

MORTGAGE GUARANTY INSURANCE MODEL ACT

Table of Contents

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|-------------|--|
| Section 1. | Title |
| Section 2. | Definitions |
| Section 3. | Capital and Surplus |
| Section 4. | Insurer's Authority to Transact Business |
| Section 5. | Geographic Concentration |
| Section 6. | Advertising |
| Section 7. | Investment Limitation |
| Section 8. | Coverage Limitation |
| Section 9. | Mortgage Guaranty Insurance as Monoline |
| Section 10. | Underwriting Discrimination |
| Section 11. | Policy Forms and Premium Rates Filed |
| Section 12. | Outstanding Total Liability |
| Section 13. | Rebates, Commissions and Charges |
| Section 14. | Compensating Balances Prohibited |
| Section 15. | Conflict of Interest |
| Section 16. | Reserves |
| Section 17. | Regulations |

Section 1. Title

This Act may be cited as the Mortgage Guaranty Insurance Act.

Section 2. Definitions

The definitions set forth in this Act shall govern the construction of the terms used in this Act but shall not affect any other provisions of the code.

- A. "Authorized real estate security," for the purpose of this Act, means an amortized note, bond or other evidence of indebtedness, not exceeding ninety-five percent (95%) of the fair market value of the real estate, secured by a mortgage, deed of trust, or other instrument that constitutes, or is equivalent to, a first lien or charge on real estate; provided:
- (1) The real estate loan secured in this manner is one of a type that a bank, savings and loan association, or an insurance company, which is supervised and regulated by a department of this state or an agency of the federal government, is authorized to make, or would be authorized to make, disregarding any requirement applicable to such an institution that the amount of the loan not exceed a certain percentage of the value of the real estate;
 - (2) The improvement on the real estate is a building or buildings designed for occupancy as specified by Subsections A(1) and A(2) of this section; and
 - (3) The lien on the real estate may be subject to and subordinate to the following:
 - (a) The lien of any public bond, assessment or tax, when no installment, call or payment of or under the bond, assessment or tax is delinquent; and
 - (b) Outstanding mineral, oil, water or timber rights, rights-of-way, easements or rights-of-way of support, sewer rights, building restrictions or other restrictions or covenants, conditions or regulations of use, or outstanding leases upon the real property under which rents or profits are reserved to the owner thereof.
- B. "Contingency reserve" means an additional premium reserve established to protect policyholders against the effect of adverse economic cycles.

C. “Mortgage guaranty insurance” is:

- (1) Insurance against financial loss by reason of nonpayment of principal, interest or other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real estate, provided the improvement on the real estate is a residential building or a condominium unit or buildings designed for occupancy by not more than four families;
- (2) Insurance against financial loss by reason of nonpayment of principal, interest or other sums agreed to be paid under the terms of any note or bond or other evidence of indebtedness secured by a mortgage, deed of trust, or other instrument constituting a lien or charge on real estate, providing the improvement on the real estate is a building or buildings designed for occupancy by five (5) or more families or designed to be occupied for industrial or commercial purposes; and
- (3) Insurance against financial loss by reason of nonpayment of rent or other sums agreed to be paid under the terms of a written lease for the possession, use or occupancy of real estate, provided the improvement on the real estate is a building or buildings designed to be occupied for industrial or commercial purposes.

Section 3. Capital and Surplus

A mortgage guaranty insurance company shall not transact the business of mortgage guaranty insurance unless, if a stock insurance company, it has paid-in capital of at least \$1,000,000 and paid-in surplus of at least \$1,000,000, or if a mutual insurance company, a minimum initial surplus of \$2,000,000. A stock company or a mutual company shall at all times thereafter maintain a minimum policyholders’ surplus of at least \$1,500,000.

Section 4. Insurer’s Authority to Transact Business

No mortgage guaranty insurance company may issue policies until it has obtained from the commissioner of insurance a certificate setting forth that fact and authorizing it to issue policies.

Section 5. Geographic Concentration

- A. A mortgage guaranty insurance company shall not insure loans secured by a single risk in excess of ten percent (10%) of the company’s aggregate capital, surplus and contingency reserve.
- B. No mortgage guaranty insurance company shall have more than twenty percent (20%) of its total insurance in force in any one Standard Metropolitan Statistical Area (SMSA), as defined by the United States Department of Commerce.
- C. The provisions of this section shall not apply to a mortgage guaranty insurance company until it has possessed a certificate of authority in this state for three (3) years.

Section 6. Advertising

No mortgage guaranty insurance company or an agent or representative of a mortgage guaranty insurance company shall prepare or distribute or assist in preparing or distributing any brochure, pamphlet, report or any form of advertising to the effect that the real estate investments of any financial institution are “insured investments,” unless the brochure, pamphlet, report or advertising clearly states that the loans are insured by mortgage guaranty insurance companies possessing a certificate of authority to transact mortgage guaranty insurance in this state or are insured by an agency of the federal government, as the case may be.

Section 7. Investment Limitation

A mortgage guaranty insurance company shall not invest in notes or other evidences of indebtedness secured by mortgage or other lien upon real property. This section shall not apply to obligations secured by real property, or contracts for the sale of real property, which obligations or contracts of sale are acquired in the course of the good faith settlement of claims under policies of insurance issued by the mortgage guaranty insurance company, or in the good faith disposition of real property so acquired.

Section 8. Coverage Limitation

A mortgage guaranty insurance company shall limit its coverage net of reinsurance ceded to a reinsurer in which the company has no interest to a maximum of twenty-five percent (25%) of the entire indebtedness to the insured or in lieu thereof, a mortgage guaranty insurance company may elect to pay the entire indebtedness to the insured and acquire title to the authorized real estate security.

Section 9. Mortgage Guaranty Insurance as Monoline

- A. A mortgage guaranty insurance company that anywhere transacts any class of insurance other than mortgage guaranty insurance is not eligible for the issuance of a certificate of authority to transact mortgage guaranty insurance in this state nor for the renewal thereof.
- B. A mortgage guaranty insurance company that anywhere transacts the classes of insurance defined in Section 2A(2) or 2A(3) is not eligible for a certificate of authority to transact in this state the class of mortgage guaranty insurance defined in Section 2A(1). However, a mortgage guarantee insurance company that transacts a class of insurance defined in Section 2A may write up to five percent (5%) of its insurance in force on residential property designed for occupancy by five (5) or more families.

Section 10. Underwriting Discrimination

- A. Nothing in this chapter shall be construed as limiting the right of a mortgage guaranty insurance company to impose reasonable requirements upon the lender with regard to the terms of a note or bond or other evidence of indebtedness secured by a mortgage or deed of trust, such as requiring a stipulated down payment by the borrower.
- B. No mortgage guaranty insurance company may discriminate in the issuance or extension of mortgage guaranty insurance on the basis of the applicant's sex, marital status, race, color, creed or national origin.
- C. No policy of mortgage guaranty insurance, excluding policies of reinsurance, shall be written unless and until the insurer has conducted a reasonable and thorough examination of the evidence supporting credit worthiness of the borrower and the appraisal report reflecting market evaluation of the property and has determined that prudent underwriting standards have been met.

Section 11. Policy Forms and Premium Rates Filed

- A. All policy forms and endorsements shall be filed with and be subject to the approval of the commissioner. With respect to owner-occupied, single-family dwellings, the mortgage guaranty insurance policy shall provide that the borrower shall not be liable to the insurance company for any deficiency arising from a foreclosure sale.
- B. In addition, each mortgage guaranty insurance company shall file with the department the rate to be charged and the premium including all modifications of rates and premiums to be paid by the policyholder.
- C. Every mortgage guaranty insurance company shall adopt, print and make available a schedule of premium charges for mortgage guaranty insurance policies. Premium charges made in conformity with the provisions of this Act shall not be deemed to be interest or other charges under any other provision of law limiting interest or other charges in connection with mortgage loans. The schedule shall show the entire amount of premium charge for each type of mortgage guaranty insurance policy issued by the insurance company.

Drafting Note: Open rating states may delete a portion or all of this provision and insert their own rating law.

Section 12. Outstanding Total Liability

A mortgage guaranty insurance company shall not at any time have outstanding a total liability, net of reinsurance, under its aggregate mortgage guaranty insurance policies exceeding twenty-five (25) times its capital, surplus and contingency reserve. In the event that any mortgage guaranty insurance company has outstanding total liability exceeding twenty-five (25) times its capital, surplus and contingency reserve, it shall cease transacting new mortgage guaranty business until such time as its total liability no longer exceeds twenty-five (25) times its capital, surplus and contingency reserve. Total outstanding liability shall be calculated on a consolidated basis for all mortgage guarantee insurance companies that are part of a holding company system.

Section 13. Rebates, Commissions and Charges

- A. A mortgage guaranty insurance company shall not pay or cause to be paid either directly or indirectly, to any owner, purchaser, lessor, lessee, mortgagee or prospective mortgagee of the real property that secures the authorized real estate security or that is the fee of an insured lease, or any interest therein, or to any person who is acting as an agent, representative, attorney or employee of such owner, purchaser or mortgagee, any commission, or any part of its premium charges or any other consideration as an inducement for or as compensation on any mortgage guaranty insurance business.
- B. In connection with the placement of any mortgage guaranty insurance, a mortgage guaranty insurance company shall not cause or permit any commission, fee, remuneration or other compensation to be paid to, or received by an insured lender or lessor; any subsidiary or affiliate of an insured; an officer, director or employee of an insured or any member of their immediate family; a corporation, partnership, trust, trade association in which an insured is a member, or other entity in which an insured or an officer, director or employee or any member of their immediate family has a financial interest; or any designee, trustee, nominee or other agent or representative of any of the foregoing.
- C. No mortgage guaranty insurance company shall make a rebate of any portion of the premium charge shown by the schedule required by Section 11C. No mortgage guaranty insurance company shall quote any rate or premium charge to a person that is different than that currently available to others for the same type of coverage. The amount by which a premium charge is less than that called for by the current schedule of premium charges is an unlawful rebate.
- D. The commissioner may, after notice and hearing, suspend or revoke the certificate of authority of a mortgage guaranty insurance company, or in his or her discretion, issue a cease and desist order to a mortgage guaranty insurance company that pays a commission or makes an unlawful rebate in willful violation of the provisions of this Act. In the event of the issuance of a cease and desist order, the commissioner may, after notice and hearing, suspend or revoke the certificate of authority of a mortgage guaranty insurance company that does not comply with the terms thereof.

Section 14. Compensating Balances Prohibited

Except for commercial checking accounts and normal deposits in support of an active bank line of credit, a mortgage guaranty insurance company, holding company or any affiliate thereof is prohibited from maintaining funds on deposit with the lender for which the mortgage guaranty insurance company has insured loans. Any deposit account bearing interest at rates less than what is currently being paid other depositors on similar deposits or any deposit in excess of amounts insured by an agency of the federal government shall be presumed to be an account in violation of this section. Furthermore, a mortgage guaranty insurance company shall not use compensating balances, special deposit accounts or engage in any practice that unduly delays its receipt of monies due or that involves the use of its financial resources for the benefit of any owner, mortgagee of the real property or any interest therein or any person who is acting as agent, representative, attorney or employee of the owner, purchaser or mortgagee as a means of circumventing any part of this section.

Section 15. Conflict of Interest

- A. If a member of a holding company system, a mortgage guaranty insurance company licensed to transact business in this state shall not, as a condition of its certificate of authority, knowingly underwrite mortgage guaranty insurance on mortgages originated by the holding company system or an affiliate or on mortgages originated by any mortgage lender to which credit is extended, directly or indirectly, by the holding company system or an affiliate.

- B. A mortgage guaranty insurance company, the holding company system of which it is a part, or any affiliate shall not as a condition of the mortgage guaranty insurance company's certificate of authority, pay any commissions, remuneration, rebates or engage in activities proscribed in Sections 13 and 14.

Section 16. Reserves

A. Unearned Premium Reserves

A mortgage guaranty insurance company shall compute and maintain an unearned premium reserve as set forth by regulation adopted by the commissioner of insurance.

B. Loss Reserve

A mortgage guaranty insurance company shall compute and maintain adequate case basis and other loss reserves that accurately reflect loss frequency and loss severity and shall include components for claims reported and for claims incurred but not reported, including estimated losses on:

- (1) Insured loans that have resulted in the conveyance of property that remains unsold;
- (2) Insured loans in the process of foreclosure;
- (3) Insured loans in default for four (4) months or for any lesser period that is defined as default for such purposes in the policy provisions; and
- (4) Insured leases in default for four (4) months or for any lesser period that is defined as default for such purposes in policy provisions.

C. Contingency Reserve

Each mortgage guaranty insurance company shall establish a contingency reserve out of net premium remaining (gross premiums less premiums returned to policyholders net of reinsurance) after establishment of the unearned premium reserve. The mortgage guaranty insurance company shall contribute to the contingency reserve an amount equal to fifty percent (50%) of the remaining unearned premiums. Contributions to the contingency reserve made during each calendar year shall be maintained for a period of 120 months, except that withdrawals may be made by the company in any year in which the actual incurred losses exceed thirty-five percent (35%) of the corresponding earned premiums, and no releases shall be made without prior approval by the commissioner of insurance of the insurance company's state of domicile.

If the coverage provided in this Act exceeds the limitations set forth herein, the commissioner of insurance shall establish a rate formula factor that will produce a contingency reserve adequate for the added risk assumed. The face amount of an insured mortgage shall be computed before any reduction by the mortgage guaranty insurance company's election to limit its coverage to a portion of the entire indebtedness.

D. Reinsurance

Whenever a mortgage guaranty insurance company obtains reinsurance from an insurance company that is properly licensed to provide reinsurance or from an appropriate governmental agency, the mortgage guaranty insurer and the reinsurer shall establish and maintain the reserves required in this Act in appropriate proportions in relation to the risk retained by the original insurer and ceded to the assuming reinsurer so that the total reserves established shall not be less than the reserves required by this Act.

E. Miscellaneous

- (1) Whenever the laws of any other jurisdiction in which a mortgage guaranty insurance company subject to the requirement of this Act is also licensed to transact mortgage guaranty insurance require a larger unearned premium reserve or contingency reserve in the aggregate than that set forth herein, the establishment of the larger unearned premium reserve or contingency reserve in the aggregate shall be deemed to be in compliance with this Act.

- (2) Unearned premium reserves and contingency reserves shall be computed and maintained on risks insured after the effective date of this Act as required by Subsections A and C. Unearned premium reserves and contingency reserves on risks insured before the effective date of this Act may be computed and maintained as required previously.

Section 17. Regulations

The commissioner shall have the authority to promulgate rules and regulations deemed necessary to effectively implement the requirements of this Act.

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

1976 Proc. II 15, 17, 647, 686, 747-753 (adopted).

1979 Proc. I 44, 47-48, 49, 719, 968-969 (corrected).

MORTGAGE GUARANTY INSURANCE MODEL ACT

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.

MORTGAGE GUARANTY INSURANCE MODEL ACT

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MORTGAGE GUARANTY INSURANCE MODEL ACT

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. 482-1-043.01 to 482-1-043.10 (2008). |
| Alaska | | ALASKA STAT. § 21.12.110 (1976) (mortgage guaranty insurance defined). |
| American Samoa | NO CURRENT ACTIVITY | |
| Arizona | ARIZ. REV. STAT. ANN. §§ 20-1541 to 20-1559 (1977/2010). | |
| Arkansas | NO CURRENT ACTIVITY | |
| California | CAL. INS. CODE §§ 12640.01 to 12640.18 (1961/2016). | |
| Colorado | NO CURRENT ACTIVITY | |
| Connecticut | NO CURRENT ACTIVITY | |
| Delaware | NO CURRENT ACTIVITY | |
| District of Columbia | NO CURRENT ACTIVITY | |
| Florida | | FLA. STAT. 635.011 to 635.091 (1983/2010); FLA. ADMIN. CODE ANN. r. 69O-185.001 to 69O-185.007 (1974/2013). |

MORTGAGE GUARANTY INSURANCE MODEL ACT

| NAIC MEMBER | MODEL ADOPTION | RELATED STATE ACTIVITY |
|--------------------|--|---|
| Georgia | NO CURRENT ACTIVITY | |
| Guam | NO CURRENT ACTIVITY | |
| Hawaii | NO CURRENT ACTIVITY | |
| Idaho | IDAHO CODE ANN. §§ 41-2650 to 41-2656 (1972/2015) (portions of model). | |
| Illinois | ILL. ADMIN. CODE tit. 50, §§ 202.10 to 202.60 (1982/2000). | |
| Indiana | NO CURRENT ACTIVITY | |
| Iowa | | IOWA CODE §§ 515C.1 to 515C.11 (1963/2010). |
| Kansas | KAN. STAT. ANN. §§ 40-3501 to 40-3521 (1977/2012). | |
| Kentucky | | KY. REV. STAT. ANN. §§ 304.23-010 to 304.23-040 (1970). |
| Louisiana | NO CURRENT ACTIVITY | |
| Maine | NO CURRENT ACTIVITY | |
| Maryland | NO CURRENT ACTIVITY | |
| Massachusetts | NO CURRENT ACTIVITY | |
| Michigan | NO CURRENT ACTIVITY | |
| Minnesota | NO CURRENT ACTIVITY | |
| Mississippi | NO CURRENT ACTIVITY | |
| Missouri | MO. CODE REGS. ANN. tit. 20, §§ 500-10.100 to 500-10.400 (1996/2003). | |
| Montana | NO CURRENT ACTIVITY | |

MORTGAGE GUARANTY INSURANCE MODEL ACT

| NAIC MEMBER | MODEL ADOPTION | RELATED STATE ACTIVITY |
|--------------------|---|--|
| Nebraska | NO CURRENT ACTIVITY | |
| Nevada | NO CURRENT ACTIVITY | |
| New Hampshire | NO CURRENT ACTIVITY | |
| New Jersey | N.J. STAT. ANN. §§ 17:46A-1 to 17:46A-11 (1968/2015). | |
| New Mexico | NO CURRENT ACTIVITY | |
| New York | | N.Y. INS. LAW §§ 6501 to 6507 (1984/2003). |
| North Carolina | | N.C. GEN. STAT. §§ 58-10-120 to 58-10-135 (2001/2009); 11 N.C. ADMIN. CODE §§ 11.0401 to 11.0406 (1978). |
| North Dakota | NO CURRENT ACTIVITY | |
| Northern Marianas | NO CURRENT ACTIVITY | |
| Ohio | OHIO ADMIN. CODE 3901:1-13 (1978/2007). | |
| Oklahoma | NO CURRENT ACTIVITY | |
| Oregon | | OR. REV. STAT. §§ 743.705 to 743.708 (1969/1973). |
| Pennsylvania | NO CURRENT ACTIVITY | |
| Puerto Rico | | P.R. LAWS ANN. tit. 26, §§ 2301 to 2307 (1976). |
| Rhode Island | NO CURRENT ACTIVITY | |
| South Carolina | NO CURRENT ACTIVITY | |
| South Dakota | NO CURRENT ACTIVITY | |
| Tennessee | NO CURRENT ACTIVITY | |

MORTGAGE GUARANTY INSURANCE MODEL ACT

| NAIC MEMBER | MODEL ADOPTION | RELATED STATE ACTIVITY |
|--------------------|-----------------------|---|
| Texas | | TEX. INS. CODE ANN. § 21.50 (1971/1997). |
| Utah | NO CURRENT ACTIVITY | |
| Vermont | | VT. STAT. ANN. tit. 55, § 66.3 (2010). |
| Virgin Islands | NO CURRENT ACTIVITY | |
| Virginia | NO CURRENT ACTIVITY | |
| Washington | NO CURRENT ACTIVITY | |
| West Virginia | NO CURRENT ACTIVITY | |
| Wisconsin | | WIS. ADMIN. CODE INS. § 3.09 (1957/2000). |
| Wyoming | NO CURRENT ACTIVITY | |

MORTGAGE GUARANTY INSURANCE MODEL ACT

Proceeding Citations

Cited to the Proceedings of the NAIC

A special task force was appointed by the Subcommittee on Essential Insurance to look at a number of issues related to mortgage guaranty insurance. The areas of concern into which the task force should make inquiry included: rating, underwriting, reinsurance, contingency reserves, unearned premium reserves, losses and loss adjustment reserves, agents' licensing, admission requirements, multiple line or monoline, and conflict of interest. **1975 Proc. I 866.**

The goal of the committee was to develop a model law and regulation by December of 1975. A trade association offered to provide each commissioner with a copy of a study on private mortgage insurance sponsored by the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation. The study assessed the mortgage insurance industry's financial strength, competitive position and procedures, investment policies, accounting techniques and underwriting practices. **1975 Proc. II 477-478.**

The drafters concluded that the scope of the proposed model bill should be broad enough to contain all pertinent and required regulatory provisions yet concise enough to constitute enabling legislation to be implemented by regulations or directives in those jurisdictions where needed. As they drafted the model act, the task force still felt it was important to also develop a regulation to implement the model act. **1976 Proc. I 625.**

Section 1. Title

Section 2. Definitions

A. The exposure draft contained definitions for residential mortgage guaranty insurance, commercial mortgage guaranty insurance and lease guaranty insurance, instead of the single consolidated definition adopted. **1976 Proc. I 626.**

Section 3. Capital and Surplus

The exposure draft suggested a minimum surplus to be maintained of \$500,000 for a stock company and \$1,500,000 for a mutual company. These figures were changed before final adoption. **1976 Proc. I 627.**

Section 4. Insurer's Authority to Transact Business

Section 5. Geographic Concentration

The exposure draft contained a limitation on insuring loans in a single or contiguous housing or commercial tract in excess of ten percent of the company's assets. **1976 Proc. I 627.**

In 1978 the Executive Committee noted that the NAIC *Proceedings* incorrectly contained an early version of the model rather than the one adopted. **1979 Proc. I 49.** One of the errors corrected was to replace the contiguous tract language with a more exact definition from the United States Department of Commerce. **1979 Proc. I 968.**

Section 6. Advertising

Section 7. Investment Limitation

Section 8. Coverage Limitation

Section 9. Mortgage Guaranty Insurance as Monoline

The exposure draft of the model contained only the first paragraph. When the definitions were revised, a second paragraph was added which contained the first part of Subsection B. **1976 Proc. I 628.**

After adoption the draft was corrected to show it should also have included the second part of Subsection B. **1979 Proc. I 968.**

MORTGAGE GUARANTY INSURANCE MODEL ACT

Proceeding Citations

Cited to the Proceedings of the NAIC

Section 10. Underwriting Discrimination

C. Subsection C was added to the draft after comments on the exposure draft were received. **1976 Proc. I 628.**

Section 11. Policy Forms and Premium Rates Filed

C. A drafting note was added when the draft was corrected to clarify the application of Subsection C. **1979 Proc. I 968.**

Section 12. Outstanding Total Liability

One of the corrections made in 1978 was to show the model should have contained the last sentence of this section which had been omitted. **1979 Proc. I 968.**

Section 13. Rebates, Commissions and Charges

D. The last sentence of Subsection D did not appear in the exposure draft, but was added after comments were received by the task force. **1976 Proc. I 628.**

Section 14. Compensating Balances Prohibited

There was considerable reworking of this section in the period of time between exposure of the draft and adoption. **1976 Proc. I 629.**

The draft of this section printed in the *Proceedings* contained an incorrect version. It was reprinted in 1978 with the correct language. **1979 Proc. I 969.**

Section 15. Conflict of Interest

Section 16. Reserves

A. Although it was the intent of the drafters to develop a model regulation, this was not done after the task force prepared the model act. **1975 Proc. II 477.**

B. When adopted the model contained an obvious typographical error. The version printed in the *Proceedings* spoke of components for claims reported "*and unpaid*". The corrections printed in 1978 showed those two words should not have been included. **1979 Proc. I 968-969.**

D. The subsection on reinsurance was not included in the exposure draft, but was added before adoption by the NAIC. **1976 Proc. I 630.**

Section 17. Regulations

This section was not part of the exposure draft, even though the task force had voiced its intention to develop regulations. **1976 Proc. I 630.**

Chronological Summary of Actions

June 1976: Model adopted.

December 1978: Errors corrected.