



MEMORANDUM

TO: Members of the Management Committee

FROM: Members of the Rulemaking Committee

DATE: June 26, 2017

SUBJECT: Review and Update to Insurance Compact Commission Bylaws

The [Bylaws of the Interstate Insurance Product Regulation Commission](#) (Compact Commission) were originally adopted on September 27, 2006 and the Bylaws with amendments to Article V, Section 2(J) and (K) were adopted on September 28, 2007. After consultation with the Compact Commission Office, the Rulemaking Committee is accepting comments on a recommendation to update or clarify the Bylaws since the last amendment ten years ago.

The proposed recommendation is for amendments to five provisions of the Bylaws. See Appendix A. Many of these suggested amendments are intended to clarify or address issues in the practical application of the particular provision. Other amendments are suggested in response to guidance from outside counsel to strengthen the Commission's tax reporting position for exclusion of its income from gross income under Section 115 of the Internal Revenue Code.

The Rulemaking Committee exposed this recommendation for public comment and held a public conference call on May 23, 2017. The Rulemaking Committee recommends to the Management Committee and Commission for further consideration the proposed amendments in Appendix A as well as seek comments on the need for other amendments or clarifications to the Compact Commission Bylaws.

APPENDIX A
PROPOSED BYLAW PROVISIONS FOR AMENDMENT
SUGGESTED BY COMPACT COMMISSION OFFICE

1. Suggestion from the Compact Commission Office to consider allowing members to designate on annual basis a proxy that can serve in place of the member as the member's designee with respect to Commission business. This change would alter the current requirement in Article II of the Bylaws that the member must provide written notice of proxy before each meeting.

Article II. Membership.

Pursuant to the Compact, each compacting state shall have and be limited to one Commission member. A member shall be a person qualified and selected to serve in that capacity according to the compacting state's laws. Each compacting state shall forward the name of its member to the Commission chair. A member may designate a person or persons to serve in place of the member as the member's designee with respect to Commission business, including attending Commission meetings, voting, and serving on one or more Commission committees, provided that the member's designee shall not have an affiliation, through employment or independent contract, with any other member of the Commission or member of the legislative committee or advisory committees. **At the beginning of each calendar year or any time during the calendar year, a member must deliver to the secretary of the Commission** a written notice identifying his or her designee(s) ~~to the secretary of the Commission or the Chair of any committee on or before the time of a meeting or Commission action for which the member's designee shall be authorized~~ **with the authority** to act in the capacity of the member **with respect to Commission business including specifying any limitations on the authority. The written designation will be effective until December 31 in the calendar year it is authorized unless otherwise stated** or. A member may cast only one vote on any matter, and only on behalf of the compacting state he or she represents.

2. Suggestion from the Commission Office to consider clarifying the term "ascending" and "highest rank" as it has become somewhat confusing at times with so many members in the second membership category of the Management Committee (more than 2% premium volume) and their growing tenure as members of the Commission and the Management Committee.

Article III. Management Committee.

A. The Management Committee shall consist of no more than fourteen (14) members, selected as follows:

....

- (2) Four (4) members from those compacting states with at least two percent (2%) of the market share based on the premium volume described above, other than the six (6) states described in Paragraph (1), selected on a rotating basis according to the

following method: 1) at the annual meeting of the Commission ~~in September~~ of each year, all members in this category shall be ranked in ~~ascending~~ order by the date of enactment of Compact legislation providing membership in the Commission **with the member who enacted the Compact legislation earliest being ranked one and the member who most recently enacted the Compact legislation being ranked at the last or highest number with members being ranked** alphabetically if members share the same date of enactment; and 2) identify the member in this category on the current Management Committee with the highest **number in the rank ranked order**. The four members to serve on the Management Committee for the following year shall be the four members **starting with next highest number in the ranks ranked order**, cycling back to rank one when necessary; provided that each compacting state in this category shall have an opportunity to be represented for the same number of **annual** terms on the Management Committee before any other compacting state in this same category is represented for an additional **annual** term; and

3. Suggest moving the three references to “September” with respect to when the Commission holds its annual meeting. After the NAIC moved to three in-person meetings per year, the Commission began holding its annual meeting in conjunction with the NAIC Winter Meeting which is generally after September each year.

Article III, Management Committee, Section 1.A.2: Four (4) members from those compacting states with at least two percent (2%) of the market share based on the premium volume described above, other than the six (6) states described in Paragraph (1), selected on a rotating basis according to the following method: 1) at the annual meeting of the Commission ~~in September~~ of each year

Article III, Management Committee, Section 2: Selection of the members delineated in Section 1A of this Article, other than Paragraph 1A(1), shall take place at the annual meeting of the Commission ~~in September~~ of each year.

Article VII, Commission Meetings, Section 1.B: The Commission shall hold an annual meeting ~~in September~~ of each year or as early as possible thereafter, at such time and place as it determines, to elect members of the Management Committee and Commission officers.

4. Suggestion to remove clause in paragraph regarding composition of Industry Advisory Committee that requires two seats be reserved for producers. Article VIII, Section 2.A(2) requires the industry advisory committee to represent the insurance industry including companies, producers and industry organizations. Producers are the only category where it is explicitly mandated to be represented with two seats. While producers are a very important part of the distribution chain for Compact-approved products, reserving two of eight available seats for producer organization limits the industry advisory committee from representing the breadth of product lines and subject matters covered under the Compact. The National Association of Insurance and Financial Advisors (NAIFA) is currently the only traditional producer organization on the IAC even though the Insured

Retirement Institute fills the other seat reserved for producer organizations as they not only represent companies but also brokers. In 2016, the Commission adopted composition and selection criteria for the industry advisory committee to ensure balanced representation by companies and member organizations interested in providing input to the Commission. Suggest removing the sentence so that the industry advisory committee is not required to reserve more than one seat for a particular sector of the industry.

Article VIII, Committees, Section 2.A

(2) *Insurance industry advisory committee.* The Commission shall establish an insurance industry advisory committee consisting of eight (8) representatives of the insurance industry including companies, producers and organizations whose membership is primarily composed of members of the insurance industry. The Commission shall develop a procedure for insurers, producers and organizations to nominate individuals for membership on the industry advisory committee and such procedure shall include submission of information to demonstrate the expertise and interest of the company, producer or organization and its nominee. The Management Committee shall appoint committee members to include representation from large, medium and small insurers and producers. ~~Producers shall have at least two members of the industry advisory committee.~~ The Commission shall appoint Committee members to serve staggered two-year terms with four terms expiring each year, except that four of the initial appointments shall serve one-year terms and four shall serve two-year terms.

5. Suggestions from outside counsel to align language in Bylaws with wording found acceptable by the Internal Revenue Service in recognizing income from interstate compact commission or bodies of member state agencies as excludable from gross income pursuant to Section 115 of the Internal Revenue Code of 1986, as amended (IRS Code).
- a. Distribution of Assets Upon Dissolution

Article XII. Dissolution of the Compact.

The Compact shall dissolve effective upon the date of the compacting states' withdrawal or termination by default that reduces membership in the Compact to one compacting state.

Upon the Compact's dissolution, the Compact becomes null and void and is of no further force and effect, and the Commission's business and affairs shall be wound up. Any surplus funds remaining after payment of all obligations of the Commission shall be used for repayment of any identifiable start-up funds contributed; provided that if the funds are not sufficient, distribution shall be made on a pro rata basis. ~~Any surplus funds remaining after the repayment of start-up funds shall be distributed equally to the compacting states that are members of the Commission upon dissolution.~~ **Upon dissolution, any assets remaining after the payment of debts and the satisfaction of liability are to be distributed**

either (1) in equal proportions, to the states or political subdivisions thereof for a public purpose provided they are members of the Commission upon dissolution or (2) to an organization whose income is excluded from gross income under Section 115 of the Code. Dissolution of the Commission shall not effect the validity of any actions taken by the Commission prior to its dissolution.

- b. Express Prohibition on Private Inurement

Article IX. Finance

Section 7. Prohibition Against Private_Inurement.

No part of the net earnings of the Commission shall inure to the benefit of, or be distributable to its members, directors or trustees, officers, or other private persons, except that the Commission shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the purposes of this corporation.