

☛ 95hr_AC-ISCP_ab0637_pt01



(FORM UPDATED: 08/11/2010)

WISCONSIN STATE LEGISLATURE ... PUBLIC HEARING - COMMITTEE RECORDS

1995-96

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on Insurance, Securities and
Corporate Policy...

COMMITTEE NOTICES ...

- Committee Reports ... **CR**
- Executive Sessions ... **ES**
- Public Hearings ... **PH**

INFORMATION COLLECTED BY COMMITTEE FOR AND AGAINST PROPOSAL

- Appointments ... **Appt** (w/Record of Comm. Proceedings)
- Clearinghouse Rules ... **CRule** (w/Record of Comm. Proceedings)
- Hearing Records ... bills and resolutions (w/Record of Comm. Proceedings)
(ab = Assembly Bill) (ar = Assembly Resolution) (ajr = Assembly Joint Resolution)
(sb = Senate Bill) (sr = Senate Resolution) (sjr = Senate Joint Resolution)
- Miscellaneous ... **Misc**

AB
637

**Northwestern
Mutual Life®**

November 28, 1995

Representative Sheryl Albers
Assembly Committee on Insurance,
Securities and Corporate Policy
Room 136 South, State Capitol
Madison, WI 53702

Dear Representative Albers:

This letter is to indicate the support of The Northwestern Mutual Life Insurance Company for the Interstate Insurance Receivership Compact which is the subject of Assembly Bill 637. We have previously testified in support of the companion bill, Senate Bill 372, which would authorize Wisconsin participation in the Compact. As more fully described below, crucial to the success of this Compact, and our endorsement of it, is the accountability of the Commission to the participating State legislature through the funding of 25% of the cost of the Commission directly by the State.

The Interstate Insurance Receivership Compact was developed by the Insurance Commissioners of the Midwest Zone of the National Association of Insurance Commissioners. It was a product of significant input from each of the Midwest Zone states as well as an advisory committee of insurers from each of the states. Important goals and objectives of both the regulators and industry were addressed and effective legislation, satisfactory to most involved, was developed. It was my privilege to participate on the advisory committee on behalf of Northwestern Mutual Life.

The Interstate Insurance Receivership Commission created by this legislation has significant potential for making the handling of insurer receiverships, rehabilitations and liquidations more efficient. It provides an interstate resource for the oversight, and where appropriate, for the administration, of receiverships, with anticipated improvements in communication among state regulators; development, retention and utilization of experience and expertise; savings in time and expense of moving a troubled insurer to rehabilitation or liquidation; and translation of learning and experience into improved insolvency regulation.

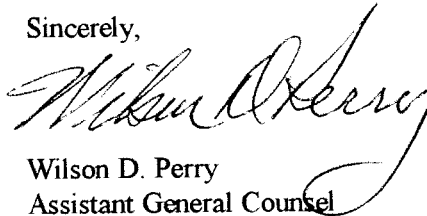
One frustrating and uncontrollable factor in dealing with insolvencies is the fact that the ebb and flow in frequency and size are unpredictable. They may be more prevalent in property and casualty companies for a time and then occur more frequently among life and health insurers at another time. They may be concentrated in one or more states or spread among the states. The fact of the randomness and change with which insolvencies occur makes it extremely difficult for any one state to consistently have the highest quality resources available when needed. Furthermore, it is inefficient and impractical for each state to gear up the staffing and systems for most efficiently handling insolvencies during periods when they are not occurring. One of the prime values of the Interstate Insurance Receivership Commission will be the opportunity for the participating states to develop shared resources for insolvencies.

Representative Sheryl Albers
Page Two
November 28, 1995

Among the major concerns of the insurance industry with the Interstate Insurance Receivership Commission is the development of new levels of regulatory administration and expense which would either be unnecessary or duplicative. That concern is magnified in the case of an interstate compact Commission to whom taxing power and authority would be granted by the states through its ability to assess insurers. For this reason, compact provisions for the sources and procedures for funding the Commission are essential for acceptance by the industry. The budget must be adopted under the same procedures provided for adoption of rules. The compact calls for 25 percent of the funding to be provided by the state through means other than the assessment of insurers in order that it will receive the same legislative review and approval as all general or insurance regulatory appropriations.

The Interstate Insurance Receivership Compact is in an innovative, carefully developed approach to improving a state regulation in a highly specialized and technical area. With rare exceptions, insurance insolvencies involve more than one state. There is potential for achieving significant improvement and the Interstate Insurance Receivership Commission can be a primary instrument for achieving it. As a new approach it requires the kind of oversight and controls that have been built into this proposed legislation. Therefore, Northwestern Mutual Life endorses Assembly Bill 637 which would approve the participation of Wisconsin with Illinois, Nebraska, New Hampshire, California and other states who choose to adopt this Interstate Insurance Receivership Compact.

Sincerely,



Wilson D. Perry
Assistant General Counsel

cc: Senator Dale Schultz



STATEMENT OF ROBERT E. MACKIN,
EXECUTIVE DIRECTOR OF THE
NATIONAL CONFERENCE OF INSURANCE LEGISLATORS
AT THE PUBLIC HEARING OF THE WISCONSIN ASSEMBLY
COMMITTEE ON INSURANCE, SECURITIES AND CORPORATE POLICY,
STATE CAPITOL,
MADISON, WISCONSIN,
THURSDAY, NOVEMBER 30, 1995
AT 1:00 P.M.

Assemblyperson Albers, members of the Committee, my name is Bob Mackin. It is my privilege to serve as executive director of the National Conference of Insurance Legislators (NCOIL). NCOIL is an organization of state legislators whose primary of legislative concern is insurance. Wisconsin State Senator Dale Schultz and Wisconsin Assemblyman William Lorge are members of the NCOIL Executive Committee.

For myself and for the state legislators active in NCOIL, I thank you for affording me the opportunity to speak in support of Assembly Bill 637. The compact legislation you have before you was adopted by the National Conference of Insurance Legislators following a joint public hearing held by its State-Federal Relations Committee and the NAIC Midwest Zone Commissioners in New York City in November, 1994. The votes endorsing the compact were unanimous - first at an NCOIL State-Federal Relations Committee meeting, and then at an NCOIL Executive Committee meeting the following day. State legislators present and voting on those issues were from the states of Arizona, Florida, Indiana, Michigan, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Texas and Vermont.

Assembly Bill 637 is designed to

- help consumers whose insurance companies have been found insolvent through the development of orderly, efficient and cost-effective insurer receivership operations;
- overcome gaps and uneven treatment of policyholders of insolvent insurers as afforded under the present system of different state laws governing multistate insurer insolvencies and receiverships;
- facilitate the prompt and full payment of legitimate claims and other funds owed policyholders by insolvent multistate insurers; and
- coordinate receivership operations in compacting states.

Allow me to provide you with some background. It has been long acknowledged that the present system of state laws does not afford even-handed protection of policyholders of insolvent multistate insurers which have operated in more than one state.

Legislators who have worked on the development of the Interstate Insurance Receivership Compact point out that interstate compacts have been an acceptable way for the states to reach agreement and treat each others' citizens fairly. Article Ten of the U.S. Constitution authorizes the states to enter into interstate compacts. There are more than 100 compacts in effect today.

The deliberations that produced the proposed Interstate Insurance Receivership Compact began late in 1990 when the National Conference of Insurance Legislators (NCOIL) asked its State-Federal Relations Committee to seek ways in which to help the National Association of Insurance Commissioners (NAIC) see its minimum solvency standards applied in all states. The Committee's work included public hearings in Indianapolis in 1991 and in San Antonio in 1992. In Indianapolis, witnesses testified in favor of a study of the feasibility of an interstate compact as a way to have the NAIC solvency standards become acceptable in all states. In San Antonio, witnesses recommended a compact in the area of multistate insolvencies. Later the same year, at its annual meeting in Charleston, South Carolina, NCOIL's Executive Committee approved an exposure draft of such a compact proposal and directed the NCOIL State-Federal Relations Committee to communicate with persons representing state governments about formulating compact legislation for approval by state legislatures.

Insurance Commissioners in the NAIC Midwest Zone began developing compact legislation in 1993 by refining the NCOIL compact draft. The evolving compact draft was revised to focus exclusively on receiverships. Representatives of the NAIC Midwest Zone and members of a special ad hoc subcommittee of the NCOIL State-Federal Relations Committee held discussions during the summer and autumn of 1994 to resolve conceptual and language differences. The agreed upon compact document satisfied a request made by the NCOIL ad hoc subcommittee that meetings of the compact commission be open and that the commission's information and documents be available to the public. It further satisfied an NCOIL request that an individual compacting state be able to "opt out" if its state legislature found a rule of the commission unacceptable. The compact satisfied a further request that a rule of the compact commission be nullified in all compacting states if a majority of compacting states opted out of that particular rule. As stated above, NCOIL adopted the proposed Interstate Insurance Receivership Compact at its Annual Meeting in New York City in November 1994.

WHY THE COMPACT IS NEEDED

The rather cumbersome disposition of multistate insurer insolvencies has long been a target for critics of state insurance regulation. According to the U.S. General Accounting

Office (GAO), in an insolvency of a multistate insurer, differences in state laws can result in unequal treatment of policyholders of the same failed insurer.

SUPPORT FOR THE COMPACT

The compact device has attracted wide interest and support among state legislators, state insurance departments and other government and insurance industry leaders. The U.S. Advisory Commission on Intergovernmental Relations (ACIR) has strongly urged states to enter into interstate compacts to assure uniform application of appropriate rules and procedures when it comes to insolvencies. The commission's membership includes three state legislators, four governors, four mayors, three county officials, three U.S. Senators, three U.S. House members, three private citizens and four executive branch representatives. The American Council of Life Insurance (ACLI), whose membership includes virtually all the nation's life insurers, has formed a special task force to study the application of interstate compacts in multistate insurer insolvencies.

HOW THE COMPACT WOULD WORK

The compact would create the "Interstate Insurance Receivership Commission." The commission would be a not-for-profit entity, separate and distinct from the compacting states. It would be a corporate body in each compacting state.

The commission would promulgate rules which would be binding in compacting states to the extent provided in the compact. The commission would oversee, supervise and coordinate the activities of receivers in compacting states. The commission would also represent compacting states in receivership matters relating to insurers domiciled or doing business in non-compacting states.

Under the compact, each compacting state would be represented on the commission. Each state would determine how to elect or appoint its own commission members. Each member would have one vote. The commission would elect its own chair and vice chair by majority vote. The commission's officers would serve without compensation but would be reimbursed for necessary and budgeted out-of-pocket costs and expenses, assuming funds were available.

ACCESS TO DOCUMENTS, OPEN MEETINGS

In establishing its rules, the commission would be guided by the Freedom of Information Laws. The commission would have authority to establish rules under which it could make information available to law enforcement agencies.

The commission would give public notice of all its meetings and all meetings would be open to the public. The commission shall issue rules consistent with the principles contained in the "Government in Sunshine Act." By a two-thirds vote, the commission could close a meeting in cases where the commission determines that an open meeting would be, among other things, likely to

- relate solely to the internal personnel matters of the commission;
- disclose matters specifically exempt from disclosure by statute;
- disclose trade secrets or commercial or financial information which is privileged or confidential;
- involve accusing any person of a crime, or formally censuring any person;
- disclose investigatory records compiled for law enforcement purposes;
- involve an unwarranted invasion of privacy;
- disclose information contained in or relating to examination, operating or condition reports prepared by or for the commission on a regulated entity for the purposes of regulation or supervision of that entity; or
- significantly endanger the stability of a regulated entity.

The commission would be required to record detailed minutes of each meeting. All votes of the commission would be recorded.

RULEMAKING BY THE COMMISSION

The commission would adopt rules by majority vote. The compact would provide that rulemaking by the commission conform substantially to the principles of the federal Administrative Procedure Act.

OVERSIGHT

Under the compact, the commission would

- oversee and monitor receiverships; and

- in monitoring, require reports on the status of insurers in receivership and have standing to appear in proceedings involving a compacting state's receiverships.

RECEIVERSHIP FUNCTIONS OF THE COMMISSION

The commission would have authority to act as receiver of any insurer domiciled or doing business in a compacting state at the request of the commissioner of the compacting state. The commission could also act as receiver under certain other conditions specified in the compact. The commission may act as receiver if the member acting as receiver fails to comply with duly-adopted commission rules or operating procedures. The commission may act as deputy receiver for any insurer domiciled or doing business in a non-compacting state in accordance with that state's laws, upon the request of the non-compacting state's commissioner and the commission's approval.

In regard to receiverships pending in a compacting state on the effective date of enactment by the compacting state, the commission

- may act as receiver at the request of that compacting state's member and the commission's approval; and
- must oversee all receiverships pending in that compacting state.

FINANCE

The commission would cover its costs of operation, activities and staff through an aggregate annual assessment. The aggregate annual assessment amount would be allocated 75 percent to insurers and 25 percent to compacting states. In the case of insurers, the amount of assessment would be in proportion to the gross direct written premium volume an insurer does in all compacting states. In the case of a compacting state, the assessment would be in proportion to the gross direct written premium volume of all insurers in that state.

The compact provides that in no event may an insurer's assessment be less than \$50 or more than \$25,000, provided that the combined assessment of an insurer and its affiliates not exceed \$50,000.

The compact further provides that all costs associated with a specific insolvency would be payable from the assets of the Estates of companies in receivership as provided by law, except as otherwise provided in the compact.

The commission's initial operations would be funded through an assessment of insurers doing a direct insurance business in compacting states up to \$450 per insurer.

The commission's adopted annual budget would determine the amount of the annual assessment. It would be subject to public notice and comment.

The commission would be exempt from taxation by the compacting states.

The commission could not pledge the credit of any compacting state, unless authorized by the state.

COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

Any state may join the compact. The compact would become effective upon enactment by two compacting states.

WITHDRAWAL, DEFAULT AND TERMINATION

A state may withdraw from the compact by enacting a law specifically repealing the statute which enacted the compact. Reinstatement may occur upon reenactment of the compact.

BINDING EFFECT OF COMPACT AND OTHER LAWS

Nothing in the compact would prevent the enforcement of any other law of a compacting state that is not inconsistent with the compact. All compacting states' laws conflicting with the compact would be superseded to the extent of the conflict.

CONCLUSION

With enactment of AB 637, Wisconsin would become the fifth state in less than a year to adopt the Interstate Insurance Receivership Compact. The other states are California, Illinois, Nebraska, and New Hampshire. AB 637 is an idea whose time has come.





State of Wisconsin / OFFICE OF THE COMMISSIONER OF INSURANCE

Tommy G. Thompson
Governor

Josephine W. Musser
Commissioner

121 East Wilson Street
P.O. Box 7873
Madison, Wisconsin 53707-7873
(608) 266-3585

**Testimony before the
Assembly Committee on Insurance, Securities, and Corporate Policy
on Senate Bill 372 and Assembly Bill 637
relating to the interstate insurance receivership compact
offered by Randy Blumer, Deputy Commissioner, OCI, and Fred Nepple, General Counsel, OCI
on November 30, 1995**

Good morning Representative Albers and members of the Committee. Thank you for the opportunity to speak with you today in favor of Senate Bill 372 (SB372) and Assembly Bill 637 (AB637) relating to the interstate insurance receivership compact (interstate compact). I am Randy Blumer, Deputy Commissioner for the Office of the Commissioner of Insurance (OCI) and with me is Fred Nepple, General Counsel with OCI.

This morning, I am going to provide you with OCI's perspective on the interstate receivership compact.

Interstate Compact: Wisconsin Perspective

OCI supports the proposed interstate compact legislation because it enables Wisconsin's participation with other states to create and develop the framework for interstate cooperation in the administration of receiverships for insurance companies. Most insurers operate in multiple states. As such, Wisconsin residents are affected by the liquidation of insurers domiciled in other states and, similarly, residents of other states are affected by the liquidation of a Wisconsin insurer.

Liquidation of insurers are a rare but complex event. An interstate mechanism to facilitate receiverships will encourage high standards for their administration and provide a resource for expertise to deal with these difficult situations.

Interstate Compact: Content

The bill accomplishes the following:

- establishes a Commission to coordinate and oversee administration of liquidations by member states;
- establishes a forum for dispute resolution for insolvency's involving multiple states;
- allows a state insurance department to delegate administration of a liquidation to the Commission; and,
- permits the Commission to take over a liquidation if it is determined the liquidation is being improperly administered.

The Commission is composed of the insurance commissioners of the member states. The act carefully prescribes the authority and procedures for the Commission's functions.

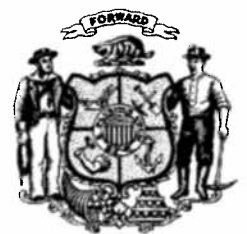
OCI believes that the Interstate Receivership Commission will serve as an additional resource for the efficient administration of liquidation of Wisconsin insurers and of insurers domiciled in other states. It will allow the states to coordinate liquidations, provide standards for efficient administration of liquidations, and provide a forum for resolution of interstate disputes, all to the benefit of Wisconsin consumers.

Thank you, again, for the opportunity to talk with you about SB372 and AB637. I would be pleased to answer any questions you might have at this time.

relationlegcompct10doc102395



WISCONSIN STATE LEGISLATURE



AMERICAN FAMILY INSURANCE GROUP

REGIONAL LEGAL DEPARTMENT - MADISON OFFICE
302 N WALBRIDGE AVENUE MADISON WI

MAILING ADDRESS: 6000 AMERICAN PKY MADISON WI 53783-0001
(608)249-2111
DIRECT FAX: 608-243-4912

Bernard T. McCartan-Regional Counsel
Donald E. Schultz-Managing Attorney
Scott J. Seymour
Ronald A. Ritchie
Rick L. Packard
William G. Rasche
Mary L. McDaniel

Paralegal:
Amy J. Klein

November 30, 1995

Madam Chairperson and Members of the Assembly Insurance
Committee:

My name is Bernard T. McCartan, and I am the Wisconsin Regional Claim Counsel for the American Family Mutual Insurance Company in Madison, Wisconsin. American Family is a Wisconsin based insurance corporation offering a full line of insurance products for individuals and businesses. In my position at American Family I am responsible for managing the Claims Legal Department in the State of Wisconsin. My department handles all claim related litigation involving the company and/or its insureds. We are also the principal legal advisors to the company's Claim Department concerning claim handling in the State of Wisconsin.

I am appearing before this committee today to speak in opposition to Assembly Bill 482.

On its face, it appears that the bill is directed at insurers seeking access to grades as part of the application or underwriting process. However, the bill does not specifically say that, and could be argued to restrict access to such information in certain types of first party personal injury claims, specifically uninsured motorists and underinsured motorist claims.

In the claims area, we have a need for access to this sort of information from time to time in cases involving alleged head injuries. In such cases the individual making the claim generally alleges that they have suffered a reduction in mental capacity or a change of personality or behavior as a result of an accident. Typically, the claim is one for loss of future earning capacity based upon a claimed inability to complete an education, perform a certain type of job, enter a profession, etc. When investigating such claims, we often find that school records predating the accident do not support the claim that the person was functioning at a significantly higher intellectual level before the accident than afterwards. We may also find relevant evidence of behavioral problems predating the accident. Grades and other relevant information in school files (such as IQ and behavioral information) are critical to our defense of such cases.

November 30, 1995
Assembly Bill 482
Page 2

My sense of this bill after reading it is that it is not intended to apply in the sort of situation which I have described. However, as it is currently drafted, it could be applied to restrict our ability to properly investigate and evaluate head injury claims.

For these reasons I urge the committee not to send the bill to the floor of the Assembly for action.

Bernard T. McCartan - Regional Claim Counsel
BTM/ja