

**Minutes of the Meeting of
The Interstate Insurance Product Regulation Commission**

**Wednesday, September 27, 2006
Conference Call**

Commission members in attendance

Commissioner Diane Koken (PA), interim Chair
Director Linda Hall (AK)
Peg Brown (CO) as designated representative for Commissioner David Rivera
Margaret Witten (GA) as designated representative for Commissioner John Oxendine
Shelley Santo (HI)
Acting Commissioner Shad Priest (ID)
Commissioner Jim Atterholt (IN)
Roseanne Mead as designated representative for Commissioner Susan Voss (IA)
Commissioner Sandy Praeger (KS)
Malinda Shepherd (KY) as designated representative for Director Julie Mix McPeak
Thomas Record (ME) as designated representative for Superintendent Alessandro Iuppa
Commissioner R. Steven Orr
Patrick Nelson (MN) as designated representative for Commissioner Glenn Wilson
John Rink (NE) as designated representative for Director Tim Wagner
Barbara Richardson (NH) as designated representative for Commissioner Roger Sevigny
Commissioner Jim Long (NC)
Doug Anderson and Peg Ising (OH) as designated representatives for Director Ann
Womer Benjamin
Michael Ridgeway (OK) as designated representative for Commissioner Kim Holland
Leila Alvarado (PR) as designated representative for Commissioner Dorelisse Juarbe
Jimenez
Sara Waitt (TX) as designated representative for Commissioner Mike Geeslin
Commissioner Kent Michie (UT)
Commissioner John Crowley (VT)
Don Beatty (VA) as designated representative for Commissioner Alfred W. Gross
Commissioner Mike Kreidler (WA)
Commissioner Jane Cline (WV)
Commissioner Ken Vines (WY)

Interim Legislative Committee Members in Attendance:

Representative Robert Damron (KY)

Interim Consumer Advisory Committee

Brendan Bridgeland (Center for Insurance Research)
Birny Birnbaum (Center for Economic Justice)

Interim Industry Advisory Committee

Michael Lovendusky (American Council of Life Insurers)
Dennis Herchel (MassMutual Life Insurance Company)
Michael Gerber (National Association of Insurance and Financial Advisors)
Julie Miller (America's Health Insurance Plans)

1. Consider Adoption of Bylaws

The Commission considered further amendments to the draft Bylaws as amended by the Commission on September 12, 2006. ATTACHMENT

Commissioner Michie made a motion, seconded by Ms. Ising, to make the following changes to the Bylaws to clarify the Audit Committee is not subject to the same requirements as other committees:

- (i) Make the following changes in Article VIII, Section 4(A):

The Commission or the Management Committee may establish such other committees or subcommittees as it deems necessary to carry out the Compact's objectives, including but not limited to drafting initial proposals for recommendation to the Management Committee or Commission. The Commission shall establish the committees' or subcommittees' composition, procedures, duties and tenure. As used in this Section, "committee or subcommittee" means a committee or subcommittee established under this section ~~and~~ but not the Audit Committee.

- (ii) Add a new paragraph to Article VIII, Section 4 as follows:

E. The independent Audit Committee established under these bylaws shall not be subject to this Section and shall conduct its activities and affairs consistent with Article IX, Section 5 of these bylaws.

- (iii) Add the following language at the end of Article IX, Section 5:

The Audit Committee shall select an auditor at a meeting that is open to the public. At the next meeting of the Commission following issuance of the annual independent audit report, the Commission shall include the annual audit report as an item on its agenda for the meeting, and shall allow public comment on the audit report prior to its acceptance by the Commission. Except for the annual independent audit report required by Article XII, Section 6 of the compact, audit and investigation reports and reviews of the Audit Committee, including work papers, shall be confidential information of the Commission and may not be disclosed unless ordered otherwise by a majority vote of the Commission or by a court that has jurisdiction over the Commission.

A roll call vote was taken and the motion passed unanimously.

Commissioner Crowley made a motion, seconded by Commissioner Cline, to make the follow three technical amendments to the Bylaws:

- (i) Add the following language after the fourth sentence in Article VII, Section 5:

If any one or more members attend a meeting by telephone or other means of telecommunication, any vote put to the Commission shall be taken by roll call of all the members attending the meeting.

- (ii) Add the following language to the first sentence in Article VII, Section 1(B) after the word “September” and before the word “each”:

“Or as early as possible thereafter”

- (iii) Change to the amendment made by the Commission on September 12, 2007 of the last sentence of Article VI, Section 2 to change “may be to qualified immunity or a defense” to *“may have to qualified immunity or to a defense.”*

A roll call vote was taken and the motion passed unanimously.

Mr. Birnbaum asked the Commission to remove the provision in Article III, Section 4(B) that allows for the Commission to take action by unanimous written consent in lieu of a meeting for the following reasons: 1) it is unclear how the Management Committee could, or would want to, take an action outside of a meeting based on the definition of meetings in the Bylaws as a gathering for purpose of taking action; 2) the provision is unnecessary in light of the ability to call emergency meetings with forty-eight (48) hours notice; 3) many of the items cited for taking action in this manner are within the domain of the Executive Director’s duties; and 4) could create a potential for abuse of open meetings and public accountability.

Commissioner Michie stated that for purposes of discussion, he makes a motion to delete the last sentence of Article III, Section 4(B). Ms. Berendt seconded the motion. Mr. Lovendusky stated the interim Industry Advisory Committee supports elimination of this provision as it provides unwarranted authority to the Management Committee to take action without a meeting.

Commissioner Koken indicated several boards have this ability and may exercise when it is difficult to schedule a meeting or to vote on ministerial matters where a meeting would not be an efficient use of time. Commissioner Koken indicated this provision could not be used for controversial matters as it requires unanimous consent of all members. Commissioner Koken indicated that with a diverse geographic composition of the membership, there may be matters that need to be taken up but do not rise to the level of needing to schedule a meeting. Mr. Moriarty indicated there were sufficient checks and balances including the unanimous consent requirement and the publication of all actions that would prevent its abuse.

Commissioner Atterholt said the emphasis of the Commission is on speed-to-market and streamlining process and as Commissioners, the members are accountable to our governors and constituents which is a very strong check on the Commission’s actions. Commissioner Atterholt stated that it is very difficult to get so many members together for in person or telephonic meeting just to vote on a technical matter. He supports maintaining this provision in the Bylaws.

Commissioner Long stated it is common practice for organizations to have a provision for electronic voting especially when its membership is spread over wide geographic area.

The following members voted in favor of the motion made by Commissioner Michie: Colorado, Georgia, Hawaii, Idaho, Kentucky, Nebraska, Ohio, Oklahoma, Utah, Washington, and Wyoming. The following members voted in the negative: Alaska, Indiana, Iowa, Kansas, Maine, Maryland, Minnesota, New Hampshire, North Carolina, Puerto Rico, Rhode Island, Texas, Vermont, Virginia, and West Virginia. The motion did not pass.

Commission Long made a motion to adopt the Bylaws with the amendments adopted by the Commission meetings on September 12, 2007 and September 27, 2007. Ms. Shepherd seconded the motion. A roll call vote was taken and the motion passed unanimously.

Commissioner Orr made a motion to hold the 2006 Annual Meeting of the Commission on November 15-16, 2007 in Lansdowne, Virginia. Ms. Waitt seconded the motion. A roll call vote was conducted and the motion passed unanimously.

2. Consider Proposed Changes to the draft Operating Procedure for Adoption, Amendment and Repeal of Rules for the Interstate Insurance Product Regulation Commission (“Rulemaking Rule”)

The Commission considered amendments to the draft Rulemaking Rule published on August 2, 2006.

Commissioner Cline stated that, as members of the Rulemaking Committee that originated the proposed draft, West Virginia and Vermont have prepared an explanatory statement intended to provide a summary of the written public comments concerning the proposed rule, and the two states suggested responses to these comments. (Attachment One)

Commissioner Cline said the Compact gives the Commission rulemaking authority and requires the Commission to adopt rules and standard operating procedures according to a rulemaking process that conforms to the Model State Administrative Procedures Act of 1981 (MSAPA) as may be appropriate to the operations of the Commission. Commissioner Cline explained the Rulemaking Rule as proposed does generally conform to MSAPA, with modifications to fit the workings of the Commission.

Commissioner Cline went over the explanatory statement and the recommendations of West Virginia and Vermont to change the Rulemaking Rule as follows:

- (i) Change to the title of Section 103 to remove the term “of Approval” and remove similar reference to “approval” throughout the Rulemaking Rule.
- (ii) Change the last sentence of Section 103 and other similar references to replace “legislative” with “*Legislative Committee, and to the*” to reflect it is a separate committee rather than an advisory committee.
- (iii) Change the references in Section 104 to replace “an oral proceeding” with “*a public hearing.*”
- (iv) Add the following language in the first sentence of Section 104(b)(1) in place of the phrase “25 persons” such that it reads: “*a person or organization representing at least 25 persons affected by the proposed rule.*”
- (v) Add the following sentence at the end of Section 104(b)(3) as follows: “*A public hearing may take place in-person or by telephone, or by electronic means provided that the hearing complies with the provisions of this section.*”
- (vi) In order to address the comments of the interim Consumer Advisory Committee and the interim Industry Advisory Committee regarding better definition of the contents of a regulatory analysis and the timeline for requesting a regulatory

analysis, change Section 105 by replacing the entire provision with the following language:

- (a) *The Management Committee shall issue a regulatory analysis of a proposed rule if within 15 days after the published notice of proposed rule a written request for the analysis is filed with the Commission by a Commission member, the Management Committee, the Legislative Committee, or an advisory committee established pursuant to Article VIII of the Bylaws of the Commission.*
- (b) *The regulatory analysis shall contain:*
 - (1) *a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule;*
 - (2) *a description of the probable quantitative and qualitative impact of the proposed rule, economic or otherwise, upon affected classes of persons;*
 - (3) *the probable costs to the Commission of the implementation and enforcement of the proposed rule and any anticipated effect on Compact revenues or state revenues;*
 - (4) *a comparison of the probable costs and benefits of the proposed rule to the probable costs and benefits of inaction;*
 - (5) *a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule;*
 - (6) *a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the Commission and the reasons why they were rejected in favor of the proposed rule; and*
 - (7) *a description of the proposed rule with respect to the purposes of the Compact.*
- (c) *Each regulatory analysis shall include quantification of the data to the extent practicable and shall take account of both short-term and long-term consequences.*
- (d) *The regulatory analysis shall be published on the official website of the Commission at least 10 days before the earlier of:*
 - (1) *the end of the period during which persons may make written submissions on the proposed rule; or*
 - (2) *the date of any scheduled public hearing on the proposed rule.*
- (e) *If the Management Committee has made a good faith effort to comply with subsections (a) and (b) of this Section, the rule may not be invalidated on the ground that the contents of the regulatory analysis are insufficient or inaccurate.*
- (vi) In order to address the comments of the interim Legislative Committee regarding notice to its committee and the state legislative committees, change Section 106(b) to indicate the Management Committee “shall” instead of “may” approve and to change Section 106(c) as follows:

Before *the Management Committee takes any action with respect to the approval of a rule* :

(i) the Management Committee shall consider the written submissions, oral submissions or any memorandum summarizing oral submissions;
(ii) *the Management Committee shall consult with the Legislative Committee, with such consultation to take place before the end of the period of public participation described in Section 104; and*
(iii) *if the proposed rule is a uniform standard, before the end of the period of public participation described in Section 104 the executive director shall provide the relevant state legislative committees in each compacting state responsible for insurance issues with written notice of the proposed rule, which notice shall include all documents described in Section 103(a)."*

(vii) In order to address the comments of the interim Consumer Advisory Committee and the interim Industry Advisory Committee, change Section 108 as follows:

- Change the title to "*Emergency Rules*";
- Replace the term "any" in the opening phrase of Section 108(a) and replace with "*emergency circumstances exist such that the*;"
- Delete the terms "unnecessary, impracticable or;"
- In the first sentence of Section 108(a), insert the following language after "those requirements shall not apply" "*, and the Commission may adopt an emergency rule under this section by majority vote of the Commission members;*"
- In the second sentence of Section 108(a) add "*of emergency circumstances*" after "finding;" and
- Replace Section 108(b) with the following language: "*An emergency rule adopted under this section shall cease to be effective 180 days after it is adopted or such earlier period as may be determined by the Commission. The Management Committee may propose a permanent rule on the same subject at the same time as it proposes an emergency rule.*"

(viii) In response to the comments of the interim Consumer Advisory Committee, add subsection (3) to Section 109(a) as follows: "*a summary of the reasons for the Management Committee's decision to agree or disagree with substantial comments for or against the original proposed rule.*"

(ix) Change the reference in Section 112(c) from Section 110(b) to Section 109(c);

(x) Change Section 117 to read "*Any Commission member, the Legislative Committee, or an advisory committee established pursuant to Article VIII of the Bylaws of the Commission may petition the Management Committee requesting the initiation of rulemaking.*"

Commissioner Michie made a motion, seconded by Commissioner Orr, to amend the Rulemaking Rule in accordance with the recommendations of West Virginia and Vermont. Mr. Birnbaum said the interim Consumer Advisory Committee was supportive of these recommendations. Representative Damron stated the Legislative Committee preferred to make the regulatory

analysis a mandatory requirement rather than required upon a request to the Commission. A roll call vote was taken and the motion passed unanimously.

Mr. Birnbaum requested the Committee consider changing Section 107(b) to make the requirement for republication more prescriptive, making republication necessary if there are any non-substantial difference between the published and changed rules or if there are any new or modified provisions that address issues not originally noticed. Commissioner Cline said Vermont and West Virginia do not recommend a change to Section 107 as proposed by Mr. Birnbaum. The current language conforms to the MSAPA language. Requiring republication for changes that are not substantial would result in unwarranted delay in the adoption of Commission rules. Mr. Birnbaum indicated that, substituting the term “*if*” for “the extent to which” creates a more objective standard. Mr. Record noted it does not make sense to substitute the term “*if*” as the analysis would always result in a “yes” response. Commissioner Michie made a motion to substitute all references to the phrase “the extent to which” with the term “*if*” in Section 107(b). There was no second to Commissioner Michie’s motion.

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Herb Olson, as designated representative for Commissioner Crowley, made a motion to accept the language in Section 107(b) as written and Commissioner Cline seconded the motion. A roll call vote was conducted and the motion passed unanimously.

3. Consider Adoption of the Rulemaking Rule

Ms. Ising made a motion to adopt the Rulemaking Rule with the amendments adopted by the Commission and Mr. Beatty seconded the motion. A roll call vote was taken and the motion passed unanimously.

Having no further business requiring action, the Commission adjourned.