



NATIONAL CONFERENCE
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Interstate Insurance Product Regulation Compact Proposed Amendments

Several proposed amendments to the Interstate Insurance Product Regulation Compact have been submitted to the Task Force for consideration. Professor Joseph Zimmerman of the State University of New York at Albany, who addressed the Task Force at its New York City meeting on March 22, 2002, as an expert on interstate compacts, has proposed many. Others have been submitted to the Task Force from other sources, which are identified in the discussion of each amendment. The NAIC Interstate Compact Implementation Working Group also is examining the proposed amendments and may provide additional comments to the Task Force.

PROPOSED AMENDMENT 1: PUBLIC BODY

The question has been raised whether the Compact would be a public or private entity. Legal and scholarly (or "academic") authorities take the position that a multi-state commission created by an interstate compact is a public body and an instrumentality of its members states. An amendment has been proposed by Professor Zimmerman to make the designation explicit.

Amend Sections 1 and 2 of Article III. Delete Section 3 of Article III.

"ARTICLE III.

1. The Compacting States hereby create and establish ~~an entity~~ joint public agency known as the "Interstate Insurance Product Regulation Commission." . . .
2. The Commission is a body corporate ~~comprising each and politic, and an instrumentality of the~~ Compacting States. . . .
3. ~~The Commission is a not for profit entity, separate and distinct from the individual Compacting States."~~

PROPOSED AMENDMENT 2: OPEN MEETINGS, CODE OF ETHICS AND BYLAWS

The Compact authorizes the Commission to determine procedures for public access to records but contains no provisions relating to open meetings, to the right of citizens to attend meetings, and to the procedures for closed meetings. It also provides no guidance to the Commission to establish a code of ethics for its members and employees or to publish and file its bylaws. An amendment has been proposed by Professor Zimmerman to require advance notice of meetings and open meetings, to guarantee the right of citizens to attend meetings, and to specify the procedure for closed meetings. The amendment also directs the Commission to promulgate a code of ethics for its

members and employees and proscribes the method for the Commission to publish and file its bylaws.

Amend Article V.

“ARTICLE V. . . .

- c. The Commission shall, by a majority of the Members, prescribe Bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes, and exercise the powers, of the Compact, including, but not limited to:
 - i. establishing the fiscal year of the Commission;
 - ii. providing reasonable procedures for appointing and electing members, as well as holding meetings, of the Management Committee;
 - iii. providing reasonable standards and procedures: (i) for the establishment of other committees, and (ii) governing any general or specific delegation of any authority or function of the Commission;
 - iv. providing reasonable procedures for calling and conducting meetings of the Commission, ~~and ensuring reasonable advance notice of each such meeting, and guaranteeing the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public’s interest, the privacy of individuals, and commercial secrets.~~ The Commission may meet in camera only after a majority of the entire membership votes to close a meeting en toto or in part. As soon as practicable, the Commission must make public a copy of each such vote revealing the vote of each member with no proxy votes allowed;
 - v. establishing the titles, duties and authority and reasonable procedures for the election of the officers of the Commission;
 - vi. providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar laws of any Compacting State, the Bylaws shall exclusively govern the personnel policies and programs of the Commission; and
 - vii. promulgating a code of ethics to address permissible and prohibited activities of commission members and employees;
 - viii.~~vii.~~ providing a mechanism for winding up the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment and/or reserving of all of its debts and obligations.
- d. The Commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party States.”

PROPOSED AMENDMENT 3: COMMISSION RECORDS

The model act directs the Commission to promulgate rules that establish conditions and procedures for making its information available. However, it has been suggested that the model act, in deferring the public access to information issue to the bylaws, grants the Commission too much discretion to the Commission regarding what information is to be made available to the public. An amendment has been proposed by Professor Zimmerman that—while it would leave the specifics to be established by the Commission—would direct the creation of provisions that promote public

inspection and would clarify that only information pertaining to the privacy of individuals and commercial secrets shall not be made public.

Amend Article VIII Section 1.

1. The Commission shall promulgate Rules ~~to establishing~~ conditions and procedures promoting public inspection and copying of its data, information, and official records except such data, information and records involving the privacy of individuals and commercial secrets ~~under which the Commission shall make its information and official records available to the public for inspection or copying.~~ The Commission may promulgate additional Rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

PROPOSED AMENDMENT 4: ENFORCEMENT

The formal process to determine whether a specific action constituted a violation was included in the model act with the goal of achieving uniform interpretation of product provisions that are approved by the Compact. However, questions have been raised concerning the scope of the Commission's authority in this area. An amendment was discussed at the December meeting of the NAIC between Commissioner Steve Larson of Maryland and then-Commissioner Frank Fitzgerald of Michigan to more specifically frame the Commission's authority to rule on violations by insurers.

Amend Article VIII Section 4.

4. The Commissioner of any State in which an Insurer is authorized to do business, or is conducting the business of insurance, shall continue to exercise his or her authority to oversee the market regulation of the activities of the Insurer in accordance with the provisions of the State's law. The Commissioner's enforcement of compliance with the Compact is governed by the following provisions:

a. With respect to the Commissioner's market regulation of a Product or Advertisement that is approved or certified to the Commission, ~~no activity of an Insurer~~ the content of the Product or Advertisement shall not constitute a violation of the provisions, standards or requirements of the Compact except upon a final order of the Commission, issued at the request of a Commissioner after prior notice to the Insurer and an opportunity for hearing before the Commission.

b. Before a Commissioner may bring an action for violation of any provision, standard or requirement of the Compact relating to the ~~use~~ content of an Advertisement not approved or certified to the Commission, the Commission, or an authorized Commission officer or employee, must authorize the action. However, authorization pursuant to this Paragraph does not require notice to the Insurer, opportunity for hearing or disclosure of requests for authorization or records of the Commission's action on such requests.

PROPOSED AMENDMENT 5: REVIEW OF COMMISSION DECISIONS

In providing for the review of decisions by the Commission disapproving product filings, the Compact provides for appeals to a review panel created by the Commission. A question was raised

by the Oregon Attorney General regarding the provision that the review panel's decision "be the final action of the Commission and not subject to review by any court." Although there is additional language in the Compact providing for judicial review of claims that the Commission "acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law," it has been suggested that additional clarification is needed to avoid any inconsistency. An amendment has been proposed to strike language that states that the review panel's decision "be the final action of the Commission and not subject to review by any court."

Amend Article XI Section 1.

1. Not later than thirty (30) days after the Commission has given notice of a disapproved Product or Advertisement filed with the Commission, the Insurer or Third Party Filer whose filing was disapproved may appeal the determination to a review panel appointed by the Commission. The Commission shall promulgate Rules to establish procedures for appointing such review panels and provide for notice and hearing. ~~The decision of the review panel shall be the final action of the Commission and not subject to review by any court. Notwithstanding the foregoing, a~~An allegation that the Commission, in disapproving a Product or Advertisement filed with the Commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with Article III, section 5.

AMENDMENT 6: RULEMAKING PROCEDURE

The model act requires that rules and operating procedures be made pursuant to a rulemaking process that conforms to the Model State Administrative Procedures Act (MSAPA). It has been suggested that language be added to specifically refer to the MSAPA of 1981. It has also been suggested to add language setting forth that the Commission is required to consider fully all submitted materials and issue an explanation of its decisions. An amendment has been proposed by Professor Zimmerman that would incorporate this requirement.

Amend Article VII Section 2.

2. Rulemaking Procedure. Rules and Operation Procedures shall be made pursuant to a rulemaking process than conforms to the Model State Administrative Procedures Act, as may be appropriate to the operations of the Commission. Before the Commission adopts a Uniform Standard, the Commission shall give written notice to the relevant state legislative committee(s) in each Compacting State responsible for insurance issues of its intention to adopt the Uniform Standard. The Commission in adopting a Uniform Standard shall consider fully all submitted materials and issue a concise explanation of its decision.

PROPOSED AMENDMENT 7: FINANCE

The model act requires that the financial accounts and reports of the Commission be audited annually by an independent certified public accountant. It also requires the review of the independent auditor to include a management and performance audit at least every three years. This information is to be included in an annual report to the governors and state legislatures of all member states. However, the Compact currently provides that the Commission's internal accounts, work papers related to internal audits and those related to the independent audit be

treated as confidential, provided that they may be share with insurance commissioners from member states, but will generally remain confidential. An amendment made by the Indiana House of Representatives changed the language to say that the Commission's internal accounts and internal audit work papers are not confidential and that such information be made available to insurance commissioners from member states upon request. The NAIC Interstate Compact Implementation Working Group is researching how this information is treated currently by departments and plans to give further consideration of this possible revision.

Amend Article XII Section 6.

6. The Commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the Commission shall be subject to the accounting procedures established under its Bylaws. The financial accounts and reports including the system of internal controls and procedures of the Commission shall be audited annually by an independent certified public accountant. Upon the determination of the Commission, but no less frequently than every three (3) years, the review of the independent auditor shall include a management and performance audit of the Commission. The Commission shall make an Annual Report to the Governor and legislature of the Compacting States, which shall include a report of the independent audit. The Commission's internal accounts, any work papers related to any internal audit and any work papers related to the independent audit, shall not be confidential; ~~provided, that~~ and such materials may be shared with the Commissioner of any Compacting State upon request ~~and shall remain confidential pursuant to Article VII herein.~~