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☞ Details: National Conference of Insurance Legislators (NCOIL) correspondence and documents

(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**



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PRESIDENT ELECT: REP. STAN BAINTER, FL.
VICE PRESIDENT: SEN. HARVEY D. TALLACKSON, ND
SECRETARY: REP. GARY RICHARDSON, AZ.
TREASURER: SEN. PAUL WARTNER, MI

**EXECUTIVE COMMITTEE
RESOLUTION RE INTERSTATE COMPACT
ADOPTED BY THE STATE-FEDERAL RELATIONS COMMITTEE
JULY 15, 1994**

WHEREAS, the National Conference of Insurance Legislators (NCOIL) has developed interstate compact legislation aimed at the more speedy and effective payment of claims of insurance policyholders in multistate insolvencies; and

WHEREAS, such a compact was developed by the NCOIL State-Federal Relations Committee after several public meetings and public hearings aimed at making insurance regulation more effective across state lines; and

WHEREAS, state legislators representing the states of Florida, Indiana, Michigan, Missouri, Nebraska, New Hampshire, New Jersey, New York, North Carolina, Ohio, Texas, and Wisconsin served on the State-Federal Relations Committee in its development of compact legislation; and

WHEREAS, the same compact legislation has been introduced in Nebraska and Missouri; and

WHEREAS, similar compact legislation has been introduced in Michigan; and

WHEREAS, the introduction of the same compact legislation is contemplated in several states in early 1995; and

WHEREAS, the NCOIL compact proposal has been described in a National Underwriter editorial as "a coherent and completed proposal which encompasses the setting of guaranty fund policy as well at implementation of that policy;" and

WHEREAS, the Commissioners of states in the Midwest Zone of the NAIC, comprising the states of Illinois, Indiana, Iowa, Kansas, Michigan, Minnesota, Missouri, Nebraska, North Dakota, Ohio, Oklahoma, South Dakota, and Wisconsin have developed a similar compact; and

CHAIR OF THE EXECUTIVE COMMITTEE: SEN. MARTIN M. SOLOMON, NY **EXECUTIVE COMMITTEE:** SEN. CHRIS ABBODD, NE, REP. GLENN ANSARDI, LA, REP. WILLIAM G. BATCHELDER, OH, SEN. WILLIAM V. BELANGER, MN, SEN. ARTHUR L. BERMAN, IL, SEN. CLESSON BLAISDELL, NH, REP. NICHOLAS A. COLAFELLA, PA, REP. JOHN F. COSGROVE, FL, REP. DAVID COUNTS, TX, REP. RONNIE CULBRETH, GA, REP. DAVE DONLEY, AK, ASSEM. CLARE FARRAGHER, NJ, REP. STEVE FLOWERS, AL, REP. TED HAIR, JR., LA, SEN. DAVID S. HOLMES, JR., MI, SEN. JOSEPH E. JOHNSON, NC, SEN. DAVID M. LANDIS, NE, SEN. WILLIAM J. LARKIN, JR., NY, REP. ALLEN LAYSON, AL, SEN. JAMES A. LEWIS, JR., IN, REP. JIMMY LORD, GA, REP. WILLIAM D. LORGE, WI, SEN. GLENN F. MCCONNELL, SC, REP. VINCENT J. MESOLELLA, RI, REP. J. STURGIS MILLER, AK, REP. ANTHONY J. MELIO, PA, SEN. JOSEPH M. MINARD, WV, REP. RAMSEY MORRIS, KY, SEN. ROBERT W. NEY, OH, SEN. JOSEPH F. O'DAY, IN, REP. TERRY R. PARKE, IL, DEL. DEBBIE PHILLIPS, WV, REP. KERMIT W. RICHARDSON, VT, SEN. BEN ROBINSON, OK, SEN. EDWARD B. SALLEBY, SC, SEN. DON SAMUELSON, MN, SEN. DALE W. SCHULTZ, WI, SEN. PAUL S. SMITH, NC, REP. ORESTE VALSANGIACOMO, VT, REP. FRANCIS J. WALD, ND, REP. JAMES F. YARDLEY, UT.
PAST PRESIDENTS AND MEMBERS OF THE EXECUTIVE COMMITTEE: SEN. RICHARD W. WORMAN, IN, SPEAKER HAROLD W. BURNS, NH, REP. MIKE STINZIANO, OH.
EXEC. DIRECTOR: ROBERT F. MACKIN **MEETING DIRECTOR:** CHARLES O. DAVIS **NATIONAL OFFICE:** 122 S. SWAN STREET ALBANY, NY 12210-1713. TEL: 518 449 3210. FAX: 518 432 5551

WHEREAS, a resolution aimed at adoption of compact legislation by the states has been adopted in the California Senate; and

WHEREAS, a resolution calling upon the states to enact interstate compact legislation covering guaranty funds, rehabilitation and liquidation of insolvent insurers, agents and broker licensing and alien insurers and reinsurers has been circulated as an exposure draft in the U. S. House of Representatives; and

WHEREAS, the U.S. Advisory Commission on Intergovernmental Relations has strongly urged the states to enter into interstate compacts to assure uniform application of rehabilitation, liquidation, and guaranty fund rules; and

WHEREAS, agreement on and enactment of interstate compact legislation would send to Congress a seminal message that the states can act together in the best interest of consumers and others directly affected by a multi-state insurer insolvency;

WHEREAS, NCOIL firmly supports the concept that meetings that are open to the public and the news media would lead to greater public input and public discussion; and

WHEREAS, NCOIL will only support an interstate compact that contains a clear and definite statement that supports and allows for open meetings; and

WHEREAS, NCOIL firmly supports the concept of legislative oversight, and NCOIL will only support an interstate compact that protects and preserves the right of a majority of compacting states' legislatures to reject a statute, regulation, rule or operating procedure adopted by the interstate commission, and reaffirms the right of legislative oversight;

NOW, THEREFORE, BE IT RESOLVED THAT the NCOIL State-Federal Relations Committee establish a special Task Force on Interstate Compacts; and

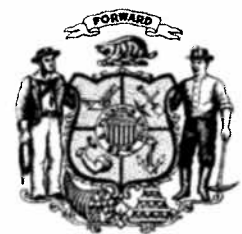
NOW, THEREFORE, BE IT ALSO RESOLVED THAT the Task Force work with the Commissioners of the NAIC Midwest Zone to agree on a compact prior to the NCOIL Annual Meeting in New York City on November 12-16 of 1994; and

NOW, THEREFORE, BE IT ALSO RESOLVED THAT failing such an agreement, the Special Task Force on Interstate Compacts, established by this resolution, press forward for adoption of NCOIL's final version of a compact by states during the 1995-96 legislative biennium.

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WISCONSIN STATE LEGISLATURE





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MEMORANDUM

DATE: SEPTEMBER 14, 1994
TO: PARTICIPANTS IN THE SEPTEMBER 14
3:00 P.M. CONFERENCE CALL
FROM: SUSAN NOLAN, MACKIN & COMPANY
RE: NAIC MIDWEST ZONE COMPACT LANGUAGE

The following is intended to be helpful in our discussions this afternoon. It identifies differences between the NAIC Midwest Zone Interstate Insurance Receivership Compact and the NCOIL Interstate Insurance Protection Compact.

DEFINITION OF INSURERS

The NAIC Midwest Zone Compact definition of insurers includes insurance agents and brokers, while the NCOIL Compact does not.

This may generate opposition from producer organizations, i.e., PIA, etc.

MIDWEST: Article II. Section 9 (*Drafting Note*), p. 4
NCOIL: Article 1. Section 1.7, p. 2

MEMBER VOTES

The Midwest Zone Compact gives each member one vote. This eliminates the concept of "premium votes" as proposed in the NCOIL Compact.

MIDWEST: Article V. Section A(2), p. 8
NCOIL: Article 1. Section 1.12/13, p. 3

IMMUNITY/MISCONDUCT

The NAIC Midwest Zone Compact provides immunity from liability and lawsuits for Compact commissioners, officers, and employees. The NCOIL Compact provides for defense of such persons in such actions.

The NAIC provision could immunize a receiver of an insurance company from a suit by a creditor and would not go over well in legislatures.

The Midwest Zone Compact's standard of conduct in respect to law suits relates to gross negligence, a lower level of conduct than that of the NCOIL Compact, which also speaks of "intentional wrongdoing" as misconduct.

The Midwest Zone Compact commissioners, officers and employees would be immune from any liability as long as they are not wanton.

MIDWEST: Article V. Section D (1)(2), p. 10

NCOIL: Article 4. Section 3(8), p. 8

DISCLOSURE OF DOCUMENTS

In addition to the standard public disclosure provisions, the Midwest Zone Compact provisions exempt from public disclosure any information or records that would "unduly impair the ability of the Commission to effectively discharge its duties and responsibilities."

The provisions for disclosure of documents are made broad, vague and standardless by this exemption. The Midwest Compact could adopt a disclosure act like the federal Freedom of Information Act or state Freedom of Information Rules.

MIDWEST: Article VI. Section 5, p. 11

STANDARD OF CONDUCT

The Midwest Zone Compact does not provide a standard of conduct which would apply to the Commission. The NCOIL Compact provides in Section 10, Section 1, that each compacting state has the obligation to "implement, execute and administer in a fair, just, effective and efficient manner" its own statutes, regulations, rules and operating procedures, as well as those of the Compact Commission.

The Midwest Compact lacks the affirmative duty to regulate in a sensible fashion as provided in the NCOIL Compact.

NCOIL: Article 10. Section 1, p. 19

ROLE OF COMPACT COMMISSION

The Midwest Zone Compact receivership functions are monitoring and oversight. The Commission would have to prove misconduct on the part of a receiver in order to take on the receivership function. The NCOIL Compact makes its Commission the receiver in all cases.

The Midwest Zone Compact shifts the balance of power away from the Commission toward the states.

MIDWEST: Article VII. Section A, p. 15

NCOIL: Article 8. Section 1, p. 15

CONSTITUTIONALITY

The Midwest Zone Compact provides that, "in the event that any provision of this Compact exceeds the constitutional limits imposed on the legislature of any Compacting State, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the Commission shall be ineffective and such obligations, duties, power or jurisdiction shall remain in the Compacting State. . ."

This makes the Midwest Zone Compact subordinate to state law, in comparison to the NCOIL Compact, in which the compact law is supreme. This would impinge upon the uniformity sought in a compact. It would also necessitate research to be effected into state laws before compact law could be approved.

MIDWEST: Article XIV. Section B(4), p. 25

NCOIL: Article 4, pp. 5,6,7

OPT-OUTS

The Midwest Zone Compact rule making functions do not offer a provision that a compact rule would not be binding if rejected by a majority of compacting states, as does the NCOIL Compact. The Midwest Compact provides that (1) uniform provisions governing insurance receiverships would become law in compacting states upon legislative enactment in a majority of states, and (2) any rule or amendment becomes ineffective in a state if the state rejects it by legislative enactment before the end of the second calendar year from the date of its promulgation.

We specifically asked for the opt-out provision on the ground that without it, the Compact would not have a chance of enactment by state legislatures.

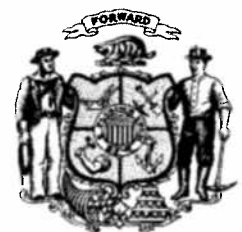
MIDWEST: Article VII. Sections 3 and 4, pp. 13 & 14

NCOIL: Article 7. Sections 3(1) and 3(2), p. 14

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WISCONSIN STATE LEGISLATURE





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TREASURER: SEN. PAUL WARTNER, MI

MEMORANDUM

DATE: OCTOBER 12, 1994

TO: AD HOC SUBCOMMITTEE ON INTERSTATE COMPACT

SENATOR PHIL CURLS, CHAIR,
STATE-FEDERAL RELATIONS COMMITTEE
SENATOR CHRIS ABBOD, VICE CHAIR,
STATE-FEDERAL RELATIONS COMMITTEE
SENATOR LEO FRASER
REPRESENTATIVE STAN BAINTEK
SENATOR PAUL WARTNER

CC: WILLIAM LATZA, STROOK & STROOK & LAVAN

FROM: SUSAN NOLAN, MACKIN & COMPANY

RE: AMENDMENTS TO NAIC MIDWEST ZONE COMPACT
IN RESPONSE TO THE SEPTEMBER 13 CONFERENCE CALL

This memo identifies amendments to the NAIC Midwest Zone Interstate Insurance Receivership Compact in its September 18 Discussion Draft which responded to issues and concerns raised by NCOIL members during the September 13 conference call. It also enumerates issues raised by NCOIL which received no response in the September 18 Discussion Draft.

ISSUES OF CONCERN THAT WERE ANSWERED IN THE SEPTEMBER 13
DISCUSSION DRAFT:

1. DEFINITION OF INSURERS

CONCERN: NCOIL members expressed concern that a drafting note to the definition of insurers in the NAIC Midwest Zone Compact which expands the definition to include insurance agents and brokers may generate opposition to the compact from producer organizations.

RESPONSE: The September 18 Midwest Zone Discussion Draft strikes the specific language, "an insurance agency, broker, or other entity," from the definition and adds the more general language, "any person or entity" to the rest of the phrase, "engaged in insurance business without a statutorily required license, certificate of authority or other required authorization to conduct such business in a Compacting State." **See Article II. Section 9 (Drafting Note), p. 4**

2. DISCLOSURE OF DOCUMENTS

CONCERN: NCOIL was concerned that provisions for disclosure of documents in the Midwestern Zone Compact were made broad, vague and standardless exempting from disclosure any information or records that would "unduly impair the ability of the Commission to effectively discharge its duties and responsibilities."

RESPONSE: The September 18 Discussion Draft strikes this language from its disclosure provisions. **See Article VI. Section 5, p. 11**

3. STANDARD OF CONDUCT

CONCERN: NCOIL raised the issue that the Midwest Zone Compact does not provide a standard of conduct which would apply to the Commission, as provided in Article 10, Section 1 of the NCOIL Compact.

RESPONSE: The September 18 Discussion Draft adds to rule making functions of the Commission consideration of uniform "provisions establishing standards of conduct." **See Article VII. Section 3, p. 13**

4. OPT-OUTS

CONCERN: NCOIL noted that the Midwest Zone Compact rule making functions do not offer a provision that a compact rule would be non-binding if rejected by a majority of compacting states, as does the NCOIL Compact.

RESPONSE: The September 18 Discussion Draft amends its opt-out language to provide that "If a majority of Compacting States reject a Rule, then such Rule shall have no further force and effect in all Compacting States," in addition to the already specified single state opt-out. **See Article VII. Section 4, p. 14**

ISSUES OF CONCERN TO NCOIL THAT WERE NOT ANSWERED IN THE SEPTEMBER 13 DISCUSSION DRAFT:

1. ROLE OF COMPACT COMMISSION

The Midwest Zone Compact receivership functions are monitoring and oversight. The Commission would have to prove misconduct on the part of a receiver in order to take on the receivership function. The NCOIL Compact makes its Commission the receiver in all cases.

The Midwest Zone Compact shifts the balance of power away from the Commission toward the states.

MIDWEST: Article VII. Section A, p. 15

NCOIL: Article 8. Section 1, p. 15

2. CONSTITUTIONALITY

The Midwest Zone Compact provides that, "in the event any provision of this Compact exceeds the constitutional limits imposed on the legislature of any Compacting State, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the Commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the Compacting State. . ."

This makes the Midwest Zone Compact subordinate to state law, in comparison to the NCOIL Compact, in which the compact law is supreme. This would impinge upon the uniformity sought in a compact. It would also necessitate research to be effected into state laws before compact law could be approved.

MIDWEST: Article XIV. Section B(4), p. 25
NCOIL: Article 4, pp. 5,6,7

3. IMMUNITY/MISCONDUCT

The NAIC Midwest Zone Compact provides immunity from liability and lawsuits for Compact commissioners, officers, and employees. The NCOIL Compact provides for defense of such persons in such actions.

The NAIC provision could immunize a receiver of an insurance company from a suit by a creditor and would not go over well in legislatures.

The Midwest Zone Compact's standard of conduct in respect to law suits relates to gross negligence, a lower level of conduct than that of the NCOIL Compact, which also speaks of "intentional wrongdoing" as misconduct.

The Midwest Zone Compact commissioners, officers and employees would be immune from any liability as long as they are not wanton.

MIDWEST: Article V. Section D (1)(2), p. 10
NCOIL: Article 4. Section 3(8), p. 8

4. MEMBER VOTES

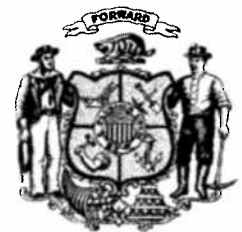
The Midwest Zone Compact gives each member one vote. This eliminates the concept of "premium votes" as proposed in the NCOIL Compact.

MIDWEST: Article V. Section A(2), p. 8
NCOIL: Article 1. Section 1.12/13, p. 3

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WISCONSIN STATE LEGISLATURE





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TREASURER: SEN. PAUL WARTNER, MI.

MEMORANDUM

DATE: OCTOBER 27, 1994
TO: NCOIL STATE-FEDERAL RELATIONS COMMITTEE

SENATOR PHIL CURLS, MO, CHAIR
SENATOR CHRIS ABOUD, NE, VICE CHAIR
SENATOR LEO FRASER, NH, VICE CHAIR
SENATOR BILL LARKIN, NY, VICE CHAIR
REPRESENTATIVE JOE ARNALL, FL
REPRESENTATIVE STAN BAINTER, FL
SENATOR ART BERMAN, IL
REPRESENTATIVE DAVID COUNTS, TX
ASSEMBLYWOMAN CLARE FARRAGHER, NJ
REPRESENTATIVE TED HAIK, LA
SENATOR JOSEPH JOHNSON, NC
REPRESENTATIVE CHRISTOPHER LIESE, MO
REPRESENTATIVE WILLIAM LORGE, WI
SENATOR BOB MADIGAN, IL
REPRESENTATIVE ANTHONY MELIO, PA
REPRESENTATIVE BONNIE PACKARD, NH
REPRESENTATIVE TERRY PARKE, IL
SENATOR MARTIN SOLOMON, NY
REPRESENTATIVE MARY ANNE STEVENS, MS
REPRESENTATIVE FRANCIS WALD, ND
SENATOR RICHARD WORMAN, IN

CC: ALL OTHER NCOIL LEGISLATORS
FROM: BOB MACKIN
RE: INTERSTATE COMPACT

As you will see from the enclosed joint statement by Senator Fraser and Acting Illinois Insurance Director Jim Schacht, the ad hoc subcommittee of the NCOIL State-Federal

Albers
What is our constitution gives
Legislator or legislators
the authority to create
an interstate commission
as that described &
do transfer subpoena
powers etc to the
commission

Relations Committee and the Compact Drafting Group of the NAIC Midwest Zone Commissioners have agreed on a draft compact covering receiverships of multi-state insurers.

The NCOIL State-Federal Relations Committee began work on compact legislation in 1991. Now there is a very good chance that compact legislation will be considered and adopted by several states during the 1995-96 biennium.

To have full NCOIL endorsement, the proposed draft compact will have to be approved by the State-Federal Relations Committee and the Executive Committee.

To help inform you regarding the discussions which took place over the last several weeks, I have enclosed two memoranda by Susan Nolan which describe points raised by the NCOIL ad hoc subcommittee and the responses of the NAIC Midwest Zone Compact Drafting Group. The agreed-upon proposed draft compact document reflects much of NCOIL's input and is totally consistent with the Compact resolution adopted by the State-Federal Relations Committee in Burlington.

As the joint statement also indicates, the full State-Federal Relations Committee will hold a public hearing on the proposed receivership compact at the Inter-Continental Hotel in New York City on Monday, November 14, beginning at 2:30 p.m.

This will be an important hearing. Both the Midwest Zone people and the NCOIL ad hoc group want to hear any opposition and make adjustments now rather than see it surface for the first time in the state legislatures in 1995.

Specifically, the items enclosed are

- the joint statement for release to the news media;
- the proposed draft receivership compact document;
- memoranda by Susan Nolan re discussions on compact language, dated September 14 and October 12; and
- the compact resolution adopted by the Committee in Burlington.

Please let me know if you have any questions.





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FOR RELEASE AT WILL:

CONTACT: JIM SCHACHT
(217) 785-5516

BOB MACKIN
(518) 449-3210

**JOINT STATEMENT OF JAMES W. SCHACHT,
ACTING DIRECTOR OF INSURANCE OF THE STATE OF ILLINOIS,
AND NEW HAMPSHIRE STATE SENATOR LEO W. FRASER, JR., PRESIDENT
OF THE NATIONAL CONFERENCE OF INSURANCE LEGISLATORS (NCOIL)
FRIDAY, OCTOBER 28, 1994**

The Compact Drafting Group of the NAIC Midwest Zone Commissioners and a special ad hoc subcommittee of the State-Federal Relations Committee of NCOIL have reached agreement on a proposed draft NAIC Midwest Zone-NCOIL Interstate Insurance Receivership Compact covering receiverships of insolvent multistate insurers.

The proposed compact will be the subject of a public hearing to be held under the joint sponsorship of the NCOIL State-Federal Relations Committee and the NAIC Midwest Zone Compact Drafting Group at the Inter-Continental Hotel, 111 East 48th Street, New York City, on Monday, November 14, 1994 beginning at 2:30 p.m.

We invite testimony from all interested parties representing consumers, insurers, insurance industry organizations, the general business community, insurance commissioners, and state legislators.

The agreement was reached in several telephone conferences over the last few weeks. These conferences have been marked by a cooperative spirit which we look forward to continuing in pursuit of the adoption of interstate compact legislation by state legislatures in 1995.

CHAIR OF THE EXECUTIVE COMMITTEE: SEN. MARTIN M. SOLOMON, NY. **EXECUTIVE COMMITTEE:** SEN. CHRIS ABBODD, NE, REP. GLENN ANSARDI, LA, REP. WILLIAM G. BATCHELDER, OH, SEN. WILLIAM V. BELANGER, MN, SEN. ARTHUR L. BERMAN, IL, SEN. GLESSON BLAISDELL, NH, REP. NICHOLAS A. COLAFELLA, PA, REP. JOHN F. COSGROVE, FL, REP. DAVID COUNTS, TX, REP. RONNIE CULBRETH, GA, REP. DAVE DONLEY, AK, ASSEM. CLARE FARRAGHER, NJ, REP. STEVE FLOWERS, AL, REP. TED HAIR, JR., LA, SEN. DAVID S. HOLMES, JR., MI, SEN. JOSEPH E. JOHNSON, NC, SEN. DAVID M. LANDIS, NE, SEN. WILLIAM J. LARKIN, JR., NY, REP. ALLEN LAYSON, AL, SEN. JAMES A. LEWIS, JR., IN, REP. JIMMY LORD, GA, REP. WILLIAM D. LORGE, WI, SEN. GLENN F. MCCONNELL, SC, REP. VINCENT J. MESOLELLA, RI, REP. J. STURGIS MILLER, AK, REP. ANTHONY J. MELIO, PA, SEN. JOSEPH M. MINARD, WV, REP. RAMSEY MORRIS, KY, SEN. ROBERT W. NEY, OH, SEN. JOSEPH F. O'DAY, IN, REP. TERRY R. PARKE, IL, DEL. DEBBIE PHILLIPS, WV, REP. KERMIT W. RICHARDSON, VT, SEN. BEN ROBINSON, OK, SEN. EDWARD E. SALEEBY, SC, SEN. DON SAMUELSON, MN, SEN. DALE W. SCHULTZ, WI, SEN. PAUL S. SMITH, NC, REP. ORESTE VALSANGIACOMO, VT, REP. FRANCIS J. WALD, ND, REP. JAMES F. YARDLEY, UT.
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If approved by the NCOIL State-Federal Relations Committee following the hearing, the proposal would be submitted to the NCOIL Executive Committee at its meeting scheduled for November 16.

Other members of the NCOIL ad hoc subcommittee who participated in the negotiations are

Representative Stan Bainter, FL
Vice President of NCOIL
Member, Florida House Insurance Committee

Senator Phil Curls, MO
Chair, NCOIL State-Federal Relations Committee
Chair, Missouri Senate Insurance Committee

Senator Chris Abboud, NE
Vice Chair, NCOIL State-Federal Relations Committee
Member, Nebraska Senate

Other members of the NAIC Midwest Zone Compact Drafting Group who participated in discussions with the NCOIL ad hoc subcommittee are

Robert Bailey, Deputy Director
Michigan Insurance Bureau

Jo Page, General Counsel
Iowa Insurance Department

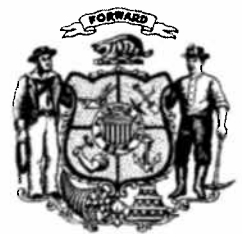
Robert Lange, Acting Director
Nebraska Insurance Department

A copy of the joint draft compact proposal is attached. The copy reflects recent deletions (strikeouts) and additions (shaded) in the draft.

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WISCONSIN STATE LEGISLATURE



PROPOSED DRAFT
NAIC MIDWEST ZONE-NCOIL
INTERSTATE INSURANCE RECEIVERSHIP COMPACT

OCTOBER 28, 1994

INTERSTATE INSURANCE RECEIVERSHIP COMPACT

This Interstate Compact legislation covers only insurance receiverships and ~~guaranty funds~~. The legislation establishes an Interstate Compact Commission which would have broad powers and authority to establish uniform rules and to oversee the conduct of receiverships and ~~guaranty funds~~. Additionally, in certain instances, the Commission itself is empowered to act as Receiver.

September 18, 1994
Discussion Draft
Work Product of NAIC
Compact Drafting Group
Not yet approved by Midwest Zone
Commissioners

ARTICLE I. PURPOSES

The purposes of this Compact are, through means of joint and cooperative action among the Compacting States:

1. To promote, develop and facilitate orderly, efficient, and cost effective ~~and uniform~~ Insurer Receiverships and Guaranty Fund ~~laws and~~ operations;
2. To coordinate Insurer Receivership and Guaranty Fund operations;
3. To create the Interstate Insurance Receivership Commission; ~~and~~
4. ~~To promote, develop and facilitate uniformity in Insurer Receivership laws and operations;~~
5. ~~To promote, develop and facilitate consistency in Guaranty Fund laws as appropriate; and~~
6. To perform these and such other related functions as may be consistent with the state regulation of the business of insurance pursuant to the McCarran-Ferguson Act.

~~Drafting Note: While the purposes of this Compact as stated above include Guaranty Funds, it is intended that the Commission will not interfere with the long standing policy that the Guaranty Funds are separate and distinct from Insurer Receiverships.~~

ARTICLE II. DEFINITIONS

For the purposes of this Compact:

1. "By-laws" mean those by-laws established by the Commission for its governance, directing or controlling the Commission's actions or conduct.
2. "Compacting State" means any State which has enacted enabling legislation for, or otherwise agreed to be bound as a party by the terms and conditions of, this Compact.
3. "Commission" means the "Interstate Insurance Receivership Commission" established by this Compact.
4. "Commissioner" means the chief insurance regulatory official of a State.
5. "Deputy Receiver" means any person appointed or retained by a Receiver and who is the Receiver's duly authorized representative for administering one or more Estates.
6. "Domiciliary State" means the state in which an Insurer is incorporated or organized; or, in the case of an alien Insurer, its state of entry; or in the case of an unauthorized Insurer not domiciled in any other state, the state where the Insurer is engaged in or doing business.
7. "Estate" means any Insurer in Receivership.
8. "Guaranty Fund" means an insurance guaranty fund or association or any similar entity now or hereafter created by statute in a Compacting State, other than a Receivership, to pay or assume, in whole or in part, the contractual claim obligations of insolvent Insurers.
9. "Insurer" means any person who has done, purports to do, is doing or is licensed to do any insurance or reinsurance business, or is or has been subject to the authority of, or to liquidation, rehabilitation, supervision, conservation or ancillary receivership by, any Commissioner.

Drafting Note: It is intended that the definition of "Insurer" be construed broadly to enable the Commission to place into receivership in accordance with applicable state insurance receivership laws ~~an insurance agency, broker, or other entity~~ ~~any person or entity~~ engaged in insurance business without a statutorily required license, certificate of authority or other required authorization to conduct such business in a Compacting State.

10. "Member" means the Commissioner of a Compacting State or his or her designee who shall be a person officially connected with the Commissioner and who is wholly or principally employed by said Commissioner.
11. "Non-compacting State" means any State which has not enacted enabling legislation for, or otherwise agreed to be bound as a party by the terms and conditions of, this Compact.
12. "Operating Procedures" mean procedures established by the Commission implementing a Rule, an existing law in a Compacting State, or a provision of this Compact.
13. "Publication" means publication in the official state publication in a Compacting State or in such other publication as may be established by the Commission.
14. "Receiver" means receiver, liquidator, rehabilitator, conservator or ancillary receiver as the context requires.
15. "Receivership" means any liquidation, rehabilitation, conservation or ancillary receivership proceeding as the context requires.
16. "Rules" mean acts of the Commission duly adopted pursuant to Article VII of this Compact substantially affecting interested parties in addition to the Commission, which shall have the force and effect of law in the Compacting States.
17. "State" means any state, district or territory of the United States of America.

ARTICLE III. ESTABLISHMENT OF THE COMMISSION AND VENUE

1. The Compacting States hereby create and establish an entity known as the "Interstate Insurance Receivership Commission."
2. The Commission is a body corporate of each Compacting State.
3. The Commission is a not-for-profit entity, separate and distinct from the Compacting States.
4. The Commission is solely responsible for its liabilities except as otherwise provided in this Compact.
5. Except as otherwise specifically provided in state or federal law in the jurisdiction where the Commission's principal office is located or where the Commission is acting as Receiver, venue is proper and judicial proceedings by or against the Commission shall be brought in a court of competent jurisdiction where the Commission's principal office is located.

ARTICLE IV. POWERS OF THE COMMISSION

The Commission shall have the following powers:

1. To promulgate Rules which shall be binding in the Compacting States to the extent and in the manner provided in this Compact;
2. To prescribe Operating Procedures which shall be binding in the Compacting States to the extent and in the manner provided in this Compact;
3. To oversee, supervise and coordinate the activities of Receivers in Compacting States;

4. To act as Receiver of Insurers organized under the laws of, engaged in or doing the business of insurance, in a Compacting State upon the request of the Commissioner of such State or when grounds for Receivership by the Commission exist under Article IX of this Compact;
5. To act as Deputy Receiver of Insurers organized under the laws of, engaged in or doing the business of insurance, in a Non-compacting State in accordance with Article IX of this Compact;
6. To act as ancillary Receiver in a Compacting State of an Insurer domiciled in a Non-compacting State;
- ~~7. To establish one or more committees of representatives of Guaranty Funds from the Compacting States to facilitate handling of Receiverships in or affecting Compacting States;~~
- ~~8. To monitor, oversee and coordinate the activities and functions of Guaranty Funds in the Compacting States;~~
- ~~9. To exercise the powers of a Guaranty Fund upon the request of such Guaranty Fund or upon the request of a Commissioner to the extent authorized by that Commissioner's state law other than this Compact;~~
- ~~10. To delegate its operating authority or functions, provided, that its rulemaking authority under Article VII of this Compact shall not be delegated;~~
- ~~11. To bring or prosecute legal proceedings or actions in its name as the Commission, or in the name of the Commission acting as Receiver;~~
- ~~12. To bring or prosecute legal proceedings or actions on behalf of an Estate or its policyholders and creditors, provided, that the Guaranty Fund's standing to sue or be sued under applicable law shall not be affected;~~
- ~~13. To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence;~~
- ~~14. To establish and maintain offices;~~

- 4513. To purchase and maintain insurance and bonds;
- 4614. To borrow, accept or contract for services of personnel ~~including, but not limited to, Members and their staff~~ and the use of property, real, personal or mixed;
- 4715. To elect or appoint such officers, attorneys, employees or agents, and to fix their compensation, define their duties and determine their qualifications;
- 4816. To accept any and all donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same;
- 4917. To lease, purchase, accept gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed;
- 2018. To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed;
- 2419. To enforce compliance with Commission Rules, Operating Procedures and By-laws;
- 2220. To provide for dispute resolution among Compacting States, Receivers and Guaranty Funds;
- 2321. To represent and advise Compacting States on issues relating to Insurers domiciled or doing business in Non-compacting jurisdictions;
- 2422. To provide advice and training to Receivership and Guaranty Fund personnel of Compacting States, and to be a resource for Compacting States by maintaining a reference library of relevant materials;
- 2523. To establish a budget and make expenditures;
- ~~24. To borrow money;~~
- 2625. To appoint committees including, but not limited to, an industry advisory committee and an executive committee of Members;

- 27~~25~~ To provide and receive information relating to Receiverships and Guaranty Funds, and to cooperate with law enforcement agencies;
- 28~~27~~ To establish the Commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation and qualifications of personnel;
- 29~~28~~ To adopt and use a corporate seal; and
- 30~~29~~ To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact.

ARTICLE V. ORGANIZATION OF THE COMMISSION

Section A. Membership, Voting and By-laws

- 1. Each Compacting State shall have and be limited to one Member. Each Member shall be qualified under or pursuant to the applicable law of the Compacting State. Each Compacting State retains the discretionary right to determine the due election or appointment and qualification of its own Commissioner, and to fill all vacancies of its Member.
- 2. Each Member shall be entitled to one vote.
- 3. The Commission shall, by a majority of the Members, adopt By-laws to govern its conduct as may be necessary or appropriate to carry out the purposes of the Compact, including, but not limited to:
 - a. establishing the fiscal year of the Commission;
 - b. providing reasonable standards and procedures (i) for the establishment of committees, and (ii) governing any general or specific delegation of any authority or function of the Commission;

- c. providing reasonable procedures for calling and conducting meetings of the Commission, and ensuring reasonable notice of each such meeting;
- d. establishing the titles and responsibilities of the officers of the Commission;
- e. 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 By-laws shall exclusively govern the personnel policies and programs of the Commission; and
- f. providing a mechanism for winding up the operations of the Commission and the equitable return 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.

Section B. Officers and Personnel

1. The Commission shall, by a majority of the Members, elect annually from among its Members a chairperson and a vice chairperson, each of whom shall have such authorities and duties as may be specified in the By-laws. The chairperson or, in his or her absence or disability, a Member designated in accordance with the By-laws, shall preside at all meetings of the Commission. The officers so elected shall serve without compensation or remuneration from the Commission; provided that, subject to the availability of budgeted funds, the officers shall be reimbursed for any actual and necessary expenses incurred by them in the performance of their duties and responsibilities as officers of the Commission.

2. The Commission may, by a majority of the Members, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Commission may deem appropriate. The executive director shall serve as secretary to the Commission, but shall not be a Member of the Commission. The executive director shall hire and supervise such other staff as may be authorized by the Commission.

Section C. Corporate Records of the Commission

The Commission shall maintain its corporate books and records in accordance with the By-laws.

Section D. Qualified Immunity and Indemnification

1. The Members, officers, executive director and employees of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error or omission that occurred, or that the defendant had a reasonable basis for believing occurred, within the scope of Commission employment, duties or responsibilities; provided that, nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of any such person.
2. The Commission shall defend any Commissioner of a Compacting State, or his or her representatives or employees, or the Commission's representatives or employees, in any civil action or any counterclaim seeking to impose liability, arising out of any actual or alleged act, error or omission that occurred, or that the defendant had a reasonable basis for believing occurred, within the scope of Commission employment, duties or responsibilities.

3. The Commission shall indemnify and hold the Commissioner of a Compacting State, or his or her representatives or employees, or the Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained against such persons arising out of any actual or alleged act, error or omission that occurred, or that such persons had a reasonable basis for believing occurred, within the scope of Commission employment, duties or responsibilities.

ARTICLE VI. MEETINGS AND ACTS OF THE COMMISSION

1. The Commission shall meet and take such actions as are consistent with the provisions of this Compact.
2. Except as otherwise provided in this Compact and unless a greater percentage is required by the By-laws, in order to constitute an act of the Commission, such act shall have been taken at a meeting of the Commission and shall have received an affirmative vote of a majority of the Members.
3. Each Member of the Commission shall have the right and power to cast a vote to which that Compacting State is entitled and to participate in the business and affairs of the Commission. A Member shall vote in person and shall not delegate his or her vote to another Member. The By-laws may provide for Members' participation in meetings by telephone or other means of telecommunications.
4. The Commission shall meet at least once during each calendar year. The chairperson of the Commission may call additional meetings at any time and, upon the request of a majority of the Members, shall call additional meetings.
5. The Commission's Rules shall establish conditions and procedures under which the Commission shall make its information and official records available to the public for inspection or copying. The Commission may exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests, ~~or unduly impair the ability of the Commission to effectively discharge its duties and responsibilities.~~ In adopting Rules, the Commission may consider

any special circumstances pertaining to Insurer insolvencies, but shall be guided by the principles embodied in state and federal freedom of information laws. The Commission may establish additional Rules under which it may make available to law enforcement agencies records and information otherwise exempt from disclosure, and may enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

6. Public notice shall be given of all meetings and all meetings shall be open to the public, except as set forth in the Rules or as otherwise provided in this Compact, and recorded. The Commission shall issue Rules consistent with the principles contained in the "Government in Sunshine Act," 5 U.S.C. Section 552(b). The Commission and any of its committees may close a meeting to the public where it determines by majority ~~two-thirds~~ vote that an open meeting would be likely to:
 - a. relate solely to the Commission's internal personnel practices and procedures;
 - b. disclose matters specifically exempted from disclosure by statute;
 - c. disclose trade secrets or commercial or financial information which is privileged or confidential;
 - d. involve accusing any person of a crime, or formally censuring any person;
 - e. disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;
 - f. disclose investigatory records compiled for law enforcement purposes;
 - g. disclose information contained in or related to examination, operating or condition reports prepared by, or on behalf of or for the use of the Commission with respect to a regulated entity for the purpose of regulation or supervision of such entity;

- h. disclose information, the premature disclosure of which would significantly endanger the stability of a regulated entity;
 - i. specifically relate to the Commission's issuance of a subpoena, or its participation in a civil action or proceeding.
- 7. For every meeting closed pursuant to this provision, the Commission's chief legal officer shall publicly certify that, in his or her opinion, the meeting may be closed to the public, and shall reference each relevant exemptive provision. The Commission shall keep minutes which shall fully and clearly describe all matters discussed in any meeting and shall provide a full and accurate summary of any actions taken, and the reasons therefor, including a description of each of the views expressed on any item and the record of any rollcall vote (reflected in the vote of each Member on the question). All documents considered in connection with any action shall be identified in such minutes.

ARTICLE VII. RULEMAKING FUNCTIONS OF THE COMMISSION

- 1. The Commission shall promulgate Rules and Operating Procedures in order to effectively and efficiently achieve the purposes of this Compact.
- 2. Rulemaking shall occur pursuant to the criteria set forth in this Article and the Rules and Operating Procedures adopted pursuant thereto. Such rulemaking shall substantially conform to the principles of the federal Administrative Procedure Act, P.L. 87-554, and the Federal Advisory Committee Act, P.L. 92-463, as may be amended.
- 3. Other than the adoption of such Rules as are necessary for the orderly operation of the Commission, the first Rule to be considered by the Commission shall be uniform provisions governing Insurer Receiverships ~~including, but not limited to, provisions establishing standards of conduct.~~ The Commission shall within three years of the adoption of this Compact by two or more States, promulgate such uniform provisions through the rulemaking process. Such uniform provisions shall become law in all of the Compacting States upon legislative enactment in a majority of the Compacting States.

- ~~4. Any Rule adopted by the Commission, other than a Rule promulgated pursuant to paragraph 3 of this Article, that would be in conflict with a statute of a Compacting State relating to Guaranty Fund funding, Guaranty Fund coverages or benefits or priorities of estate asset distribution, including any amendment to a Rule promulgated pursuant to paragraph 3 of this Article relating to any such subject, to be binding on or in the Compacting States, shall become binding on or in each and every Compacting State at the end of the second full calendar year following adoption by the Commission; provided that a majority of Compacting States determined as of the expiration of such second full calendar year have not, before that time, expressly rejected such Rule through legislative enactment.~~
- ~~5. All other Rules and amendments shall become binding as of the date specified in each Rule or amendment; provided that, if a majority of Compacting States expressly reject such Rule or amendment through legislative enactment as of the expiration of the second full calendar year, such Rule or amendment shall have no further force and effect in the rejecting Compacting State. If a majority of Compacting States' reject a Rule, then such Rule shall have no further force and effect in all Compacting States.~~
- ~~6. When prescribing a Rule or Operating Procedure, the Commission shall (a) effect Publication of proposed rulemaking stating with particularity the text of the Rule or Operating Procedure which is proposed and the reason for the proposed Rule or Operating Procedure; (b) allow persons to submit written data, facts, opinions and arguments, which information shall be publicly available; (c) provide an opportunity for an informal hearing; and (d) promulgate a final Rule or Operating Procedure and its effective date, if appropriate, based on the rulemaking record.~~
- ~~7. Not later than sixty days after a Rule or Operating Procedure is promulgated, any interested person may file a petition in a court of competent jurisdiction where the Commission's principal office is located for judicial review of such Rule or Operating Procedure. If the court finds that the Commission's action is not supported by substantial evidence in the rulemaking record, the court shall hold the Rule unlawful and set it aside.~~

ARTICLE VIII. OVERSIGHT AND DISPUTE RESOLUTION BY THE COMMISSION

Section A. Oversight

1. The Commission shall oversee the administration and operations of Receiverships ~~and assist any Commissioner upon that Commissioner's request in monitoring the operation of Guaranty Funds in each Compacting State~~, and shall monitor Receiverships being administered in Non-compacting States which may significantly affect Compacting States.
2. To aid its monitoring, oversight and coordination responsibilities, the Commission shall establish Operating Procedures requiring each Member to submit written reports to the Commission as follows:
 - a. An initial report of the status of an Insurer within a reasonable time after the initiation of a Receivership;
 - b. An initial report to the Commission upon a finding or other official action that grounds for Receivership of a multi-state Insurer exist. Thereafter, reports shall be submitted periodically and as otherwise required pursuant to the Commission's Operating Procedures. The Commission shall be entitled to receive notice of, and shall have standing to appear in, Compacting States' Receiverships.
3. The Commission shall establish Operating Procedures requiring Receivers ~~and Guaranty Funds~~ to submit to the Commission periodic written reports and such additional information and documentation as the Commission may reasonably request. Each Compacting State's Receivers ~~and Guaranty Funds~~ shall establish the capability to obtain and provide all records, data and information required by the Commission in accordance with the Commission's Operating Procedures.
4. Except as to privileged records, data and information, the laws of any Compacting State pertaining to confidentiality or nondisclosure shall not relieve any Compacting State Commissioner ~~or Guaranty Fund~~ of the responsibility to disclose any relevant records, data or information to the Commission; provided that, disclosure to the Commission shall not be deemed to waive or otherwise affect any confidentiality requirement; and further provided that, the Commission shall be subject to the Compacting

State's laws pertaining to confidentiality and nondisclosure with respect to all records, data and information in its possession.

5. The courts and executive agencies in each Compacting State shall enforce this Compact and shall take all actions necessary and appropriate to effectuate the Compact's purposes and intent. In any Receivership or other judicial or administrative proceeding in a Compacting State pertaining to the subject matter of this Compact which may affect the powers, responsibilities or actions of the Commission, the Commission shall be entitled to receive all service of process in any such proceeding, and shall have standing to intervene in the Receivership or proceeding for all purposes.
6. The Commission shall analyze and correlate records, data, information and reports received from Receivers and Guaranty Funds, and shall make recommendations for improving their performance to the Compacting States ~~and Guaranty Funds~~. The Commission shall include summary information and data regarding its oversight functions in its annual report.

Section B. Dispute Resolution

1. The Commission shall attempt, upon the request of a Member, to resolve any disputes or other issues which are subject to this Compact and which may arise among Compacting States and Non-compacting States.
2. The Compacting States shall report to the Commission on issues or activities of concern to them, and cooperate with and support the Commission in the discharge of its duties and responsibilities.
3. The Commission shall promulgate an Operating Procedure providing for binding dispute resolution for disputes among Receivers.
4. The Commission shall facilitate voluntary dispute resolution for disputes among ~~Guaranty Funds~~, or Guaranty Funds and Receivers.

ARTICLE IX. RECEIVERSHIP FUNCTIONS OF THE COMMISSION

1. The Commission has authority to act as Receiver of any Insurer domiciled, engaged in or doing business in a Compacting State upon the request of the Commissioner of such Compacting State, or as otherwise provided in this Compact.
 - a. The Commission as Receiver shall have all powers and duties pursuant to the Receivership laws of the Domiciliary State.
 - b. The Commission as Receiver shall maintain accounts of receipts and disbursements of the Estates consistent with the accounting practices and procedures set forth in the By-laws.
 - c. The Commission as Receiver shall cause an annual audit of its Estates to be conducted by an independent certified public accountant unless the Estate lacks sufficient assets to conduct such audit.
 - d. The Commission as Receiver is authorized to delegate its Receivership duties and functions, and to effectuate such delegation through contracts with others.
2. The Commission shall act as Receiver of any Insurer domiciled or doing business in a Compacting State in the event that the Member acting as Receiver in that Compacting State fails to comply with duly-adopted Commission Rules or Operating Procedures. The Commission shall notify such Member in writing of his or her noncompliance with Commission Rules or Operating Procedures. If the Member acting as Receiver fails to remedy such noncompliance within ten days after his or her receipt of such notification, the Commission may petition the supervising court before which such Receivership is pending for an order substituting and appointing the Commission as Receiver of the Estate.
3. The Commission shall not act as Receiver of an Estate which appears to lack sufficient assets to fund such Receivership unless the Compacting State makes provisions for the payment of the Estate's administrative expenses satisfactory to the Commission.

4. The Commission may act as Deputy Receiver for any Insurer domiciled or doing business in a Non-compacting State in accordance with such State's laws, upon request of that Non-compacting State's Commissioner and approval of the Commission.
5. With respect to Receiverships pending in a Compacting State on the effective date of the enactment of this Compact by the Compacting State:
 - a. the Commission may act as Receiver of an Insurer upon the request of that Compacting State's Member and approval of the Commission; and
 - b. the Commission shall oversee, monitor and coordinate the activities of all Receiverships pending in that Compacting State regardless whether the Commission is acting as Receiver of Estates in the Compacting State.

ARTICLE X. FINANCE

1. The Commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization.
2. Except as otherwise provided in this Compact or by act of the Commission, the expenses of each Compacting State shall be the sole and exclusive responsibility of the respective Compacting State. The Commission may pay or provide for actual and necessary expenses for attendance of its Members at official meetings of the Commission or its designated committees.
3. The Commission shall levy on and collect an annual assessment from each Compacting State and each Insurer authorized to do business in a Compacting State to cover the cost of the internal operations and activities of the Commission and its staff in a total amount sufficient to cover the Commission's annual budget.

- a. The aggregate annual assessment amount shall be allocated ninety percent to Insurers, hereinafter referred to as the "Insurers' Portion," and ten percent to Compacting States, hereinafter referred to as the "Compacting States' Portion." The Insurers Portion shall be allocated to each Insurer by the percentage derived from a fraction, the numerator of which shall be the premium received on that Insurer's business in all Compacting States and the denominator of which shall be the premium received by all Insurers on business in all Compacting States. The Compacting States' Portion shall be allocated to each Compacting State by the percentage derived from a fraction, the numerator of which shall be the premium received by all Insurers domiciled in that Compacting State and the denominator shall be the premium received on all Insurers on business in all Compacting States. In no event shall an Insurer's assessment be less than \$50 or more than \$25,000, provided that, affiliated Insurers' combined assessments shall not exceed \$50,000. Each Insurer authorized to do business in a Compacting State shall timely pay assessments to the Commission to maintain its authority to do business in a Compacting State. Upon the request of an Insurer, the Commission may exempt or defer the assessment of any Insurer, if such assessment would cause the Insurer's financial impairment.
 - b. These assessments shall not be used to pay any costs or expenses incurred by the Commission and its staff acting as Receiver of Estates. Such costs shall be payable from the assets of the Estates as provided by law, except as otherwise provided in this Compact.
4. The Commission shall be reimbursed in the following manner for the costs and expenses incurred by the Commission and its staff acting as Receiver of Estates to the extent that an Insurer's assets may be insufficient for the effective administration of its Estate:
 - a. if the Insurer is domiciled in a Compacting State, then the Domiciliary State is responsible for reimbursing the Commission; provided that, if the Commission is acting as Receiver under paragraph 2 of Article IX, the Estate shall be closed unless that Compacting State makes provisions for reimbursing the Commission; and

- b. if the Insurer is unauthorized to do business in a Compacting State or if the Insurer is domiciled in a Non-compacting State and subject to ancillary receivership, then the Commission and such State shall agree to provisions for reimbursing the Commission prior to the Commission becoming Receiver of such Insurer.
5. To fund the cost of the initial operations of the Commission until its first annual budget is adopted and related assessments have been made, contributions from Compacting States and others may be accepted and an assessment on Insurers doing business in the Compacting States may be made not to exceed \$450 per Insurer.
6. The Commission's adopted budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in Article VII of this Compact. The budget shall determine the amount of the annual assessment. The Commission may accumulate a net worth not to exceed thirty percent of its then annual cost of operation to provide for contingencies and events not contemplated. These accumulated funds shall be held separately and shall not be used for any other purpose. The Commission's budget may include a provision for a contribution to the Commission's net worth.
7. The Commission shall be exempt from all taxation in and by the Compacting States.
8. The Commission shall not pledge the credit of any Compacting State, except by and with the appropriate legal authority of that Compacting State.
9. The Commission shall keep complete and accurate accounts of all its internal receipts (including grants and donations) and disbursements of all funds, other than Receivership assets, under its control. The internal accounts of the Commission shall be subject to the audit and accounting procedures established under its By-laws; provided that, all internal accounts of the Commission shall be audited annually by an independent certified public accountant and the report of such independent audit shall be made available to the public and shall be included in and become part of the annual report of the Commission to the Governors and legislatures of the Compacting States. The Commission's internal accounts, any workpapers related to any internal audit and any workpapers related to the independent audit, shall be confidential; provided that, such materials shall be made available: (i) in compliance with the order of any court of

competent jurisdiction; (ii) pursuant to such reasonable Rules as the Commission shall promulgate; and (iii) to any Commissioner, Governor of a Compacting State, or their duly authorized representatives.

10. No Compacting State shall have any claim to or ownership of any property held by or vested in the Commission or the Commission acting as Receiver or to any other Commission funds held pursuant to the provisions of this Compact.

ARTICLE XI. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

1. Any State is eligible to become a Compacting State.
2. The Compact shall become effective and binding upon legislative enactment of the Compact into law by two Compacting States. Thereafter, it shall become effective and binding as to any other Compacting State upon enactment of the Compact into law by that State.
3. Amendments to the Compact may be proposed by the Commission for enactment by the Compacting States. No amendment shall become effective and binding upon the Commission and the Compacting States unless and until it is enacted into law by unanimous consent of the Compacting States.

ARTICLE XII. WITHDRAWAL, DEFAULT AND TERMINATION

Section A. Withdrawal

1. Once effective, the Compact shall continue in force and remain binding upon each and every Compacting State; provided that, a Compacting State may withdraw from the Compact ("Withdrawing State") by enacting a statute specifically repealing the statute which enacted the Compact into law.

2. The effective date of withdrawal is the effective date of the repeal; provided that, the repeal shall not apply to any Receiverships, as to which the Commission is acting as Receiver, pending on the date of the repeal except by mutual agreement of the Commission and the Withdrawing State.
3. The Withdrawing State shall immediately notify the Chairperson of the Commission in writing upon the introduction of legislation repealing this Compact in the withdrawing State.
4. The Commission shall notify the other Compacting States of the Withdrawing State's intent to withdraw within sixty days of its receipt thereof.
5. The Withdrawing State is responsible for all assessments, obligations and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the Commission and the Withdrawing State. Notwithstanding the foregoing, the Withdrawing State is responsible for the costs of its Estates subject to this Compact pending on the date of repeal; the Commission and the other Estates subject to this Compact shall not bear any costs related to the Withdrawing State's Estates unless otherwise mutually agreed upon between the Commission and the Withdrawing State.
6. Reinstatement following withdrawal of any Compacting State shall occur upon the Withdrawing State reenacting the Compact or upon such later date as determined by the Commission.

Section B. Default

1. If the Commission determines that any Compacting State has at any time defaulted ("Defaulting State") in the performance of any of its obligations or responsibilities under this Compact, or the By-laws and duly-adopted Rules, all rights, privileges and benefits conferred by this Compact and any agreements entered into pursuant to this Compact shall be suspended from the effective date of default as

fixed by the Commission. The grounds for default include, but are not limited to, failure of a Compacting State to perform such obligations or responsibilities and any other grounds designated in Commission Rules. The Commission shall immediately notify the Defaulting State in writing of the Defaulting State's suspension pending a cure of the default. The Commission shall stipulate the conditions and the time period within which the Defaulting State must cure its default. If the Defaulting State fails to cure the default within the time period specified by the Commission, the Defaulting State shall be terminated from the Compact upon an affirmative vote of a majority of the Compacting States and all rights, privileges and benefits conferred by this Compact shall be terminated from the effective date of termination.

2. Within sixty days of the effective date of termination of a Defaulting State, the Commission shall notify the Governor and the Majority and Minority Leaders of the Defaulting State's legislature of such termination.
3. The termination of a Defaulting State shall apply to all Receiverships, as to which the Commission is acting as Receiver, pending on the effective date of termination except by mutual agreement of the Commission and the Defaulting State.
4. The Defaulting State is responsible for all assessments, obligations and liabilities incurred through the effective date of termination, and is responsible for the costs relating to its Estates subject to this Compact pending on the date of the termination. The Commission and the other Estates subject to this Compact shall not bear any costs relating the Defaulting State's Estates unless otherwise mutually agreed upon between the Commission and the Defaulting State.
5. Reinstatement following termination of any Compacting State requires both a reenactment of the Compact by the Defaulting State and the approval of the Commission pursuant to the Rules.

Section C. Dissolution of Compact

1. The Compact dissolves effective upon the date of the withdrawal or default of the Compacting State which reduces membership in the Compact to one Compacting State.
2. Upon the dissolution of this Compact, the Compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Commission shall be wound up and any surplus funds shall be distributed in accordance with the By-laws.

ARTICLE XIII. SEVERABILITY AND CONSTRUCTION

1. The provisions of this Compact shall be severable, and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the Compact shall be enforceable.
2. The provisions of this Compact shall be liberally construed to effectuate its purposes.

ARTICLE XIV. BINDING EFFECT OF COMPACT AND OTHER LAWS

Section A. Other Laws

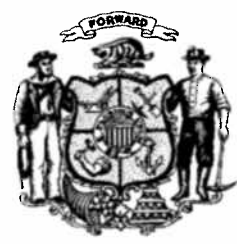
1. Nothing herein prevents the enforcement of any other law of a Compacting State that is not inconsistent with this Compact.
2. All Compacting States' laws conflicting with this Compact are superseded to the extent of the conflict.

Section B. Binding Effect of this Compact

1. All lawful actions of the Commission, including all Rules and Operating Procedures adopted by the Commission, are binding upon the Compacting States.
2. All agreements between the Commission and the Compacting States are binding in accordance with their terms.
3. Upon the request of a party to a conflict over meaning or interpretation of Commission actions, and upon a majority vote of the Compacting States, the Commission may issue advisory opinions regarding such meaning or interpretation.
4. In the event any provision of this Compact exceeds the constitutional limits imposed on the legislature of any Compacting State, the obligations, duties, powers or jurisdiction sought to be conferred by such provision upon the Commission shall be ineffective and such obligations, duties, powers or jurisdiction shall remain in the Compacting State and shall be exercised by the agency thereof to which such obligations, duties, powers or jurisdiction are delegated by law in effect at the time this Compact becomes effective.



WISCONSIN STATE LEGISLATURE





JUN 16 1995

State of Wisconsin / Office of the Commissioner of Insurance

Tommy G. Thompson
Governor

Josephine W. Musser
Commissioner

MEMORANDUM

121 East Wilson Street
PO Box 7873
Madison WI 53707-7873
(608) 266-3585

DATE: June 14, 1995
TO: Senate Insurance Committee members
Assembly Insurance Committee members
FROM: Josephine Musser
RE: NAIC Summer Quarterly Meeting

The National Association of Insurance Commissioners (NAIC) held its summer quarterly meeting in St. Louis, Missouri on June 3-7, 1995. At the spring meeting, nearly 170 meetings were held involving insurance commissioners, legislators, insurer and consumer representatives from across the nation.

As you know, the NAIC is examining not only the issues affecting the various lines of insurance but also its internal structuring and administration. The summer meeting provided NAIC members and other participants with a developing forum to review, analyze, and discuss the issues at hand.

I would like to thank Rep. Sheryl Albers for her attendance at the summer meeting. You may be interested in hearing her perspective on the activities. If you would like to discuss the NAIC or any other insurance issues, do not hesitate to call me (6-0102).

I am pleased to provide you with the following information highlights:

NAIC-specific issues

Accreditation: The NAIC accreditation program is designed to ensure company compliance with minimum insurance market standards. The NAIC voted to:

- > review the laws and regulations that are a part of the program
 - > review the standards for insurance departments
- Any proposed changes or additions to the standards must be reviewed according to:*
- > *purpose of standard & its effect on the market*
 - > *cost estimate of insurer compliance*
 - > *impact on consumers, without the standard*

Open Meeting Policy: The NAIC is committed to broadening participation at its meetings. In St. Louis, more than 90 percent of the sessions were open to the public. The NAIC voted to:

- > open its Executive Committee discussions, wherein NAIC officers, NAIC past presidents, and 3 members from each of the four geographic zones vote on issues, to the public
- > open its Plenary Session, wherein all final decisions of the NAIC are made, to the public
- > develop a system to open the committee's conference calls to the public by Jan. 1996

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Budget Process: The NAIC is committed to providing maximum opportunity for comment and input from all NAIC members, legislators, industry and consumer groups. The NAIC voted to:

- approve a modified budget process.

The process has the following steps:

1. *end August 1995: present budget proposal to NAIC Committee*
2. *Sept. meeting: present proposal to NAIC membership*
3. *Sept. meeting: hold Public Hearing #1*
4. *October: hold Public Hearing #2*
5. *Dec. meeting: adopt 1996 budget*

Health Insurance –specific Issues

Medicare Select: The Committee favors the House of Representatives' bill, which expands the program to all 50 states for five years, over the Senate version, which extends the program to all 50 states for 18 months. The Committee voted to:

- send a letter to the House & Senate conferees detailing the Committee's position

Portability Reform: The Committee supports the idea of credit for qualifying previous coverage for preexisting condition limitation exclusions. The Committee voted to:

- send a letter of support to Rep. Bill Thomas (R-CA), whose bill applies to all health plans, including self-funded ERISA-governed health benefit plans.

Stop Loss: Stop loss coverage can protect employer groups that are self-funding their workers' health coverage from unpredictable and excessive claims amounts. The Committee voted to:

- adopt the Stop Loss Model Act, which is intended to clarify when such a plan is operating as a health insurance policy and when it is functioning as a stop loss plan. It does this by defining the points at which stop loss coverage begins and health insurance coverage ends.

Insurance –general Issues

Insurance Availability & Affordability: The task force held two panel discussions that addressed how various initiatives came about, what was involved with implementing the initiatives, the success of the programs and how these programs might be replicated in other communities.

Specifically, the task force heard about the Southern California Insurance Partnership, the Neighborhood Partnership Program in Philadelphia, the Agent-Insurer Partnership Program in Atlanta, New Jersey's Mentoring Program for Agencies and The Inner-City Underwriting Agency in Chicago.

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Banking & Insurance: The panel discussed the latest legislative action by the US Congress on the Glass Steagall Act and other legislation affecting the insurance and banking industries. The Committee voted to:

- support either specific legislation introduced by Rep. Thomas Bliley (R-VA) or other legislation similar to it, which would maintain state control over insurance activities and require all insurance-related activities by banks to be approved by state insurance regulators.

Interstate Compact: The Committee heard two reports about interstate compact:

- 1) Interstate Alien Insurer and Reinsurer Regulatory Compact and
- 2) Interstate Insurance Receivership Compact.

Domestic Violence: The working group released for public comment a draft model law to address insurer's treatment of domestic violence victims. The working group voted to:

- accept public comment through the end of July
- meet in August to discuss comments and decide upon changes to the draft

NOTE: It is believed that the new draft could serve either as stand alone legislation, or could be used to amend a state's unfair trade practices act, a decision that would be left up to the states that choose to use the model.

Other Activity

Information Systems: Participants received briefings on the various IT projects.

- The Producer Database has 6 pilot states, *including Wisconsin*, on line and the next group of participants has been identified
- The System for Electronic Rate & Form Filing (SERFF) prototype is being developed for demonstration in December
- The State Interface for Technology Enhancement (SITE) now has 43 participating states, which have begun converting their systems from the NAIC mainframe to the new client/server applications

Antifraud: The working group voted to:

- adopt a new model act that defines fraudulent insurance acts and makes commission of a fraudulent insurance act a criminal offense.

NOTE: the model would replace three existing NAIC models relating to antifraud matters, the Model Insurance Fraud Statute, Model Legislation Creating an Insurance Fraud Unit in the Department of Insurance, and the Model Immunity Act.

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Multistate Examinations: The working group identified concerns involved with addressing problems of selected insurers whose business crosses state lines, such as preserving state identities, appropriation of tax dollars for examinations, potential for increased litigation, the reaction of agents, the quality of examination, and the availability of resources.

The working group decided to:

- > invite the insurance industry to submit their comments and suggestions about the issues discussed
- > hold a meeting in July or August to define the multi-state market examination process

If you would like more information on the NAIC or the issues discussed at the NAIC, please contact either Peter Farrow at 608/264-6239 or Melanie Paulsrud at 608/267-9336.