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**Interstate Insurance Product Regulation Compact
Proposed Amendments (revised June 30, 2003)**

PROPOSED AMENDMENT 1: PUBLIC BODY

Task Force: *Adopted* (April 24, 2003¹)

Origin: Proposed by Professor Joseph Zimmerman² in response to issues raised in the Four Attorneys General Report³

Discussion: 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 member states.

Summary: The amendment clarifies that the Compact is a public body and an instrumentality of the states.

Amend Sections 1 and 2 of Article III; Delete Section 3 of Article III (pages 2-3 of the Compact))

"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 2A: OPEN MEETINGS (revised, May 23, 2003)

Task Force: *Adopted* (June 17, 2003⁴)

Origin: Proposed by Professor Zimmerman in response to issues raised in the Four Attorneys General Report

¹ At its meeting in Boston on April 24, 2003, the Task Force considered seven amendments. It took positions in favor of three amendments and a portion of another and held three and the balance of another for further consideration.

² Professor Joseph Zimmerman of the State University of New York at Albany is an expert on interstate compacts who addressed the Task Force at its New York City meeting on March 22, 2003.

³ The "Four Attorneys General Report" refers to a report on the Compact by attorneys general from California, Minnesota, Missouri, and Oklahoma that was mailed to Task Force members in February 2003.

⁴ During its conference call on June 17, 2003, the Task Force considered five amendments. It took positions in favor of three amendments, held two for further consideration, and directed the drafting of two new ones.

Discussion: 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.

Summary: The amendment requires the Commission to create procedures to require advance notice of meetings, to provide for the right of citizens to attend meetings, and to specify the procedure for closed meetings. It also requires the Commission to make public votes to close a meeting and any votes taken during a closed meeting, as it is practicable.

Amend Article V (pages 5-6)

“ARTICLE V. . . .

1. Membership, Voting and Bylaws

. . . .

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 and meetings 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 any meetings of the Commission that consists of a majority of Commission Members, and ensuring reasonable advance notice of each such meeting, and providing the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public’s interest, the privacy of individuals, and insurers’ proprietary information, including trade 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 (i) a copy of the vote to close the meeting revealing the vote of each Member with no proxy votes allowed, and (ii) votes taken during such meeting;

PROPOSED AMENDMENT 2B: CODE OF ETHICS AND BYLAWS

Task Force: *Adopted* (April 24, 2003)

Origin: Proposed by Professor Zimmerman

Discussion: The Compact does not provide guidance to the Commission on establishing a code of ethics for its members and employees or on publishing and filing its bylaws.

Summary: The amendment 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 (pages 5-6)

“ARTICLE V. . . .

1. Membership, Voting and Bylaws

. . . .

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:

.....

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 Compacting States.”

PROPOSED AMENDMENT 3: COMMISSION RECORDS (revised, May 23, 2003)

Task Force: *Adopted* (June 17, 2003)

Origin: Proposed by Professor Zimmerman in response to issues raised in the Four Attorneys General Report

Discussion: 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.

Summary: The amendment directs the Commission to promulgate rules to ensure public access of Commission records and to clarify that only information pertaining to the privacy of individuals and commercial secrets shall not be made public.

Amend Article VIII (page 11)

1. The Commission shall promulgate Rules ~~to~~ establishing conditions and procedures for public inspection and copying of its information and official records except such 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

Task Force: *Adopted* (April 24, 2003)

Origin: Negotiated by then-insurance commissioners Frank Fitzgerald of Michigan and Steve Larson of Maryland at the NAIC Winter Meeting in December 2002

Discussion: In order to achieve uniform interpretation of product provisions approved by the Commission, the Compact establishes a formal process for individual states to seek guidance from the Commission on whether a specific action of an insurer violates product guidelines. However, concerns were expressed by some insurance

commissioners that the scope of the Commission's authority in this area was drafted too broadly.

Summary: The amendment more specifically frames the Commission's authority to rule on violations by insurers.

Amend Article VIII Section 4 (page 11)

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

Task Force: *Adopted* (April 24, 2003)

Origin: Oregon Attorney General, Office of General Counsel

Discussion: A provision in Article XI states that the review panel's decision "be the final action of the Commission and not subject to review by any court." Although the Compact clarifies that judicial review of claims is permitted where the Commission acts "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 this provision needlessly confuses the guidelines for judicial review.

Summary: The amendment strikes 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 (page 12)

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 (revised, May 30, 2003)

Task Force: *Adopted* (June 17, 2003)

Origin: Professor Zimmerman

Discussion: The Compact 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.

Summary: The amendment specifies MSAPA "of 1981 or as amended" and requires the Commission to consider fully all submitted materials and issue an explanation of its decisions.

Amend Article VII Section 2 (page 9)

2. Rulemaking Procedure. Rules and Operation Procedures shall be made pursuant to a rulemaking process than conforms to the Model State Administrative Procedures Act of 1981 or as amended, 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 (revised, May 30, 2003)

Task Force: *Under consideration* (revisions directed, April 24, 2003; discussed, June 17, 2003)

Origin: Legislation considered by the Indiana General Assembly

Discussion: 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. Audit reports would be included in an annual report submitted annually to the governors and legislatures of all compacting states. 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 shared with insurance commissioners from compacting states. The initial version of the amendment directed that these materials not be confidential. In Boston, the Task Force requested that the amendment be revised to treat these materials in a manner consistent with how they are handled currently in the states. The Task Force again considered the amendment on June 17, 2003, but held it to consider its use of "proprietary information" compared to the use of "trade secrets" and "commercial secrets" in proposed amendments 2a and 3. It since has been clarified that the amendment correctly uses the broader term, "proprietary information," but the subsequent clause has been corrected to include

Summary: "trade" rather than "commercial" secrets. The NAIC Interstate Compact Implementation Working Group has taken a position in favor of this amendment. The amendment would state that the Commission's internal accounts are not confidential and must be made available to insurance commissioners from compacting states upon request. It also would maintain the confidentiality of work papers related to internal and independent audits and clarifies that information related to the privacy of individuals and insurers' proprietary information are to be confidential, as well.

Amend Article XII Section 6 (page 13)

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, provided, however, that any work papers related to any internal or independent audit and any information regarding the privacy of individuals and insurers' proprietary information, including trade secrets, shall remain confidential.

PROPOSED AMENDMENT 8: BINDING EFFECT (revised, June 26, 2003)

Task Force: *Under consideration*

Origin: Originally enacted by the Iowa General Assembly; revised multiple times by working groups of assistant attorneys generals, insurance regulators, and insurance industry representatives

Discussion: Following consultation with assistant attorneys general prior to its adoption by the NAIC in December 2002, the Compact was amended to explicitly protect access of any person, including the attorney general, to state court. The Compact also explicitly does not abrogate or restrict remedies available under state law related to laws not specifically directed to the content of the Product, such as state unfair or deceptive trade practices laws. However, assistant attorneys general from several states have raised concern that the Compact could limit or restrict the authority granted to attorneys general under current law. A working group of assistant attorneys general from Arkansas, Iowa, Illinois, New York, Oklahoma and Texas has concluded that the revised language effectively preserves the authority of state attorneys general. The ACLI Task Force expressed support for the revised language, but requested that the ", as" be inserted in the final clause. The NAIC Working Group adopted the revised language—along with changes to the drafting note—on June 26, 2003, with the

understanding that it would revisit the issue if the attorneys general had concern with the "as" insert in the final clause.

Summary: The amendment would state that the Compact in no way would abrogate or restrict the "authority of the attorney general of the state, including but not limited to maintaining any actions or proceeding, as authorized by law." It also would revise the drafting note.

Amend Article XVI Section 1 (page 16)

1. Other Laws

...

b. For and Product approved or certified to the Commission, the Rules, Uniform Standards and any other requirements of the Commission shall constitute the exclusive provisions applicable to the content, approval and certification of such Products. For advertisement that is subject to Commission's authority, any Rule, Uniform Standard or other requirement of the Commission which governs the content of the Advertisement shall constitute the exclusive provision that a Commissioner may apply to the content of the Advertisement. Notwithstanding the foregoing, no action taken by the Commission shall abrogate or restrict: (i) the access of any person, ~~including the attorney general~~, to state courts; (ii) remedies available under state law related to breach of contract, tort, or other laws not specifically directed to the content of the Product; ~~or~~ (iii) state law relating to the construction of insurance contracts; or (iv) the authority of the attorney general of the state, including but not limited to maintaining any actions or proceedings, as authorized by law.

Drafting Note: In those states where a state official other than the attorney general enforces general consumer protection laws, the title of the official should be inserted into the model act in place of the attorney general. It is not intended for the Compact to empower the Commission with authority beyond what has been traditionally given to state insurance regulators. For example, the Compact is not intended to affect the application, if any, of a state's general consumer fraud statutes, deceptive or unfair trade practices act or claims handling laws or the enforcement of such laws by the state attorney general or other appropriate official. Additionally, nothing in the interstate compact legislation is designed to alter the current rules of construction in a state, such as the rule that any ambiguity will be construed against the drafter of the policy.

PROPOSED AMENDMENT 9: COMMISSION RECORDS (drafted June 24, 2003)

Task Force: *Under consideration*

Origin: Sen. Hannon of New York during conference call on June 17, 2003

Discussion: During the conference call on June 17, 2003, a question was raised regarding the different uses of the terms "insurers' proprietary information," "trade secrets," and "commercial secrets" in amendments 2a, 3 and 7. The Task Force directed the evaluation of the different uses and, if appropriate, recommended inserting a drafting note to explain the reason different terms were used. It has been confirmed that the broader term, "proprietary information, including trade secrets," is appropriate for proposed amendments 2a and 7 but that the more narrow term, "trade secrets," was appropriate Article VIII, Section I (previously proposed amendment 3). Because the term is use for information that would be exempted from the materials made available for public inspection, the use of the more narrow term would permit the Commission to allow public inspection of information that may be proprietary but is

not a trade secret, such as a product filing once it has been approved. The NAIC Working Group has taken a position in favor of this amendment.

Summary: The amendment would insert the term "trade secret" in the place of "commercial secret" and would add a drafting note to explain that the use of the more narrow term is intended.

Amend Article VIII Section 1 (page 11)

“ARTICLE VIII. . . .

1. The Commission shall promulgate Rules establishing conditions and procedures for public inspection and copying of its information and official records, except such information and records involving the privacy of individuals and insurers' ~~trade commercial~~ secrets. 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.

. . . .

Drafting Note: The Commission will generally develop rules establishing conditions and procedures for making information available to the public. However, the reference in this section to the confidential treatment of insurer information is limited to trade secrets. Article X provides for the development of rules by the Commission to address the manner in which the public will be given access to product filing information, which is recognized as proprietary information of insurers.

PROPOSED AMENDMENT 10: PRODUCT LINE DEFINITIONS (drafted June 24, 2003)

Task Force: *Under consideration*

Origin: NAIC staff at the request of the Task Force

Discussion: Although the Compact defines "Product" to mean "the form of a policy contract... for an individual or group annuity, life insurance, disability income or long-term care insurance product," it does not define the specific product lines. During the conference call on June 17, 2003, Sen. Owen suggested that broad product line definitions be included in the Compact to clarify the products that the Commission is authorized to regulate. Del. Morgan of Virginia also said that he believed that definitions would be helpful. NAIC staff drafted the amendment and distributed it to regulators and members of the industry. The ACLI Task Force has taken a position against including product line definitions in Compact. The NAIC Working Group has deferred a position on whether to include product line definitions in the Compact but has agreed to work with the Task Force to improve the definitions, in the event that they are included.

Summary: The amendment would define "life insurance," "annuity," "disability income insurance," and "long-term care insurance."

Amend Article II (page 1-2)

“Life Insurance” is insurance coverage on human lives conditioned upon death, including accidental dismemberment or incidental benefits, but not including death benefits in accident and health or casualty contracts.

“Annuity” is a contract not coming within the definition of life insurance under which an insurer obligates itself to make periodic payments for a specified period of time, such as for a number of years, or until the happening of an event, or for a period of time determined by any combination thereof, including incidental benefits.

“Disability Income Insurance” is accident and health insurance that provides payments, including incidental benefits, when the insured is unable to work because of illness, disease, or injury.

“Long-Term Care Insurance” is insurance that provides coverage for long-term care services and incidental benefits provided by a source other than an acute care unit of a hospital, but not including coverage offered primarily to provide basic Medicare supplement coverage, basic hospital expense coverage, basic medical-surgical expense coverage, hospital confinement indemnity coverage, major medical expense coverage, disability income protection coverage, accident only coverage, specified disease or specified accident coverage, or other limited benefit health coverage.