

Draft: 7/29/16  
*A new model*

Comments are being requested on this draft. Comments should be sent only by email to Jolie Matthews at [jmatthews@naic.org](mailto:jmatthews@naic.org).

## UNCLAIMED LIFE INSURANCE AND ANNUITIES MODEL ACT

Section 1.	Short Title
Section 2.	Purpose
Section 3.	Definitions
Section 4.	Applicability and Scope
Section 5.	Insurer Conduct
Section 6.	Unfair Insurance Practices
[Section 7.	Unfair Insurance Practices]
Section 8.	Regulations
Section 9.	Severability
Section 10.	Effective Date

### **Section 1. Short Title**

This Act shall be known and may be cited as the Unclaimed Life Insurance and Annuities Act.

### **Section 2. Purpose**

The purpose and intent of this Act is to provide standards for:

- A. Identifying deceased individuals whose deaths may require insurers to pay benefits or proceeds to beneficiaries in accordance with the terms of life insurance policies, annuity contracts or retained asset accounts; and
- B. Locating beneficiaries of such deceased individuals and providing appropriate claims forms or instructions to such beneficiaries to make a claim.

### **Section 3. Definitions**

For purposes of this Act:

- A. “Annuity contract” does not include an annuity used to fund an employment-based retirement plan or program where:
  - (1) The insurer does not perform the record keeping services; or
  - (2) The insurer is not committed by the terms of the annuity contract to pay death benefits to the beneficiaries of specific plan participants.
- B. “Beneficiary” or “beneficiaries” means the party or parties entitled or contingently entitled to receive the proceeds from a policy, an annuity contract or a retained asset account.
- C. “Death master file” or “DMF” means the United States Social Security Administration’s Death Master File or any other database or service that is at least as comprehensive and accurate as the United States Social Security Administration’s Death Master File for determining that an individual has reportedly died.
- D. “Death master file match” means a search of the DMF that results in a match of the social security number or name and date of birth of an insured made and validated in accordance with the requirements of Section 5A of this Act.

- E. “Insured” means an individual identified in a policy, retained asset account or annuity contract whose death obligates the insurer to pay benefits or proceeds.
- F. “Knowledge of death” means:
- (1) Receipt of an original or valid copy of a certified death certificate;
  - (2) A death master file match; or
  - (3) Any other information in an insurer’s records from which the insurer should reasonably conclude that the insured has died.
- G. “Lapse” means the termination of a policy resulting from nonpayment of premiums or, in the case of variable life and universal life insurance policies, the depletion of cash value below the amount needed to keep the policy in force.
- H. (1) “Policy” means any policy or certificate of life insurance that provides a death benefit.
- (2) “Policy” does not include:
- (a) Any policy or certificate of life insurance that provides a death benefit under an employee welfare benefit plan subject to the federal Employee Retirement Income Security Act of 1974 (ERISA) for which the insurer does not provide recordkeeping services or under any federal employee benefit program;
  - (b) Preneed insurance;
  - (c) Any policy or certificate of credit life or mortgage life;
  - (d) Any accidental death or health policies, riders or certificates, including but not limited to disability and long-term care policies, riders or certificates; or
  - (e) Any policy issued to a group master policyholder for which the insurer does not provide recordkeeping services.
- I. (1) “Preneed insurance” means any life insurance policy or certificate that is used in combination with, in support of, with an assignment to, or as a guarantee for a prearrangement agreement for goods and services to be provided at the time of and immediately following the death of the insured.
- (2) Goods and services may include, but are not limited to embalming, cremation, body preparation, viewing or visitation, coffin or urn, memorial stone and transportation of the deceased.
- (3) The status of the policy or contract as preneed insurance is determined at the time of issue in accordance with the policy form filing.
- J. “Recordkeeping services” means those circumstances under which the insurer has agreed with a group life insurance policy holder or contract owner to be responsible for obtaining, maintaining and administering in its own or its agents’ systems, information about each individual insured under an insured’s group insurance contract (or a line of coverage thereunder), which shall include at least the following information:
- (1) Social security number or name and date of birth;
  - (2) Beneficiary designation information;

- (3) Coverage eligibility;
  - (4) Benefit amount; and
  - (5) Premium payment status.
- K. (1) “Records” means information regarding policies, annuity contracts and retained asset accounts maintained in the insurer’s administrative systems or the administrative systems of any third party retained by the insurer.
- (2) “Records” does not include such information maintained by a group life insurance policyholder or contract owner.
- L. “Retained asset account” means any mechanism whereby the settlement of proceeds payable under a policy or individual annuity contract, including, but not limited to, the payment of cash surrender value, is accomplished by the insurer or an entity acting on behalf of the insurer establishing an account with check or draft-writing privileges, where those proceeds are retained by the insurer, pursuant to a supplementary contract not involving annuity benefits.
- M. “Retained asset account holder” means the owner of a retained asset account or other person to file a claim for, or otherwise receive proceeds in accordance with the terms of the retained asset account.
- N. “Thorough search” means reasonable and good faith efforts, which an insurer shall document, to identify a beneficiary, determine a current address for the beneficiary and contact the beneficiary.

**Drafting Note:** When assessing whether an insurer has used reasonable and good faith efforts in conducting a thorough search, as required under Section 5D of this Act and Section 5H of this Act, states may want to consider whether the insurer searched its records, which means information regarding in-force and certain lapsed policies, annuity contracts and retained asset accounts maintained on the insurer’s administrative systems or the administrative systems of any third party retained by the insurer. States also may want to consider whether the insurer conducted an online search or used any other type of available locator tool to attempt to identify a beneficiary, determine a current address for the beneficiary and contact the beneficiary. In addition, in situations where a beneficiary is unknown or there is no last known address for the beneficiary, if the insurer uses the beneficiary’s last known address maintained in its records to identify a beneficiary, determine a current address for the beneficiary and contact the beneficiary, states may want to consider this attempt as a thorough search for that beneficiary.

#### **Section 4. Applicability and Scope**

- A. The requirements of this Act shall apply to all in-force and future policies, annuity contracts and retained asset accounts as of the effective date of this Act and policies that have lapsed within eighteen (18) months prior to the effective date of this Act.

**Drafting Note:** Subsection A above provides for a retroactive application of the requirements of this Act. Each state should conduct its own legal analysis and review of its laws, case law and any other relevant authority to determine whether, and in what circumstances, retroactive laws are permitted in the state and whether the statute must expressly provide that it is intended to be retroactive.

- B. This Act shall not apply to a policy, annuity contract or retained asset account of an insurer unless:
- (1) The insurer is domiciled in this state; or
  - (2) The policy, annuity contract or retained asset account was issued or delivered in this state.

#### **Section 5. Insurer Conduct**

- A. An insurer shall comply with the following requirements for performing a comparison of its policies,

annuity contracts and retained asset accounts against the death master file:

- (1) Initially, an insurer shall compare all in-force policies, annuity contracts and retained asset accounts and policies that have lapsed within eighteen (18) months prior to the effective date of this Act in its records against the complete death master file to identify potential matches of its insureds using the search criteria in Paragraph (4).

**Drafting Note:** States may want to include language in Paragraph (1) providing that the first DMF comparison search insurers must make should take place within [x] months after the effective date of the Act.

- (2) Thereafter, an insurer shall compare all in-force policies, annuity contracts and retained asset accounts and policies that have lapsed within eighteen (18) months in its records against any updates to the death master file on at least a semi-annual basis to identify potential matches of its insureds using the search criteria in Paragraph (4). If the insurer conducts death master file searches for any of its other lines of insurance business more frequently than semiannually, the insurer shall conduct a death master file search of all lines of business with the same frequency.

- (3) (a) Except as provided in Subparagraph (b) of this paragraph, within six (6) months of acquisition of policies or annuity contracts from another insurer, the acquiring insurer shall compare all newly acquired policies and annuity contracts that were not searched by the previous insurer in compliance with this Act against the complete death master file to identify potential matches of its insureds and annuitants using the search criteria in Paragraph (4).

- (b) Upon any subsequent acquisition of policies or annuity contracts from another insurer, when the previous insurer has already conducted a search of the newly acquired policies and annuity contracts using the complete death master file, the acquiring insurer shall compare all newly acquired policies and annuity contracts using all of the death master file updates since the time the previous insurer conducted the complete search to identify potential matches of its insureds and annuitants using the search criteria in Paragraph (4).

- (4) In addition to accounting for exact matches of names, social security numbers and dates of birth, every insurer also shall conduct the comparisons required under this subsection following reasonable procedures that account for:

- (a) Initials used in lieu of a first or middle name, use of a middle name, compound first and middle names, and interchanged first and middle names;
- (b) Compound last names, maiden or married names, and hyphens, blank spaces or apostrophes in last names;
- (c) Transposition of the “month” and “date” portions of the date of birth;
- (d) Incomplete social security number; and
- (e) Common data entry errors that account for transposed numbers.

- (5) Upon identifying a potential match pursuant to this section, an insurer shall promptly make reasonable good faith efforts to validate the match by confirming the death of an insured.

- B. (1) (a) The commissioner may exempt an insurer from the DMF comparisons required under Subsection A if the insurer demonstrates to the commissioner’s satisfaction that compliance would result in financial hardship to the insurer or is not cost effective.
- (b) In making a determination under Subparagraph (a), the commissioner, among other things, may consider the number of policies involved, the costs of conducting a

retroactive search in relation to the collected premiums for those policies, whether the policy information is stored electronically and whether the insurer previously has engaged in the use of the DMF for its annuity contracts, but not for its life insurance policies.

- (2) The commissioner may phase in the requirements for compliance with Subsection A according to a plan and timeline the commissioner approves.
- C. (1) Upon receipt of information establishing knowledge of death, other than when an insurer has made a match pursuant to Subsection A, the insurer shall check its records to determine whether the insurer has any other policies, annuity contracts or retained asset accounts for that insured.
- (2) Upon receipt of information establishing knowledge of death of an insured the insurer shall:
  - (a) Notify each United States affiliate, parent or subsidiary, as appropriate, and any entity with which the insurer contracts that may maintain or control records related to policies, annuity contracts or retained asset accounts to which this Act applies of the knowledge of death or match; and
  - (b) Make a reasonable and good faith effort to ensure that each affiliate, parent or subsidiary or other entity performs a check of their records for purposes of Paragraph (1).
- D. Following 120 days of an insurer's receipt of information establishing the insurer's knowledge of death, if the insurer has not been contacted by a beneficiary, the insurer shall commence a thorough search, which shall be completed within one year from the date the insurer received such information.

**Drafting Note:** In deciding the appropriate timeframe for Subsection D above, states should review the timeframes in their unclaimed property laws and regulations and other laws and regulations, such as their claim settlement laws or regulations, to avoid any potential conflicts.

- E. An insurer may disclose the minimum necessary personal information about an insured or beneficiary to a person to whom the insurer reasonably believes may be able to assist the insurer to locate the beneficiary or a person otherwise entitled to payment of the proceeds, provided that the insurer may not implement policies or practices that will or may diminish the rights of or amounts of proceeds due to beneficiaries under its policies, annuity contracts or retained asset accounts.
- F. An insurer or its service provider may not charge any beneficiary or other authorized representative for any fees or costs associated with a death master file search or verification of a death master file match conducted pursuant to this section.
- G. If the insurer locates a beneficiary, within fifteen (15) days after the date of location, the insurer shall provide appropriate claims forms or instructions to the beneficiary to make a claim if the insurer has not already received a claim from that beneficiary.
- H. In the event, an insurer fails to locate a beneficiary following a thorough search the insurer shall report and remit the proceeds in accordance with [cite state unclaimed property law].

**Drafting Note:** States need to be aware that under federal law another state may require an insurer to report and remit proceeds as unclaimed property even if the insurer is not domiciled in the other state and even if the policy, annuity contract or retained asset account was not issued or delivered in this state. Under *Texas v. New Jersey*, 379 U.S. 674 (1965) and its progeny, the U.S. Supreme Court has held that "the State of the last known address of the creditor, as shown by the debtor's books and records" has priority over all other states in requiring a holder (including an insurer) to report and remit unclaimed property. This obligation to report and remit unclaimed property cannot be waived by the terms of an insurance contract. See *Connecticut Mutual Life Insurance Co. v. Moore*, 333 U.S. 541 (1947). Under the Revised Uniform Unclaimed Property Act and the unclaimed property laws of most states, the address of the insured is the default address for determining which state has priority in requiring the insurer to report and remit the proceeds as unclaimed property.

**Drafting Note:** The NAIC group that developed this Act intends to recommend that the NAIC require insurers subject to the Act to report annually to the state insurance commissioner information concerning the number and amount of policy, annuity contract and retained asset account proceeds transferred to the state unclaimed property funds and the number and amount of policy, annuity contract and retained asset account proceeds provided to beneficiaries as a result of the death master file matches made in accordance with the search requirements of this Act in the format and manner the NAIC considers appropriate, such as through an annual statement blank note, disclosure or exhibit, market conduct annual statement report or some other format and manner that promotes the uniformity of the information collected. If the NAIC does not establish the reporting requirement, states should consider establishing such a requirement.

- I. (1) Except as set forth in Paragraph (2), at no later than the policy delivery or the establishment of an account and upon any change of insured or beneficiary, an insurer shall request information sufficient to ensure that all benefits or proceeds are distributed to the appropriate persons upon the death of the insured including, at a minimum, the name, address, date of birth, social security number, and telephone number of every insured and beneficiary of such policy or account, as applicable.
- (2) Where an insurer issues a policy or provides an account based on information received directly from an insured's employer, the insurer may obtain the beneficiary information described in Paragraph (1) by communicating with the insured after the insurer's receipt of the information from the insured's employer.

**Section 6. Unfair Insurance Practices**

Failure to meet any requirement of this Act with such frequency as to constitute a general practice is a violation of [insert reference to the state Unfair Trade Practices law]. Nothing herein shall be construed to create or imply a private right of action for a violation of this Act.

**Drafting note:** Some states' Unfair Trade Practices statutes specify that an act must be shown to be a "pattern" or "general business practice" in order to constitute a violation of that statute. In those instances, care should be taken in the adoption of this Act to ensure consistency across those two statutes.

**[Section 7. Unfair Insurance Practices**

The [insert reference to state unfair insurance practices code] is amended by changing [section xxx] as follows: [provide amended language].]

**Section 8. Regulations**

The commissioner may, after notice and hearing, promulgate regulations to carry out the provisions of this Act. The regulations shall be subject to review in accordance with [insert reference to state law relating to the adoption and promulgation of rules and regulations or state Administrative Procedures Act].

**Section 9. Severability**

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

**Section 10. Effective Date**

This Act shall take effect no more than one year after the date signed into law.

**Drafting Note:** States may want to include language providing that the first DMF comparison search insurers must make should take place within [x] months after the effective date of the Act. States should be mindful of the time between the Act's effective date and the first required DMF comparison search.