

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

Section 1. Short Title

This [Act/Bill] shall be known as the *Market Conduct Annual Statement Data Sharing [Act/Bill]*.

Section 2. Purpose

The purpose of this [Act/Bill] is to ensure the confidentiality of Market Conduct Annual Statement (“MCAS”) Data the Commissioner shares with other persons and entities.

Section 3. Scope

This Act applies to admitted insurers with direct written premium exceeding \$100,000 in this jurisdiction in lines of business subject to NAIC MCAS.

Section 4. Definitions

- A. “Commissioner” means [inset the title of the chief insurance regulatory official].
- B. “Designee” means either a statistical agent or a market analyst designated by the Commissioner pursuant to this [Act/Bill].
- C. “Insurer” means an admitted insurance company required by the Commissioner to file MCAS Data and having direct written premium exceeding \$100,000 in this jurisdiction in lines of business subject to NAIC MCAS.
- D. “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 its established procedures.
- E. “MCAS Data” means the data required by MCAS and filed by Insurers pursuant to the Commissioner’s examination authority.

Section 5. Collection of MCAS Data through a Designee

The Commissioner may designate one or more qualified organizations or persons to serve as statistical agents to collect and compile MCAS Data from Insurers. The Commissioner may also direct the Designee to perform statistical activities related to the receipt and presentation of MCAS Data to assist the Commissioner in the review and subsequent analysis of MCAS Data. Such designation(s) and Designee(s) shall be subject to the provisions of this [Act/Bill].

Such designations shall be made pursuant to written contract which terms shall include the scope of work, and shall be subject to the provisions of this [Act/Bill]. The written contract, including all provisions relating to compensation and costs, shall be a public record of the Commissioner.

A Designee may not use the MCAS Data or any related information, including any information created or produced by the Designee, for any other purpose.

Section 6. Analysis of MCAS Data through a Designee

The Commissioner may designate one or more qualified independent organizations or persons to assist the Commissioner in the analysis and reporting of MCAS Data, and such designation(s) and Designee(s) shall be subject to the provisions of this [Act/Bill].

Such designation shall be made pursuant to written contract, and shall be subject to the provisions of this [Act/Bill]. The written contract which terms shall include the scope of work, including all provisions relating to compensation and costs, shall be a public record of the Commissioner.

A Designee may not use the MCAS Data or any related analysis or other information, including any analysis or other information created or produced by the Designee, for any other purpose.

Section 7. Confidentiality of MCAS Data, Analysis, Information and Reports

- A. MCAS Data, the work papers and any analysis or other information produced by a Designee, as well as the work papers and any analysis or other information produced by or received from another governmental entity or the NAIC, and the review and analysis of MCAS Data of the Commissioner, is confidential and privileged. It shall be afforded no less protection than materials covered under the Commissioner's examination and investigation authority under [insert cite], and 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 MCAS Data, documents, materials, or other related information shall be permitted or required to testify in a private civil action concerning such MCAS Data, documents, materials, or other information.
- C. Within three business days after receipt by a Designee, or any other recipient of MCAS, MCAS Data, or other related information, of a subpoena or request for discovery of MCAS Data, related analysis, or other related information submitted by or pertaining to a specific insurer, the Designee shall notify the Commissioner and the Insurer of such subpoena or request for data. An Insurer shall have the right to intervene and to assert privileges under this [Act/Bill] and any other law, or to commence an action to prevent disclosure of any MCAS Data provided by it unless the disclosure will be made pursuant to a regulatory action to which such information is relevant.

Section 8. Sharing MCAS Data and Related Information

In accordance with the terms of this [Act/Bill], the Commissioner, or a Designee with the express consent of the Commissioner, may:

- A. Share MCAS Data, analysis and related information, with

1. State, federal, and international regulatory agencies and law enforcement authorities; provided that the recipient has, to the satisfaction of the Commissioner, a reasonable need to review the materials, 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; or with
 2. the NAIC, provided that the NAIC agrees that the NAIC, including its members, will maintain the confidentiality and privileged status of the documents, materials, or other information, including any analysis of information; and,
 3. the recipient enters into a confidentiality agreement with the Commissioner consistent with this [Act/Bill].
- B. Receive MCAS Data and related analysis, documents, materials, or other information, including otherwise confidential and privileged analysis, 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 analysis, documents, materials, or other information, and may enter into agreements governing the sharing and use of the same, consistent with this [Act/Bill].

Section 9. Notice to Insurers for the Collection of New MCAS Data

In order to allow Insurers time to prepare to submit MCAS Data, the Commissioner shall provide advance notice to Insurers for new data included within MCAS.

- A. For data Insurers then collect, the Commissioner shall notify Insurers before July of the preceding year during which the MCAS data is to be submitted.
- B. For data that Insurers do not then collect, the Commissioner shall notify Insurers by July one year preceding the year during which the MCAS data is to be submitted.