

## PROPERTY AND CASUALTY ACTUARIAL OPINION MODEL LAW

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### Section 1. Title

This Act shall be known as the Property and Casualty Actuarial Opinion Law.

### Section 2. Actuarial Opinion of Reserves and Supporting Documentation

This section shall become operative at the end of the first full calendar year following the year of enactment.

#### A. Statement of Actuarial Opinion

Every property and casualty insurance company doing business in this state, unless otherwise exempted by the domiciliary commissioner, shall annually submit the opinion of an Appointed Actuary entitled “Statement of Actuarial Opinion.” This opinion shall be filed in accordance with the appropriate NAIC Property and Casualty Annual Statement Instructions.

#### B. Actuarial Opinion Summary

(1) Every property and casualty insurance company domiciled in this state that is required to submit a Statement of Actuarial Opinion shall annually submit an Actuarial Opinion Summary, written by the company’s Appointed Actuary. This Actuarial Opinion Summary shall be filed in accordance with the appropriate NAIC Property and Casualty Annual Statement Instructions and shall be considered as a document supporting the Actuarial Opinion required in Subsection A.

(2) A company licensed but not domiciled in this state shall provide the Actuarial Opinion Summary upon request.

#### C. Actuarial Report and Workpapers

(1) An Actuarial Report and underlying workpapers as required by the appropriate NAIC Property and Casualty Annual Statement Instructions shall be prepared to support each Actuarial Opinion.

(2) If the insurance company fails to provide a supporting Actuarial Report and/or workpapers at the request of the commissioner or the commissioner determines that the supporting Actuarial Report or workpapers provided by the insurance company is otherwise unacceptable to the commissioner, the commissioner may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare the supporting Actuarial Report or workpapers.

**Drafting Note:** Even though the regulator as part of an exam or target exam usually has the authority to do this; this section reinforces the authority of the commissioner. The commissioner can also fine or require the company to have the workpapers redone with proper documentation.

- D. The Appointed Actuary shall not be liable for damages to any person (other than the insurance company and the commissioner) for any act, error, omission, decision or conduct with respect to the actuary's opinion, except in cases of fraud or willful misconduct on the part of the Appointed Actuary.

### **Section 3. Confidentiality**

- A. The Statement of Actuarial Opinion shall be provided with the Annual Statement in accordance with the appropriate NAIC Property and Casualty Annual Statement Instructions and shall be treated as a public document.
- B.
  - (1) Documents, materials or other information in the possession or control of the Department of Insurance that are considered an Actuarial Report, workpapers or Actuarial Opinion Summary provided in support of the opinion, and any other material provided by the company to the commissioner in connection with the Actuarial Report, workpapers or Actuarial Opinion Summary, shall be confidential by law and privileged, shall not be subject to [insert open records, freedom of information, sunshine or other appropriate phrase], shall not be subject to subpoena, and shall not be subject to discovery or admissible in evidence in any private civil action.
  - (2) This provision shall not be construed to limit the commissioner's authority to release the documents to the Actuarial Board for Counseling and Discipline (ABCD) so long as the material is required for the purpose of professional disciplinary proceedings and that the ABCD establishes procedures satisfactory to the commissioner for preserving the confidentiality of the documents, nor shall this section be construed to limit the commissioner's authority to use the documents, materials or other information in furtherance of any regulatory or legal action brought as part of the commissioner's official duties.
- C. Neither the commissioner nor any person who received documents, materials or other information while acting under the authority of the commissioner shall be permitted or required to testify in any private civil action concerning any confidential documents, materials or information subject to Subsection B.
- D. In order to assist in the performance of the commissioner's duties, the commissioner:
  - (1) May share documents, materials or other information, including the confidential and privileged documents, materials or information subject to Subsection B with other state, federal and international regulatory agencies, with the National Association of Insurance Commissioners and its affiliates and subsidiaries, and with state, federal and international law enforcement authorities, provided that the recipient agrees to maintain the confidentiality and privileged status of the document, material or other information and has the legal authority to maintain confidentiality;

- (2) May receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners and its affiliates and subsidiaries, and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and
  - (3) [Optional provision] May enter into agreements governing sharing and use of information consistent with Subsections B to D.
- E. No waiver of any applicable privilege or claim of confidentiality in the documents, materials or information shall occur as a result of disclosure to the commissioner under this section or as a result of sharing as authorized in Subsection D.

#### **Section 4. Effective Date**

This Act shall take effect [insert date].

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

*2003 Proc. 2<sup>nd</sup> Quarter 323, 347-348, 349-351 (adopted by parent committee).*

*2003 Proc. 3<sup>rd</sup> Quarter 14 (adopted by Plenary).*

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**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.**

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### **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. 482-1-149-.01 to 482-1-149-.08 (2009).	ALA. CODE § 27-3-26.1 (1993/1994).
Alaska		ALASKA STAT. § 21.09.207 (2006).
American Samoa	NO CURRENT ACTIVITY	
Arizona	ARIZ. REV. STAT. ANN. §§ 20-697 to 20-697.01 (2009).	BULLETIN 2009-3 (2009).
Arkansas	ARK. CODE ANN. § 23-63-1902 (2009).	
California		BULLETIN 91-11 (1991).
Colorado		3 COLO. CODE REGS. 702-1:1-1-1 (2012).
Connecticut		CONN. AGENCIES REGS. §§ 38a-53-1 to 38a-53-3 (1993/2010) (similar to model).
Delaware	NO CURRENT ACTIVITY	
District of Columbia	NO CURRENT ACTIVITY	
Florida		FLA. ADMIN. CODE ANN. r. 690-170.031 (1992/2003).

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Georgia		GA. CODE ANN. § 33-3-21.2 (1989).
Guam	NO CURRENT ACTIVITY	
Hawaii	HAW. REV. STAT. § 431:3-304 (2010/2011).	HAW. CODE R. §§ 16-169-10 to 16-169-13 (2012).
Idaho	IDAHO ADMIN. CODE r. 18.01.56.000 to 18.01.56.001 (2006) (portions of model).	
Illinois	215 ILL. COMP. STAT. 5/136 (1997/2009).	
Indiana		IND. CODE § 27-1-20-21.3 (1990/2000).
Iowa	IOWA CODE §§ 515H.1 to 515H.3 (2007).	
Kansas	KAN. STAT. ANN. § 63 (2008).	
Kentucky		KY. REV. STAT. § 304.3-242 (1992).
Louisiana		LA. ADMIN. CODE tit. 37, §§ XIII.701 to XIII.709 (Regulation 39) (1992/1999).
Maine	ME. REV. STAT. ANN. tit. 24-A, §§ 991 to 994 (2007/2009).	
Maryland	MD. CODE REGS. §§ 31.05.12.01 to 31.05.12.04 (2010).	BULLETIN 2010-3 (2010).
Massachusetts	MASS. GEN. LAWS ch. 175 § 227 (2015).	
Michigan	MICH. COMP. LAWS § 500.814a (2010).	
Minnesota	MINN. STAT. §§ 60A.1295 to 60A.1296 (2013).	



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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Mississippi	MISS. CODE ANN. §§ 83-5-501 to 83-5-505 (2009/2012).	
Missouri	MO. CODE REGS. ANN. tit. 20, § 200-1.105 (2010).	
Montana	MONT. CODE ANN. §§ 33-1-1401 to 33-1-1403 (2009).	
Nebraska	NEB. REV. STAT. §§ 44-7901 to 44-7903 (2005).	
Nevada	NO CURRENT ACTIVITY	
New Hampshire	N.H. CODE ADMIN. R. ANN. INS. 2402.01 to 2402.06 (2010).	
New Jersey		N.J. ADMIN. CODE §§ 11:1-21.1 to 11:1-21.5 (1986/2014).
New Mexico	N.M. CODE R. §§ 13.2.9.1 to 13.2.9.9 (2010/2012).	
New York		OCG No. 2001-71 (2001); Circular Letter 2005-22 (2009).
North Carolina		Directive 90-11 (1990).
North Dakota	N.D. ADMIN. CODE 45-03-19.1-01 (2010).	
Northern Marianas	NO CURRENT ACTIVITY	
Ohio	OHIO REV. CODE ANN. § 38-9-225 (2009); § 38-9-230 (2009).	
Oklahoma	OKLA. STAT. tit. 36, § 1125 to 1126 (2006/2012).	
Oregon	OR. ADMIN. R. 836-011-0015 (2010).	OR. REV. STAT. § 731.312 (1993/2001).
Pennsylvania	NO CURRENT ACTIVITY	
Puerto Rico		P.R. INS. RULE XCVI (2011).

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Rhode Island	R.I. GEN. LAWS §§ 27-12.1 to 27-12.3-3 (2008)	
South Carolina	NO CURRENT ACTIVITY	
South Dakota		S.D. CODIFIED LAWS § 58-26-13.1 (1992/1997).
Tennessee	TENN. CODE ANN. 56-1-419 to 56-1-420 (2010).	
Texas	TEX. ADMIN. CODE § 7.9 (2006).	TEX. INS. CODE ANN. § 802.002 (2003).
Utah	NO CURRENT ACTIVITY	
Vermont		VT. STAT. ANN. tit. 8, § 3577 (1992/210).
Virgin Islands	NO CURRENT ACTIVITY	
Virginia	VA. CODE ANN. § 38.2-1315.1 (2006/2014).	
Washington	WASH. REV. CODE § 48.05.383 (2006); § 48.05.385 (2006); § 42.56.403 (2006).	WASH. ADMIN. CODE § 284-07-060 (1993/2014).
West Virginia	W. VA. CODE R. §§ 114-41A-1 to 114-41A-3 (2010).	
Wisconsin		BULLETIN Oct. 13, 1982 (1982).
Wyoming	WYO. STAT. ANN. §§ 26-6-401 to 26-6-403 (2007).	