

## MANAGING GENERAL AGENTS ACT

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### Section 1. Purpose and Scope

This Act may be cited as the Managing General Agents Act. This chapter governs the qualifications and procedures for resident and non-resident producers acquiring the status as a Managing General Agent.

### Section 2. Definitions

As used in this Act:

- A. “Actuary” means a person who is a member in good standing of the American Academy of Actuaries.
- B. “Business entity” means a corporation, association, partnership, limited liability company, limited liability partnership or other legal entity.
- C. “Insurer” means any person duly licensed in this state as an insurance company pursuant to [insert applicable licensing statute].
- D. “Managing general agent” (MGA) means any person who:
  - (1) Manages all or part of the insurance business of an insurer (including the management of a separate division, department or underwriting office); and
  - (2) Acts as an agent for such insurer whether known as a managing general agent, manager or other similar term, who, with or without the authority, either separately or together with affiliates, produces, directly or indirectly, and underwrites an amount of gross direct written premium equal to or more than five percent (5%) of the policyholder surplus as reported in the last annual statement of the insurer in any one quarter or year together with the following activity related to the business produced adjusts or pays claims in excess of \$10,000 per claim or negotiates reinsurance on behalf of the insurer.

**Drafting Note:** Individuals or agents calling themselves “managing general agents” may not necessarily fall under the provisions of this Act. In other words, if the individual or agent does not perform the activities set forth in Paragraphs (1) and (2) then, for purposes of the Act, the individual is not an MGA.

**Drafting Note:** Insert the proper title for the chief insurance regulatory official wherever the term “Commissioner” appears.

- (3) Notwithstanding the above, the following persons shall not be considered MGAs for the purposes of this Act:
  - (a) An employee of the insurer;
  - (b) A U.S. Manager of the United States branch of an alien insurer;
  - (c) An underwriting manager which, pursuant to contract, manages all or part of the insurance operations of the insurer, is under common control with the insurer, subject to the holding company regulatory act, and whose compensation is not based on the volume of premiums written;

- (d) The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney.

**Drafting Note:** A managing general agent does not fall within the definition of an “adjuster,” or one “who negotiates reinsurance on behalf of the insurer” as stated in Paragraph (2).

- E. “Person” means an individual or a business entity.
- F. “Underwrite” means the authority to accept or reject risk on behalf of the insurer.

**Drafting Note:** If the enacting state has a third party administration (TPA) Act, it should be reviewed to eliminate any conflict.

### **Section 3. Licensure**

- A. No person shall act in the capacity of an MGA with respect to risks located in this state for an insurer licensed in this state unless such person is a licensed producer in this state.
- B. No person shall act in the capacity of an MGA representing an insurer domiciled in this state with respect to risks located outside this state unless such person is licensed as a producer in this state (such license may be a nonresident license) pursuant to the provisions of this Act.

### **Section 4. Required Contract Provisions**

No person acting in the capacity of an MGA shall place business with an insurer unless there is in force a written contract between the parties which sets forth the responsibilities of each party and where both parties share responsibility for a particular function, specifies the division of such responsibilities, and which contains the following minimum provisions:

- A. The insurer may terminate the contract for cause upon written notice to the MGA. The insurer may suspend the underwriting authority of the MGA during the pendency of any dispute regarding the cause for termination.

**Drafting Note:** Nothing in the above subsection is intended to relieve the MGA or insurer of any other contractual obligation.

- B. The MGA will render accounts to the insurer detailing all transactions and remit all funds due under the contract to the insurer on not less than a monthly basis.
- C. All funds collected for the account of an insurer will be held by the MGA in a fiduciary capacity in an institution that is insured by the FDIC. This account shall be used for all payments on behalf of the insurer. The MGA may retain no more than three months estimated claims payments and allocated loss adjustment expenses.
- D. Separate records of business written by the MGA will be maintained. The insurer shall have access and right to copy all accounts and records related to its business in a form usable by the insurer and the commissioner shall have access to all books, bank accounts and records of the MGA in a form usable to the commissioner. Such records shall be retained according to [cite appropriate record retention statute].
- E. The contract may not be assigned in whole or part by the MGA.
- F. (1) Appropriate underwriting guidelines including:
  - (a) The maximum annual premium volume;
  - (b) The basis of the rates to be charged;
  - (c) The types of risks which may be written;
  - (d) Maximum limits of liability;
  - (e) Applicable exclusions;

- (f) Territorial limitations;
  - (g) Policy cancellation provisions; and
  - (h) The maximum policy period.
- (2) The insurer shall have the right to cancel or non-renew any policy of insurance subject to the applicable laws and regulations [concerning the cancellation and non-renewal of insurance policies].
- G. The insurer shall require the MGA to obtain and maintain a surety bond for the protection of the insurer. The bond amount shall be at least \$100,000 or ten percent (10%) of the managing general agent's total annual written premium nationwide produced by the MGA for the insurer in the prior calendar year, but in no event greater than \$500,000.

**Drafting Note:** It is contemplated that one bond per company represented would be required.

- H. The insurer may require the MGA to maintain an errors and omissions policy.
- I. If the contract permits the MGA to settle claims on behalf of the insurer:
- (1) All claims must be reported to the company in a timely manner.
  - (2) A copy of the claim file will be sent to the insurer at its request or as soon as it becomes known that the claim:
    - (a) Has the potential to exceed an amount determined by the commissioner or exceeds the limit set by the company; whichever is less;
    - (b) Involves a coverage dispute;
    - (c) May exceed the MGA's claims settlement authority;
    - (d) Is open for more than six months; or
    - (e) Is closed by payment of an amount set by the commissioner or an amount set by the company, whichever is less.
  - (3) All claim files will be the joint property of the insurer and MGA. However, upon an order of liquidation of the insurer such files shall become the sole property of the insurer or its estate; the MGA shall have reasonable access to and the right to copy the files on a timely basis.
  - (4) Any settlement authority granted to the MGA may be terminated for cause upon the insurer's written notice to the MGA or upon the termination of the contract. The insurer may suspend the settlement authority during the pendency of any dispute regarding the cause for termination.

**Drafting Note:** Nothing in the above subsection is intended to relieve the MGA or insurer of any other contractual obligation.

- J. Where electronic claims files are in existence, the contract must address the timely transmission of the data.
- K. The MGA may use only advertising material pertaining to the business issued by an insurer that has been approved in writing by the insurer in advance of its use.
- L. If the contract provides for a sharing of interim profits by the MGA, and the MGA has the authority to determine the amount of the interim profits by establishing loss reserves or controlling claim payments, or in any other manner, interim profits will not be paid to the MGA until one year after they are earned for property insurance business and five years after they are earned on casualty business and not until the profits have been verified pursuant to Section 5 of this Act.

- M. The MGA shall not:
- (1) Bind reinsurance or retrocessions on behalf of the insurer, except that the MGA may bind facultative reinsurance contracts pursuant to obligatory facultative agreements if the contract with the insurer contains reinsurance underwriting guidelines including, for both reinsurance assumed and ceded, a list of reinsurers with which such automatic agreements are in effect, the coverages and amounts or percentages that may be reinsured and commission schedules;
  - (2) Commit the insurer to participate in insurance or reinsurance syndicates;
  - (3) Appoint any producer without assuring that the producer is lawfully licensed to transact the type of insurance for which he is appointed;
  - (4) Without prior approval of the insurer, pay or commit the insurer to pay a claim over a specified amount, net of reinsurance, which shall not exceed one percent (1%) of the insurer's policyholder's surplus as of December 31 of the last completed calendar year;
  - (5) Collect any payment from a reinsurer or commit the insurer to any claim settlement with a reinsurer; without prior approval of the insurer. If prior approval is given, a report must be promptly forwarded to the insurer;
  - (6) Except as provided in Section 5G, permit its subproducer to serve on the insurer's board of directors;
  - (7) Jointly employ an individual who is employed with the insurer; or
  - (8) Appoint a sub-MGA.

**Section 5. Duties of Insurers**

- A. The insurer shall have on file an independent audited annual financial statement or reports for the two (2) most recent fiscal years that prove that the MGA has a positive net worth. If the MGA has been in existence for less than two fiscal years, the MGA shall include financial statements or reports, certified by an officer of the MGA and prepared in accordance with GAAP, for any completed fiscal years, and for any month during the current fiscal year for which such financial statements or reports have been completed. An audited financial/annual report prepared on a consolidated basis must include a columnar consolidating or combining worksheet that shall be filed with the report and include the following: a) amounts shown on the consolidated audited financial report shall be shown on the worksheet; b) amounts for each entity shall be stated separately, and c) explanations of consolidating and eliminating entries shall be included.

**Drafting Note:** If the MGA has been in existence for less than two (2) fiscal years or has not qualified as an MGA for that period and otherwise does not have the required audited financial statements or reports, the MGA shall include financial statements or reports, certified by an officer of the MGA and prepared in accordance with GAAP, for any completed fiscal years, and for any month during the current fiscal year for which financial statements or reports have been completed.

- B. If an MGA establishes loss reserves, the insurer shall annually obtain the opinion of an actuary attesting to the adequacy of loss reserves established for losses incurred and outstanding on business produced by the MGA. This is in addition to any other required loss reserve certification.
- C. The insurer shall periodically (at least semi-annually) conduct an on-site review of the underwriting and claims processing operations of the MGA.
- D. Binding authority for all reinsurance contracts or participation in insurance or reinsurance syndicates shall rest with an officer of the insurer, who shall not be affiliated with the MGA.
- E. Within thirty (30) days of entering into or terminating a contract with an MGA, the insurer shall provide written notification to the commissioner. Notices entering into a contract with an MGA shall include a statement of duties which the applicant is expected to perform on behalf of the insurer, the lines of insurance for which the applicant is to be authorized to act, and any other information the commissioner may request.

- F. An insurer shall review its books and records each quarter to determine if any producer as defined by Section 2D has become, by operation of Section 2D, a MGA as defined in that section. If the insurer determines that a producer has become a MGA pursuant to the above, the insurer shall promptly notify the producer and the commissioner of such determination and the insurer and producer must fully comply with the provisions of this Act within thirty (30) days.
- G. An insurer shall not appoint to its board of directors an officer, director, employee, subproducer or controlling shareholder of its MGAs. This subsection shall not apply to relationships governed by the Insurance Holding Company Systems Regulatory Act or, if applicable, the Business Transacted with Producer Controlled Property/Casualty Insurer Act.
- H. The insurer shall keep the bond required by Section 4G on file for review by any applicable commissioner.

#### **Section 6. Examination Authority**

The acts of the MGA are considered to be the acts of the insurer on whose behalf it is acting. An MGA may be examined as if it were the insurer.

#### **Section 7. Penalties and Liabilities**

- A. If the commissioner determines that the MGA or any other person has not materially complied with this Act, or any regulation or Order promulgated thereunder, after notice and opportunity to be heard, the Commissioner may order:
  - (1) For each separate violation, a penalty in an amount not exceeding [insert amount];
  - (2) Revocation or suspension of the producer's license; and
  - (3) If it was found that because of such material non-compliance that the insurer has suffered any loss or damage, the Commissioner may maintain a civil action brought by or on behalf of the insurer and its policyholders and creditors for recovery of compensatory damages for the benefit of the insurer and its policyholders and creditors or other appropriate relief.
- B. If an order of rehabilitation or liquidation of the insurer has been entered pursuant to [insert state's rehabilitation or liquidation statute], and the receiver appointed under that order determines that the MGA or any other person has not materially complied with this Act, or any regulation or order promulgated thereunder, and the insurer suffered any loss or damage therefrom, the receiver may maintain a civil action for recovery of damages or other appropriate sanctions for the benefit of the insurer.

**Drafting Note:** If state law does not otherwise provide, amend the bracketed citation in the preceding paragraph to include the rehabilitation or liquidation statute of any reciprocal state. This is intended to codify the standing of a receiver to maintain a civil action in a reciprocal state.

- C. Nothing contained in this section shall affect the right of the commissioner to impose any other penalties provided for in the insurance law.
- D. Nothing contained in this Act is intended to or shall in any manner limit or restrict the rights of policyholders, claimants and creditors.

#### **Section 8. Rules and Regulations**

The Commissioner of Insurance may adopt reasonable rules and regulations for the implementation and administration of the provisions of this Act.

**Section 9. Effective Date**

This Act shall take effect on [insert date]. No insurer may continue to utilize the services of an MGA on and after [insert date] unless such utilization is in compliance with this Act.

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

*1990 Proc. I 12-14, 851, 853-856 (adopted at special plenary session in September 1989).*

*1990 Proc. I 6, 30, 838-839, 841-844 (amended at winter plenary and reprinted).*

*1991 Proc. I 9, 18, 907, 909 (amended).*

*1993 Proc. I 1128-1129, 1131, 1138-1142 (amended, reprinted and adopted by parent committee).*

*1993 Proc. 2<sup>nd</sup> Quarter 12, 102 (adopted by executive and plenary).*

*2002 Proc. 3<sup>rd</sup> Quarter 11, 888, 890-894 (amended and reprinted).*

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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. CODE §§ 27-6A-1 to 27-6A-8 (1993/2001).	ALA. ADMIN. CODE r. 482-1-106.01 to 482-1-106-.09 (1994/2013).
Alaska	ALASKA STAT. §§ 21.27.590 to 21.27.620 (1992/2006); § 21.90.900 (2006/2010).	ALASKA STAT. § 21.27.010 (1966/2014); BULLETIN 92-3 (1992).
American Samoa	NO CURRENT ACTIVITY	
Arizona	ARIZ. REV. STAT. ANN. §§ 20-284 to 20-301.01 (1954/2014).	
Arkansas	ARK. CODE ANN. §§ 23-64-401 to 23-64-408 (1993).	BULLETIN 5-2014 (2014).
California	CAL. INS. CODE §§ 769.80 to 769.87 (1991/1992).	
Colorado	COLO. REV. STAT. §§ 10-2-401 to 10-2-408 (1992/2014).	3 COLO. CODE REGS. § 702-1:1-2-7 (1994/2012).
Connecticut	CONN. GEN. STAT. §§ 38a-90 to 38a-90h (1992/1993).	BULLETIN No. FS-17 (1993).
Delaware	DEL. CODE ANN. tit 18, §§ 1801 to 1809 (1991/1993).	
District of Columbia	D.C. CODE §§ 31-1501 to 31-1506 (1993).	
Florida	FLA. STAT. §§ 626.7451 to 626.7454 (1990/2013).	

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Georgia	GA. CODE ANN. §§ 33-47-1 to 33-47-7 (1991/2009).	GA. COMP. R. & REGS. 120-2-84 (2004).
Guam	NO CURRENT ACTIVITY	
Hawaii	HAW. REV. STAT. §§ 431:9C-101 to 431:9C-107 (2002/2010).	HAW. CODE R. § 16-171-312 (2005/2012).
Idaho	IDAHO CODE ANN. §§ 41-1501 to 41-1507 (1991).	IDAHO ADMIN. CODE r. 18.01.64 (1991/1993).
Illinois	215 ILL. COMP. STAT. 5/141a (1991/2003).	
Indiana	IND. CODE § 27-1-33-4 (1992/2013).	760 IND. ADMIN. CODE 1-52-1 to 1-52-7 (2007/2013).
Iowa	IOWA CODE §§ 510.1A to 510.9 (1991/2004).	IOWA ADMIN. CODE r. § 191-5.43 (1991).
Kansas	KAN. STAT. ANN. §§ 40-2,129 to 40-2,137 (1991/2005).	KAN. ADMIN. REGS. § 40-3-48 (1991/2006); § 40-1-41 (1993).
Kentucky	KY. REV. STAT. ANN. §§ 304.3-500 to 304.3-570 (1992).	
Louisiana	LA. REV. STAT. ANN. §§ 22:1621 to 22:1627 (1992/2009).	
Maine	ME. REV. STAT. ANN. tit. 24-A, §§ 1491 to 1498 (1993/1997).	
Maryland	MD. CODE ANN., INS. § 8-201 to 8-213 (1991/2001).	
Massachusetts	MASS. GEN. LAWS ch. 175, §§ 177F to 177L (1993).	
Michigan	MICH. COMP. LAWS §§ 500.1401 to 500.1419 (1990/1991).	
Minnesota	MINN. STAT. §§ 60H.01 to 60H.09 (1991/1995).	
Mississippi	MISS. CODE ANN. §§ 83-18-101 to 83-18-111 (1992).	

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<b>NAIC MEMBER</b>	<b>MODEL ADOPTION</b>	<b>RELATED STATE ACTIVITY</b>
Missouri	MO. REV. STAT. §§ 375.147 to 375.153 (1991/1999).	MO. CODE REGS. ANN. tit. 20, §§ 200-10.100 to 200-10.600 (1991/2004).
Montana	MONT. CODE ANN. §§ 33-2-1601 to 33-2-1605 (1993).	
Nebraska	NEB. REV. STAT. §§ 44-4901 to 44-4910 (1993).	210 NEB. CODE R. § 59 (1991/2006); BULLETIN 7-7-2006 (2006); Notice 11-17-2006.
Nevada	NEV. ADMIN. CODE §§ 683A.450 to 683A.560 (1990/2002).	
New Hampshire	N.H. REV. STAT. ANN. §§ 402-E:1 to 402-E:7 (1992/2003).	
New Jersey	N.J. STAT. ANN. §§ 17:22C-1 to 17:22C-10 (1993).	N.J. ADMIN. CODE §§ 11:17-6.1 to 11:17-6.8 (1993/2010).
New Mexico	N.M. STAT. ANN. §§ 59A-12B-1 to 59A-12B-8 (1993).	
New York		N.Y. COMP. CODES & REGS. tit. 11, § 33 (1985/2003) (Regulation 120).
North Carolina	N.C. GEN. STAT. § 58-34-2 (1991/2001).	
North Dakota	N.D. CENT. CODE §§ 26.1-26.3-01 to 26.1-26.3-07 (1991/1993).	BULLETIN 2003-2 (2003).
Northern Marianas	NO CURRENT ACTIVITY	
Ohio	OHIO REV. CODE ANN. §§ 3905.71 to 3905.79 (1991/1997).	OHIO ADMIN. CODE 3901-3-10 (1993).
Oklahoma	OKLA. STAT. tit. 36, §§ 1471 to 1478 (1991/2012).	
Oregon	OR. REV. STAT. §§ 744.300 to 744.314 (1992/2003).	OR. ADMIN. R. 836-71-117, 836-71-315 to 836-71-320 (1992).
Pennsylvania	40 PA. STAT. ANN. §§ 25-801 to 25-807 (1993).	
Puerto Rico	NO CURRENT ACTIVITY	

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NAIC MEMBER	MODEL ADOPTION	RELATED STATE ACTIVITY
Rhode Island	R.I. GEN. LAWS §§ 27-51-1 to 27-51-9 (1992/1996).	
South Carolina	S.C. CODE ANN. §§ 38-44-10 to 38-44-80 (1992/2004).	
South Dakota	S.D. CODIFIED LAWS §§ 58-30-124 to 58-30-139 (1992).	
Tennessee	TENN. CODE ANN. §§ 56-6-501 to 56-6-510 (1991/1992).	
Texas	28 TEX. ADMIN. CODE §§ 19.1201 to 19.1206 (1991).	TEX. INS. CODE ANN. §§ 4053.001 to 4053.152 (2005).
Utah	UTAH CODE ANN. §§ 31A-23a-601 to 31A-23a-605 (1992/2003).	BULLETIN 1993-1 (1993).
Vermont	VT. STAT. ANN. tit. 8, §§ 4815 to 4824 (1992/1993).	VT. STAT. ANN. tit. 8, §§ 6070 to 6075 (1994) (Managing general agents for risk retention groups); VT. CODE R. § 94-2 (1994).
Virgin Islands	V.I. CODE ANN. tit. 22, §§ 31-771 to 31-793 (2016).	
Virginia	VA. CODE ANN. §§ 38.2-1358 to 38.2-1364 (1992/2001).	Admin. Letter 2002-11 (2002).
Washington	WASH. REV. CODE ANN. §§ 48.98.005 to 48.98.901 (1993/2005).	WASH. ADMIN. CODE 284-12-200 to 284-12-280 (1993).
West Virginia	W. VA. CODE §§ 33-37-1 to 33-37-7 (1992/2014).	
Wisconsin	WIS. ADMIN. CODE INS. §§ 42.01 to 42.07 (1993/2006).	
Wyoming	WYO. STAT. ANN. §§ 26-46-101 to 26-46-107 (1992).	29 WYO. CODE R. (1988/1997).

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### Proceedings Citations

Cited to the Proceedings of the NAIC

#### Section 1. Purpose and Scope

When amendments were being developed in 2001, an interested party suggested changing the name of the model to the Managing General Underwriters Act because the definition of MGA really defined what a managing general underwriter did as opposed to most general agents who called themselves MGAs. The drafting group decided to retain the current name, as a change would likely create greater confusion. **2001 Proc. 4<sup>th</sup> Quarter 414.**

The title of the section was also changed during the development of the amendments adopted in 2002. A sentence was added describing the scope of the model. **2002 Proc. 3<sup>rd</sup> Quarter 890.**

#### Section 2. Definitions

When the drafters began their work, there was considerable discussion of definitions applied in the Act. **1989 Proc. II 699.**

Testimony from several state insurance departments indicated that managing general agents played important roles in key insolvencies in their respective states. They also agreed that a properly regulated and supervised managing general agency can be a great benefit to insurers. All of the witnesses noted that the range of authority and services provided by the MGAs varied widely. Some of the MGAs have no authority other than marketing, while others perform final underwriting functions, adjust claims and negotiate reinsurance contracts. A consensus of the working group and the witnesses was that the MGA concept is an important part of the distribution system, but must be properly supervised to prevent abuse. **1989 Proc. II 701.**

The model adopted by the NAIC attempts to encompass individuals who, through their responsibilities and amount of premium written for an insurer, have the potential to significantly impact the financial solvency of the company. **1990 Proc. IB 850-851.**

Early drafts of the model revisions discussed in 2001 contained definitions for “sell,” “solicit,” “negotiate,” “uniform application” and “insurance producer.” The drafters realized these terms were not an integral part of MGA licensing and thus were not necessary. The terms were already included in the Producer Licensing Model Act for reciprocal licensing purposes. **2001 Proc. 4<sup>th</sup> Quarter 414.**

A. An interested party questioned whether the definition of actuary should be limited to a person in good standing with the American Academy of Actuaries, since there are other professional actuarial societies. **2001 Proc. 4<sup>th</sup> Quarter 414.**

B. Subsection B was added in 2002 and the references to firm, association and corporation in other subsections were revised. **2002 Proc. 3<sup>rd</sup> Quarter 890.**

D. The most difficult definition to formulate was that of managing general agent. The first draft excluded entities with common ownership. One comment at an early hearing pointed out that common ownership was a factor in many recent insolvencies. Another testimony presented the opinion that the definition was imprecise. The exemption for MGAs representing alien insurers with no state of domicile discriminated in favor of MGAs representing alien non-admitted insurers, in the opinion of one testimony. A representative of an agents’ association expressed concern that the definition as written included all independent agents. **1989 Proc. II 699-700.**

Commentary on earlier drafts indicated dissatisfaction with the definitions, and particularly the definition of a managing general agent. It was felt that the definition was so broad it would encompass every independent agent. It also confused wholesale insurance agents who might accept subproduced business, but in doing so, do not necessarily have any authority to independently appoint, manage or control subproducers as does a managing general agent. **1989 Proc. II 709.**

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#### Section 2D (cont.)

A representative of independent agents put forth the opinion that the first draft included all independent agents under the definition of managing general agent. Independent agents are not viewed by the association as managing general agents, nor did the representative believe the NAIC intended to include them. It would unquestionably inhibit their insurance business activities which are currently accepted and established in the marketplace and considered proper in all U.S. insurance jurisdictions. **1989 Proc. II 717-718.**

Industry spokespersons were also concerned about the provision in early drafts that an MGA was someone who “negotiated reinsurance.” Within the framework of the model, it appeared this meant someone who would develop proposals for reinsurance agreements to be submitted to the company for approval. **1989 Proc. II 710.**

It was suggested at one hearing that NAIC drafters define a managing general agent by the authority the agent possesses. The suggestion outlined four parts to MGA authority: (1) Underwriting authority: the authority to set prices and accept or reject risks, (2) Authority to appoint subproducers, (3) Authority to execute reinsurance agreements, and (4) Claims adjusting authority. **1989 Proc. II 710-711.**

Before adoption, the model was amended so it would not apply to reinsurance intermediaries. The issue of reinsurance to intermediaries acting as MGAs was to be addressed by a different working group. **1990 Proc. IA 12.**

The last amendment made before adoption of the initial model was addition of the word “direct” where the model referred to “gross direct written premium equal to 5% of the company’s surplus.” The reason for doing this, according to one commissioner on the drafting team, was so that if a company’s affiliates were split up, they couldn’t escape underneath this act if they produced an appreciable amount of business. The group exempted out reinsurers by this provision; they were working on a separate model for them. **1990 Proc. IA 13.**

Three months after the model was adopted, an amendment was made to the definition. A phrase was added to include under the model one who negotiated and bound ceded reinsurance contracts on behalf of an insurer. One of the drafting committee explained that the purpose of this was to coordinate with the new Reinsurance Intermediaries Act. The new model covered those who negotiated and bound reinsurance contracts on behalf of the assuming insurer, but without the change to the MGA model, managers negotiating and binding reinsurance contracts of the ceding insurer would not be covered under either Act. **1990 Proc. IB 838.**

A second amendment to the model was proposed in December 1989. It created a special exception to the Managing General Agents Model Act for attorneys-in-fact of reciprocal insurance companies. The committee decided to study the issue before considering adoption. **1990 Proc. IB 838-839.**

After considering the issue of attorneys-in-fact and the operation of reciprocals, the drafting group suggested two amendments to the model for further consideration. One was an addition to the exceptions part of the definition for attorneys-in-fact and the second was a new section defining what did apply to reciprocals. **1990 Proc. II 747, 749.**

The working group had difficulty reaching a consensus on the issue of exempting attorneys-in-fact. After much discussion, the group decided to adopt the exemption for attorneys-in-fact and also to move forward with urgency toward adoption of a Model Reciprocal Insurers Act, which would contain regulatory safeguards not presently included in the majority of state laws governing reciprocals. **1991 Proc. IB 907.**

In the summer of 1992 the MGA and Reinsurance Intermediary Working Group began consideration of possible amendments to the definition section. Another association suggested an amendment to the definition regarding profitability. The working group chair expressed the opinion that the suggested amendment liberalized the model so it would provide less effective regulation. **1992 Proc. IIB 897.**

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#### Section 2D (cont.)

At the same time the working group considered another proposal that deleted a phrase at the beginning of Paragraph (1) that defined an MGA as someone who “negotiates and binds ceding reinsurance contracts on behalf of an insurer....” In addition a phrase was added at the end of Paragraph (2) to clarify that the activities should be related to the business produced. **1992 Proc. IIB 899.**

This language was added in an attempt to clarify that one who is underwriting some business but also handling claims for another book of business would not be considered a managing general agent. **1993 Proc. IB 1130.**

The working group considered language that had been added by one state exempting an underwriting manager whose compensation was based on the volume of premiums written as well as the insurers’ profit on the business written by the underwriting manager. One regulator pointed out that the only recent sources of profit had been investment income and capital gain, thus profit derived from the business written by an underwriting manager was unlikely. The working group chair noted that the purpose of the MGA Act was to establish requirements for the written contract between the person acting as an MGA and the insurer. If certain MGAs are exempt from the requirements of the model act, then they were exempt from contract requirements and this would weaken regulation. **1993 Proc. IB 1136.**

The working group considered the proposal to add a reference to profitability of business written at the end of Paragraph C(3). It was suggested by one regulator that this imposed uncertainty because profitability could not be determined in advance. The Act was not so burdensome for underwriting managers that such an exemption was warranted. **1993 Proc. IB 1131.**

An insurance association urged adoption of a provision exempting underwriters who managed all *or part* of the insurance operations within a holding company system. They suggested MGA-like operations within a holding company system were distinguishable because the holding company was able to exercise control over the MGA and said the distinction between “all” or “part” was without merit. **1993 Proc. IB 1135.**

When the Financial Regulation Standards and Accreditation Committee considered whether the model law changes recommended in September 1992 should be part of the standards required of an accredited state, one regulator noted that one of the proposed changes included expanding the exemption to an underwriting manager who managed all *or part of* the insurance operations of the insurer. She noted that the exemption change could be viewed by some as a lessening of the Act’s impact on certain underwriting managers. **1993 Proc. 2nd Quarter 102.**

The association also pointed out that there were sound business considerations to recognize. In many holding company systems an insurer was not designated to one underwriting manager and more than one underwriting manager may place business with an insurer. This occurred because the insurer’s management may not want to devote all of the insurer’s capital to an MGA especially if the MGA wrote specialty lines, which may be perceived as riskier. **1993 Proc. IB 1135.**

A member of the NAIC staff was asked to compare the model as it existed before and after the amendments adopted in September 1993. The earlier version was unclear as to whether the adjustment or payment of claims or negotiation of reinsurance must be related to the business produced by the person who may be considered an MGA. The revised version specified that, in order to cause the person to be defined as an MGA, adjustment or payment of reinsurance on behalf of an insurer must be related to the business produced which is greater than or equal to five percent of the insurer’s policyholder surplus. **1993 Proc. 3rd Quarter 89.**

When regulators again considered revisions to the model in 2000, the issue of the definition of an MGA was raised by an interested party. He opined that many entities that called themselves MGAs did not fall within the definition in the NAIC model and were actually issued a general agency license. **2000 Proc. 4<sup>th</sup> Quarter 328.**

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#### Section 2D (cont.)

The model as it existed in 2000 had “an amount determined by the commissioner” in the phrase requiring that an entity must pay or adjust claims in excess of a certain amount before it was considered an MGA. The drafting group chair asked how states had addressed that requirement. The group decided to survey states and find out what thresholds states had enacted and whether these thresholds were set on a per claim basis or an aggregate claim settlement basis. **2000 Proc. 4<sup>th</sup> Quarter 328.**

By the spring of 2001 the working group had produced a draft that eliminated the phrase about paying or adjusting claims. An interested party expressed concern over the definition of MGA as he thought the new definition was too narrow and very few entities would meet the definition of MGA. **2001 Proc. 1<sup>st</sup> Quarter 281.**

The chair said he eliminated the provision because he did not believe the duty to set an amount should be placed on the commissioner. Another regulator suggested the focus should be on those MGAs that adjust claims and not those who simply pay claims under draft authority. **2001 Proc. 2<sup>nd</sup> Quarter 277.**

An interested party suggested inserting an amount of \$50,000 in the provision instead of leaving it up to the commissioner to set an amount for claims adjusted or paid. **2001 Proc. 3<sup>rd</sup> Quarter 202.**

At a later meeting a regulator suggested inserting a threshold amount of \$15,000. An interested party responded that some producers may have the authority to settle claims for an amount greater than \$15,000, but yet do not consider themselves to be MGAs. Another interested party added that a claim settlement threshold of \$15,000 coupled with the requirement of underwriting an amount of gross direct premium equal to or more than five percent of an insurer’s policyholder surplus was not a very high threshold, especially for a producer contracting with a smaller company. **2001 Proc. 4<sup>th</sup> Quarter 414.**

The drafting group agreed to add back in the language of “adjusts or pays claims” but not require the commissioner to determine a threshold amount. **2001 Proc. 4<sup>th</sup> Quarter 414.**

To further clarify the definition of an MGA, the group agreed to add a drafting note cautioning that persons calling themselves MGAs may not necessarily fall within the model definition. **2001 Proc. 4<sup>th</sup> Quarter 414.**

The drafting group settled on final language for the drafting note in March 2002. **2002 Proc. 1<sup>st</sup> Quarter 413.**

An interested party said the definition of MGA was too broad and suggested joining the last two phrases of Paragraph (2) with “and” instead of “or.” In addition he suggested that the five percent threshold should be changed to a ten percent threshold. The working group considered the suggestion but disagreed that the definition of MGA was too broad. **2002 Proc. 1<sup>st</sup> Quarter 413.**

A regulator questioned whether the word “agent” in Paragraph (2) should be changed to “producer.” Another responded that the word agent was more descriptive of the relationship being referenced by the paragraph. The first regulator wondered if the term should be defined to eliminate any confusion as to whether the model was referring to the agency relationship or to a producer. **2001 Proc. 3<sup>rd</sup> Quarter 202.**

Just prior to adoption of the model, the working group heard a request from an interested party to set an amount as a threshold for the payment of claims because the definition of an MGA was too broad without it. The regulators decided to include a \$10,000 per claim threshold. **2002 Proc. 1<sup>st</sup> Quarter 408.**

The exemptions from the definition in Paragraph (3) were also a topic of discussion by the drafters. One regulator suggested adding an exemption for authorized agents who acted exclusively in the issuance of bail bonds for surety insurers. Another regulator said his state exempted third party administrators. **2000 Proc. 4<sup>th</sup> Quarter 328.**

The drafting note following Paragraph (3) was added in 2002. **2002 Proc. 3<sup>rd</sup> Quarter 891.**



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#### Section 2 (cont.)

E. This subsection was added in 2002 to allow the model to refer to a business entity or individual rather than listing the types of entities throughout the model. References to corporations, associations, etc. were deleted as part of the change. **2002 Proc. 3<sup>rd</sup> Quarter 891.**

F. The initial draft did not contain a definition of underwriter, but one person offering testimony culled a definition from other parts of the model draft. It appeared the word underwrite must mean “the act of acceptance or rejection of coverage on behalf of an insurer.” Unfortunately, he found that definition inadequate and highly confusing. Later drafts included such a definition. **1989 Proc. II 709.**

#### Section 3. Licensure

One person commenting on an early draft stated that the licensing provision would place an undue hardship on the MGA since MGAs represent carriers domiciled in different states. Another commentator called the licensing requirements “duplicative and discriminatory.” **1989 Proc. II 699-700.**

One association presented the opinion that extraterritorial licensing was inappropriate and perhaps even unconstitutional because there may be insufficient minimum contacts to justify extraterritorial licensing. **1989 Proc. II 700.**

In the fall of 2002 a working group began to consider amendments to the Managing General Agents Act as a result of the Gramm-Leach-Bliley Act (GLBA). The chair noted that MGAs were subject to GLBA because they “sell and solicit” insurance. The working group began by discussing the various regulatory frameworks governing MGAs that were in place from state to state. Some states indicated that they issued a separate license and others said they did not. While most states required an MGA to hold a producer license, some indicated they did not. **2000 Proc. 3<sup>rd</sup> Quarter 404.**

At the first meeting of the subgroup appointed to focus on the MGA model, a regulator said he did not believe it was the intent of the model to require a separate MGA license. Another regulator responded that she saw a need for a separate license because of the broad authority some MGAs had. **2000 Proc. 4<sup>th</sup> Quarter 327.**

The working group considered adding a new subsection to the licensing requirements that specified how to treat a nonresident MGA. An interested party commented that it was not needed to ensure compliance with GLBA reciprocity mandates, since the MGA designation was a status given to a licensed producer who met the definitional requirements of an MGA. MGAs were afforded reciprocal licensing as producers and certain producers were classified as MGAs. **2001 Proc. 3<sup>rd</sup> Quarter 202.**

Later in 2001 the drafting group again considered the need for a new subsection on nonresident licensing. Some expressed concern that the new subsection prescribed standards for nonresident licensing but failed to address resident MGA licensing. Staff pointed out that many states classified a licensed producer as an MGA but did not issue a separate license. **2001 Proc. 4<sup>th</sup> Quarter 414-415.**

The group agreed that the current regulatory framework was for states to issue a producer license and that certain producers were classified as MGAs when they met the threshold requirements of what constituted an MGA. At the same time, the group realized this regulatory framework did not require the affirmative issuance of a separate MGA license. Because of this, the group decided a separate subsection addressing nonresident licensing was not necessary. **2001 Proc. 4<sup>th</sup> Quarter 415.**

A. One reviewer of a draft called this a “typical” licensing provision. **1989 Proc. II 711.**

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#### Section 3B (cont.)

B. This subsection of the draft was called “atypical” by the reviewer. It required an agent meeting the definition of an MGA to obtain a license if the MGA represented the company with respect to risks located outside the company’s domiciliary state. This requirement would apply even though the MGA was neither located nor transacted business in the company’s domiciliary state. **1989 Proc. II 711.**

The combined impact of 3A and 3B was to require an MGA representing a licensed carrier to obtain a license in each state in which it represented the licensed company as well as the company’s domiciliary state. An industry representative was of the opinion this was an enormous and unreasonable multiple licensing burden on MGAs. **1989 Proc. II 711.**

When reviewing the model in 2000 to determine compliance with GLBA, the chair of the drafting group said he would like to see non-resident states rely on the MGA’s home state certification. He suggested a uniform application for MGAs should be developed. **2000 Proc. 4<sup>th</sup> Quarter 327-328.**

The licensing section had contained requirements for a bond and errors and omissions coverage. During the development of the 2002 amendments, the provisions were removed from Section 3 and addressed in Section 4 instead. **2002 Proc. 3<sup>rd</sup> Quarter 891.**

#### Section 4. Required Contract Provisions

B. The first draft required reporting to the insurer and remitting funds on a quarterly basis. An industry representative suggested monthly reporting so that better control would exist and the possibility of fraud and mismanagement of funds would be minimized. **1989 Proc. I 706.**

C. An initial draft required a separate account for each insurer represented by the MGA. An industry spokesperson suggested this was an extremely burdensome requirement because most MGAs represent a large number of insurers. Subsection D would address concerns of the commissioners with regard to tracking amounts owed to each insurer. **1989 Proc. II 706.**

An interested party representing the Federal Deposit Insurance Corporation (FDIC) suggested amending Subsection C to require an MGA to deposit funds in a fiduciary capacity with an FDIC-insured financial institution, instead of a bank that is part of the Federal Reserve System, as had been required by the model since its initial adoption. She explained that many financial institutions were not members of the Federal Reserve System. The suggestion was unanimously adopted. **2002 Proc. 1<sup>st</sup> Quarter 408.**

D. An early draft required a set period of time for record retention. It was pointed out that some state laws require that records be retained for a longer period of time, and some contracts contain a requirement for a longer retention period. The draft was changed to reference the state’s record retention law. **1989 Proc. II 712.**

G. The initial draft of the licensing section contained a provision requiring the MGA to maintain a fidelity bond with a unaffiliated insurer. An association urged removal of the requirement. The spokesperson wondered why MGAs and their employees were any less trustworthy than other types of agents who had never been required to obtain a bond. The most significant problem was the difficulty in finding an insurer willing to provide the bond. **1989 Proc. II 713.**

At a meeting between the NAIC and another association, it was suggested that the model be amended to request a hearing on the amount of a bond after the amount is established by the commissioner. One state suggested in the alternative that a model regulation be developed to establish a standard bond amount in all states. **1993 Proc. IB 1136.**

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#### Section 4G (cont.)

The group working on revisions in 2000 discussed the issuance of a blanket bond. One regulator opined that a blanket bond would not work because bonds were issued to ensure MGAs were in compliance with the laws of a particular state. This would cause a problem because the issuing entity would not know in what states an MGA would operate. The chair cautioned that blanket bonds would not work unless the state laws governing activities of MGAs were uniform. **2000 Proc. 4<sup>th</sup> Quarter 328.**

The chair of the drafting groups expressed the opinion that the MGA's home state should set the bond amount. An interested party agreed, but said problems might arise if the bond requirement was for multiple states and every state required the bond to be 10 percent of the national premium volume. A regulator responded that the draft should clarify whether the bond amount would apply to national premium volume or a state-specific premium volume. **2001 Proc. 3<sup>rd</sup> Quarter 202.**

After reviewing the bond requirements in the Third Party Administrator Statute, the drafting group agreed to add language to the model requiring the MGA to maintain a bond in the greater of \$100,000 or ten percent of the direct premium volume written for each insurer. Interested parties opined that "premium volume written for each insurer" was clearer than "national premium" as that term could be interpreted in various ways. The group also agreed that the ten percent should be tied to direct premium volume written and not premium collected. **2001 Proc. 4<sup>th</sup> Quarter 413.**

A regulator questioned the benefit of imposing a bond requirement on MGAs. A representative from a surety company said the bond requirement offered the benefit of an independent pre-qualification review of the MGA and claims payment protection. She noted that approximately 44 states have a bond requirement for MGAs. **2001 Proc. 4<sup>th</sup> Quarter 413.**

At the Winter National Meeting the working group discussed a suggestion to insert in the model a bond requirement of \$100,000 or ten percent of the direct premium volume for all states in which the MGA was authorized to do business. An interested party asked if the ten percent requirement applied to each insurer within a holding company group. A regulator suggested that additional language might be needed to address the situation where the contract between the insurer and the MGA specified a different amount than the model or required no bond. The working group decided more discussion was needed before it was ready to make a decision. **2001 Proc. 4<sup>th</sup> Quarter 400.**

Revised language was discussed by the drafting group in the spring of 2002. The ten percent threshold discussed earlier would apply to each insurer within a holding company. A representative from a surety insurer said an MGA could have one bond for all the companies it represented. A representative from a trade association of MGAs opined that such a bond would be expensive. Because of cost concerns a regulator suggested a maximum bond amount be set. **2002 Proc. 1<sup>st</sup> Quarter 412-413.**

By the end of the meeting, the drafting group had settled on language stating that the commissioner should require a surety bond for the protection of the insurer. A maximum amount of \$500,000 was included in the provision. **2002 Proc. 1<sup>st</sup> Quarter 413.**

When the model was presented to the Executive Committee for consideration, the regulator describing the model said that the most important change was a standard for a bond rather than leaving it up to each state. The NAIC president asked if the model had been reviewed by the working group that addresses producer licensing issues in response to the Gramm-Leach-Bliley Act. The chair of that group said his working group had not looked at the model and offered to review it prior to adoption. The Executive Committee decided to forward the model for this review prior to adoption. **2002 Proc. 1<sup>st</sup> Quarter 13.**

The bond requirement had been part of the licensing section from the inception of the model, but the working group assigned its review recommended moving the bond requirement to the section on contract provisions between an insurer and its MGA to eliminate any reciprocity issues that may arise. **2002 Proc. 3<sup>rd</sup> Quarter 888.**

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#### Section 4 (cont.)

H. The requirement for an errors and omissions policy originally specified that it be with an unaffiliated insurer. That was removed before adoption. The change was suggested by an industry comment that during hard markets, it would be very difficult for an MGA to find an appropriate policy from an unaffiliated insurer. Maintenance of sufficient levels of coverage was appropriate for a MGA, but the restriction that the coverage come from an unaffiliated insurer could impose, in some cases, an impossible burden on the MGA. **1989 Proc. II 713.**

The group assigned to review the model to judge compliance with the provisions of the Gramm-Leach-Bliley Act regarding reciprocity of producer licensing recommended moving the errors and omissions coverage requirement. Moving the provision to the section regarding the contract between the insurer and the MGA would eliminate any reciprocity issue that might arise. **2002 Proc. 3<sup>rd</sup> Quarter 888.**

The text included in the new Subsection H was identical to the language that had previously been included in Section 3, except that the decision on whether to require an errors and omissions policy now was the prerogative of the insurer. **2002 Proc. 3<sup>rd</sup> Quarter 892.**

I. It was suggested by one person commenting on a draft that Paragraph (2)(c) should be eliminated. This requirement might encourage MGAs to set case claim reserves at inadequate levels in order to avoid the burden of continually forwarding claim files to the company. **1989 Proc. II 712.**

J. Early drafts of the model contained the requirement that updates of any electronically maintained data base for business produced or claims paid by the MGA be forwarded to the insurer weekly. Before adoption, that requirement was changed to say only that the contract address timely transmission of data. **1989 Proc. II 713.**

K. The drafting group reviewed the language of a new subsection added in the 2001 drafting efforts. An interested party asked if the intent was to permit an MGA to advertise a type of product offered by a company if the MGA did not reference the particular company that would underwrite the product. The chair opined that an MGA only needed to obtain an insurer's prior approval of an advertisement if the MGA was going to specifically reference the name of the insurer underwriting the product. An interested party suggested that the phrase "in writing" should be clarified to include electronic communications. **2001 Proc. 4<sup>th</sup> Quarter 415.**

L. Early drafts of the model required a delay of two years before contingent commissions could be paid. Industry representations stated the opinion that two years was too long to delay payment from first party or property business, but too short a period for loss development to occur on long tail, third party liability coverages. **1989 Proc. II 713.**

M. One member of the committee asked about subproducer activities, and an industry representative expressed the opinion that the managing general agent was crucial in the selection of subagents since the MGAs were more familiar with the agents in their own states. **1989 Proc. II 700.**

One draft contained a provision that a subagent could not be appointed without the prior written approval of the insurer. An industry representative suggested this provision would impact negatively upon availability of insurance. He felt the MGA's knowledge of subagents within his territory was a value added role of the MGA and to require written approval of each subagent was an unnecessary administrative burden. **1989 Proc. II 706.**

Early drafts had a brief Paragraph (1) that only said MGAs could not bind reinsurance or retrocessions on behalf of the insurer. One comment at a hearing suggested this was inappropriate in a model designed to regulate, not eliminate, MGAs. In other words, an MGA with no authority to bind reinsurance on behalf of the insurer is no MGA at all for reinsurance purposes. The commentator speculated that the real purpose might be to control the MGA's authority to bind the company to any reinsurance agreement without prior approval of the company. **1989 Proc. II 713.**

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#### Section 4 (cont.)

A regulator questioned the apparent inconsistency between Subsection M(6) and Section 5G regarding the ability of a subproducer to serve on an insurer's board of directors. The group agreed that it needed to add language to help clarify how these two subsections related to each other. **2001 Proc. 4<sup>th</sup> Quarter 415.**

Just prior to adoption of the model, the drafting group agreed to add the phrase "Except as provided in Section 5G ..." to reconcile the inconsistency. **2002 Proc. 1<sup>st</sup> Quarter 413.**

#### Section 5. Duties of Insurers

Some of the comments received on the first draft related to the additional expenses that would be incurred by the MGAs. The costs for independent audits and reserve reviews would be prohibitive. It was suggested that additional costs would tend to eliminate the smaller general agencies and only allow companies to deal with larger agencies. A recommendation was made that the audit requirement be tied to a material amount which would put the company in jeopardy. **1989 Proc. II 700.**

A. Early drafts required each insurer to obtain an annual audit by a CPA of the business produced by the insurer in which the MGA has a contract in effect. One association representative suggested this might mean an operational audit, for which CPAs were not trained. If it meant a financial audit, compliance would mean multiple audits of most MGAs. He said a financial audit could not be done separately on each company's slice of an MGA's business; logic dictates only one financial audit was necessary. **1989 Proc. II 714.**

At the time amendments to the model were being developed in 2001, Subsection A required only that the insurer have on file an independent financial examination of each MGA with which it had done business. One regulator opined that this was a positive net worth requirement and that a specific amount had not been identified. **2001 Proc. 3<sup>rd</sup> Quarter 203.**

By December the drafting group had received a suggestion for entirely new text for Subsection A that detailed more extensive requirements for the financial examination and required its filing with the commissioner of the home state. The chair said he would support the change as long as the filing was only with the home state. **2001 Proc. 4<sup>th</sup> Quarter 413.**

The language was revised to state that the insurer should have an audited financial statement on file for the two most recent fiscal years, and outlining requirement for the contents of the report. **2002 Proc. 1<sup>st</sup> Quarter 413.**

An interested party suggested the addition of a drafting note following Subsection A to help clarify that being an MGA is a status. **2002 Proc. 1<sup>st</sup> Quarter 407.**

Just prior to adoption of the model, an interested party expressed concern over the requirement to file an independent audited financial statement. The working group acknowledged his concern but agreed to retain the requirement since a state could waive it if appropriate. **2002 Proc. 1<sup>st</sup> Quarter 407.**

B. The subsection originally imposed a duty on insurers to obtain loss reserve certifications of the business produced by each MGA which produced two percent of the insurer's business in any quarter. That language was changed before the final draft was adopted. **1989 Proc. II 704.**

Testimony was presented at a hearing urging the NAIC to delete this requirement. It was claimed that qualified actuaries would find certification of loss reserves on business produced by an MGA difficult, if not impossible, to accomplish. **1989 Proc. II 714.**

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#### Section 5 (cont.)

C. When comments were requested on an early draft of the model, one industry representative commented that inspections of MGAs were not a substitute for day-to-day management oversight by the insurer. The proper frequency of on-site inspections would be difficult to determine. If the amount of business the MGA provided the insurer was small, annual or even less frequent on-site inspections might be sufficient. He suggested the semi-annual inspection requirement be changed to require insurers to make on-site reviews of MGA's offices that were appropriate for the amount and classes of business provided to the insurer by the MGA. **1989 Proc. II 714.**

E. An interested party requested a clarification as to whether Subsection E mandated a separate and distinct appointment of an MGA. The chair said no separate appointment was required, but rather a notification to the insurance commissioner that an insurer has entered into a contract with an MGA. Another regulator agreed, stating that the notification was necessary to ensure that the state may conduct the appropriate financial review of an MGA. The working group decided to clarify the language, which had been in place since the model's adoption in 1989. **2002 Proc. 1<sup>st</sup> Quarter 407.**

H. This subsection was added in 2002 at the same time the bond requirement was moved from Section 3 to Section 4. **2002 Proc. 3<sup>rd</sup> Quarter 893.**

#### Section 6. Examination Authority

#### Section 7. Penalties and Liabilities

The penalties first adopted were very similar to the ones the NAIC adopted in the original broker bill (Producer Controlled Property/Casualty Insurer Model Act). It brought accountability to an issue that congressional committees were very attuned to. **1990 Proc. IA 12.**

The penalty section was completely revised in a draft prepared for discussion at the Summer 1992 NAIC meeting. Subsections A and B were revised so that the right to recover damages was based on a court proceeding rather than administrative action by the commissioner. **1992 Proc. IIB 902.**

The proposed revisions conformed penalty provisions to the Producer Controlled Insurer Act revisions. **1993 Proc. 2nd Quarter 102.**

A. At one point the draft provision for Paragraph (1) stated there would be a dollar amount penalty for each violation. It was suggested that the phrase should say an amount "not exceeding" a dollar amount, and the working group responded that they had intended to use the "not exceeding" language. **1993 Proc. IB 1130, 1133.**

When a member of the NAIC staff compared the model as it existed before and after the amendments adopted in September 1993, he pointed out that in the old version, penalties were triggered by *violations* of the Act, and in the new version penalties were triggered by *material noncompliance*. **1993 Proc. 3rd Quarter 88-89.**

In the old version the commissioner could order the MGA to reimburse the insurer, rehabilitator or liquidator of the insurer for losses incurred by the insurer due to a violation of the Act committed by the MGA. Under the revised version, if material noncompliance with the Act caused loss or damage to the insurer, the commissioner could file a civil action on behalf of the insurer and its policyholders and creditors for recovery of compensatory damages or other appropriate relief. **1993 Proc. 3rd Quarter 89.**

B. In the original draft of amendments, the model spoke of what the receiver "believed." Comments received by the working group included a suggestion to change that to "determine" which would be more appropriate in light of the formal determination that must be made after notice and a hearing. **1993 Proc. IB 1133.**

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#### Section 7B (cont.)

A regulator suggested adding wording about proceedings in reciprocal states to the subsection. Following discussion the working group determined that the issue of a receiver's potential standing to maintain a civil suit in a reciprocal state was better addressed in a drafting note because some states' liquidation statutes might already provide for such standing. **1993 Proc. IB 1131.**

In the staff comparison of the old and new versions of the MGA Act, it was pointed out that the older version included a provision for judicial review of the commissioner's order, and the 1993 revised version provided that the rehabilitator or liquidator could maintain a civil action or appropriate sanctions against a person whose material noncompliance with the Act caused loss or damage to the insurer. The draft also added a note concerning codification of standing of the receiver to maintain a civil action in a reciprocal state. **1993 Proc. 3rd Quarter 89.**

#### Section 8. Rules and Regulations

#### Section 9. Effective Date

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#### *Chronological Summary of Action*

*September 1989: Model adopted at special plenary session.*

*December 1989: Technical amendments plus amendment to include in the definition those who bind reinsurance on behalf of ceding insurers.*

*December 1990: Amended to exclude reciprocal attorneys-in-fact from definition of managing general agents.*

*September 1993: Deleted old Section 7A and 7B and replaced with new penalty provisions. Revised definition of MGA.*

*September 2002: Revised the model to ensure compliance with the requirements of the Gramm-Leach-Bliley Act (GLBA).*

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