

## UNAUTHORIZED TRANSACTION OF INSURANCE CRIMINAL MODEL ACT

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### Section 1. Application

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

### Section 2. Definitions

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

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

### Section 3. Certificate of Authority Required

- A. A person shall not engage in a transaction of insurance in this State unless the person is an authorized insurer or unless the transaction of insurance is exempt under [insert reference to applicable exemptions, such as surplus lines law or the Liability Risk Retention Act of 1986].

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

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

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

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

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

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

#### **Section 5. Penalty for Subsequent Violations**

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

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

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

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

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

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

*2006 Proc. 4<sup>th</sup> Quarter 44, 123-126 (adopted).*