WEST VIRGINIA CODE: §33-47-5

§33-47-5. Organization of the commission.

(a) Membership, voting and bylaws of the commission shall be as follows:

(1) Each compacting state shall have and be limited to one member. Each member shall be qualified to serve in that capacity pursuant to applicable law of the compacting state. Any member may be removed or suspended from office as provided by the law of the state from which he or she is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compacting state wherein the vacancy exists. Nothing herein may be construed to affect the manner in which a compacting state determines the election or appointment and qualification of its own commissioner.

(2) Each member shall be entitled to one vote and shall have an opportunity to participate in the governance of the commission in accordance with the bylaws. Notwithstanding any provision herein to the contrary, no action of the commission with respect to the promulgation of a uniform standard shall be effective unless two thirds of the members vote in favor thereof.

(3) The commission shall, by a majority of the members, prescribe bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes, and exercise the powers, of the compact, including, but not limited to:

(A) Establishing the fiscal year of the commission;

(B) Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the management committee;

(C) Providing reasonable standards and procedures for the establishment and meetings of other committees, and providing standards and procedures governing any general or specific delegation of any authority or function of the commission;

(D) Providing reasonable procedures for calling and conducting meetings of the commission that consist of a majority of commission members, ensuring reasonable advance notice of each such meeting and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting en toto or in part. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed, and the votes taken during such meeting;

(E) Establishing the titles, duties and authority and reasonable procedures for the election of

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the officers of the commission;

(F) 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 bylaws shall exclusively govern the personnel policies and programs of the commission;

(G) Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees; and

(H) Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact after the payment and reserving of all of its debts and obligations.

(4) The commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the compacting states.

(b) Management committee, officers and personnel.

(1) A management committee comprising no more than fourteen members shall be established as follows:

(A) One member from each of the six compacting states with the largest premium volume for individual and group annuities, life, disability income and long-term care insurance products, determined from the records of the NAIC for the prior year;

(B) Four members from those compacting states with at least two percent of the market based on the premium volume described above, other than the six compacting states with the largest premium volume, selected on a rotating basis as provided in the bylaws; and

(C) Four members from those compacting states with less than two percent of the market, based on the premium volume described above, with one selected from each of the four zone regions of the NAIC as provided in the bylaws.

(2) The management committee shall have such authority and duties as may be set forth in the bylaws, including, but not limited to:

(A) Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission;

(B) Establishing and overseeing an organizational structure within, and appropriate procedures for, the commission to provide for the creation of uniform standards and other rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a compacting state to opt out of a uniform standard: Provided, That a uniform

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standard shall not be submitted to the compacting states for adoption unless approved by two thirds of the members of the management committee;

(C) Overseeing the offices of the commission; and

(D) Planning, implementing and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the commission.

(3) The commission shall elect annually officers from the management committee, with each having such authority and duties, as may be specified in the bylaws.

(4) The management committee may, subject to the approval of the commission, 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.

(c) Legislative and advisory committees.

(1) A legislative committee comprising state legislators or their designees shall be established to monitor the operations of, and make recommendations to, the commission, including the management committee: Provided, That the manner of selection and term of any legislative committee member shall be as set forth in the bylaws. Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget or other significant matter as may be provided in the bylaws, the management committee shall consult with and report to the legislative committee.

(2) The commission shall establish two advisory committees, one of which shall comprise consumer representatives independent of the insurance industry, and the other comprising insurance industry representatives.

(3) The commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.

(d) Corporate records of the commission.

The commission shall maintain its corporate books and records in accordance with the bylaws.

(e) Qualified immunity, defense and indemnification.

(1) The members, officers, executive director, employees and representatives 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 by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing

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occurred within the scope of commission employment, duties or responsibilities: Provided, That nothing in this subdivision shall be construed to protect any such person from suit or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of that person.

(2) The commission shall defend any member, officer, executive director, employee or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities: Provided, That nothing herein shall be construed to prohibit that person from retaining his or her own counsel: Provided, however, That the actual or alleged act, error or omission did not result from that person's intentional or willful and wanton misconduct.

(3) The commission shall indemnify and hold harmless any member, officer, executive director, employee or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities: Provided, That the actual or alleged act, error or omission did not result from the intentional or willful and wanton misconduct of that person.

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