

NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
Proposed Market Conduct Annual Statement Model Act

To be considered by the NCOIL State-Federal Relations Committee on March 5, 2010.

Sponsored by Sen. James Seward (NY)

Section 1. Short Title

This Act shall be known as the *Market Conduct Annual Statement Act*.

Section 2. Purpose

The purpose of this Act is to enable the Commissioner to collect and analyze Market Conduct Annual Statement (“MCAS”) data. The procedures set forth under this statute shall be the exclusive method for collecting, analyzing and sharing MCAS information.

Section 3. Scope

This Act applies to admitted insurers that write more than \$100,000 in direct written premium in this jurisdiction in any of the following lines of business:

- (a) Life and annuity for individual life cash value products, individual life non-cash value products, group life products (cash and non-cash value), individual fixed annuities, individual variable annuities;
- (b) Property and casualty for private passenger automobile;
- (c) Homeowners, including renters; and
- (d) Other lines of insurance the Commissioner determines, in accordance with applicable procedures, should be examined in order to protect individual insurance consumers.

Section 4. Definitions

For purposes of this Act, these defined words have the following meaning:

- A. “Commissioner” means the chief insurance regulatory official of the state.
- B. “Designee” means a statistical agent the Commissioner designates under Subsection 5(C) and a qualified professional organization or person outside his or her department under Subsection 6(B).
- C. “Insurer” means an admitted insurance company subject to the scope of this Act and required by Subsection 5(B) of this Act to file a MCAS in this jurisdiction.

- D. “Market Analysis” means a process whereby market conduct surveillance personnel collect and analyze information from filed schedules, surveys, required reports and other sources in order to develop a baseline and to identify patterns or practices of insurers licensed to do business in this state pertaining to company operations and management, complaint handling, marketing and sales, producer licensing, policyholder services, underwriting, and claims. Such analysis may include, but is not limited to, practices that may pose a potential risk to the insurance consumer. Market Analysis does not represent standards for market behavior and does not establish compliance or non-compliance.
- E. “Market Conduct Annual Statement” or “MCAS” means the Market Conduct Annual Statement as adopted by the National Association of Insurance Commissioners (“NAIC”) and as amended by the NAIC from time to time in accordance with the established procedures of that organization, provided that the MCAS and any changes thereto have been approved by the Commissioner.
- F. “Statistical Agent” means an entity or entities that have been designated by the Commissioner to collect statistics from insurers and provide reports developed from these statistics to the Commissioner for the purpose of fulfilling the MCAS reporting obligations of those insurers.

Section 5. Submission and Collection of MCAS Information

- A. The Commissioner may annually gather MCAS information. In order to allow insurers time to prepare to submit the data required, the Commissioner, or his or her statistical agent, shall provide advance notice to insurers. For data the insurer presently has, the Commissioner, or his or her statistical agent, shall notify insurers before July of the preceding year of the MCAS data to be submitted. For data that the insurer does not presently collect, the Commissioner, or his or her statistical agent, shall notify insurers before the July two years preceding the year the MCAS data is to be submitted.
- B. If the Commissioner determines that it will gather MCAS information, every insurer shall annually file with the Commissioner, or the Commissioner’s designated statistical agent, MCAS information for each line of business for which it writes more than \$100,000 in direct written premium in this state.
- C. The Commissioner may approve and designate one or more statistical agent for the purpose of gathering, compiling, aggregating and reporting to the Commissioner MCAS statistical data. Not more than one statistical agent may be designated for each line of business that is subject to MCAS. The designation of a statistical agent by the Commissioner does not mean that admitted insurers must report to such agent any statistics other than those statistics required to be reported under this Section.
- D. In the event that the Commissioner designates more than one statistical agent, each insurer shall choose one of the designated statistical agents to report to.

Section 6. Review and Analysis of MCAS Data

- A. The Commissioner may review MCAS information for the purpose of market analysis.
- B. The Commissioner may authorize a qualified professional organization or person outside his or her department to assist in the analysis and reporting of MCAS information subject to the confidentiality and sharing provisions in this Act. Such designated entity or person may not use the information collected for any purpose other than as stated in Section 2 of this Act and as within the scope of this designation.

Section 7. Selection and Standards for Designees

- A. The Commissioner may only approve and/or hire a designee if the Commissioner takes necessary steps to ensure that such functions are conducted by qualified organizations or persons in accordance with the following procedures:
 - 1. To be selected as a designee under this Act an applicant shall:
 - a. Follow the procedure the Commissioner outlines for consideration to serve as a designee, which may include licensing, a written application, or a formal request for such a designation;
 - b. State its qualifications, whether by education, experience, and where appropriate, professional designations, to act in the capacity for which it seeks designation;
 - c. Agree in writing to:
 - (i) comply with the all rules, technical advisories and directives issued by the Commissioner;
 - (ii) report statistical data or provide analysis of that data to the Commissioner in a timely manner;
 - (iii) submit to an audit or performance review, as required by the Commissioner;
 - (iv) make continuing efforts to resolve data quality and integrity issues, by working with insurance regulators and insurers on consistent definitions, ratios, interpretations, and protocols, as appropriate for the size and scope of the designation;
 - (v) maintain the confidentiality and privilege of all data;

- (vi) enter into a confidentiality agreement, consistent with this statute, with each insurer;
 - (vii) implement appropriate measures to establish standards for developing and implementing administrative, technical and physical safeguards to protect the security, confidentiality and integrity of information; and
 - d. For selection as a statistical agent, submit a reporting plan that conforms to the MCAS reporting format adopted by the NAIC and approved by the Commissioner.
- 2. A designee may collect and maintain the MCAS information but shall not own such information and shall not make such information available to any other person or entity except in accordance with this Act.
- B. The Commissioner shall designate in accordance with applicable state contracting procedures. It shall require any designee to engage in practices that are cost effective for the Commissioner and the insurer. In no event shall a designee charge more than reasonable and necessary costs and/or fees. The Commissioner or an insurer may request that a designee provide an accounting and/or itemized invoices.
- C. Nothing in this Act shall be construed to prevent an organization or person from being selected to serve both as a statistical agent and as a market analyst, provided the organization or person is qualified for both functions and agrees to the terms and conditions set forth in this section.
- D. The designee shall be the agent for the Commissioner and not for a reporting insurer.

Section 8. Confidentiality of MCAS Data, Analysis and Reports

- A. The MCAS information submitted by an insurer to the Commissioner or the Commissioner's designee ~~in accordance with this Act~~, as well as the work papers and other information received from another governmental entity or the NAIC and the review and analysis of that data, is confidential and privileged. It shall be afforded no less protection than materials provided under the Commissioner's examination and investigation authority under [insert cite]. Such information: shall not be subject to subpoena or to discovery; shall not be admissible in evidence in a private civil action; and shall be exempt from any applicable freedom of information law, public records law, public records disclosure law, or other similar statute.
- B. No person or entity which receives or has access to documents, materials, or other information under this section shall be permitted or required to testify in a private civil action concerning such documents, materials, or other materials.

- C. No waiver of an applicable privilege or claim of confidentiality in the documents, materials, or other information shall occur as a result of disclosure to the Commissioner or the Commissioner's designee under this Section or as a result of sharing such documents, materials or other information as provided in this Act. Nothing in this Section shall require an insurer to disclose documents, materials, or other information that is not otherwise required by law to be disclosed.
- D. The making, publishing, disseminating, circulating, or placing before the public, or causing, directly or indirectly to be made, published, disseminated, circulated, or placed before the public, any information provided to a designee under this Act is prohibited.
- E. Within three business days after receipt by designee of a subpoena or request for discovery of data on a specific insurer, the designee shall notify the Commissioner and the individual insurer from which the data originated, of such subpoena or request for data. The Commissioner and insurer whose data has been subpoenaed or requested shall have the right to intervene and to assert privileges under this Act and any other laws.
- F. An insurer may bring any action, in law or in equity, to prevent disclosure of any information provided to the Commissioner or to a designee in accordance with this Act to any person or entity not authorized to receive such information, unless that person or entity is the subject of a legal or regulatory action to which such information is or may be relevant.
- G. Consistent with Subsection 7(A)(1.) (c)(vi) and Section 9, a designee or other third party with whom MCAS information is shared shall enter into a confidentiality agreement with each insurer. Such agreement shall include, but is not limited to, language addressing:
 - 1. Protections contained in this Section;
 - 2. Data security safeguards and liability for damages due to unauthorized release of insurer data; and
 - 3. Prohibition against release of data to any third party, unless the insurer is provided advance written notice of the identity of the third party to whom the information would be released and unless such third party agrees on the same terms outlined in this Subsection.
- H. Nothing in this Section shall be construed to prohibit an insurer from making information about its operations public.

Section 9. Sharing MCAS Data and Analysis

In accordance with the purpose of this Act, as set forth in Section 2 above, the Commissioner or the Commissioner's designee, with the express consent of the Commissioner, may:

- A. Share MCAS information gathered under this statute, as well as any analysis of that information, if the recipient enters into a confidentiality agreement with the insurer consistent with Subsection 8(G), with:
 - 1. State, federal, and international regulatory agencies and law enforcement authorities; provided that the recipient has a compelling need to review the information, and that the recipient agrees, and has the legal authority, to maintain the confidentiality and privileged status of the documents, materials, or other information, including any analysis of such information.
 - 2. The NAIC, provided that the NAIC enters into an agreement, in writing with the insurer, that it will maintain the confidentiality and privileged status of the documents, materials, or other information, including any analysis of information.
- B. Receive MCAS documents, materials, or other information, including otherwise confidential and privileged documents, materials, or other information, from the NAIC, from other state and federal and international regulatory agencies, and from law enforcement authorities and shall maintain as privileged and confidential such material, and may enter into agreements governing the sharing and use of information consistent with this section.

Additions indicated by underline.
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