The Legality, Transparency, and Accountability in State Insurance Regulation Act of 20XX.

Section 1. Purpose.

The purpose of this Act is to ensure that the regulation of the business of insurance in [insert state name] is being carried out in accordance with the intent of Congress as expressed in the Act of Congress of March 9, 1945 (Public Law 15, 79th Congress, commonly referred to as the McCarran-Ferguson Act) (stating that "the continued regulation and taxation by the several States of the business of insurance is in the public interest"); the Gramm-Leach-Bliley Act (Public Law 106-102, 106th Congress) (stating with respect to the "operation of state law" that "the 'McCarran-Ferguson Act'...remains the law of the United States"); and the Dodd-Frank Act of 2010 (Public Law 111-203, 111th Congress) (creating the Federal Insurance Office but declaring "retention of existing state regulatory authority" such that "nothing…shall be construed to establish or provide the Office…with general supervisory or regulatory authority over…insurance") that insurance be regulated state by state and that insurance regulatory policy be set by individual state legislatures, not by private corporations, such that "nothing…would authorize a State to try to regulate for other States, or authorize any private group or association to regulate in the field of interstate commerce" (91 Cong. Rec. 1483, as quoted in FTC v. Travelers, 362 U.S. 293 (1960), in a manner consistent with the transparency and accountability necessary for the proper pursuit of the people's business, and to ensure that state employees do not participate in policymaking efforts within private corporations which circumvent or unnecessarily influence the proper policymaking process in the state legislature absent certain necessary rules which ensure transparency, accountability, and the preservation of state sovereignty.

Section 2. Transparency and Accountability of State Employees; State Sovereignty Protected.

(1) Neither the Commissioner nor Department of Insurance staff shall attend or participate in any NAIC meeting, event, conference call, or other gathering which is not open to the public unless the meeting, event, conference call, or other gathering meets one of the enumerated criteria numbered 1-5 and 7-9 in the NAIC Policy Statement on Open Meetings dated April 1, 2014. The exemption which the NAIC observes in its NAIC Policy Statement on Open Meetings dated April 1, 2014 for "Roundtable discussions, zone meetings, commissioners' conferences, and other like meetings of the members effect on Dec. 1, 2009 for roundtable discussions, zone retreats and meetings, commissioners' conferences, and other like meetings of the members" does not serve as an exemption for the Commissioner and Department of Insurance staff from the requirements of this section; neither the Commissioner nor Department of Insurance staff may attend any such meeting which is closed to the public. If the Commissioner or any Department of Insurance staff attend or participate in any NAIC meeting, event, conference call, or other gathering under enumerated criteria 1-5 or 7-9 in the NAIC Policy Statement on Open Meetings dated April 1, 2014, within 15 days of doing so, they shall submit a report to the Chairs of the standing committees on insurance [and, for appointed commissioners, to the governor's office] notifying them of said participation, stating which of the enumerated criteria in the NAIC Statement on Open Meetings dated April 1, 2014, formed the basis for the meeting, event, conference call, or other gathering being not open to the public, and making themselves available

to the chairs of the standing committees on insurance [and, for appointed commissioners, the governor's office] to answer more specific questions about said attendance or participation.

(2) Neither the Commissioner nor Department of Insurance staff shall attend or participate in any NAIC meeting, event, conference call, or other gathering where they are asked to vote on any NAIC Document (Document is defined as a model act, model regulation, standard to be included in any NAIC handbook, manual, or other NAIC work product incorporated by reference into state law, or guidance document), unless all of the following are true.

(a) The Commissioner submitted the proposed NAIC Document to the members of the standing committees on insurance [and, for appointed commissioners, to the governor's office] for review and comment at least 30 days before the vote.

(b) The Commissioner posted said proposed NAIC Document on the Department of Insurance website at least 30 days before the vote.

(c) The Commissioner held an open meeting soliciting comments from legislators, regulated entities, and the public on the proposed NAIC Document at least 14 days before the vote.

(d) The Department of Insurance posted on its website within 2 days of receipt all written materials received from the NAIC (whether in hard copy, electronic, or some other form) pertaining to the NAIC Document in question.

(3) Neither the Commissioner nor Department of Insurance staff shall attend or participate in any NAIC meeting, event, conference call, or other gathering where they participate in the drafting of any NAIC Document, unless all of the following are true.

(a) The Commissioner submitted any draft of the NAIC Document received from the NAIC to the members of the standing committees on insurance [and, for appointed commissioners, to the governor's office] for review and comment, within two days of receipt from the NAIC.

(b) The Commissioner posted said proposed NAIC Document on the Department of Insurance website within two days of receipt from the NAIC; provided a mechanism for submission of comments from regulated entities and the public; and provided a mechanism for members of the standing committees on insurance [and, for appointed commissioners, the governor's office] to review such comments.

(c) The Department of Insurance posted on its website within 2 days of receipt all written materials received from the NAIC (whether in hard copy, electronic, or some other form) pertaining to the NAIC Document in question.

(d) If requested by both of the Chairs of the standing committees on insurance, held an open meeting soliciting comments from legislators, regulated entities, and the public on the proposed NAIC Document at an appropriate time during the drafting process.

(4) [For appointed commissioners] Any travel taken by the Commissioner or Department of Insurance staff paid for by any NAIC funds must be pre-approved by the Governor's office and copies of all travel vouchers for reimbursement submitted to the NAIC must be provided to the

members of the standing committees on insurance no later than 10 days after being submitted to the NAIC for reimbursement.

(5) The Department of Insurance shall submit a quarterly report to the members of the standing committees on insurance [and, for appointed commissioners, to the governor's office], detailing the state resources devoted to NAIC activities. This report shall enumerate any expenditures of Department funds, by state employee, used to support NAIC-related activities, including travel, but not including electronics and communications such as phones, computers, and fax machines. It shall also enumerate the approximate hours spent on NAIC activities by each state employee; these hours shall be broken down into relevant category, including but not limited to discussion of NAIC models; discussion of multi-state regulatory issues; discussion of lobbying activities; and discussion of internal NAIC operations.

(6) Neither the Commissioner nor Department of Insurance staff shall act as an NAIC witness in a Congressional hearing and shall purport to represent the position of the NAIC at such a hearing unless they have submitted a draft testimony or a summary of the public policy positions to be taken at the hearing to the members of the standing committees on insurance [and for appointed commissioners, to the governor's office] for review and comment at least 48 hours before such testimony is scheduled to take place.

(7) Neither the Commissioner nor Department of Insurance staff shall lobby or advocate in favor of any legislation or policy position with a member of Congress or Congressional staff on behalf of or in conjunction with the NAIC unless (a) they have provided a description of the subject matter and the position to be advocated to the members of the standing committees on insurance [and the governor's office for appointed commissioners] for review and comment at least 48 hours before such advocacy is to occur and (b) they have submitted to the members of the standing committees on insurance [and the governor's office for appointed commissioners] on a quarterly basis a report detailing the positions taken by the NAIC in Congressional advocacy (with attachments providing copies of all Congressional testimony delivered by NAIC witnesses) and any expenditures of funds by the NAIC on retained lobbyists.

Section 3. Required NAIC Report.

(1) On or before October 1 of each year, the NAIC shall file a report of its activities with the commissioner and the senate and house of representatives standing committees on insurance issues. The commissioner shall post the NAIC report on the Department of Insurance website no later than October 10. The report shall include all of the following:

(a) A summary of the activities of the NAIC during the preceding year.

(b) A fiscal report, in accordance with generally accepted accounting principles and on a form approved by the commissioner, stating each category of personal, operating, and capital expenditures, and each category of revenue from all sources for the NAIC's preceding fiscal year, and anticipated expenses and revenues for the current and succeeding fiscal years. The fiscal report shall include for each fiscal year statements of expenditures by major program; an audit opinion of the association's fiscal report; the salaries and other compensation for the association's

officers; the salaries and other compensation of the professional and managerial employees receiving the highest 5 salaries; the salary range and other compensation of all other professional and managerial employees; and other information as may be requested on or before August 1 of each year by the commissioner or the senate and house of representatives standing committees on insurance issues.

(c) A list of each proposed or required NAIC standard, identified by name and version, to be enacted, adopted, or followed in order for a state to receive or continue its status as an NAIC accredited state, including a detailed explanation of how each NAIC standard benefits the public interest and why alternative means, less restrictive of state sovereignty and innovation, would not accomplish an equal or greater benefit to the public interest.

(d) A list of each NAIC standard adopted or proposed to be adopted during the preceding calendar year, identified by name and version, that is not required or proposed to be required for a state to receive or continue its status as an NAIC accredited state.

(e) A description of the policies and procedures in effect with the NAIC that are designed to ensure that a state's accreditation status is determined solely based on the merits of a state's regulatory effectiveness, a statement on whether the NAIC has complied with those policies and procedures, and a detailed explanation of any noncompliance with those policies and procedures.

(f) A description of the policies and procedures designed to ensure that the NAIC conducts its deliberations and makes its decisions in meetings that are open to the public and in a manner that provides fair notice and a fair opportunity for all affected persons to be heard; a statement on whether the NAIC has complied with those policies and procedures; and a detailed explanation of any noncompliance with those policies and procedures.

(2) On or before March 15 of each year, the senate and house of representatives standing committees on insurance issues shall review the NAIC report filed under subsection (1). The committees may provide an opportunity for consumers, the commissioner and other state regulators, insurers, and any other interested person to be heard on matters relating to the NAIC and any other matter relative to the efficient and effective regulation of insurers. The committees may explore the feasibility of conducting legislative oversight hearings together with the legislative committees of other states that have jurisdiction over insurance matters. The committees may transmit the record of their oversight review to the national conference of insurance legislators, the NAIC, and the commissioner on or before July 1 of each year.

Section 4. Payment of NAIC fees by domestic insurers.

(1) An insurer domiciled in this state and authorized to transact insurance in this state is not required and cannot be compelled to pay any fee imposed by the NAIC, unless the fee is authorized by an order of the commissioner pursuant to the administrative procedures act.

(2) In determining whether to authorize the payment of a fee imposed by the NAIC, the commissioner shall consider the NAIC's annual report required under section 3, any legislative

oversight reports, records, or findings transmitted by the senate and house of representatives standing committees on insurance issues under section 3, and the following factors:

(a) How the NAIC dedicates the use of the fees, including the degree to which any solvency-related revenue is improperly used to subsidize NAIC functions other than solvency oversight.

(b) The degree to which fees imposed by the NAIC are based on an insurer's annual amount of premium volume, rather than the cost of a service rendered by the NAIC.

(c) Whether the NAIC has exceeded its legal authority, as determined by an examination of the fiscal report required under section 3, as well as any other factors considered appropriate by the commissioner.

(d) The level of accountability shown by the NAIC to legislative and regulatory authorities.

(e) The effect of NAIC standards on state sovereignty and innovation.

(f) Whether the NAIC determines the state's accreditation status solely on the basis of its regulatory effectiveness.

(g) Whether NAIC proceedings and decision making are open and publicly accessible.

(3) An order issued under this section shall include a detailed explanation of the commissioner's findings concerning the factors listed in subsection (2).

(4) The commissioner may by an appropriate order authorize or prohibit, in whole or in part, the payment of a fee imposed by the NAIC. The commissioner may rescind or modify, in whole or in part, an order issued by the commissioner under this section as circumstances warrant.

(5) The commissioner's order in subsection (3) concerning the factors listed in subsection (2) shall be subject to a de novo judicial review by the circuit court with jurisdiction over case originating in [insert name of capital] and the reviewing court may remand the case for reconsideration of the remedy imposed by the commissioner under subsection (4) if it determines that that remedy chosen by the commissioner is not commensurate with the court's own findings regarding the factors listed in subsection (2).

Section 5. Definitions.

As used in sections 3 and 4:

(a) "Fee" means financial data base fees, annual statement filing fees, securities valuation fees, user fees, and any other financial assessment or charge of any kind imposed directly or indirectly by the NAIC.

(b) "NAIC" means the national association of insurance commissioners.

(c) "NAIC standard" means a directive; financial annual statement requirement; model act; model regulation; issue paper; market conduct or financial examination report or requirement; accounting practice, procedure, or reporting standard; securities valuation requirement; or any

report, action, or program of any kind promulgated by the NAIC, or a committee, task force, working group, or advisory committee of the NAIC.

(d) "Solvency oversight" means an activity directly related to regulating the financial condition of an insurer. Solvency oversight does not include an activity related to market conduct regulation, market regulatory support, or general regulatory support.

(e) "Solvency-related revenue" means only financial data base fees, annual statement fees, and securities valuation fees.