

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

**Tuesday, September 12, 2006
St. Louis America's Center
St. Louis, Missouri**

Commission members in attendance

Jeffrey Trout (AK) as designated representative for Director Linda Hall
Peg Brown (CO) as designated representative for Commissioner David Rivera
Commissioner John Oxendine (GA)
Shelley Santo (HI)
Commissioner Jim Atterholt (IN)
Commissioner Susan Voss (IA)
Commissioner Sandy Praeger (KS)
Director Julie Mix McPeak (KY)
Superintendent Alessandro Iuppa (ME)
Commissioner R. Steven Orr (MD)
Joseph Murphy (MA) as designated representative for Commissioner Julianne Bowler
Commissioner Glenn Wilson (MN)
Director Tim Wagner (NE)
Commissioner Roger Sevigny (NH)
Commissioner Jim Long (NC)
Director Ann Womer Benjamin (OH)
Commissioner Kim Holland (OK)
Commissioner Diane Koken (PA)
Commissioner Dorelisse Juarbe Jimenez (PR)
Superintendent Joseph Torti III (RI)
Sara Waitt (TX) as designated representative for Commissioner Mike Geeslin
Commissioner Kent Michie (UT)
Herb Olson (VT) as designated representative for Commissioner John Crowley
Jackie Cunningham (VA) as designated representative for Commissioner Alfred W. Gross
Beth Berendt (WA) as designated representative for Commissioner Mike Kreidler
Commissioner Jane Cline (WV)
Commissioner Ken Vines (WY)

Interim Legislative Committee Members in Attendance:

Senator Ruth Teichman (KS)
Representative Robert Damron (KY)
Representative Larry Taylor (TX)

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)

Commissioner Koken called the meeting to order. Commissioner Michie agreed to be the recording secretary for the meeting.

1. Report of the interim Management Committee

Commissioner Koken reported on the two conference calls of the interim Management Committee on August 2, 2006 and September 5, 2006 respectively. (Attachment One and Two). Upon motion of Commissioner Womer-Benjamin and seconded by Commissioner Voss, the report of the interim Management Committee was adopted.

2. Consider Ratification of Action of Interim Management Committee

Commissioner Long moved that the that the action of the interim Management Committee in retaining Korn/Ferry to locate and screen candidates for the Executive Director position be ratified by the Commission. Upon second by Commissioner Praeger, the Commission ratified this action. Upon motion of Commissioner Long, with a second by Commissioner Michie, the Commission ratified the actions of the interim Management Committee in publishing the Bylaws and Rulemaking Rule for notice and comment. Commissioner Voss made a motion that Commission employees be able to participate in the NAIC's health and welfare programs as a separate employer and that retirement, tax savings and vision service plans for the Commission separate from the NAIC be established. This motion was seconded by Commissioner Cline and adopted by the Commission.

3. Report of the Interim Legislative Committee

Representative Damron stated the interim Legislative Committee has offered suggestions to the proposed bylaws. Representative Damron said that the suggestions regarding filling vacancies and the governance of the Legislative Committee do not necessarily need to be included in the bylaws but rather in an internal rule. Representative Damron said the Legislative Committee recognizes that as the Commission begins initial work, many of the committee members are doing the work in lieu of staff and that an open meeting policy would not extend to staff meetings. Representative Damron stated that as the Commission moves forward to implement the Compact, it should have the ability to strike a balance between the need to maintain openness and transparency of Commission actions and at same time provide flexibility to move the process forward as the Commission members serve as staff.

Representative Damron reported the Legislative Committee's recommendation to change the term "may" to "shall" in the opening of section 105 of the Rulemaking Rule such that Management Committee is required to issue a regulatory analysis. Representative Damron also said the Legislative Committee recommends the provision regarding reasonable expenses for committees be expanded such that the legislative committee be allowed reasonable and necessary expenses to maintain staff support as deemed necessary by the Legislative Committee. Representative Damron indicated the Legislative Committee should be the one to make this funding decision in order to maintain independence between the two bodies.

4. Report of the Interim Consumer Advisory Committee

Mr. Birnbaum reported that the interim Consumer Advisory Committee provided written comments on the Bylaws and the Rulemaking Rule, participated in the Management Committee's conference calls and provided oral testimony. Mr. Birnbaum made a request for financial

assistance for the consumer advisory committee to assist it in developing comments for the public access rule and five product standards, given the Commission's aggressive schedule.

5. Report of the Interim Industry Advisory Committee

Mr. Lovendusky reported that the interim Industry Advisory Committee met several times via conference call to develop consensus on the matters that are the subject of the committee's comments for the Commission.

6. Consider proposed amendments to draft Bylaws

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

Mr. Olson made a motion to add the following language to the end of Article I, Section 4: "*The term "trade secret" shall have the meaning provided in a rule adopted by the Commission regarding public access to information and documentation, as such rule may be amended from time to time.*" Mr. Olson indicated it would be helpful to have a reference in the Bylaws as it is not defined in the Compact model legislation and is used in the rulemaking rule. Ms. Berendt seconded the motion and the motion passed.

Mr. Olson made a motion to amend Article III, Section 1 to add the following language to the end of Article III, Section 1: "*A member may designate a person or persons to serve in place of the member to attend any meeting of the Management Committee as the member's designee with respect to Commission business, including attending and voting in meetings of the Management Committee, as provided in and subject to the conditions of Article II regarding appointment of designees.*" Commissioner Wilson seconded the motion. Commissioner Koken asked whether this proposed amendment would be necessary when Article II, Section 8 of the Compact model legislation defines "member" to include "his or her designee." Mr. Olson, with the agreement of Commissioner Wilson, withdrew his motion based on the understanding the Bylaws will be interpreted consistent with the definition of member in the Compact model legislation.

Mr. Olson made a motion to add the following subsection to the end of Article III, Section 3: "*J. Any action necessary and appropriate to carry out the foregoing and to effect the purposes of the Commission.*" Mr. Olson explained that as a public agency, the Commission should have the clear authority to take actions to carry out its purposes. Ms. Berendt seconded the motion and the motion passed.

Mr. Olson made a motion to make the following revisions to Article III, Section 4: 1) in the first sentence to change the term "officers" to "Chair" such that the power to call a Management Committee be limited to the Chair of the Commission rather than the officers; 2) after the phrase "[b]y majority vote of" in the eighth sentence, to add the following language "*the members attending a meeting at which a quorum is present;*" 3) to add the following sentence after the eighth sentence: "*members may participate in meetings by telephone or other means of telecommunication reasonably audible by all persons attending the meeting. If one or more members attend a meeting by telephone or other means of telecommunication, any vote put to the Management Committee shall be taken by roll call of all members attending the meeting.*" Commissioner Long seconded the motion.

Mr. Lovendusky expressed his concern that it may be too restrictive to limit the power to call a Management Committee meeting to only the Chair or a one-third vote of the Management Committee. Commissioner Koken asked what would happen if a meeting needed to be called

promptly but the Chair was out of the office because of sickness or travel. Mr. Birnbaum stated the interim Consumer Advisory Committee was supportive of the change requiring a roll call vote during conference calls as it would ensure only eligible members are entitled to vote and that a quorum is still present when a vote is taken. Director Womer Benjamin made a friendly amendment to restore the language in Article III, Section 4 to keep the term “officers.” Mr. Olson and Commissioner Long accepted the friendly amendment. The motion, as amended, passed.

Mr. Olson indicated his concern that the standard articulated in Article VI for eligibility for indemnification by the Commission appears different than the standard in Article V, Sections 5(b) and (c) of the Compact model legislative for entitlement to defenses and indemnification. Mr. Olson made a motion to add the following language to the end of Article VI, Section 2: *“The provisions of this Article VI shall not be construed to limit or otherwise modify any rights a person may have to qualified immunity or a defense as provided in Article V, Section 5 of the Compact.”* Mr. Olson indicated this change would ensure consistency with regards to the rights to qualified immunity and defenses as provided in Article V, Section 5 of the Compact. Commissioner Cline seconded the motion and the motion passed.

Mr. Olson made a motion to change Article X, Section 2(A) to remove the following language “in conformance with the Model State Administrative Procedures Act of 1981, as amended” and to add the following language at the end of the second sentence “, *pursuant to rules and procedures for the conduct of such hearings adopted by the Commission and as amended from time to time.*” Mr. Olson indicated the interim Rulemaking Committee is drafting a rule regarding notice and hearing to specify the procedure for hearings in the event of default. Commissioner Voss seconded the motion and the motion passed.

Director Womer Benjamin made a motion, seconded by Commissioner Voss, to make the following changes to the Bylaws to address the concerns regarding open meetings and balancing the need for drafting initial proposals for public comment and open deliberations:

- (i) Add the following language to Article III, Section 4 and number as Subsection A: *“A meeting of the Management Committee means a prearranged gathering of the majority of the members of the Management Committee for the purpose of discussing or taking action upon Management Committee business. A meeting of the Management Committee shall not include any of the following, provided that formal action of the Management Committee is not taken and any discussion of Management Committee business is incidental to them: (1) gatherings of members for social purposes; (2) meetings of a regional, state or national body other than the Management Committee; or (3) other public forums not convened solely by Management Committee members. For purposes of this paragraph, a gathering may take place in-person or via telephone or electronic communication.”*
- (ii) Renumber the remaining language in Article III as Section 4(B) and completely remove the last sentence which reads: “Subcommittees established by the Management Committee shall not be required to have meetings open to the public for purposes of these Bylaws, when such meetings do not consist of a majority of the members of the Management Committee and the purpose of the meeting is not to take formal action and no formal action is taken on behalf of the Management Committee.”

- (iii) Completely remove the last sentence of Article VII, Section 1(C) which reads: “Committees established by the Commission shall not be required to have meetings open to the public for purposes of these Bylaws, when such meetings do not consist of a majority of the members of the Commission and the purpose of the meeting is not to take formal action and no formal action is taken on behalf of the Management Committee or Committee.”
- (iv) Replace Article VIII, Section 4 with the following language:

Section 4. Other Committees.

- 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 the Audit Committee.*
- B. *Prior to a committee or subcommittee taking a vote on a recommendation to be forwarded to the Commission or Management Committee, including but not limited to a recommendation related to a rule or operating procedure, a committee or subcommittee shall hold one, or may hold more than one, open meeting that provides the public with an opportunity to comment on the proposed recommendation.*
- C. *Written notice of a committee or subcommittee meeting that is open to the public shall be provided at least fifteen (15) days prior to the meeting to committee or subcommittee members, members of the Commission’s legislative and advisory committees, and to parties who have requested in writing to receive such notices. Notice of the meeting shall also be posted on the Commission website. The notice must contain a description of the items to be addressed at the scheduled meeting, and the name and address of at least one individual serving as a contact person for information related to the scheduled meeting. An open meeting of a committee or subcommittee may be held via teleconference, in which case the notice of a meeting shall indicate the manner in which members and the public may participate.*
- D. *Committees and subcommittees are not authorized to act on behalf of the Management Committee or Commission unless specifically authorized to do so.*

Director Womer Benjamin indicated that the Commission recognizes it is still sorting out its procedures and that it has a lot of work that needs to be one to set up operations. Director Womer Benjamin explained that for proposals to initially be developed for presentation, there must be some ability for members or their staff to discuss and develop proposals. Director Womer Benjamin pointed out the Commission currently has no staff. It has always been premised that states would pool resources to provide some assistance to the Commission. Ohio’s proposed amendment is intended to require that before a recommendation by a subcommittee was made to

the Management Committee at least one public meeting would be held. This public meeting requirement would allow input to occur at early stage when meaningful change can be made without delaying the notice period. Director Womer Benjamin said Ohio had considerable support in drafting this amendment from representatives of Texas, Washington, West Virginia and Vermont.

Representative Damron stated the interim Legislative Committee supported Ohio's amendment. Mr. Lovendusky indicated the interim Industry Advisory Committee supported Ohio's amendment.

Mr. Birnbaum said the interim Consumer Advisory Committee was generally supportive of Ohio's amendment, other than it preferred the original definition of a meeting as a gathering of four or more members instead of the current definition of a meeting as a prearranged gathering of a majority of the members.

The motion made by Director Womer Benjamin passed unanimously.

Upon recommendation from the interim Legislative Committee, Superintendent Iuppa made a motion, seconded by Commissioner Praeger, to add the following provisions to Article V, Section 2 as subsections J and K and to renumber accordingly:

- J. Prepare the annual report to governors and state legislatures and, with the approval by the Commission, submit the annual report, which shall include a report of the independent audit, to the governor and legislature of each of the compacting states; for the purposes of this section; "legislature" will include the presiding officer of each legislative chamber, the chair and ranking member of each committee of jurisdiction, and the members of each committee of jurisdiction;*
- K. Provide written notice on behalf of the Commission to the chair, ranking member and members of each committee of jurisdiction of the compacting states of its intention to adopt a Uniform Standard;*

Representative Damron presented several suggested changes to Article VIII, Section 1. Commissioner Michie made a motion, seconded by ??, to keep the first sentence Article VIII, Section 1 and to replace the remainder of this section with the following language recommended by the Legislative Committee:

- A. . . . The representatives of this committee shall be legislators from compacting states and shall consist of four legislators appointed by the National Conference of State Legislatures (NCSL) and four legislators appointed by the National Conference of Insurance Legislators (NCOIL). Each legislative association shall appoint one member from each of four NAIC zones, and NCSL and NCOIL should consult to achieve reasonable political and geographic balance.*
- B. NCSL and NCOIL shall appoint members to serve two-year terms. In the event of a vacancy, the legislative association that appointed the vacating member will appoint another legislator from the same NAIC zone to serve for the remainder of the term.*

- C. *The legislative committee will elect two officers, a chair and a vice chair, including one Democrat and one Republican, to serve one-year terms. Officers must be elected by a majority of the committee and may be reelected for successive terms.*
- D. *The legislative committee and the Management Committee shall meet jointly and in person no less than once each year. The joint meeting shall occur each year prior to the Commission's annual meeting and shall be coordinated by the committees' respective officers.*

Commissioner Koken stated the other requested changes are matters that could be handled outside the Bylaws through procedures for convening and communicating with the Legislative Committee. Representative Damron indicated he was disappointed the Commission did not include a provision that would allow the Legislative Committee, subject to budgeted funds, to retain its own staff support. Commissioner Koken noted the Commission expected the staff of the Commission to provide support to the Legislative Committee and the advisory committees and that the funding issue is more appropriate when the Commission looks at the 2007 budget at its annual meeting in November. The motion passed.

Upon the recommendation of the interim Advisory Committee, Director Wagner made a motion, seconded by Commissioner Long, to make the following technical changes to the draft Bylaws:

- (i) In Article III, Section 2(A), strike reference to Paragraph 1A(2)
- (ii) In the first sentence of Article IV, Section 1, change the term "include" to "*consist of*"
- (iii) In Article IV, Section 1, replace the reference to Article VIII with Article VII(1)(D).

The motion passed.

Mr. Birnbaum indicated his concern with the provision in the Bylaws allowing the Management Committee to take action in lieu of a meeting if action is taken by unanimous written consent. Superintendent Iuppa stated this provision allows the Commission to take action in cases where it may not be feasible to call a meeting and the matter requires prompt attention. Commissioner Koken reiterated there were projections built in to the provision including advanced written notice, the requirement of unanimity and public notice of the actions taken.

7. Approval of June 13, 2006 Minutes

Upon motion of Commissioner Wilson and seconded by Commissioner Long, the Commission approved the minutes from the Commission meeting on June 13, 2006.