

17:22C-1

LEGISLATIVE HISTORY CHECKLIST
Compiled by the NJ State Law Library

(Managing general agents of
insurers--licensing)

NJSA: 17:22C-1

LAWS OF: 1993 **CHAPTER:** 237

BILL NO: A78

SPONSOR(S) Anderson and others

DATE INTRODUCED: February 1, 1993

COMMITTEE: **ASSEMBLY:** Insurance
SENATE: Commerce

AMENDED DURING PASSAGE: No

DATE OF PASSAGE: **ASSEMBLY:** May 13, 1993
SENATE: June 28, 1993

DATE OF APPROVAL: August 9, 1993

FOLLOWING STATEMENTS ARE ATTACHED IF AVAILABLE:

SPONSOR STATEMENT: Yes

COMMITTEE STATEMENT: **ASSEMBLY:** Yes
SENATE: Yes

FISCAL NOTE: No

VETO MESSAGE: No

MESSAGE ON SIGNING: Yes

FOLLOWING WERE PRINTED:

REPORTS: No

HEARINGS: No

See newspaper clippings--attached:

"Governor signs stricter scrutiny for insurance companies in state," 8-10-93,
Star Ledger."

Attached:

Model Managing General Agents Act, promulgated by National Association of
Insurance Commissioners.

KBG:pp

DEPOSITORY COPY
Do Not Remove From Librarian

P.L.1993, CHAPTER 237 approved August 9, 1993
1993 Assembly No. 78

1 AN ACT concerning managing general agents.

2

3 BE IT ENACTED by the Senate and General Assembly of the
4 State of New Jersey:

5 1. For the purposes of this act:

6 "Commissioner" means the Commissioner of Insurance.

7 "Insurer" means:

8 a. Any corporation, association, partnership, reciprocal
9 exchange, interinsurer, Lloyd's insurer, fraternal benefit society
10 or other person engaged in the business of insurance pursuant to
11 Subtitle 3 of Title 17 of the Revised Statutes (C.17:17-1 et seq.),
12 or Subtitle 3 of Title 17B of the New Jersey Statutes (C.17B:17-1
13 et seq.);

14 b. Any medical service corporation operating pursuant to
15 P.L.1940, c.74 (C.17:48A-1 et seq.);

16 c. Any hospital service corporation operating pursuant to
17 P.L.1938, c.366 (C.17:48-1 et seq.);

18 d. Any health service corporation operating pursuant to
19 P.L.1985, c.236 (C.17:48E-1 et seq.); and

20 e. Any dental service corporation operating pursuant to
21 P.L.1968, c.305 (C.17:48C-1 et seq.).

22 "Managing general agent" means any person, firm, association
23 or corporation who binds ceding reinsurance contracts on behalf
24 of an insurer or manages all or part of the insurance business of
25 an insurer, including the management of a separate division,
26 department or underwriting office, and acts as an agent for that
27 insurer whether known as a managing general agent, manager or
28 other similar term, who, with or without the authority, either
29 separately or together with affiliates, produces, directly or
30 indirectly, and underwrites an amount of gross written premium
31 equal to or more than 5% of the policyholder surplus as reported
32 in the last annual statement of the insurer in any one quarter or
33 year together with one or more of the following: (1) adjusts or
34 pays claims in excess of an amount determined by the
35 commissioner; or (2) negotiates reinsurance on behalf of the
36 insurer.

37 Notwithstanding the above, the following persons shall not be
38 considered as managing general agents for the purposes of this
39 act:

40 (1) An employee of the insurer;

41 (2) A United States manager of the United States branch of an
42 alien insurer;

43 (3) An underwriting manager which, pursuant to contract,
44 manages all or part of the insurance operations of the insurer, is
45 under common control with the insurer, subject to P.L.1970, c.22
46 (C.17:27A-1 et seq.), and whose compensation is not solely based

1 on the volume of premiums written;

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

5 "Sub-managing general agent" means any person, firm,
6 association or corporation with which a managing general agent
7 contracts or which a managing general agent appoints to perform
8 all or substantially all of the duties and responsibilities of the
9 managing general agent.

10 "Underwrite" means the authority to accept or reject risk on
11 behalf of the insurer.

12 2. No person, firm, association or corporation shall act in the
13 capacity of a managing general agent with respect to risks
14 located in this State for an insurer licensed in this State unless
15 such person is licensed as an insurance producer in this State.

16 3. No person, firm, association or corporation shall act in the
17 capacity of a managing general agent representing an insurer
18 domiciled in this State with respect to risks located outside of
19 this State unless such person is licensed as a producer in this
20 State.

21 4. The commissioner may require a bond in an amount
22 acceptable to him for the protection of the insurer.

23 5. The commissioner may require the managing general agent
24 to maintain an errors and omissions policy in a form and amount
25 acceptable to the commissioner.

26 6. No person, firm, association, or corporation acting in the
27 capacity of a managing general agent shall place business with an
28 insurer unless there is in force a written contract between the
29 parties which sets forth the responsibilities of each party and, if
30 both parties share responsibility for a particular function,
31 specifies the division of such responsibilities, and which contains
32 the following minimum provisions:

33 a. The insurer may terminate the contract upon written notice
34 to the managing general agent. The insurer may suspend the
35 underwriting authority of the managing general agent during the
36 pendency of any dispute regarding the cause for termination. The
37 insurer shall, within 15 days of any termination of the contract,
38 file written notice of the termination with the commissioner.
39 Notice of termination shall be on a form established by the
40 commissioner and shall indicate the date of termination and the
41 reason therefor. Agency appointment shall not terminate until
42 notice of termination has been received by the commissioner.

43 b. The managing general agent shall render accounts to the
44 insurer detailing all transactions and remit all funds due under
45 the contract to the insurer on not less than a monthly basis.

46 c. All funds collected for the account of an insurer shall be
47 held by the managing general agent in a trust account which shall
48 conform with the requirements established by the commissioner
49 for the management of funds by insurance producers licensed in
50 this State. The account shall be used for all payments on behalf
51 of the insurer. The managing general agent shall retain no more
52 than three months' estimated claims payments and allocated loss
53 adjustment expenses.

54 d. Separate records of business written by the managing

1 general agent shall be maintained. The insurer shall have access
2 and the right to copy all accounts and records related to this
3 business in a form usable by the insurer and the commissioner
4 shall have access to all books, bank accounts and records of the
5 managing general agent in a form usable to the commissioner.

6 e. The contract shall not be assigned in whole or part by the
7 managing general agent.

8 f. Appropriate underwriting guidelines including:

- 9 (1) The maximum annual premium volume;
- 10 (2) The basis of the rates to be charged;
- 11 (3) The types of risks which may be written;
- 12 (4) Maximum limits of liability;
- 13 (5) Applicable exclusions;
- 14 (6) Territorial limitations;
- 15 (7) Policy cancellation provisions; and
- 16 (8) The maximum policy period.

17 The insurer shall have the right to cancel or non-renew any
18 policy of insurance subject to the applicable laws and regulations
19 of this State governing the cancellation and nonrenewal of
20 insurance policies.

21 g. If the contract permits the managing general agent to settle
22 claims on behalf of the insurer the managing general agent shall
23 comply with the requirements governing the settlement of claims
24 set forth in subsections (9) and (10) of section 4 of P.L.1947,
25 c.379 (C.17:29B-4), or section 1 and 2 of P.L.1975, c.101
26 (C.17B:30-13.1 and 17B:30-13.2), as applicable, and any
27 regulations promulgated by the commissioner thereunder. In
28 addition:

29 (1) All claims shall be reported to the company in a timely
30 manner.

31 (2) A copy of the claim file shall be sent to the insurer at its
32 request or as soon as it becomes known that the claim:

33 (a) Has the potential to exceed an amount determined by the
34 commissioner or exceeds the limit set by the insurer, whichever
35 is less;

36 (b) Involves a coverage dispute;

37 (c) May exceed the managing general agent's claims
38 settlement authority;

39 (d) Is open for more than six months; or

40 (e) Is closed by payment of an amount set by the commissioner
41 or an amount set by the insurer, whichever is less.

42 (3) All claim files shall be the joint property of the insurer and
43 managing general agent. However, upon an order of liquidation
44 of the insurer such files shall become the sole property of the
45 insurer or its estate, and the managing general agent shall have
46 reasonable access to and the right to copy the files on a timely
47 basis.

48 (4) Any settlement authority granted to the managing general
49 agent may be terminated for cause upon the insurer's written
50 notice to the managing general agent or upon the termination of
51 the contract. The insurer may suspend the settlement authority
52 during the pendency of any dispute regarding the cause for
53 termination.

54 h. If electronic claims files are in existence, the contract shall

- 1 address the timely transmission of the data.
- 2 i. If the contract provides for a sharing of interim profits by
3 managing general agent and the managing general agent has the
4 authority to determine the amount of the interim profits by
5 establishing loss reserves or controlling claim payments or in any
6 other manner, interim profits shall not be paid to the managing
7 general agent until one year after they are earned for property
8 insurance business and five years after they are earned on
9 casualty business, or such other periods of time as determined by
10 the commissioner, and not until the profits have been certified
11 pursuant to section 7 of this act.
- 12 j. The managing general agent shall not:
- 13 (1) Bind reinsurance or retrocessions on behalf of the insurer,
14 except that the managing general agent may bind facultative
15 reinsurance contracts pursuant to obligatory facultative
16 agreements if the contract with the insurer contains reinsurance
17 underwriting guidelines including, for both reinsurance assumed
18 and ceded, a list of reinsurers with which such automatic
19 agreements are in effect, the coverages and amounts or
20 percentages that may be reinsured and commission schedules.
- 21 (2) Commit the insurer to participate in insurance or
22 reinsurance syndicates;
- 23 (3) Appoint any insurance producer without assuring that the
24 producer is lawfully licensed to transact the type of insurance for
25 which he is appointed;
- 26 (4) Without prior approval of the insurer, pay or commit the
27 insurer to pay a claim over a specified amount, net of
28 reinsurance, which shall not exceed one percent of the insurer's
29 policyholders' surplus as of December 31 of the last completed
30 calendar year;
- 31 (5) Collect any payment from a reinsurer or commit the
32 insurer to any claim settlement with a reinsurer, without prior
33 approval of the insurer. If prior approval is given, a report shall
34 be promptly forwarded to the insurer;
- 35 (6) Permit its subproducer to serve on its board of directors;
- 36 (7) Jointly employ an individual, who is employed with the
37 insurer; or
- 38 (8) Appoint a sub-managing general agent.
- 39 7. a. The insurer shall conduct and have on file an independent
40 audit in a form acceptable to the commissioner of each managing
41 general agent with which it has done business.
- 42 b. If a managing general agent establishes loss reserves, the
43 insurer shall annually obtain the opinion of an actuary attesting
44 to the adequacy of loss reserves established for losses incurred
45 and outstanding on business produced by the managing general
46 agent. Such loss reserve opinion shall be in the format of and
47 otherwise satisfy all requirements established by the
48 commissioner for loss reserve opinions required to be submitted
49 by licensed insurers in this State.
- 50 c. The insurer shall at least biannually conduct an on-site
51 procedural audit of the underwriting and claims processing
52 operations of the managing general agent.
- 53 d. The managing general agent may negotiate reinsurance
54 contracts or participation in insurance or reinsurance syndicates

1 on behalf of the insurer. However, binding authority for all
2 reinsurance contracts or participation in insurance or reinsurance
3 syndicates shall rest with an officer of the insurer, who shall not
4 be affiliated with the managing general agent.

5 e. Within 30 days of entering into, or within 15 days of
6 termination of, a contract with a managing general agent, the
7 insurer shall provide written notification of that appointment or
8 termination to the commissioner. Notices of appointment of a
9 managing general agent shall include a statement of duties which
10 the managing general agent is expected to perform on behalf of
11 the insurer, the lines of insurance for which the managing general
12 agent is to be authorized to act, and any other information the
13 commissioner may request.

14 f. An insurer shall review each quarter its books and records to
15 determine if any insurance producer has become a managing
16 general agent as defined in section 1 of this act. If the insurer
17 determines that an insurance producer has become a managing
18 general agent, the insurer shall promptly notify the insurance
19 producer and the commissioner of such determination and the
20 insurer and insurance producer shall fully comply with the
21 provisions of this act within 30 days.

22 g. An insurer shall not appoint to its board of directors an
23 officer, director, employee or controlling shareholder of its
24 managing general agents. This subsection shall not apply to
25 relationships governed by P.L.1970, c.22 (C.17:27A-1 et seq.) or,
26 if applicable, any laws governing business transacted by
27 producer-controlled property and casualty insurers in this State.

28 8. The acts of the managing general agent are considered to be
29 the acts of the insurer on whose behalf it is acting. A managing
30 general agent may be examined as if it were the insurer.

31 9. a. If the commissioner finds after notice and opportunity
32 for a hearing that any person has violated any provision of this
33 act, the commissioner may refuse to issue or renew the insurance
34 producer's license, or may revoke or suspend the insurance
35 producer's license.

36 b. In addition, or as an alternative to any other penalty, the
37 commissioner may:

38 (1) Impose a fine of up to \$5,000 for the first violation, and not
39 exceeding \$10,000 for each subsequent violation, and in
40 appropriate circumstances order restitution of moneys owed to
41 any person and reimbursement of the costs of investigation and
42 prosecution;

43 (2) Order the managing general agent to reimburse the insurer,
44 the rehabilitator or liquidator of the insurer for any losses
45 incurred by the insurer caused by a violation of this act
46 committed by the managing general agent.

47 c. If the commissioner finds that the interests of the public
48 require that immediate action be taken prior to completion of the
49 hearing, the making of a determination and the entry of a final
50 order, he may enter an appropriate order to be effective pending
51 completion of the hearing and entry of a final order. These
52 orders may be entered on ex parte proofs if the proofs indicate
53 that the commissioner's withholding of any action until
54 completion of a full hearing will be harmful to the public

1 interest. Orders issued pursuant to this subsection shall be
2 subject to an application to vacate upon 10 days' notice, and a
3 preliminary hearing on the ex parte order shall be held in any
4 event within 20 days after it is entered. In the alternative, or in
5 addition, the commissioner is authorized to institute a proceeding
6 in the Superior Court, to be conducted in a summary manner, for
7 an injunction against specified acts or conduct in aid of the
8 proceedings pending before him, including temporary injunctions
9 and interim restraints.

10 d. Nothing contained in this section shall affect the right of
11 the commissioner to impose any other penalties provided for by
12 the laws of this State.

13 e. Nothing contained in this act is intended to or shall in any
14 manner limit or restrict the rights of policyholders, claimants and
15 auditors.

16 10. The commissioner may promulgate rules and regulations as
17 are necessary to effectuate the purposes of this act.

18 11. This act shall take effect on the 180th day following
19 enactment. No insurer shall continue to utilize the services of a
20 managing general agent on and after the effective date of this
21 act unless such utilization is in compliance with this act.

22

23

24

STATEMENT

25

26 This bill, based on a model law by the National Association of
27 Insurance Commissioners, provides for the licensing of certain
28 persons, firms, associations or corporations who act as managing
29 general agents on behalf of insurers. Managing general agents
30 have broad authority to act on an insurer's behalf with respect to
31 certain lines of business, including the making of underwriting
32 decisions and, frequently, claims settlement authority. Because
33 this is such an important function, individuals who act in this
34 capacity need to have special expertise. Moreover, because they
35 frequently act in the same manner as an insurer, it is essential
36 that the Commissioner of Insurance be authorized to exercise
37 some of the regulatory controls which he has with respect to
38 insurers.

39 This bill requires that managing general agents be licensed as
40 insurance producers in this State; provides the Department of
41 Insurance with broad examination authority over managing
42 general agents; and grants the Commissioner of Insurance the
43 authority to establish regulations governing the conduct of
44 managing general agents and the authority to impose specified
45 oversight responsibilities on insurers which appoint managing
46 general agents.

47

48

49

50

51 Provides for the licensing of certain persons acting as managing
52 general agents for insurers.

1 interest. Orders issued pursuant to this subsection shall be
2 subject to an application to vacate upon 10 days' notice, and a
3 preliminary hearing on the ex parte order shall be held in any
4 event within 20 days after it is entered. In the alternative, or in
5 addition, the commissioner is authorized to institute a proceeding
6 in the Superior Court, to be conducted in a summary manner, for
7 an injunction against specified acts or conduct in aid of the
8 proceedings pending before him, including temporary injunctions
9 and interim restraints.

10 d. Nothing contained in this section shall affect the right of
11 the commissioner to impose any other penalties provided for by
12 the laws of this State.

13 e. Nothing contained in this act is intended to or shall in any
14 manner limit or restrict the rights of policyholders, claimants and
15 auditors.

16 10. The commissioner may promulgate rules and regulations as
17 are necessary to effectuate the purposes of this act.

18 11. This act shall take effect on the 180th day following
19 enactment. No insurer shall continue to utilize the services of a
20 managing general agent on and after the effective date of this
21 act unless such utilization is in compliance with this act.

22
23
24 STATEMENT

25
26 This bill, based on a model law by the National Association of
27 Insurance Commissioners, provides for the licensing of certain
28 persons, firms, associations or corporations who act as managing
29 general agents on behalf of insurers. Managing general agents
30 have broad authority to act on an insurer's behalf with respect to
31 certain lines of business, including the making of underwriting
32 decisions and, frequently, claims settlement authority. Because
33 this is such an important function, individuals who act in this
34 capacity need to have special expertise. Moreover, because they
35 frequently act in the same manner as an insurer, it is essential
36 that the Commissioner of Insurance be authorized to exercise
37 some of the regulatory controls which he has with respect to
38 insurers.

39 This bill requires that managing general agents be licensed as
40 insurance producers in this State; provides the Department of
41 Insurance with broad examination authority over managing
42 general agents; and grants the Commissioner of Insurance the
43 authority to establish regulations governing the conduct of
44 managing general agents and the authority to impose specified
45 oversight responsibilities on insurers which appoint managing
46 general agents.

47
48
49
50
51 Provides for the licensing of certain persons acting as managing
52 general agents for insurers.

ASSEMBLY INSURANCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 78

STATE OF NEW JERSEY

DATED: MARCH 29, 1993

The Assembly Insurance Committee reports favorably Assembly Bill No. 78.

This bill, based on a model law by the National Association of Insurance Commissioners, provides for the licensing of certain persons, firms, associations or corporations who act as managing general agents on behalf of insurers. Managing general agents have broad authority to act on an insurer's behalf with respect to certain lines of business, including the making of underwriting decisions and, frequently, claims settlement authority. Because this is such an important function, individuals who act in this capacity need to have special expertise. Moreover, because they frequently act in the same manner as an insurer, it is essential that the Commissioner of Insurance be authorized to exercise some of the regulatory controls which he has with respect to insurers.

This bill requires that managing general agents be licensed as insurance producers in this State; provides the Department of Insurance with broad examination authority over managing general agents; and grants the Commissioner of Insurance the authority to establish regulations governing the conduct of managing general agents and the authority to impose specified oversight responsibilities on insurers which appoint managing general agents.

SENATE COMMERCE COMMITTEE

STATEMENT TO

ASSEMBLY, No. 78

STATE OF NEW JERSEY

DATED: MAY 27, 1993

The Senate Commerce Committee reports favorably Assembly Bill No. 78.

This bill, based on a model law by the National Association of Insurance Commissioners, provides for the licensing of certain persons, firms, associations or corporations who act as managing general agents on behalf of insurers. Managing general agents have broad authority to act on an insurer's behalf with respect to certain lines of business, including the making of underwriting decisions and, frequently, claims settlement authority. Because this is such an important function, individuals who act in this capacity need to have special expertise. Moreover, because they frequently act in the same manner as an insurer, it is essential that the Commissioner of Insurance be authorized to exercise some of the regulatory controls which he has with respect to insurers.

This bill requires that managing general agents be licensed as insurance producers in this State; provides the Department of Insurance with broad examination authority over managing general agents; and grants the Commissioner of Insurance the authority to establish regulations governing the conduct of managing general agents and the authority to impose specified oversight responsibilities on insurers which appoint managing general agents.

974.901
G61



OFFICE OF THE GOVERNOR NEWS RELEASE

GN-001

TRENTON, N.J. 08625

FOR RELEASE: August 9, 1993

CONTACT: Jon Shure
(609) 777-2600

Peter Cammarano
(609) 633-3955

GOVERNOR FLORIO SIGNS FINANCIAL SOLVENCY LEGISLATION

Governor Jim Florio today signed legislation that will increase the New Jersey Insurance Department's effectiveness in monitoring the industry's financial activities.

The 12-bill package adopts the insurer solvency standards recommended by the National Association of Insurance Commissioners (NAIC).

Under the NAIC Accreditation Program, state insurance departments must be accredited by January 1, 1994. Accredited states will not be permitted to accept financial examinations of domestic insurance companies by non-accredited states. An independent audit team will review New Jersey's standards to ensure their compliance with the program.

"This legislation will strengthen the Insurance Department's ability to regulate the industry and to take preventive measures if companies experience financial difficulties," Governor Florio said. "The citizens of New Jersey can rest assured that the NAIC Accreditation Program will enhance the capabilities of a department which already is one of the most proactive consumer protection agencies in the country."

Insurance Commissioner Samuel F. Fortunato praised the efforts of Governor Florio and several members of the State Legislature in adopting the legislation.

"We are grateful to the Governor and members of the Legislature for acting quickly on these bills," Fortunato stated. "Their support and sponsorship of vital elements of this package have shown that great things may be accomplished through a true team effort."

Failure to receive accreditation could have affected New Jersey's 27 domestic property and casualty companies and 12 life and health insurers. These companies would be subject to accredited state insurance departments' audits at the companies' expense. These additional costs ultimately would be passed on to policyholders.

The NAIC accreditation audit team is tentatively scheduled to review the state's financial solvency standards in October.

####

MANAGING GENERAL AGENTS ACT

Table of Contents

Section 1.	Short Title
Section 2.	Definitions
Section 3.	Licensure
Section 4.	Required Contract Provisions
Section 5.	Duties of Insurers
Section 6.	Examination Authority
Section 7.	Penalties and Liabilities
Section 8.	Rules and Regulations
Section 9.	Effective Date

Section 1. Short Title

This Act may be cited as the Managing General Agents Act.

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. "Insurer" means any person, firm, association or corporation duly licensed in this state as an insurance company pursuant to [insert applicable licensing statute].
- C. "Managing General Agent" (MGA) means any person, firm, association or corporation who negotiates and binds ceding reinsurance contracts on behalf of an insurer or manages all or part of the insurance business of an insurer (including the management of a separate division, department or underwriting office) and 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 one or more of the following: (i) adjusts or pays claims in excess of an amount determined by the Commissioner, [Superintendent, Director] or (ii) negotiates reinsurance on behalf of the insurer.

Notwithstanding the above, the following persons shall not be considered as MGAs for the purposes of this Act:

- (1) An employee of the insurer;
- (2) A U.S. Manager of the United States branch of an alien insurer;
- (3) An underwriting manager which, pursuant to contract, manages all 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;
- (4) The attorney-in-fact authorized by and acting for the subscribers of a reciprocal insurer or inter-insurance exchange under powers of attorney.

D. "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, firm, association or corporation 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, firm, association or corporation 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.
- C. The Commissioner may require a bond in an amount acceptable to him for the protection of the insurer.

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

D. The Commissioner may require the MGA to maintain an errors and omissions policy.

Section 4. Required Contract Provisions

No person, firm, association or corporation 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 a bank which is a member of the Federal Reserve System. 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. Appropriate underwriting guidelines including:
 - (1) The maximum annual premium volume;
 - (2) The basis of the rates to be charged;
 - (3) The types of risks which may be written;

- (4) Maximum limits of liability;
- (5) Applicable exclusions;
- (6) Territorial limitations;
- (7) Policy cancellation provisions; and
- (8) The maximum policy period.

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. 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.

- H. Where electronic claims files are in existence, the contract must address the timely transmission of the data.
- I. 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.
- J. 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; or
- (6) 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 financial examination, in a form acceptable to the Commissioner, of each MGA with which it has done business.
- 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 termination of a contract with an MGA, the insurer shall provide written notification of such appointment or termination to the Commissioner. Notices of appointment of 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 2C has become, by operation of Section 2C, 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 System Regulatory Act or, if applicable, the Business Transacted with Producer Controlled Property/Casualty Insurer Act.

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 finds after a hearing conducted in accordance with [insert appropriate citation to state administrative code] that any person has violated any provision(s) of this Act, the Commissioner may order:
- (1) For each separate violation, a penalty in an amount of [insert amount];
 - (2) Revocation or suspension of the producer's license; and
 - (3) The MGA to reimburse the insurer, the rehabilitator or liquidator of the insurer for any losses incurred by the insurer caused by a violation of this Act committed by the MGA.
- B. The decision, determination or order of the Commissioner pursuant to Subsection A of this section shall be subject to judicial review pursuant to [insert appropriate citation to state administrative procedure act and state insurance law].
- 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 Chapter.

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.

Legislative History (all references are to the Proceedings of the NAIC).

1990 Proc. 1 12-14, 851, 853-856 (adopted at special plenary session in September 1989).

1990 Proc. 1 6, 30, 838-839, 841-844 (amended at winter plenary and reprinted).

1991 Proc. 1 9, 18, 907, 909 (amended).