order of the commissioner, the commissioner may order the
10 company to take any action the commissioner considers necessary
11 and appropriate to cure such violation; or

12 (2) Reject the examination report with directions to the
13 examiners to reopen the examination for purposes of obtaining
14 additional data, documentation or information, and refile
15 pursuant to subsection a. of this section; or

16 (3) Call for an investigatory hearing with no less than 20 days'
17 notice to the company for purposes of obtaining additional
18 documentation, data, information and testimony.

19 d. (1) All determinations made pursuant to paragraph (1) of
20 subsection c. of this section shall be accompanied by findings and
21 conclusions resulting from the commissioner's consideration and
22 review of the examination report, relevant examiner workpapers
23 and any written submissions or rebuttals. Any such determination
24 shall be served upon the company, together with a copy of the
25 adopted examination report. Within 30 days of the issuance of
26 the adopted report, the company shall file affidavits executed by
27 each of its directors stating under oath that they have received a
28 copy of the adopted report and related orders.

29 (2) Any hearing conducted under paragraph (3) of subsection c.
30 of this section by the commissioner or an authorized
31 representative of the commissioner, shall be conducted as a
32 nonadversarial confidential investigatory proceeding as necessary
33 for the resolution of any inconsistencies, discrepancies or
34 disputed issues apparent upon the face of the filed examination
35 report or raised by or as a result of the commissioner's review of
36 relevant workpapers or by the written submission or rebuttal of
37 the company. Within 20 days of the conclusion of any such
38 hearing, the commissioner shall make a determination pursuant to
39 paragraph (1) of subsection c. of this section.

40 (a) The hearing shall proceed expeditiously with discovery by
41 the company limited to the examiner's workpapers which tend to
42 substantiate any assertions set forth in any written submission or
43 rebuttal. The commissioner or his representative may issue
44 subpoenas for the attendance of any witnesses or the production
45 of any documents deemed relevant to the investigation whether
46 under the control of the department, the company or other
47 persons. Nothing contained in this section shall require the
48 department to disclose any information or records which would
49 indicate or show the existence or content of any investigation or
50 activity of a criminal justice agency.

51 (b) The hearing shall proceed with the commissioner or his
52 representative posing questions to the persons subpoenaed.
53 Thereafter the company and the department may present
54 testimony relevant to the investigation. Cross examination shall

1 be conducted only by the commissioner or his representative.
2 The company and the department shall be permitted to make
3 closing statements and may be represented by counsel of their
4 choice.

5 e. (1) Upon the adoption of the examination report under
6 paragraph (1) of subsection c. of this section, the commissioner
7 may continue to hold the content of the examination report as
8 private and confidential information for a period of 90 days
9 except to the extent provided in subsection b. of this section

10 (2) Nothing contained in this act shall prevent or be construed
11 as prohibiting the commissioner from disclosing the content of an
12 examination report, preliminary examination report or results, or
13 any matter relating thereto, to the insurance department or other
14 regulatory authority of this or any other state or country, or to
15 law enforcement officials of this or any other state or agency of
16 the federal government at any time, so long as such agency or
17 office receiving the report or matters relating thereto agrees in
18 writing to hold it confidential and in a manner consistent with
19 this act.

20 (3) In the event the commissioner determines that regulatory
21 action is appropriate as a result of any examination, he may
22 initiate any proceedings or actions as provided by law.

23 f. All working papers, recorded information, documents and
24 copies thereof produced by, obtained by, or disclosed to the
25 commissioner or any other person in the course of an examination
26 made under this act shall be given confidential treatment and are
27 not subject to subpoena and may not be made public by the
28 commissioner or any other person, except to the extent provided
29 in subsection e. of this section. Access may also be granted to
30 the National Association of Insurance Commissioners. Such
31 parties shall agree in writing prior to receiving the information to
32 provide to it the same confidential treatment as required by this
33 section, unless the prior written consent of the company to which
34 it pertains has been obtained.

35 6. No examiner shall be appointed by the commissioner if such
36 examiner, either directly or indirectly, has a conflict of interest
37 or is affiliated with the management of or owns a pecuniary
38 interest in any person subject to examination under this act. This
39 section shall not be construed to automatically preclude an
40 examiner from being:

41 a. A policyholder or claimant under an insurance policy;

42 b. A grantor of a mortgage or similar instrument on the
43 examiner's residence to a regulated entity if done under
44 customary terms and in the ordinary course of business;

45 c. An investment owner in shares of regulated diversified
46 investment companies; or

47 d. A settlor or beneficiary of a "blind trust" into which any
48 otherwise impermissible holdings have been placed.
49 Notwithstanding the requirements of this section to the contrary,
50 the commissioner may retain from time to time, on an individual
51 basis, qualified actuaries, certified public accountants, or other
52 similar individuals who are independently practicing their
53 professions, even though said persons may from time to time be
54 similarly employed or retained by persons subject to examination
55 under this act.

1 7. a. No cause of action shall arise nor shall any liability be
2 imposed against the commissioner, the commissioner's
3 authorized representatives or any examiner appointed by the
4 commissioner for any statements made or conduct performed in
5 good faith while carrying out the provisions of this act.

6 b. No cause of action shall arise, nor shall any liability be
7 imposed against any person for the act of communicating or
8 delivering information or data to the commissioner or the
9 commissioner's authorized representative or examiner pursuant to
10 an examination made under this act, if such act of
11 communication or delivery was performed in good faith and
12 without fraudulent intent or the intent to deceive.

13 c. This section does not abrogate or modify in any way any
14 common law or statutory privilege or immunity heretofore
15 enjoyed by any person identified in subsection a. of this section.

16 d. A person identified in subsection a. of this section shall be
17 entitled to an award of attorney's fees and costs if he is the
18 prevailing party in a civil cause of action for libel, slander or any
19 other relevant tort arising out of activities in carrying out the
20 provisions of this act and the party bringing the action was not
21 substantially justified in doing so. For purposes of this section, a
22 proceeding is "substantially justified" if it had a reasonable basis
23 in law or fact at the time that it was initiated.

24 8. R.S.17:23-4, R.S.17:23-5; sections 1 and 2 of P.L.1958, c.15
25 (C.17:23-6 and 17:23-7); section 57 of P.L.1975, c.106
26 (C.17:46B-57); and N.J.S.17B:21-3 through N.J.S.17B:21-6,
27 inclusive, are repealed.

28 9. Any administrative rules promulgated pursuant to the
29 provisions of law which are repealed pursuant to section 8 of this
30 act shall remain in full force and effect as if promulgated under
31 this act in the first instance.

32 10. This act shall take effect immediately.

33
34
35
36

37 Provides a scheme for the examination of insurers conducting
38 business in this State.

1 imposed against the commissioner, the commissioner's
2 authorized representatives or any examiner appointed by the
3 commissioner for any statements made or conduct performed in
4 good faith while carrying out the provisions of this act.

5 b. No cause of action shall arise, nor shall any liability be
6 imposed against any person for the act of communicating or
7 delivering information or data to the commissioner or the
8 commissioner's authorized representative or examiner pursuant to
9 an examination made under this act, if such act of
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19 provisions of this act and the party bringing the action was not
20 substantially justified in doing so. For purposes of this section, a
21 proceeding is "substantially justified" if it had a reasonable basis
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23 8. R.S.17:23-4, R.S.17:23-5; sections 1 and 2 of P.L.1958, c.15
24 (C.17:23-6 and 17:23-7); section 57 of P.L.1975, c.106
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26 inclusive, are repealed.

27 9. Any administrative rules promulgated pursuant to the
28 provisions of law which are repealed pursuant to section 8 of this
29 act shall remain in full force and effect as if promulgated under
30 this act in the first instance.

31 10. This act shall take effect immediately.

32
33
34 *SPONSORS'* STATEMENT

35
36 This bill, based on a model law from the National Association
37 of Insurance Commissioners (NAIC), provides for a revised
38 scheme under which the Department of Insurance conducts
39 examinations of insurers transacting business in this State. The
40 bill continues to provide the Commissioner of Insurance with the
41 flexibility provided under current law to examine insurers
42 whenever he deems it expedient. This bill expands the
43 commissioner's authority to examine any other person if the
44 commissioner believes such examination is necessary to the
45 examination of the insurer, and to issue subpoenas and oaths to
46 persons in connection with an examination. The bill further
47 provides details concerning the content of examination reports
48 and procedures for the adoption of examination reports. Finally,
49 the bill provides that the commissioner may accept examination
50 reports on foreign or alien insurers performed by the domiciliary
51 regulator until January 1, 1994. Thereafter, such reports may
52 only be accepted if the state domiciliary insurance department
53 was accredited by the NAIC at the time of such examination.

ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 77

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MARCH 29, 1993

The Assembly Insurance Committee favorably reports, with committee amendments, Assembly, No. 77.

This bill, based on a model law from the National Association of Insurance Commissioners (NAIC), provides for a revised scheme under which the Department of Insurance conducts examinations of insurers transacting business in this State. The bill continues to provide the Commissioner of Insurance with the flexibility provided under current law to examine insurers whenever he deems it expedient. This bill expands the commissioner's authority to examine any other person if the commissioner believes such examination is necessary to the examination of the insurer, and to issue subpoenas and oaths to persons in connection with an examination. The bill further provides details concerning the content of examination reports and procedures for the adoption of examination reports. Finally, the bill provides that the commissioner may accept examination reports on foreign or alien insurers performed by the domiciliary regulator until January 1, 1994. Thereafter, such reports may only be accepted if the state domiciliary insurance department was accredited by the NAIC at the time of such examination.

The amendments clarify that certain preliminary information will not be given directly to the public, however, the commissioner retains the power to use the information.

SENATE COMMERCE COMMITTEE

STATEMENT TO

[FIRST REPRINT]

ASSEMBLY, No. 77

STATE OF NEW JERSEY

DATED: MAY 27, 1993

The Senate Commerce Committee reports favorably Assembly, No. 77 (1R).

This bill, based on a model law from the National Association of Insurance Commissioners (NAIC), provides for a revised scheme under which the Department of Insurance conducts examinations of insurers transacting business in this State. The bill continues to provide the Commissioner of Insurance with the flexibility provided under current law to examine insurers whenever he deems it expedient. This bill expands the commissioner's authority to examine any other person if the commissioner believes such examination is necessary to the examination of the insurer, and to issue subpoenas and oaths to persons in connection with an examination. The bill further provides details concerning the content of examination reports and procedures for the adoption of examination reports. Finally, the bill provides that the commissioner may accept examination reports on foreign or alien insurers performed by the domiciliary regulator until January 1, 1994. Thereafter, such reports may only be accepted if the state domiciliary insurance department was accredited by the NAIC at the time of such examination.

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OFFICE OF THE GOVERNOR NEWS RELEASE

GN-001

TRENTON, N.J. 08625

FOR RELEASE: August 9, 1993

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GOVERNOR FLORIO SIGNS FINANCIAL SOLVENCY LEGISLATION

Governor Jim Florio today signed legislation that will increase the New Jersey Insurance Department's effectiveness in monitoring the industry's financial activities.

The 12-bill package adopts the insurer solvency standards recommended by the National Association of Insurance Commissioners (NAIC).

Under the NAIC Accreditation Program, state insurance departments must be accredited by January 1, 1994. Accredited states will not be permitted to accept financial examinations of domestic insurance companies by non-accredited states. An independent audit team will review New Jersey's standards to ensure their compliance with the program.

"This legislation will strengthen the Insurance Department's ability to regulate the industry and to take preventive measures if companies experience financial difficulties," Governor Florio said. "The citizens of New Jersey can rest assured that the NAIC Accreditation Program will enhance the capabilities of a department which already is one of the most proactive consumer protection agencies in the country."

Insurance Commissioner Samuel F. Fortunato praised the efforts of Governor Florio and several members of the State Legislature in adopting the legislation.

"We are grateful to the Governor and members of the Legislature for acting quickly on these bills," Fortunato stated. "Their support and sponsorship of vital elements of this package have shown that great things may be accomplished through a true team effort."

Failure to receive accreditation could have affected New Jersey's 27 domestic property and casualty companies and 12 life and health insurers. These companies would be subject to accredited state insurance departments' audits at the companies' expense. These additional costs ultimately would be passed on to policyholders.

The NAIC accreditation audit team is tentatively scheduled to review the state's financial solvency standards in October.

####

MODEL LAW ON EXAMINATIONS

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Prefatory Drafting Comment

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

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

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

This Model Act will not diminish the Commissioner's authority to conduct examinations but rather will see that examinations are a more effective part of the Department financial regulation and surveillance program.

Section 1. Purpose

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

Section 2. Definitions

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

- A. "Commissioner" means the Commissioner of Insurance of this State.

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

- B. "Company" means any person engaging in or proposing or attempting to engage in any transaction or kind of insurance or surety business and any person or group of persons who may otherwise be subject to the administrative, regulatory or taxing authority of the Commissioner.

- C. "Department" means the Department of Insurance of this State.

- D. "Examiner" means any individual or firm having been authorized by the Commissioner to conduct an examination under this Act.
- E. "Insurer" means [refer to appropriate definition in state insurance code].
- F. "Person" means any individual, aggregation of individuals, trust, association, partnership or corporation, or any affiliate thereof.

Section 3. Authority, Scope and Scheduling of Examinations

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

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

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

Section 4. Conduct of Examinations

- A. Upon determining that an examination should be conducted, the Commissioner or the Commissioner's designee shall issue an examination warrant appointing one or more examiners to perform the examination and instructing them as to the scope of the examination. In conducting the examination, the examiner shall observe those guidelines and procedures set forth in the Examiners' Handbook adopted by the National Association of Insurance Commissioners. The Commissioner may also employ such other guidelines or procedures as the Commissioner may deem appropriate.
- B. Every company or person from whom information is sought, its officers, directors and agents must provide to the examiners appointed under Subsection A timely, convenient and free access at all reasonable hours at its offices to all books, records, accounts, papers, documents and any or all computer or other recordings relating to the property, assets, business and affairs of the company being examined. The officers, directors, employees and agents of the company or person must facilitate the examination and aid in the examination so far as it is in their power to do so. The

refusal of any company, by its officers, directors, employees or agents, to submit to examination or to comply with any reasonable written request of the examiners shall be grounds for suspension or refusal of, or nonrenewal of any license or authority held by the company to engage in an insurance or other business subject to the Commissioner's jurisdiction. Any such proceedings for suspension, revocation or refusal of any license or authority shall be conducted pursuant to Section [insert reference to cease and desist statute or other law having a post-order hearing mechanism].

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

Section 5. Examination Reports

A. General Description

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

B. Filing of Examination Report

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

C. Adoption of Report on Examination

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

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

D. Orders and Procedures

- (1) All orders entered pursuant to Subsection C(1) above shall be accompanied by findings and conclusions resulting from the Commissioner's consideration and review of the examination report, relevant examiner workpapers and any written submissions or rebuttals. Any such order shall be considered a final administrative decision and may be appealed pursuant to the [insert name of State Administrative Review Law], and shall be served upon the company by certified mail, together with a copy of the adopted examination report. Within thirty (30) days of the issuance of the adopted report, the company shall file affidavits executed by each of its directors stating under oath that they have received a copy of the adopted report and related orders.
- (2) Any hearing conducted under Subsection C(3) above by the Commissioner or authorized representative, shall be conducted as a nonadversarial confidential investigatory proceeding as necessary for the resolution of any inconsistencies, discrepancies or disputed issues apparent upon the face of the filed examination report or raised by or as a result of the Commissioner's review of relevant workpapers or by the written submission or rebuttal of the company. Within twenty (20) days of the conclusion of any such hearing, the Commissioner shall enter an order pursuant to Subsection C(1) above.
 - (a) The Commissioner shall not appoint an examiner as an authorized representative to conduct the hearing. The hearing shall proceed expeditiously with discovery by the company limited to the examiner's workpapers which tend to substantiate any assertions set forth in any written submission or rebuttal. The Commissioner or his representative may issue subpoenas for the attendance of any witnesses or the production of any documents deemed relevant to the investigation whether under the control of the Department, the company or other persons. The documents produced shall be included in the record and testimony taken by the Commissioner or his representative shall be under oath and preserved for the record.

Nothing contained in this section shall require the Department to disclose any information or records which would indicate or show the existence or content of any investigation or activity of a criminal justice agency.

- (b) The hearing shall proceed with the Commissioner or his representative posing questions to the persons subpoenaed. Thereafter the company and the Department may present testimony relevant to the investigation. Cross examination shall be conducted only by the Commissioner or his representative. The company and the Department shall be permitted to make closing statements and may be represented by counsel of their choice.

E. Publication and Use

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

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

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

F. Confidentiality of Ancillary Information

All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the Commissioner or any other person in the course of an examination made under this Act must be given confidential treatment and are not subject to subpoena and may not be made public by the Commissioner or any other person, except to the extent provided in Subsection E above. Access may also be granted to the National Association of Insurance Commissioners. Such parties must agree in writing prior to receiving the information to provide to it the same confidential treatment as required by this section, unless the prior written consent of the company to which it pertains has been obtained.

Drafting Note: As an alternative, states may make reference to their public records law as follows: "All working papers, recorded information, documents and copies thereof produced by, obtained by or disclosed to the Commissioner or any other person in the course of an examination made under this Act may be held by the Commissioner as a record not required to be made public pursuant to [cite public records laws]."

Section 6. Conflict of Interest

No examiner may be appointed by the Commissioner if such examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this Act. This section shall not be construed to automatically preclude an examiner from being:

- A. A policyholder or claimant under an insurance policy;
- B. A grantor of a mortgage or similar instrument on the examiner's residence to a regulated entity if done under customary terms and in the ordinary course of business;
- C. An investment owner in shares of regulated diversified investment companies; or
- D. A settlor or beneficiary of a "blind trust" into which any otherwise impermissible holdings have been placed.

Notwithstanding the requirements of this section, the Commissioner may retain from time to time, on an individual basis, qualified actuaries, certified public accountants, or other similar individuals who are independently practicing their professions, even though said persons may from time to time be similarly employed or retained by persons subject to examination under this Act.

Section 7. Cost of Examinations

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

Section 8. Immunity from Liability

- A. No cause of action shall arise nor shall any liability be imposed against the Commissioner, the Commissioner's authorized representatives or any examiner appointed by the Commissioner for any statements made or conduct performed in good faith while carrying out the provisions of this Act.
- B. No cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information or data to the Commissioner or the Commissioner's authorized representative or examiner pursuant to an examination made under this Act, if such act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive.
- C. This section does not abrogate or modify in any way any common law or statutory privilege or immunity heretofore enjoyed by any person identified in Subsection A.
- D. A person identified in Subsection A shall be entitled to an award of attorney's fees and costs if he or she is the prevailing party in a civil cause of action for libel, slander or any other relevant tort arising out of activities in carrying out the provisions of this Act and the party bringing the action was not substantially justified in doing so. For purposes of this section a proceeding is "substantially justified" if it had a reasonable basis in law or fact at the time that it was initiated.

Legislative History (all references are to the Proceedings of the NAIC)

1991 Proc. 19, 14, 26, 27-31 (adopted)

This replaces an earlier model law entitled: Standard Law Relating to Procedures in Examining the Affairs of Insurance Companies

1956 Proc. II 328, 329-333 (adopted)