

1 HB75
2 124470-1
3 By Representatives Wren, Canfield and Faust
4 RFD: Insurance
5 First Read: 01-MAR-11

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8 SYNOPSIS: Under existing law, individual and group
9 annuity, life, disability income, and long-term
10 care insurance policies must be filed with the
11 Commissioner of Insurance prior to their use in
12 this state.

13 This bill would adopt the Interstate
14 Insurance Product Regulation Compact to permit
15 uniform approval of individual and group annuity,
16 life, disability income, and long-term care
17 insurance policies, and thus permit this state to
18 become a member of the Interstate Insurance Product
19 Regulation Commission, with the Commissioner of
20 Insurance designated to serve as the representative
21 of this state to the commission.

22
23 A BILL
24 TO BE ENTITLED
25 AN ACT
26

1 Relating to insurance, to provide and adopt the
2 Interstate Insurance Product Regulation Compact to permit
3 uniform approval of individual and group annuity, life,
4 disability income, and long-term care insurance policies, and
5 thus permit this state to become a member of the Interstate
6 Insurance Product Regulation Commission, with the Commissioner
7 of Insurance designated to serve as the representative of this
8 state to the commission.

9 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

10 Section 1. Pursuant to the terms and conditions of
11 this act, the State of Alabama seeks to join with other states
12 and establish the Interstate Insurance Product Regulation
13 Compact, and thus become a member of the Interstate Insurance
14 Product Regulation Commission. The Alabama Commissioner of
15 Insurance is hereby designated to serve as the representative
16 of this state to the commission.

17 Section 2. The State of Alabama hereby agrees to the
18 following interstate compact known as the Interstate Insurance
19 Product Regulation Compact:

20 ARTICLE I. PURPOSES.

21 The purposes of this compact are, through means of
22 joint and cooperative action among the compacting states:

23 1. To promote and protect the interest of consumers
24 of individual and group annuity, life insurance, disability
25 income, and long-term care insurance products;

26 2. To develop uniform standards for insurance
27 products covered under the compact;

1 3. To establish a central clearinghouse to receive
2 and provide prompt review of insurance products covered under
3 the compact and, in certain cases, advertisements related
4 thereto, submitted by insurers authorized to do business in
5 one or more compacting states;

6 4. To give appropriate regulatory approval to those
7 product filings and advertisements satisfying the applicable
8 uniform standard;

9 5. To improve coordination of regulatory resources
10 and expertise between state insurance departments regarding
11 the setting of uniform standards and review of insurance
12 products covered under the compact;

13 6. To create the Interstate Insurance Product
14 Regulation Commission; and

15 7. To perform these and such other related functions
16 as may be consistent with the state regulation of the business
17 of insurance.

18 ARTICLE II. DEFINITIONS.

19 For purposes of this compact:

20 1. "Advertisement" means any material designed to
21 create public interest in a product, or induce the public to
22 purchase, increase, modify, reinstate, borrow on, surrender,
23 replace, or retain a policy, as more specifically defined in
24 the rules and operating procedures of the commission.

25 2. "Bylaws" mean those bylaws established by the
26 commission for its governance, or for directing or controlling
27 the actions or conduct of the commission.

1 3. "Compacting state" means any state which has
2 enacted this compact legislation and which has not withdrawn
3 pursuant to Section 1 of Article XIV, or been terminated
4 pursuant to Section 2 of Article XIV.

5 4. "Commission" means the Interstate Insurance
6 Product Regulation Commission established by this compact.

7 5. "Commissioner" means the chief insurance
8 regulatory official of a state including, but not limited to,
9 commissioner, superintendent, director, or administrator.

10 6. "Domiciliary state" means the state in which an
11 insurer is incorporated or organized; or, in the case of an
12 alien insurer, its state of entry.

13 7. "Insurer" means any entity licensed by a state to
14 issue contracts of insurance for any of the lines of insurance
15 covered by this compact.

16 8. "Member" means the person chosen by a compacting
17 state as its representative to the commission, or his or her
18 designee.

19 9. "Non-compacting state" means any state which is
20 not at the time a compacting state.

21 10. "Operating procedures" mean procedures
22 promulgated by the commission implementing a rule, uniform
23 standard, or a provision of this compact.

24 11. "Product" means the form of a policy or
25 contract, including any application, endorsement, or related
26 form which is attached to and made a part of the policy or
27 contract, and any evidence of coverage or certificate, for an

1 individual or group annuity, life insurance, disability
2 income, or long-term care insurance product that an insurer is
3 authorized to issue.

4 12. "Rule" means a statement of general or
5 particular applicability and future effect promulgated by the
6 commission, including a uniform standard developed pursuant to
7 Article VII, designed to implement, interpret, or prescribe
8 law or policy or describing the organization, procedure, or
9 practice requirements of the commission, which shall have the
10 force and effect of law in the compacting states.

11 13. "State" means any state, district, or territory
12 of the United States of America.

13 14. "Third party filer" means an entity that submits
14 a product filing to the commission on behalf of an insurer.

15 15. "Uniform standard" means a standard adopted by
16 the commission for a product line, pursuant to Article VII,
17 and shall include all of the product requirements in
18 aggregate. Each uniform standard shall be construed, whether
19 express or implied, to prohibit the use of any inconsistent,
20 misleading, or ambiguous provisions in a product and the form
21 of the product made available to the public shall not be
22 unfair, inequitable, or against public policy as determined by
23 the commission.

24 ARTICLE III. ESTABLISHMENT OF THE COMMISSION AND
25 VENUE.

26 1. The compacting states hereby create and establish
27 a joint public entity known as the Interstate Insurance

1 Product Regulation Commission. Pursuant to Article IV, the
2 commission shall have the power to develop uniform standards
3 for product lines, receive and provide prompt review of
4 products filed therewith, and give approval to those product
5 filings satisfying applicable uniform standards. It is not
6 intended for the commission to be the exclusive entity for
7 receipt and review of insurance product filings. Nothing
8 herein shall prohibit any insurer from filing its product in
9 any state wherein the insurer is licensed to conduct the
10 business of insurance, and any such filing shall be subject to
11 the laws of the state where filed.

12 2. The commission is a body corporate and politic,
13 and an instrumentality of the compacting states.

14 3. The commission is solely responsible for its
15 liabilities except as otherwise specifically provided in this
16 compact.

17 4. Venue is proper and judicial proceedings by or
18 against the commission shall be brought solely and exclusively
19 in a court of competent jurisdiction where the principal
20 office of the commission is located.

21 ARTICLE IV. POWERS OF THE COMMISSION.

22 The commission shall have all of the following
23 powers:

24 1. To promulgate rules, pursuant to Article VII,
25 which shall have the force and effect of law and shall be
26 binding in the compacting states to the extent and in the
27 manner provided in this compact.

1 2. To exercise its rule making authority and
2 establish reasonable uniform standards for products covered
3 under the compact, and advertisements related thereto, which
4 shall have the force and effect of law and shall be binding in
5 the compacting states, but only for those products filed with
6 the commission. A compacting state shall have the right to opt
7 out of such uniform standard pursuant to Article VII, to the
8 extent and in the manner provided in this compact, and any
9 uniform standard established by the commission for long-term
10 care insurance products may provide the same or greater
11 protections for consumers as, but shall not provide less than,
12 those protections set forth in the National Association of
13 Insurance Commissioners' Long-Term Care Insurance Model Act
14 and Long-Term Care Insurance Model Regulation, respectively,
15 adopted as of 2001. The commission shall consider whether any
16 subsequent amendments to the NAIC Long-Term Care Insurance
17 Model Act or Long-Term Care Insurance Model Regulation adopted
18 by the NAIC require amending of the uniform standards
19 established by the commission for long-term care insurance
20 products.

21 3. To receive and review in an expeditious manner
22 products filed with the commission, and rate filings for
23 disability income and long-term care insurance products, and
24 give approval of those products and rate filings that satisfy
25 the applicable uniform standard, where such approval shall
26 have the force and effect of law and be binding on the

1 compacting states to the extent and in the manner provided in
2 this compact.

3 4. To receive and review in an expeditious manner
4 advertisements relating to long-term care insurance products
5 for which uniform standards have been adopted by the
6 commission, and give approval to any advertisement that
7 satisfies the applicable uniform standard. For any product
8 covered under this compact, other than long-term care
9 insurance products, the commission shall have the authority to
10 require an insurer to submit all or any part of its
11 advertisements with respect to that product for review or
12 approval prior to use, if the commission determines that the
13 nature of the product is such that an advertisement of the
14 product could have the capacity or tendency to mislead the
15 public. The actions of the commission as provided in this
16 section shall have the force and effect of law and shall be
17 binding in the compacting states to the extent and in the
18 manner provided in this compact.

19 5. To exercise its rule making authority and
20 designate products and advertisements that may be subject to a
21 self-certification process without the need for prior approval
22 by the commission.

23 6. To promulgate operating procedures, pursuant to
24 Article VII, which shall be binding in the compacting states
25 to the extent and in the manner provided in this compact.

26 7. To bring and prosecute legal proceedings or
27 actions in its name as the commission. The standing of any

1 state insurance department to sue or be sued under applicable
2 law shall not be affected.

3 8. To issue subpoenas requiring the attendance and
4 testimony of witnesses and the production of evidence.

5 9. To establish and maintain offices.

6 10. To purchase and maintain insurance and bonds.

7 11. To borrow, accept, or contract for services of
8 personnel including, but not limited to, employees of a
9 compacting state.

10 12. To hire employees, professionals, or
11 specialists, and elect or appoint officers, and to fix their
12 compensation, define their duties, give them appropriate
13 authority to carry out the purposes of this compact, and
14 determine their qualifications, and to establish personnel
15 policies and programs of the commission relating to, among
16 other things, conflicts of interest, rates of compensation,
17 and qualifications of personnel.

18 13. To accept any and all appropriate donations and
19 grants of money, equipment, supplies, materials, and services
20 and to receive, utilize, and dispose of the same. At all times
21 the commission shall strive to avoid any appearance of
22 impropriety.

23 14. To lease, purchase, accept appropriate gifts or
24 donations of, or otherwise to own, hold, improve, or use any
25 property, real, personal, or mixed. At all times the
26 commission shall strive to avoid any appearance of
27 impropriety.

1 15. To sell, convey, mortgage, pledge, lease,
2 exchange, abandon, or otherwise dispose of any property, real,
3 personal or mixed.

4 16. To remit filing fees to compacting states as may
5 be set forth in the bylaws, rules, or operating procedures.

6 17. To enforce compliance by compacting states with
7 rules, uniform standards, operating procedures, and bylaws.

8 18. To provide for dispute resolution among
9 compacting states.

10 19. To advise compacting states on issues relating
11 to insurers domiciled or doing business in non-compacting
12 jurisdictions, consistent with the purposes of this compact.

13 20. To provide advice and training to those
14 personnel in state insurance departments responsible for
15 product review, and to be a resource for state insurance
16 departments.

17 21. To establish a budget and make expenditures.

18 22. To borrow money.

19 23. To appoint committees, including advisory
20 committees comprising members, state insurance regulators,
21 state legislators or their representatives, insurance industry
22 and consumer representatives, and such other interested
23 persons as may be designated in the bylaws.

24 24. To provide and receive information from, and to
25 cooperate with, law enforcement agencies.

26 25. To adopt and use a corporate seal.

1 26. To perform such other functions as may be
2 necessary or appropriate to achieve the purposes of this
3 compact consistent with the state regulation of the business
4 of insurance.

5 ARTICLE V. ORGANIZATION OF THE COMMISSION.

6 1. Membership, voting, and bylaws.

7 a. Each compacting state shall have and be limited
8 to one member. Each member shall be qualified to serve in that
9 capacity pursuant to applicable law of the compacting state.
10 Any member may be removed or suspended from office as provided
11 by the law of the state from which he or she shall be
12 appointed. Any vacancy occurring in the commission shall be
13 filled in accordance with the laws of the compacting state
14 wherein the vacancy exists. Nothing herein shall be construed
15 to affect the manner in which a compacting state determines
16 the election or appointment and qualification of its own
17 commissioner.

18 b. Each member shall be entitled to one vote and
19 shall have an opportunity to participate in the governance of
20 the commission in accordance with the bylaws. Notwithstanding
21 any provision herein to the contrary, no action of the
22 commission with respect to the promulgation of a uniform
23 standard shall be effective unless two-thirds of the members
24 vote in favor thereof.

25 c. The commission, by a majority of the members,
26 shall prescribe bylaws to govern its conduct as may be
27 necessary or appropriate to carry out the purposes, and

1 exercise the powers, of the compact including, but not limited
2 to, all of the following:

3 (i) Establishing the fiscal year of the commission.

4 (ii) Providing reasonable procedures for appointing
5 and electing members, as well as holding meetings, of the
6 management committee.

7 (iii) Providing reasonable standards and procedures
8 for the establishment and meetings of other committees, and
9 governing any general or specific delegation of any authority
10 or function of the commission.

11 (iv) Providing reasonable procedures for calling and
12 conducting meetings of the commission that consist of a
13 majority of commission members, ensuring reasonable advance
14 notice of each such meeting, and providing for the right of
15 citizens to attend each such meeting with enumerated
16 exceptions designed to protect the interest of the public, the
17 privacy of individuals, and proprietary information of
18 insurers, including trade secrets. The commission may meet in
19 camera only after a majority of the entire membership votes to
20 close a meeting en toto or in part. As soon as practicable,
21 the commission shall make public a copy of the vote to close
22 the meeting revealing the vote of each member with no proxy
23 votes allowed and votes taken during such meeting.

24 (v) Establishing the titles, duties and authority,
25 and reasonable procedures for the election of the officers of
26 the commission.

1 (vi) Providing reasonable standards and procedures
2 for the establishment of the personnel policies and programs
3 of the commission. Notwithstanding any civil service or other
4 similar laws of any compacting state, the bylaws shall
5 exclusively govern the personnel policies and programs of the
6 commission.

7 (vii) Promulgating a code of ethics to address
8 permissible and prohibited activities of commission members
9 and employees.

10 (viii) Providing a mechanism for winding up the
11 operations of the commission and the equitable disposition of
12 any surplus funds that may exist after the termination of the
13 compact after the payment or reserving, or both, of all of its
14 debts and obligations.

15 d. The commission shall publish its bylaws in a
16 convenient form and file a copy thereof, and a copy of any
17 amendment thereto, with the appropriate agency or officer in
18 each of the compacting states.

19 2. Management committee, officers, and personnel.

20 a. A management committee comprising no more than 14
21 members shall be established as follows:

22 (i) One member from each of the six compacting
23 states with the largest premium volume for individual and
24 group annuities, life, disability income, and long-term care
25 insurance products, determined from the records of the NAIC
26 for the prior year.

1 (ii) Four members from those compacting states with
2 at least two percent of the market based on the premium volume
3 described above, other than the six compacting states with the
4 largest premium volume, selected on a rotating basis as
5 provided in the bylaws.

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

10 b. The management committee shall have such
11 authority and duties as may be set forth in the bylaws
12 including, but not limited to, all of the following:

13 (i) Managing the affairs of the commission in a
14 manner consistent with the bylaws and purposes of the
15 commission.

16 (ii) Establishing and overseeing an organizational
17 structure within, and appropriate procedures for, the
18 commission to provide for the creation of uniform standards
19 and other rules, receipt and review of product filings,
20 administrative and technical support functions, review of
21 decisions regarding the disapproval of a product filing, and
22 the review of elections made by a compacting state to opt out
23 of a uniform standard. A uniform standard shall not be
24 submitted to the compacting states for adoption unless
25 approved by two-thirds of the members of the management
26 committee.

27 (iii) Overseeing the offices of the commission.

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

5 c. The commission shall elect annually officers from
6 the management committee, with each having such authority and
7 duties, as may be specified in the bylaws.

8 d. The management committee, subject to the approval
9 of the commission, may appoint or retain an executive director
10 for such period, upon such terms and conditions, and for such
11 compensation as the commission may deem appropriate. The
12 executive director shall serve as secretary to the commission,
13 but shall not be a member of the commission. The executive
14 director shall hire and supervise such other staff as may be
15 authorized by the commission.

16 3. Legislative and advisory committees.

17 a. A legislative committee, comprising state
18 legislators or their designees, shall be established to
19 monitor the operations of, and make recommendations to, the
20 commission, including the management committee. The manner of
21 selection and term of any legislative committee member shall
22 be as set forth in the bylaws. Prior to the adoption by the
23 commission of any uniform standard, revision to the bylaws,
24 annual budget, or other significant matter as may be provided
25 in the bylaws, the management committee shall consult with and
26 report to the legislative committee.

1 b. The commission shall establish two advisory
2 committees, one of which shall comprise consumer
3 representatives independent of the insurance industry, and the
4 other comprising insurance industry representatives.

5 c. The commission may establish additional advisory
6 committees as its bylaws may provide for the carrying out of
7 its functions.

8 4. Corporate records of the commission.

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

11 5. Qualified immunity, defense, and indemnification.

12 a. The members, officers, executive director,
13 employees, and representatives of the commission shall be
14 immune from suit and liability, either personally or in their
15 official capacity, for any claim for damage to or loss of
16 property or personal injury or other civil liability caused by
17 or arising out of any actual or alleged act, error, or
18 omission that occurred, or that the person against whom the
19 claim is made had a reasonable basis for believing occurred
20 within the scope of commission employment, duties, or
21 responsibilities. Nothing in this paragraph shall be construed
22 to protect any such person from suit or liability, or both,
23 for any damage, loss, injury, or liability caused by the
24 intentional or willful and wanton misconduct of that person.

25 b. The commission shall defend any member, officer,
26 executive director, employee, or representative of the
27 commission in any civil action seeking to impose liability

1 arising out of any actual or alleged act, error, or omission
2 that occurred within the scope of commission employment,
3 duties, or responsibilities, or that the person against whom
4 the claim is made had a reasonable basis for believing
5 occurred within the scope of commission employment, duties, or
6 responsibilities provided that the actual or alleged act,
7 error, or omission did not result from the intentional or
8 willful and wanton misconduct of that person. Nothing herein
9 shall be construed to prohibit that person from retaining his
10 or her own counsel.

11 c. The commission shall indemnify and hold harmless
12 any member, officer, executive director, employee, or
13 representative of the commission for the amount of any
14 settlement or judgment obtained against that person arising
15 out of any actual or alleged act, error, or omission that
16 occurred within the scope of commission employment, duties, or
17 responsibilities, or that such person had a reasonable basis
18 for believing occurred within the scope of commission
19 employment, duties, or responsibilities, provided, that the
20 actual or alleged act, error, or omission did not result from
21 the intentional or willful and wanton misconduct of that
22 person.

23 ARTICLE VI. MEETINGS AND ACTS OF THE COMMISSION.

24 1. The commission shall meet and take such actions
25 as are consistent with this compact and the bylaws.

26 2. Each member of the commission shall have the
27 right and power to cast a vote to which that compacting state

1 is entitled and to participate in the business and affairs of
2 the commission. A member shall vote in person or by such other
3 means as provided in the bylaws. The bylaws may provide for
4 participation by members in meetings by telephone or other
5 means of communication.

6 3. The commission shall meet at least once during
7 each calendar year. Additional meetings shall be held as set
8 forth in the bylaws.

9 ARTICLE VII. RULES AND OPERATING PROCEDURES:

10 RULE MAKING FUNCTIONS OF THE COMMISSION AND OPTING
11 OUT OF UNIFORM STANDARDS.

12 1. Rule making authority. The commission shall
13 promulgate reasonable rules, including uniform standards, and
14 operating procedures in order to effectively and efficiently
15 achieve the purposes of this compact. Notwithstanding the
16 foregoing, in the event the commission exercises its rule
17 making authority in a manner that is beyond the scope of the
18 purposes of this compact, or the powers granted hereunder,
19 then such an action by the commission shall be invalid and
20 have no force and effect.

21 2. Rule making procedure. Rules and operating
22 procedures shall be made pursuant to a rule making process
23 that conforms to the Model State Administrative Procedure Act
24 of 1981, as amended, as may be appropriate to the operations
25 of the commission. Before the commission adopts a uniform
26 standard, the commission shall give written notice to the
27 relevant state legislative committee or committees in each

1 compacting state responsible for insurance issues of its
2 intention to adopt the uniform standard. The commission in
3 adopting a uniform standard shall consider fully all submitted
4 materials and issue a concise explanation of its decision.

5 3. Effective date and opt out of a uniform standard.
6 A uniform standard shall become effective 90 days after its
7 promulgation by the commission or such later date as the
8 commission may determine. A compacting state may opt out of a
9 uniform standard as provided in this article. The term opt out
10 shall be defined as any action by a compacting state to
11 decline to adopt or participate in a promulgated uniform
12 standard. All other rules and operating procedures, and
13 amendments thereto, shall become effective as of the date
14 specified in each rule, operating procedure, or amendment.

15 4. Opt out procedure. A compacting state may opt out
16 of a uniform standard, either by legislation or regulation
17 duly promulgated by the insurance department under the
18 administrative procedure act of the compacting state. If a
19 compacting state elects to opt out of a uniform standard by
20 regulation, it shall give written notice to the commission no
21 later than 10 business days after the uniform standard is
22 promulgated, or at the time the state becomes a compacting
23 state and find that the uniform standard does not provide
24 reasonable protections to the citizens of the state, given the
25 conditions in the state. The commissioner shall make specific
26 findings of fact and conclusions of law, based on a
27 preponderance of the evidence, detailing the conditions in the

1 state which warrant a departure from the uniform standard and
2 determining that the uniform standard would not reasonably
3 protect the citizens of the state. The commissioner shall
4 consider and balance the following factors and find that the
5 conditions in the state and needs of the citizens of the state
6 outweigh: (i) The intent of the legislature to participate in,
7 and the benefits of, an interstate agreement to establish
8 national uniform consumer protections for the products subject
9 to this compact; and (ii) the presumption that a uniform
10 standard adopted by the commission provides reasonable
11 protections to consumers of the relevant product.

12 Notwithstanding the foregoing, a compacting state,
13 at the time of its enactment of this compact, may
14 prospectively opt out of all uniform standards involving
15 long-term care insurance products by expressly providing for
16 such opt out in the enacted compact, and such an opt out shall
17 not be treated as a material variance in the offer or
18 acceptance of any state to participate in this compact. Such
19 an opt out shall be effective at the time of enactment of this
20 compact by the compacting state and shall apply to all
21 existing uniform standards involving long-term care insurance
22 products and those subsequently promulgated.

23 5. Effect of opt out. If a compacting state elects
24 to opt out of a uniform standard, the uniform standard shall
25 remain applicable in the compacting state electing to opt out
26 until such time as the opt out legislation is enacted into law
27 or the regulation opting out becomes effective.

1 Once the opt out of a uniform standard by a
2 compacting state becomes effective as provided under the laws
3 of that state, the uniform standard shall have no further
4 force and effect in that state unless and until the
5 legislation or regulation implementing the opt out is repealed
6 or otherwise becomes ineffective under the laws of the state.
7 If a compacting state opts out of a uniform standard after the
8 uniform standard has been made effective in that state, the
9 opt out shall have the same prospective effect as provided
10 under Article XIV for withdrawals.

11 6. Stay of uniform standard. If a compacting state
12 has formally initiated the process of opting out of a uniform
13 standard by regulation, and while the regulatory opt out is
14 pending, the compacting state may petition the commission, at
15 least 15 days before the effective date of the uniform
16 standard, to stay the effectiveness of the uniform standard in
17 that state. The commission may grant a stay if it determines
18 the regulatory opt out is being pursued in a reasonable manner
19 and there is a likelihood of success. If a stay is granted or
20 extended by the commission, the stay or extension thereof may
21 postpone the effective date by up to 90 days, unless
22 affirmatively extended by the commission. A stay may not be
23 permitted to remain in effect for more than one year unless
24 the compacting state can show extraordinary circumstances
25 which warrant a continuance of the stay including, but not
26 limited to, the existence of a legal challenge which prevents
27 the compacting state from opting out. A stay may be terminated

1 by the commission upon notice that the rule making process has
2 been terminated.

3 7. Not later than 30 days after a rule or operating
4 procedure is promulgated, any person may file a petition for
5 judicial review of the rule or operating procedure. The filing
6 of such a petition shall not stay or otherwise prevent the
7 rule or operating procedure from becoming effective unless the
8 court finds that the petitioner has a substantial likelihood
9 of success. The court shall give deference to the actions of
10 the commission consistent with applicable law and shall not
11 find the rule or operating procedure to be unlawful if the
12 rule or operating procedure represents a reasonable exercise
13 of the authority of the commission.

14 ARTICLE VIII. COMMISSION RECORDS AND ENFORCEMENT.

15 1. The commission shall promulgate rules
16 establishing conditions and procedures for public inspection
17 and copying of its information and official records, except
18 such information and records involving the privacy of
19 individuals and trade secrets of insurers. The commission may
20 promulgate additional rules under which it may make available
21 to federal and state agencies, including law enforcement
22 agencies, records and information otherwise exempt from
23 disclosure, and may enter into agreements with such agencies
24 to receive or exchange information or records subject to
25 nondisclosure and confidentiality provisions.

26 2. Except as to privileged records, data, and
27 information, the laws of any compacting state pertaining to

1 confidentiality or nondisclosure shall not relieve any
2 compacting state commissioner of the duty to disclose any
3 relevant records, data, or information to the commission.
4 Disclosure to the commission shall not be deemed to waive or
5 otherwise affect any confidentiality requirement. Except as
6 otherwise expressly provided in this compact, the commission
7 shall not be subject to the laws of the compacting state
8 pertaining to confidentiality and nondisclosure with respect
9 to records, data, and information in its possession.
10 Confidential information of the commission shall remain
11 confidential after such information is provided to any
12 commissioner.

13 3. The commission shall monitor compacting states
14 for compliance with duly adopted bylaws, rules, including
15 uniform standards, and operating procedures. The commission
16 shall notify any noncomplying compacting state in writing of
17 its noncompliance with commission bylaws, rules, or operating
18 procedures. If a noncomplying compacting state fails to remedy
19 its noncompliance within the time specified in the notice of
20 noncompliance, the compacting state shall be deemed to be in
21 default as set forth in Article XIV.

22 4. The commissioner of any state in which an insurer
23 is authorized to do business, or is conducting the business of
24 insurance, shall continue to exercise his or her authority to
25 oversee the market regulation of the activities of the insurer
26 in accordance with the law of that state. The enforcement of

1 compliance with the compact by the commissioner is governed by
2 the following provisions:

3 a. With respect to the commissioner's market
4 regulation of a product or advertisement that is approved or
5 certified to the commission, the content of the product or
6 advertisement shall not constitute a violation of the
7 provisions, standards, or requirements of the compact except
8 upon a final order of the commission, issued at the request of
9 a commissioner after prior notice to the insurer and an
10 opportunity for hearing before the commission.

11 b. Before a commissioner may bring an action for
12 violation of any provision, standard, or requirement of the
13 compact relating to the use of an advertisement not approved
14 or certified to the commission, the commission, or an
15 authorized commission officer or employee, shall authorize the
16 action. However, authorization pursuant to this paragraph does
17 not require notice to the insurer, opportunity for hearing, or
18 disclosure of requests for authorization or records of the
19 action of the commission on such requests.

20 ARTICLE IX. DISPUTE RESOLUTION.

21 The commission, upon the request of a member, shall
22 attempt to resolve any disputes or other issues that are
23 subject to this compact and which may arise between two or
24 more compacting states, or between compacting states and
25 non-compacting states, and the commission shall promulgate an
26 operating procedure providing for resolution of such disputes.

27 ARTICLE X. PRODUCT FILING AND APPROVAL.

1 1. Insurers and third party filers seeking to have a
2 product approved by the commission shall file the product
3 with, and pay applicable filing fees to, the commission.
4 Nothing in this compact shall be construed to restrict or
5 otherwise prevent an insurer from filing its product with the
6 insurance department in any state wherein the insurer is
7 licensed to conduct the business of insurance, and such filing
8 shall be subject to the laws of the states where filed.

9 2. The commission shall establish appropriate filing
10 and review processes and procedures pursuant to commission
11 rules and operating procedures. Notwithstanding any provision
12 herein to the contrary, the commission shall promulgate rules
13 to establish conditions and procedures under which the
14 commission will provide public access to product filing
15 information. In establishing such rules, the commission shall
16 consider the interests of the public in having access to such
17 information, as well as protection of personal medical and
18 financial information and trade secrets, that may be contained
19 in a product filing or supporting information.

20 3. Any product approved by the commission may be
21 sold or otherwise issued in those compacting states for which
22 the insurer is legally authorized to do business.

23 ARTICLE XI. REVIEW OF COMMISSION DECISIONS REGARDING
24 FILINGS.

25 1. Not later than 30 days after the commission has
26 given notice of a disapproved product or advertisement filed
27 with the commission, the insurer or third party filer whose

1 filing was disapproved may appeal the determination to a
2 review panel appointed by the commission. The commission shall
3 promulgate rules to establish procedures for appointing such
4 review panels and provide for notice and hearing. An
5 allegation that the commission, in disapproving a product or
6 advertisement filed with the commission, acted arbitrarily,
7 capriciously, or in a manner that is an abuse of discretion or
8 otherwise not in accordance with the law, is subject to
9 judicial review in accordance with Article III.

10 2. The commission shall have authority to monitor,
11 review, and reconsider products and advertisements subsequent
12 to their filing or approval upon a finding that the product or
13 advertisement does not meet the relevant uniform standard.
14 Where appropriate, the commission may withdraw or modify its
15 approval after proper notice and hearing, subject to the
16 appeal process in Section 1.

17 ARTICLE XII. FINANCE.

18 1. The commission shall pay or provide for the
19 payment of the reasonable expenses of its establishment and
20 organization. To fund the cost of its initial operations, the
21 commission may accept contributions and other forms of funding
22 from the National Association of Insurance Commissioners,
23 compacting states, and other sources. Contributions and other
24 forms of funding from other sources shall be of such a nature
25 that the independence of the commission concerning the
26 performance of its duties shall not be compromised.

1 2. The commission shall collect a filing fee from
2 each insurer and third party filer filing a product with the
3 commission to cover the cost of the operations and activities
4 of the commission and its staff in a total amount sufficient
5 to cover the annual budget of the commission.

6 3. The budget of the commission for a fiscal year
7 shall not be approved until it has been subject to notice and
8 comment as set forth in Article VII.

9 4. The commission shall be exempt from all taxation
10 in and by the compacting states.

11 5. The commission shall not pledge the credit of any
12 compacting state, except by and with the appropriate legal
13 authority of that compacting state.

14 6. The commission shall keep complete and accurate
15 accounts of all its internal receipts, including grants and
16 donations, and disbursements of all funds under its control.
17 The internal financial accounts of the commission shall be
18 subject to the accounting procedures established under its
19 bylaws. The financial accounts and reports including the
20 system of internal controls and procedures of the commission
21 shall be audited annually by an independent certified public
22 accountant. Upon the determination of the commission, but no
23 less frequently than every three years, the review of the
24 independent auditor shall include a management and performance
25 audit of the commission. The commission shall make an annual
26 report to the governor and legislature of the compacting
27 states, which shall include a report of the independent audit.

1 The internal accounts of the commission shall not be
2 confidential and such materials may be shared with the
3 commissioner of any compacting state upon request. Any work
4 papers related to any internal or independent audit and any
5 information regarding the privacy of individuals and
6 proprietary information of insurers, including trade secrets,
7 shall remain confidential.

8 7. No compacting state shall have any claim to or
9 ownership of any property held by or vested in the commission
10 or to any commission funds held pursuant to this compact.

11 ARTICLE XIII. COMPACTING STATES, EFFECTIVE DATE, AND
12 AMENDMENT.

13 1. Any state is eligible to become a compacting
14 state.

15 2. The compact shall become effective and binding
16 upon legislative enactment of the compact into law by two
17 compacting states. The commission shall become effective for
18 purposes of adopting uniform standards for, reviewing, and
19 giving approval or disapproval of, products filed with the
20 commission that satisfy applicable uniform standards only
21 after 26 states are compacting states or, alternatively, by
22 states representing greater than 40 percent of the premium
23 volume for life insurance, annuity, disability income, and
24 long-term care insurance products, based on records of the
25 NAIC for the prior year. Thereafter, it shall become effective
26 and binding as to any other compacting state upon enactment of
27 the compact into law by that state.

1 3. Amendments to the compact may be proposed by the
2 commission for enactment by the compacting states. No
3 amendment shall become effective and binding upon the
4 commission and the compacting states unless and until all
5 compacting states enact the amendment into law.

6 ARTICLE XIV. WITHDRAWAL, DEFAULT, AND TERMINATION.

7 1. Withdrawal.

8 a. Once effective, the compact shall continue in
9 force and remain binding upon each and every compacting state.
10 A compacting state may withdraw from the compact ("withdrawing
11 state") by enacting a statute specifically repealing the
12 statute which enacted the compact into law.

13 b. The effective date of withdrawal is the effective
14 date of the repealing statute. However, the withdrawal shall
15 not apply to any product filings approved or self-certified,
16 or any advertisement of such products, as of the date the
17 repealing statute becomes effective, except by mutual
18 agreement of the commission and the withdrawing state unless
19 the approval is rescinded by the withdrawing state as provided
20 in subsection e.

21 c. The commissioner of the withdrawing state shall
22 immediately notify the management committee in writing upon
23 the introduction of legislation repealing this compact in the
24 withdrawing state.

25 d. The commission shall notify the other compacting
26 states of the introduction of such legislation within 10 days
27 after its receipt of notice thereof.

1 e. The withdrawing state is responsible for all
2 obligations, duties, and liabilities incurred through the
3 effective date of withdrawal, including any obligations, the
4 performance of which extend beyond the effective date of
5 withdrawal, except to the extent those obligations may have
6 been released or relinquished by mutual agreement of the
7 commission and the withdrawing state. The approval of the
8 commission of products and advertisements prior to the
9 effective date of withdrawal shall continue to be effective
10 and be given full force and effect in the withdrawing state,
11 unless formally rescinded by the withdrawing state in the same
12 manner as provided by the laws of the withdrawing state for
13 the prospective disapproval of products or advertisements
14 previously approved under state law.

15 f. Reinstatement following withdrawal of any
16 compacting state shall occur upon the effective date of the
17 withdrawing state reenacting the compact.

18 2. Default.

19 a. If the commission determines that any compacting
20 state has at any time defaulted ("defaulting state") in the
21 performance of any of its obligations or responsibilities
22 under this compact, the bylaws, or duly promulgated rules or
23 operating procedures, then, after notice and hearing as set
24 forth in the bylaws, all rights, privileges, and benefits
25 conferred by this compact on the defaulting state shall be
26 suspended from the effective date of default as fixed by the
27 commission. The grounds for default include, but are not

1 limited to, failure of a compacting state to perform its
2 obligations or responsibilities, and any other grounds
3 designated in commission rules. The commission shall
4 immediately notify the defaulting state in writing of the
5 suspension of the defaulting state pending a cure of the
6 default. The commission shall stipulate the conditions and the
7 time period within which the defaulting state must cure its
8 default. If the defaulting state fails to cure the default
9 within the time period specified by the commission, the
10 defaulting state shall be terminated from the compact and all
11 rights, privileges, and benefits conferred by this compact
12 shall be terminated from the effective date of termination.

13 b. Product approvals by the commission or product
14 self-certifications, or any advertisement in connection with
15 such product, that are in force on the effective date of
16 termination shall remain in force in the defaulting state in
17 the same manner as if the defaulting state had withdrawn
18 voluntarily pursuant to Section 1.

19 c. Reinstatement following termination of any
20 compacting state requires a reenactment of the compact.

21 3. Dissolution of compact.

22 a. The compact dissolves effective upon the date of
23 the withdrawal or default of the compacting state which
24 reduces membership in the compact to one compacting state.

25 b. Upon the dissolution of this compact, the compact
26 becomes null and void and shall be of no further force or
27 effect, and the business and affairs of the commission shall

1 be wound up and any surplus funds shall be distributed in
2 accordance with the bylaws.

3 ARTICLE XV. SEVERABILITY AND CONSTRUCTION.

4 1. The provisions of this compact shall be
5 severable; and if any phrase, clause, sentence, or provision
6 is deemed unenforceable, the remaining provisions of the
7 compact shall be enforceable.

8 2. The provisions of this compact shall be liberally
9 construed to effectuate its purposes.

10 ARTICLE XVI. BINDING EFFECT OF COMPACT AND OTHER
11 LAWS.

12 1. Other laws.

13 a. Nothing herein prevents the enforcement of any
14 other law of a compacting state, except as provided in
15 paragraph b.

16 b. For any product approved by or certified to the
17 commission, the rules, uniform standards, and any other
18 requirements of the commission shall constitute the exclusive
19 provisions applicable to the content, approval, and
20 certification of such products. For an advertisement that is
21 subject to the authority of the commission, any rule, uniform
22 standard, or other requirement of the commission which governs
23 the content of the advertisement shall constitute the
24 exclusive provision that a commissioner may apply to the
25 content of the advertisement. Notwithstanding the foregoing,
26 no action taken by the commission shall abrogate or restrict
27 any of the following:

1 (i) The access of any person to state courts.

2 (ii) Remedies available under state law related to
3 breach of contract, tort, or other laws not specifically
4 directed to the content of the product.

5 (iii) State law relating to the construction of
6 insurance contract.

7 (iv) The authority of the attorney general of the
8 state including, but not limited to, maintaining any actions
9 or proceedings, as authorized by law.

10 c. All insurance products filed with individual
11 states shall be subject to the laws of those states.

12 2. Binding effect of this compact.

13 a. All lawful actions of the commission, including
14 all rules and operating procedures promulgated by the
15 commission, are binding upon the compacting states.

16 b. All agreements between the commission and the
17 compacting states are binding in accordance with their terms.

18 c. Upon the request of a party to a conflict over
19 the meaning or interpretation of commission actions, and upon
20 a majority vote of the compacting states, the commission may
21 issue advisory opinions regarding the meaning or
22 interpretation in dispute.

23 d. In the event any provision of this compact
24 exceeds the constitutional limits imposed on the legislature
25 of any compacting state, the obligations, duties, powers, or
26 jurisdiction sought to be conferred by that provision upon the
27 commission shall be ineffective as to that compacting state,

1 and those obligations, duties, powers, or jurisdiction shall
2 remain in the compacting state and shall be exercised by the
3 agency thereof to which those obligations, duties, powers, or
4 jurisdiction are delegated by law in effect at the time this
5 compact becomes effective.

6 Section 3. This act shall become effective
7 immediately following its passage and approval by the
8 Governor, or its otherwise becoming law.