

## UNFAIR CLAIMS SETTLEMENT PRACTICES ACT

### Table of Contents

Section 1.	Purpose
Section 2.	Definitions
Section 3.	Unfair Claims Settlement Practices Prohibited
Section 4.	Unfair Claims Practices Defined
Section 5.	Statement of Charges
Section 6.	Cease and Desist and Penalty Orders
Section 7.	Penalty for Violation of Cease and Desist Orders
Section 8.	Regulations
Section 9.	Severability

**Prefatory Note:** By adopting this model act in June 1990, the NAIC separated issues regarding unfair claims settlement practices into a free-standing act apart from the NAIC Model Unfair Trade Practices Act. This change focuses more attention on unfair claims as a function of market conduct surveillance separate and apart from general unfair trade practices. By doing so, the NAIC is not recommending that states repeal their existing acts, but states may modify them for the purpose of capturing the substantive changes. However, for those states wishing to completely rewrite their comprehensive approach to unfair claims practices, this separation of unfair claims from unfair trade practices is recommended.

### Section 1. Purpose

The purpose of this Act is to set forth standards for the investigation and disposition of claims arising under policies or certificates of insurance issued to residents of [insert state]. It is not intended to cover claims involving workers' compensation, fidelity, suretyship or boiler and machinery insurance. Nothing herein shall be construed to create or imply a private cause of action for violation of this Act.

**Drafting Note:** A jurisdiction choosing to provide for a private cause of action should consider a different statutory scheme. This Act is inherently inconsistent with a private cause of action. This is merely a clarification of original intent and not indicative of any change of position. The NAIC has promulgated the Unfair Property/Casualty Claims Settlement Practices and the Unfair Life, Accident and Health Claims Settlement Practices Model Regulations pursuant to this Act.

### Section 2. Definitions

When used in this Act:

- A. "Commissioner" means the Commissioner of Insurance of this state;

**Drafting Note:** Insert the title of the chief insurance regulatory official wherever the term "commissioner" appears.

- B. "Insured" means the party named on a policy or certificate as the individual with legal rights to the benefits provided by the policy;
- C. "Insurer" means a person, reciprocal exchange, interinsurer, Lloyd's insurer, fraternal benefit society, and any other legal entity engaged in the business of insurance, including agents, brokers, adjusters and third party administrators. Insurer shall also mean medical service plans, hospital service plans, health maintenance organizations, prepaid limited health care service plans, dental, optometric and other similar health service plans as defined in Section [insert applicable section]. For purposes of this Act, these foregoing entities shall be deemed to be engaged in the business of insurance;
- D. "Person" means a natural or artificial entity, including, but not limited to, individuals, partnerships, associations, trusts or corporations;
- E. "Policy" or "certificate" means a contract of insurance, indemnity, medical, health or hospital service, or annuity issued. "Policy" or "certificate" for purposes of this Act, shall not mean contracts of workers' compensation, fidelity, suretyship or boiler and machinery insurance.

**Drafting Note:** The term "policy" is intended to cover the product issued by medical, health or hospital service plans and should be changed to conform to the laws of each state.

The Federal Employee Retirement Income Security Act (ERISA) preempts certain entities and some activities of those entities from the application of state laws. The purpose of these definitions is to include within this Act and regulations issued pursuant to it, all entities and activities to the extent not preempted by ERISA.

**Section 3. Unfair Claims Settlement Practices Prohibited**

It is an improper claims practice for a domestic, foreign or alien insurer transacting business in this state to commit an act defined in Section 4 of this Act if:

- A. It is committed flagrantly and in conscious disregard of this Act or any rules promulgated hereunder; or
- B. It has been committed with such frequency to indicate a general business practice to engage in that type of conduct.

**Section 4. Unfair Claims Practices Defined**

Any of the following acts by an insurer, if committed in violation of Section 3, constitutes an unfair claims practice:

- A. Knowingly misrepresenting to claimants and insureds relevant facts or policy provisions relating to coverages at issue;
- B. Failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies;
- C. Failing to adopt and implement reasonable standards for the prompt investigation and settlement of claims arising under its policies;
- D. Not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear;
- E. Compelling insureds or beneficiaries to institute suits to recover amounts due under its policies by offering substantially less than the amounts ultimately recovered in suits brought by them;
- F. Refusing to pay claims without conducting a reasonable investigation;
- G. Failing to affirm or deny coverage of claims within a reasonable time after having completed its investigation related to such claim or claims;
- H. Attempting to settle or settling claims for less than the amount that a reasonable person would believe the insured or beneficiary was entitled by reference to written or printed advertising material accompanying or made part of an application;
- I. Attempting to settle or settling claims on the basis of an application that was materially altered without notice to, or knowledge or consent of, the insured;
- J. Making claims payments to an insured or beneficiary without indicating the coverage under which each payment is being made;
- K. Unreasonably delaying the investigation or payment of claims by requiring both a formal proof of loss form and subsequent verification that would result in duplication of information and verification appearing in the formal proof of loss form;
- L. Failing in the case of claims denials or offers of compromise settlement to promptly provide a reasonable and accurate explanation of the basis for such actions;
- M. Failing to provide forms necessary to present claims within fifteen (15) calendar days of a request with reasonable explanations regarding their use;

- N. Failing to adopt and implement reasonable standards to assure that the repairs of a repairer owned by or required to be used by the insurer are performed in a workmanlike manner.

#### **Section 5. Statement of Charges**

Whenever the commissioner has reasonable cause to believe that an insurer doing business in this state is engaging in any unfair claims practice and that a proceeding in respect thereto would be in the public interest, the commissioner shall issue and serve upon the insurer a statement of the charges in that respect and a notice of hearing, which shall set a hearing date not less than thirty (30) days from the date of the notice.

**Drafting Note:** If a formal hearing procedure exists, states may wish to incorporate the timeframes from that existing procedure.

#### **Section 6. Cease and Desist and Penalty Orders**

If, after hearing, the commissioner finds an insurer has engaged in an unfair claims practice, the commissioner shall reduce the findings to writing and shall issue and cause to be served upon the insurer charged with the violation a copy of the findings and an order requiring the insurer to cease and desist from engaging in the act or practice and the commissioner may, at the commissioner's discretion, order:

- A. Payment of a monetary penalty of not more than \$1,000 for each violation but not to exceed an aggregate penalty of \$100,000, unless the violation was committed flagrantly and in conscious disregard of this Act, in which case the penalty shall not be more than \$25,000 for each violation, but not to exceed an aggregate penalty of \$250,000 pursuant to hearing; and/or
- B. Suspension or revocation of the insurer's license if the insurer knew or reasonably should have known it was in violation of this Act.

#### **Section 7. Penalty for Violation of Cease and Desist Orders**

An insurer that violates a cease and desist order of the commissioner and, while the order is in effect, may, after notice and hearing and upon order of the commissioner, be subject, at the discretion of the commissioner, to:

- A. A monetary penalty of not more than \$25,000 for each and every act or violation not to exceed an aggregate of \$250,000 pursuant to hearing; and/or
- B. Suspension or revocation of the insurer's license.

#### **Section 8. Regulations**

The commissioner may, after notice and hearing, promulgate reasonable rules, regulations and orders as are necessary or proper to carry out and effectuate the provisions of this Act. The regulations shall be subject to review in accordance with Section [insert applicable section].

**Drafting Note:** Insert section number providing for review of administrative orders.

#### **Section 9. Severability**

If any provision of this Act, or the application of the provision to any person or circumstances, shall be held invalid, the remainder of the Act, and the application of the provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

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

*1972 Proc. I 15, 16, 443-444, 491, 495-496 (claims settlement practices made part of Unfair Trade Practices Act).*

*1990 Proc. II 7, 13-14, 160, 177-179 (adopted free-standing claims settlement practices act).*

*1991 Proc. I 9, 16, 192-193, 203-206 (amended and reprinted).*

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## UNFAIR CLAIMS SETTLEMENT PRACTICES ACT

**This chart is intended to provide readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings related to the NAIC model. Such guidance provides readers with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state's activity in this area and has determined whether the citation most appropriately fits in the Model Adoption column or Related State Activity column based on the definitions listed below. The NAIC's interpretation may or may not be shared by the individual states or by interested readers.**

**This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist readers in locating useful information. Readers should consult state law for further details and for the most current information.**

**UNFAIR CLAIMS SETTLEMENT PRACTICES ACT**

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**UNFAIR CLAIMS SETTLEMENT PRACTICES ACT**

**KEY:**

**MODEL ADOPTION:** States that have citations identified in this column adopted the most recent version of the NAIC model in a **substantially similar manner**. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

**RELATED STATE ACTIVITY:** Examples of Related State Activity include but are not limited to: older versions of the NAIC model, statutes or regulations addressing the same subject matter, or other administrative guidance such as bulletins and notices. States that have citations identified in this column **only** (and nothing listed in the Model Adoption column) have **not** adopted the most recent version of the NAIC model in a **substantially similar manner**.

**NO CURRENT ACTIVITY:** No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Alabama		ALA. ADMIN. CODE r. 482-1-124 to 482-1-125 (2003/2014); 482-12-24 (1971).
Alaska	ALASKA STAT. §§ 21.36.125 (1976).	
American Samoa	NO CURRENT ACTIVITY	
Arizona	ARIZ. REV. STAT. ANN. § 20-461 (1981/2004).	
Arkansas	ARK. CODE ANN. § 23-66-206 (1959/2009).	BULLETIN 8-2014 (2014).
California	CAL. INS. CODE § 790.03 (1959/1989).	CAL. CODE REGS. tit. 10, § 2695.85 (2003/2009).
Colorado	COLO. REV. STAT. § 10-3-1104 (1963/2014).	BULLETIN B-6.3 (2012/2013); BULLETIN B-4.72 (2014).
Connecticut	CONN. GEN. STAT. § 38a-816 (1955/2013).	
Delaware	18 DEL. ADMIN. CODE § 902 (1977/2003).	
District of Columbia	NO CURRENT ACTIVITY	

**UNFAIR CLAIMS SETTLEMENT PRACTICES ACT**

<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Florida	FLA. STAT. § 626.9541 (1976/2014).	FLA. STAT. § 626.9743 to 626.9744 (2004) (motor vehicle settlements).
Georgia	GA. CODE ANN. §§ 33-6-30 to 33-6-37 (1992).	
Guam	NO CURRENT ACTIVITY	
Hawaii	HAW. REV. STAT. § 431:13-103 (1988/1989).	
Idaho	IDAHO CODE ANN. §§ 41-1329 (1977/1987).	
Illinois	215 ILL. COMP. STAT. 5/154.6 (1997).	
Indiana	IND. CODE § 27-4-1-4.5 (1983/1987).	
Iowa	NO CURRENT ACTIVITY	
Kansas	KAN. STAT. ANN. §§ 40-2404 (1955/1992).	
Kentucky	KY. REV. STAT. ANN. §§ 304.12-230 (1984/1988).	
Louisiana	LA. REV. STAT. ANN. § 22:1964 (1958/2009).	LA. REV. STAT. ANN. § 22:1973 (2009) (duty of P/C insurers); § 22:1892 (2009).
Maine	ME. REV. STAT. ANN. tit. 24-A, § 2164-D (1987) (portions of model).	
Maryland	MD. CODE ANN., INS. §§ 27-301 to 27-306 (1986/2012).	MD. CODE ANN., INS. § 31.15.08.03 (1989/2009); BULLETIN 2012-13 (2012).
Massachusetts	MASS. GEN. LAWS ch. 176D, § 3 (1972/1986).	
Michigan	MICH. COMP. LAWS § 500.2026 (1951/1977).	

**UNFAIR CLAIMS SETTLEMENT PRACTICES ACT**

<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Minnesota	MINN. STAT. § 72A.20 Subd. 12 (1967/2006).	
Mississippi	NO CURRENT ACTIVITY	
Missouri	MO. REV. STAT. §§ 375.1000 to 375.1018 (1991/1993).	
Montana	MONT. CODE ANN. § 33-18-201 (1977).	Memorandum 1-29-2014 (2014).
Nebraska	NEB. REV. STAT. §§ 44-1536 to 44-1544 (1991/2002).	
Nevada	NO CURRENT ACTIVITY	
New Hampshire	N.H. REV. STAT. ANN. § 417:4 (1947/1991).	N.H. CODE ADMIN. R. ANN. INS. §§ 1001.01 to 1001.11 (1982/2015).
New Jersey	N.J. REV. STAT. § 17:29B-4 (1947/2001).	
New Mexico	N.M. STAT. ANN. § 59A-16-20 (1985/1993).	
New York	N.Y. INS. LAW § 2601 (1984).	Circular Letter 2009-3 (2009); Circular Letter 2008-14 (2008); Circular Letter 2011-13 (2011).
North Carolina	N.C. GEN. STAT. § 58-63-15 (1949/1987).	
North Dakota	N.D. CENT. CODE §§ 26.1-04-03 (1983/2003).	
Northern Marianas	4 N. MAR. ISLAND CODE § 7302(g) (1984).	
Ohio	OHIO ADMIN. CODE § 3901-1-07 (1975).	
Oklahoma		OKLA. STAT. tit. 36, §§ 1250.1 to 1250.16 (1986/2009).

**UNFAIR CLAIMS SETTLEMENT PRACTICES ACT**

<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Oregon	OR. REV. STAT. § 746.230 (1967/1989).	OR. ADMIN. R. 836-080-0235 (1980/2006).
Pennsylvania	40 PA. STAT. ANN. § 1171.5(a)(10) (1974/2006).	
Puerto Rico	P.R. LAWS ANN. tit. 26, § 2716a (1974).	
Rhode Island	R.I. GEN. LAWS §§ 27-9.1-1 to 27-9.1-9 (1993/2013).	BULLETIN 2007-7 (2007); BULLETIN 2010-6 (2010).
South Carolina	S.C. CODE ANN. §§ 38-59-10 to 38-59-50 (1987).	
South Dakota	S.D. CODIFIED LAWS § 58-33-67 (1986/1989).	
Tennessee	TENN. CODE ANN. §§ 58-8-2 to 58-8-13 (2008) (portions of model).	
Texas	TEX. ADMIN. CODE § 21.203 (1976/1985).	TEX. INS. CODE ANN. §§ 542.001 to 542.014 (2005).
Utah	UTAH CODE ANN. §§ 31A-26-303 to 31A-26-310 (1986).	
Vermont	VT. STAT. ANN. tit. 8, § 4724 (1955/1987).	
Virgin Islands	NO CURRENT ACTIVITY	
Virginia	VA. CODE ANN. §§ 38.2-510 (1986/2001).	VA. CODE ANN. § 38.2-517 (1992/1999).
Washington	WASH. ADMIN. CODE 284-30-300 to 284-30-390 (1978/2016).	
West Virginia	W. VA. CODE § 33-11-4 (1957/1985).	
Wisconsin	WIS. ADMIN. CODE INS. § 6.11 (1971/2000).	
Wyoming	WYO. STAT. ANN. § 26-13-124 (1986).	

## UNFAIR CLAIMS SETTLEMENT PRACTICES ACT

### Proceeding Citations

Cited to the Proceedings of the NAIC

In 1971 the Unfair Trade Practices Subcommittee identified several areas where they thought changes needed to be made to the Unfair Trade Practices Act. One of those areas was related to claims practices, particularly unreasonable delay or refusal. **1971 Proc. II 341.**

A draft of revisions being considered in Michigan was presented and it served as a pattern for the amendment adopted by the NAIC. **1971 Proc. II 373-374.**

The amended Unfair Trade Practices Act adopted in December 1971 included a section on unfair claims settlement practices which identified 14 activities which, when committed or performed with such frequency as to indicate a general business practice, were violations. In the past it had been difficult for regulators and insurers to solve problems because there were no ground rules. The provisions adopted set out standards the subcommittee thought were desirable. **1972 Proc. I 491-492, 495-496.**

In 1989 a subgroup was appointed to consider revisions to the unfair claims settlement practices provisions. The group decided it would be appropriate to create a separate free-standing unfair claims settlement practices act by removing the section from the Unfair Trade Practices Act and setting it apart. In addition the group decided that further amendments needed to be discussed. **1989 Proc. II 204.**

#### Section 1. Purpose

The first issue of discussion was the NAIC's position regarding whether a private cause of action was intended to be created. The group decided no private cause of action was intended and language was added to the draft to that effect. **1989 Proc. II 204.**

It was the consensus of the drafters and the advisory committee that these new drafts would provide a new emphasis on claims issues. **1990 Proc. II 160.**

#### Section 2. Definitions

The subcommittee considered numerous linguistic and stylistic changes recommended by industry and staff. Of notable substance was the issue regarding the definitions of "insurer" and "person" and their relative scope. The purpose of the definitions was to provide the broadest possible authority while at the same time not being overly broad. It was noted the authority of the insurance department was to regulate insurers, not all persons. However, there was several sections of the drafts where the word person was utilized to include all entities, whether engaged in the business of insurance or not. **1991 Proc. IA 218.**

B. The definition of insured was added when the model was amended in December 1990. **1991 Proc. IA 204.**

#### Section 3. Unfair Claims Settlement Practices Prohibited

The unfair claims settlement practices section which had been part of the Unfair Trade Practices Act defined an unfair claims settlement practice as one which was committed or performed with such frequency as to indicate a general business practice. **1972 Proc. I 495.**

When amendments were being developed in 1989 there were extensive discussions on whether it was appropriate to broaden the scope beyond the long-standing "general business practice" standard. **1989 Proc. II 204.**

The standards adopted broadened the scope to include either a flagrant violation or one committed with such frequency that it indicated a general business practice. **1990 Proc. II 178.**

## UNFAIR CLAIMS SETTLEMENT PRACTICES ACT

### Proceeding Citations

Cited to the Proceedings of the NAIC

#### Section 4. Unfair Claims Practices Defined

This section was patterned after the basic list of claims settlement violations adopted in 1971. **1990 Proc. II 172-173, 178.**

A. The significant difference from the original model was the addition of the word “knowingly.” In addition the wording “pertinent facts” was changed to “relevant facts.” **1990 Proc. II 178.**

D. This provision was not part of the original section from the Unfair Trade Practices Act. The section most nearly comparable made it an unfair claims practice to fail to settle a clearly liable claim in order to influence a settlement on other portions on the coverage. **1990 Proc. II 172-173.**

K. The original model language was altered by the addition of the qualifier “unreasonably” delaying investigation. **1990 Proc. II 173, 178.**

M. This subsection was not included in the original list deleted from the Unfair Trade Practices Act. **1990 Proc. II 172-173.**

N. This provision was not included in the original list deleted from the Unfair Trade Practices Act. **1990 Proc. II 172-173.**

#### Section 5. Statement of Charges

#### Section 6. Cease and Desist and Penalty Orders

One industry attendee at the task force meeting commented that he found the amendment of the draft which changed the potential penalty for an unfair claims practices violation from an aggregate of \$50,000 to an aggregate of \$250,000 somewhat alarming. He offered concern that this change could legitimize some current practices of states utilizing fines for revenue raising and retaliation purposes rather than for bona fide regulatory purposes. He stated he hoped the committee did not defend or intend this change to encourage that practice. The chair of the drafting committee responded that, without question, increasing the size of the penalties was not intended to increase the size of the state coffers. **1990 Proc. II 160.**

Extensive discussions on the appropriateness of the aggregate penalty were again held when the model was amended in late 1990. While the industry was divided on the issue, regulators indicated a commitment to the heightened penalties while still endorsing their position taken previously that such penalties be utilized for regulatory purposes and not revenue enhancement devices. **1991 Proc. IA 218.**

A. The amendments adopted in December 1990 did reduce the aggregate penalty for violations to \$100,000, but maintained the \$250,000 penalty for flagrant violations. **1991 Proc. IA 205.**

The model adopted in June 1990 contained language specifying the penalty for “each and every” violation. The “and every” was removed by the December amendments. **1991 Proc. IA 205.**

#### Section 7. Penalty for Violation of Cease and Desist Orders

This section was added at the time amendments were adopted in late 1990. It was the desire of the drafting committee to include heightened penalties for violation of cease and desist orders. **1991 Proc. IA 218.**

#### Section 8. Regulations

#### Section 9. Severability

## UNFAIR CLAIMS SETTLEMENT PRACTICES ACT

### Proceeding Citations

Cited to the Proceedings of the NAIC

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#### *Chronological Summary of Actions*

*December 1971: Adopted claims settlement section as part of Unfair Trade Practices Act.*

*June 1990: Deleted section from Unfair Trade Practices Act and made it part of new model on claims settlement practices.*

*December 1990: Technical amendments made to correlate language of Unfair Trade Practices Act, this model, and two claims settlement regulations.*

**UNFAIR CLAIMS SETTLEMENT PRACTICES ACT**

**Proceeding Citations**

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