

By Senator Grant

13-965-98

See HB 471

1                                   A bill to be entitled  
 2           An act relating to insurance receivership;  
 3           creating the "Interstate Insurance Receivership  
 4           Compact"; providing purposes; providing  
 5           definitions; establishing the Interstate  
 6           Insurance Receivership Commission; providing  
 7           powers of the commission; providing for  
 8           membership of the commission; providing for an  
 9           executive director and staff; providing for  
 10          immunity from liability for the commission and  
 11          staff; providing for meetings; providing for  
 12          rulemaking functions; providing for oversight  
 13          and dispute resolution; providing procedures;  
 14          providing receivership functions; providing for  
 15          financing of commission expenses; authorizing  
 16          the commission to levy and collect an annual  
 17          assessment from member states and insurers;  
 18          specifying a rate of assessment; providing  
 19          limitations; exempting the commission from all  
 20          taxation; providing for effect of the compact;  
 21          providing for amendment of the compact;  
 22          providing for withdrawal from the compact;  
 23          providing consequences for default by a  
 24          compacting state; providing for dissolution of  
 25          the compact; providing severability and  
 26          construction; providing for binding effect of  
 27          the compact; providing an effective date.

28  
 29 Be It Enacted by the Legislature of the State of Florida:  
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1           (4) "Commissioner" means the chief insurance  
2 regulatory official of a state.

3           (5) "Deputy receiver" means any person appointed or  
4 retained by a receiver and who is the receiver's duly  
5 authorized representative for administering one or more  
6 estates.

7           (6) "Domiciliary state" means the state in which an  
8 insurer is incorporated or organized or, in the case of an  
9 alien insurer, its state of entry, or, in the case of an  
10 unauthorized insurer not incorporated, organized, or entered  
11 in any state, a state where the insurer is engaged in or doing  
12 business.

13           (7) "Estate" means the assets and liabilities of any  
14 insurer in receivership.

15           (8) "Guaranty association" means an insurance guaranty  
16 fund or association or any similar entity now or hereafter  
17 created by statute in a compacting state, other than a  
18 receivership, to pay or assume, in whole or in part, the  
19 contractual claim obligations of insolvent insurers.

20           (9) "Insuree" means any person who has engaged in,  
21 purports to engage in, is engaging in, or is licensed to  
22 engage in any insurance or reinsurance business, or is or has  
23 been subject to the authority of, or to liquidation,  
24 rehabilitation, supervision, conservation, or ancillary  
25 receivership by, any commissioner.

26           (10) "Member" means the commissioner of a compacting  
27 state or his or her designee, who shall be a person officially  
28 connected with the commissioner and who is wholly or  
29 principally employed by the commissioner.

30           (11) "Noncompacting state" means any state which has  
31 not enacted the enabling legislation for this compact.





1           (6) To act as ancillary receiver in a compacting state  
2 of an insurer domiciled in a noncompacting state.

3           (7) To monitor the activities and functions of  
4 guaranty associations in the compacting states.

5           (8) To delegate its operating authority or functions,  
6 provided that its rulemaking authority under Article VII shall  
7 not be delegated.

8           (9) To bring or prosecute legal proceedings or actions  
9 in its name as the commission, or in the name of the  
10 commission acting as receiver.

11           (10) To bring or prosecute legal proceedings or  
12 actions on behalf of an estate or its policyholders and  
13 creditors, provided that any guaranty association's standing  
14 to sue or be sued under applicable law shall not be affected.

15           (11) To issue subpoenas requiring the attendance and  
16 testimony of witnesses and the production of evidence.

17           (12) To establish and maintain offices.

18           (13) To purchase and maintain insurance and bonds.

19           (14) To borrow, accept, or contract for services of  
20 personnel, including, but not limited to, members and their  
21 staff.

22           (15) To elect or appoint such officers, attorneys,  
23 employees, or agents, and to fix their compensation, define  
24 their duties, and determine their qualifications, and to  
25 establish the commission's personnel policies and programs  
26 relating to conflicts of interest, rates of compensation, and  
27 qualifications of personnel.

28           (16) To accept any and all donations and grants of  
29 money, equipment, supplies, materials, and services, and to  
30 receive, utilize, and dispose of such money, equipment,  
31 supplies, materials, and resources.

1           (17) To lease, purchase, accept gifts or donations of,  
2 or otherwise to own, hold, improve, or use, any property,  
3 real, personal, or mixed.

4           (18) To sell, convey, mortgage, pledge, lease,  
5 exchange, abandon, or otherwise dispose of any property, real,  
6 personal, or mixed.

7           (19) To enforce compliance with commission rules,  
8 operating procedures, and bylaws.

9           (20) To provide for dispute resolution among  
10 compacting states and receivers.

11           (21) To represent and advise compacting states on  
12 issues relating to insurers domiciled or doing business in  
13 noncompacting jurisdictions, consistent with the purposes of  
14 this compact.

15           (22) To provide advice and training to receivership  
16 personnel of compacting states, and to be a resource for  
17 compacting states by maintaining a reference library of  
18 relevant materials.

19           (23) To establish a budget and make expenditures.

20           (24) To borrow money.

21           (25) To appoint committees, including, but not limited  
22 to, an industry advisory committee and an executive committee  
23 of members.

24           (26) To provide and receive information relating to  
25 receiverships and guaranty associations, and to cooperate with  
26 law enforcement agencies.

27           (27) To adopt and use a corporate seal.

28           (28) To perform such other functions as may be  
29 necessary or appropriate to achieve the purposes of this  
30 compact as may be consistent with the state regulation of the  
31 business of insurance pursuant to the McCarran-Ferguson Act.

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ARTICLE V

ORGANIZATION OF THE COMMISSION.--

(1) Each compacting state shall have and be limited to one member. Each member shall be qualified to serve in such capacity 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, prescribe bylaws 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 for the establishing committees and for 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 bylaws shall



1 exclusively govern the personnel policies and programs of the  
2 commission.

3 (f) Providing a mechanism for winding up the  
4 operations of the commission and the equitable return of any  
5 surplus funds that may exist after the termination of the  
6 compact after the payment or reserving of all of its debts and  
7 obligations.

8 (4) The commission shall, by a majority of the  
9 members, elect annually from among its members a chairperson  
10 and a vice chairperson, each of whom shall have such  
11 authorities and duties as may be specified in the bylaws. The  
12 chairperson or, in his or her absence or disability, a member  
13 designated in accordance with the bylaws, shall preside at all  
14 meetings of the commission. The officers so elected shall  
15 serve without compensation or remuneration from the  
16 commission. However, subject to the availability of budgeted  
17 funds, the officers shall be reimbursed for any actual and  
18 necessary costs and expenses incurred by them in the  
19 performance of their duties and responsibilities as officers  
20 of the commission.

21 (5) The commission may, by a majority of the members,  
22 appoint or retain an executive director for such period, upon  
23 such terms and conditions, and for such compensation as the  
24 commission may deem appropriate. The executive director shall  
25 serve as secretary to the commission, but shall not be a  
26 member of the commission. The executive director shall hire  
27 and supervise such other staff as may be authorized by the  
28 commission.

29 (6) The commission shall maintain its corporate books  
30 and records in accordance with the bylaws.

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1           (7) The members, officers, executive director, and  
2 employees of the commission shall be immune from suit and  
3 liability, either personally or in their official capacity,  
4 for any claim for damage to or loss of property or personal  
5 injury or other civil liability caused or arising out of any  
6 actual or alleged act, error, or omission that occurred, or  
7 that such person had a reasonable basis for believing occurred  
8 within the scope of commission employment, duties, or  
9 responsibilities, provided nothing in this subsection shall be  
10 construed to protect any such person from suit or liability  
11 for any damage, loss, injury, or liability caused by the  
12 intentional or willful and wanton misconduct of any such  
13 person, or to protect the commission acting as receiver under  
14 Article IX.

15           (8) The commission shall defend any commissioner of a  
16 compacting state, or his or her representatives or employees,  
17 or the commission's representatives or employees, in any civil  
18 action seeking to impose liability, arising out of any actual  
19 or alleged act, error, or omission that occurred within the  
20 scope of commission employment, duties, or responsibilities,  
21 or that the defendant had a reasonable basis for believing  
22 occurred within the scope of commission employment, duties, or  
23 responsibilities, provided the actual or alleged act, error,  
24 or omission did not result from gross negligence or  
25 intentional wrongdoing on the part of such person.

26           (9) The commission shall indemnify and hold harmless  
27 the commissioner of a compacting state, or his or her  
28 representatives or employees, or the commission's  
29 representatives or employees, in the amount of any settlement  
30 or judgment obtained against such persons arising out of any  
31 actual or alleged act, error, or omission that occurred within

1 the scope of commission employment, duties, or  
2 responsibilities, or that such persons had a reasonable basis  
3 for believing occurred within the scope of commission  
4 employment, duties, or responsibilities, provided the actual  
5 or alleged act, error, or omission did not result from gross  
6 negligence or intentional wrongdoing on the part of such  
7 person.

8 (10) The costs and expenses of defense and  
9 indemnification of the commission acting as receiver of an  
10 estate shall be paid as administrative expenses from the  
11 assets of that estate unless such costs and expenses are  
12 covered by insurance maintained by the commission.

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14 ARTICLE VI

15  
16 MEETINGS AND ACTS OF THE COMMISSION.--

17 (1) The commission shall meet and take such actions as  
18 are consistent with the provisions of this compact.

19 (2) Except as otherwise provided in this compact and  
20 unless a greater percentage is required by the bylaws, in  
21 order to constitute an act of the commission, such act shall  
22 have been taken at a meeting of the commission and shall have  
23 received an affirmative vote of a majority of the members.

24 (3) Each member of the commission shall have the right  
25 and power to cast a vote to which that compacting state is  
26 entitled and to participate in the business and affairs of the  
27 commission. A member shall vote in person and shall not  
28 delegate his or her vote to another member. The bylaws may  
29 provide for members' participation in meetings by telephone or  
30 other means of telecommunication.

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1           (4) The commission shall meet at least once during  
2 each calendar year. The chairperson of the commission may call  
3 additional meetings at any time and, upon the request of a  
4 majority of the members, shall call additional meetings.

5           (5) Commission rules shall establish conditions and  
6 procedures under which the commission shall make its  
7 information and official records available to the public for  
8 inspection or copying. The commission may exempt from  
9 disclosure any information or official records to the extent  
10 they would adversely affect personal privacy rights or  
11 proprietary interests. In adopting such rules, the commission  
12 may consider any special circumstances pertaining to insurer  
13 insolvencies, but shall be guided by the principles embodied  
14 in state and federal freedom-of-information laws. The  
15 commission may adopt additional rules under which it may make  
16 available to law enforcement agencies records and information  
17 otherwise exempt from disclosure, and may enter into  
18 agreements with law enforcement agencies to receive or  
19 exchange information or records subject to nondisclosure and  
20 confidentiality provisions.

21           (6) Public notice shall be given of all meetings and  
22 all meetings shall be open to the public, except as set forth  
23 in the rules or as otherwise provided in this compact. The  
24 commission shall adopt rules consistent with the principles  
25 contained in the "Government in Sunshine Act," 5 U.S.C.  
26 Section, 552(b), as amended. The commission and any of its  
27 committees may close a meeting to the public when it  
28 determines by two-thirds vote that an open meeting would be  
29 likely to:

30           (a) Relate solely to the commission's internal  
31 personnel practices and procedures;

1           (b) Disclose matters specifically exempted from  
2 disclosure by statute;

3           (c) Disclose trade secrets or commercial or financial  
4 information that is privileged or confidential;

5           (d) Involve accusing any person of a crime, or  
6 formally censuring any person;

7           (e) Disclose information of a personal nature when  
8 disclosure would constitute a clearly unwarranted invasion of  
9 personal privacy;

10           (f) Disclose investigatory records compiled for law  
11 enforcement purposes;

12           (g) Disclose information contained in or related to  
13 examination, operating, or condition reports prepared by, or  
14 on behalf of, or for the use of the commission with respect to  
15 a regulated entity for the purpose of regulation or  
16 supervision of such entity;

17           (h) Disclose information the premature disclosure of  
18 which would significantly endanger the stability of a  
19 regulated entity; or

20           (i) Specifically relate to the commission's issuance  
21 of a subpoena, or its participation in a civil action or  
22 proceeding.

23           (7) For every meeting closed pursuant to subsection  
24 (6), the commission's chief legal officer shall publicly  
25 certify that, in his or her opinion, the meeting may be closed  
26 to the public, and shall reference each relevant exemptive  
27 provision. The commission shall keep minutes that fully and  
28 clearly describe all matters discussed in any meeting and  
29 shall provide a full and accurate summary of any actions  
30 taken, and the reasons therefor, including a description of  
31 each of the views expressed on any item and the record of any

1 roll call vote reflected in the vote of each member on the  
2 question. All documents considered in connection with any  
3 action shall be identified in such minutes.

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5 ARTICLE VII

6  
7 RULEMAKING FUNCTIONS OF THE COMMISSION.--

8 (1) The commission shall adopt rules and operating  
9 procedures in order to effectively and efficiently achieve the  
10 purpose of this compact, provided that the commission shall  
11 not adopt any rules directly relating to guaranty association,  
12 including, but not limited to, rules governing coverage,  
13 funding, or assessment mechanisms, or, except pursuant to  
14 rules adopted under subsection (3), altering the statutory  
15 priorities for distributing assets out of an estate.

16 (2) Rulemaking shall occur pursuant to the criteria  
17 set forth in this article and the rules and operating  
18 procedures adopted pursuant thereto. Such rulemaking shall  
19 substantially conform to the principles of the federal  
20 Administrative Procedure Act, 5 U.S.C.S. section 551 et seq.,  
21 and the Federal Advisory Committee Act, 5 U.S.C.S. app. 2,  
22 section 1 et seq., as amended.

23 (3) Other than the adoption of such rules as are  
24 necessary for the orderly operation of the commission, the  
25 first rule to be considered by the commission shall be uniform  
26 provisions governing insurer receiverships including, but not  
27 limited to, provisions requiring compacting states to  
28 implement, execute, and administer in a fair, just, effective,  
29 and efficient manner rules and operating procedures relating  
30 to receiverships. The commission shall, within 3 years after  
31 the adoption of this compact by two or more states, adopt such

1 uniform provisions through the rulemaking process. Such  
2 uniform provisions shall become law in all of the compacting  
3 states upon legislative enactment in a majority of the  
4 compacting states.

5 (4) All rules and amendments shall become binding as  
6 of the date specified in each rule or amendment, provided, if  
7 a compacting state expressly rejects such rule or amendment  
8 through legislative enactment as of the expiration of the  
9 second full calendar year after such rule is adopted, such  
10 rule or amendment shall have no further force and effect in  
11 the rejecting compacting state. If a majority of compacting  
12 states reject a rule, then such rule shall have no further  
13 force and effect in any compacting state.

14 (5) When prescribing a rule or operating procedure,  
15 the commission shall:

16 (a) Effect publication of the proposed rulemaking,  
17 stating with particularity the text of the rule or operating  
18 procedure which is proposed and the reason for the proposed  
19 rule or operating procedure.

20 (b) Allow persons to submit written data, facts,  
21 opinions, and arguments, which information shall be publicly  
22 available.

23 (c) Provide an opportunity for an informal hearing.

24 (d) Adopt a final rule or operating procedure and its  
25 effective date, if appropriate, based on the rulemaking  
26 record.

27 (6) Not later than 60 days after a rule or operating  
28 procedure is adopted, any interested person may file a  
29 petition in a court of competent jurisdiction where the  
30 commission's principal office is located for judicial review  
31 of such rule or operating procedure. If the court finds that

1 the commission's action is not supported by substantial  
2 evidence in the rulemaking record, the court shall hold the  
3 rule unlawful and set it aside.

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5 ARTICLE VIII

6  
7 OVERSIGHT AND DISPUTE RESOLUTION BY THE COMMISSION.--

8 (1) The commission shall oversee the administration  
9 and operations of receiverships in compacting states, and  
10 shall monitor receiverships being administered in  
11 noncompacting states which may significantly affect compacting  
12 states.

13 (2) To aid its monitoring, oversight, and coordination  
14 responsibilities, the commission shall establish operating  
15 procedures requiring each member to submit written reports to  
16 the commission as follows:

17 (a) An initial report to the commission upon a finding  
18 or other official action by the compacting state that grounds  
19 exist for receivership of an insurer doing business in more  
20 than one state. Thereafter, reports shall be submitted  
21 periodically and as otherwise required pursuant to the  
22 commission's operating procedures. The commission shall be  
23 entitled to receive notice of, and shall have standing to  
24 appear in, compacting states' receiverships.

25 (b) An initial report of the status of any insurer  
26 within a reasonable time after the initiation of a  
27 receivership.

28 (3) The commission shall adopt operating procedures  
29 requiring receivers to submit to the commission periodic  
30 written reports and such additional information and  
31 documentation as the commission may reasonably request. Each



1 compacting state's receivers shall establish the capability to  
2 obtain and provide all records, data, and information required  
3 by the commission in accordance with the commission's  
4 operating procedures.

5 (4) Except as to privileged records, data, and  
6 information, the laws of any compacting state pertaining to  
7 confidentiality or nondisclosure shall not relieve any  
8 compacting state commissioner of the responsibility to  
9 disclose any relevant records, data, or information to the  
10 commission, provided disclosure to the commission shall not be  
11 deemed to waive or otherwise affect any confidentiality  
12 requirement, and further provided the commission shall be  
13 subject to the compacting state's laws pertaining to  
14 confidentiality and nondisclosure with respect to all records,  
15 data, and information in its possession.

16 (5) The courts and executive agencies in each  
17 compacting state shall enforce this compact and shall take all  
18 actions necessary and appropriate to effectuate the compact's  
19 purposes and intent. In any receivership or other judicial or  
20 administrative proceeding in a compacting state pertaining to  
21 the subject matter of this compact which may affect the  
22 powers, responsibilities, or actions of the commission, the  
23 commission shall be entitled to receive all service of process  
24 in any such proceeding, and shall have standing to intervene  
25 in the receivership or proceeding for all purposes.

26 (6) The commission shall analyze and correlate  
27 records, data, information, and reports received from  
28 receivers and guaranty associations and shall make  
29 recommendations for improving their performance to the  
30 compacting states. The commission shall include summary

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1 information and data regarding its oversight functions in its  
2 annual report.

3 (7) The commission shall attempt, upon the request of  
4 a member, to resolve any disputes or other issues which are  
5 subject to this compact and which may arise among compacting  
6 states and noncompacting states.

7 (8) The compacting states shall report to the  
8 commission on issues or activities of concern to them, and  
9 cooperate with and support the commission in the discharge of  
10 its duties and responsibilities.

11 (9) The commission shall adopt an operating procedure  
12 providing for binding dispute resolution for disputes among  
13 receivers.

14 (10) The commission shall facilitate voluntary dispute  
15 resolution for disputes among guaranty associations and  
16 receivers.

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18 ARTICLE IX

19  
20 RECEIVERSHIP FUNCTIONS OF THE COMMISSION.--

21 (1) The commission has authority to act as receiver of  
22 any insurer domiciled, engaged in, or doing business in a  
23 compacting state upon the request of the commissioner of such  
24 compacting state, or as otherwise provided in this compact.

25 (a) The commission as receiver shall have all powers  
26 and duties pursuant to the receivership laws of the  
27 domiciliary state.

28 (b) The commission shall maintain accounts of receipts  
29 and disbursements of the estates consistent with the  
30 accounting practices and procedures set forth in the bylaws.

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1           (c) The commission shall cause an annual audit of each  
2 estate for which it is acting as receiver to be conducted by  
3 an independent certified public accountant. The costs and  
4 expenses of such audit shall be paid as administrative  
5 expenses from the assets of the estate. The commission shall  
6 not cause an annual audit to be conducted of any estate which  
7 lacks sufficient assets to conduct such audit.

8           (d) The commission as receiver is authorized to  
9 delegate its receivership duties and functions and to  
10 effectuate such delegation through contracts with others.

11           (2) The commission shall act as receiver of any  
12 insurer domiciled or doing business in a compacting state in  
13 the event that the member acting as receiver in that  
14 compacting state fails to comply with adopted commission rules  
15 or operating procedures. The commission shall notify such  
16 member in writing of his or her noncompliance with commission  
17 rules or operating procedures and, if the member acting as  
18 receiver fails to remedy such noncompliance within 10 days  
19 after his or her receipt of such notification, the commission  
20 may petition the supervising court before which such  
21 receivership is pending for an order substituting and  
22 appointing the commission as receiver of the estate.

23           (3) The commission shall not act as receiver of an  
24 estate which appears to lack sufficient assets to fund such  
25 receivership unless the compacting state makes provisions for  
26 the payment of the estate's administrative expenses  
27 satisfactory to the commission.

28           (4) The commission may act as deputy receiver for any  
29 insurer domiciled or doing business in a noncompacting state  
30 in accordance with such state's laws, upon request of that  
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1 noncompacting state's commissioner and approval of the  
2 commission.

3 (5) With respect to receiverships pending in a  
4 compacting state on the effective date of the enactment of  
5 this compact by the compacting state:

6 (a) The commission may act as receiver of an insurer  
7 upon the request of that compacting state's member and  
8 approval of the commission.

9 (b) The commission shall oversee, monitor, and  
10 coordinate the activities of all receiverships pending in that  
11 compacting state regardless of whether the commission is  
12 acting as receiver of estates in the compacting state.

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14 ARTICLE X

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16 FINANCE.--

17 (1) The commission shall pay or provide for the  
18 payment of the reasonable expenses of its establishment and  
19 organization.

20 (2) Except as otherwise provided in this compact or by  
21 act of the commission, the costs and expenses of each  
22 compacting state shall be the sole and exclusive  
23 responsibility of the respective compacting state. The  
24 commission may pay or provide for actual and necessary costs  
25 and expenses for attendance of its members at official  
26 meetings of the commission or its designated committees.

27 (3) The commission shall levy on and collect an annual  
28 assessment from each compacting state and each insurer  
29 authorized to do business in a compacting state and writing  
30 direct insurance to cover the cost of the internal operations

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1 and activities of the commission and its staff in a total  
2 amount sufficient to cover the commission's annual budget.

3 (a) The aggregate annual assessment amount shall be  
4 allocated 75 percent to insurers, hereinafter referred to as  
5 the insurers' portion, and 25 percent to compacting states,  
6 hereinafter referred to as the compacting states' portion. The  
7 insurers' portion shall be allocated to each insurer by the  
8 percentage derived from a fraction, the numerator of which  
9 shall be the gross direct written premium received on that  
10 insurer's business in all compacting states and the  
11 denominator of which shall be the gross direct written premium  
12 received by all insurers on business in all compacting states.  
13 The compacting states' portion shall be allocated to each  
14 compacting state by the percentage derived from a fraction,  
15 the numerator of which shall be the gross direct written  
16 premium received by all insurers on business in that  
17 compacting state and the denominator shall be the gross direct  
18 written premium received on all insurers on business in all  
19 compacting states. Each compacting state's portion shall be  
20 funded as provided by the legislature of that compacting  
21 state. In no event shall an insurer's assessment be less than  
22 \$50 or more than \$25,000; provided, that affiliated insurers'  
23 combined assessments shall not exceed \$50,000. Upon the  
24 request of an insurer, the commission may exempt or defer the  
25 assessment of any insurer, if such assessment would cause the  
26 insurer's financial impairment.

27 (b) These assessments shall not be used to pay any  
28 costs or expenses incurred by the commission and its staff  
29 acting as receiver of estates. Such costs and expenses shall  
30 be payable from the assets of the estates as provided by law,  
31 except as otherwise provided in this compact.

1           (c) Each insurer authorized to do business in a  
2 compacting state shall timely pay assessments to the  
3 commission. Failure to pay such assessments shall not be  
4 grounds for the revocation, suspension, or denial of an  
5 insurer's authority to do business but shall subject the  
6 insurer to suit by the commission for recovery of any  
7 assessment due, attorney's fees, and costs, together with  
8 interest from the date the assessment is due at a rate of 10  
9 percent per annum, and to civil forfeiture in an amount to be  
10 determined by the commissioner of that compacting state in  
11 which the insurer received the greatest premium in the year  
12 next preceding the first year for which the insurer shall be  
13 delinquent in payment of assessments.

14           (4) The commission shall be reimbursed in the  
15 following manner for the costs and expenses incurred by the  
16 commission and its staff acting as receiver of estates to the  
17 extent that an insurer's assets may be insufficient for the  
18 effective administration of its estate:

19           (a) If the insurer is domiciled in a compacting state,  
20 the estate shall be closed unless that compacting state makes  
21 provisions for reimbursing the commission.

22           (b) If the insurer is unauthorized to do business in a  
23 compacting state or if the insurer is domiciled in a  
24 noncompacting state and subject to ancillary receivership, the  
25 commission and such state shall make provisions for  
26 reimbursing the commission prior to the commission becoming  
27 receiver of such insurer.

28           (5) To fund the cost of the initial operations of the  
29 commission until its first annual budget is adopted and  
30 related assessments have been made, contributions from  
31 compacting states and others may be accepted and a one-time

1 assessment on insurers doing a direct insurance business in  
2 the compacting states may be made not to exceed \$450 per  
3 insurer.

4 (6) The commission's adopted budget for a fiscal year  
5 shall not be approved until it has been subject to notice and  
6 comment as set forth in Article VII. The budget shall  
7 determine the amount of the annual assessment. The commission  
8 may accumulate a net worth not to exceed 30 percent of its  
9 then annual cost of operation to provide for contingencies and  
10 events not contemplated. These accumulated funds shall be held  
11 separately and shall not be used for any other purpose. The  
12 commission's budget may include a provision for a contribution  
13 to the commission's net worth.

14 (7) The commission shall be exempt from all taxation  
15 in and by the compacting states.

16 (8) The commission shall not pledge the credit of any  
17 compacting state, except by and with the appropriate legal  
18 authority of that compacting state.

19 (9) The commission shall keep complete and accurate  
20 accounts of all its internal receipts, including grants and  
21 donations, and disbursements of all funds, other than  
22 receivership assets, under its control. The internal financial  
23 accounts of the commission shall be subject to the accounting  
24 procedures established under its bylaws. The financial  
25 accounts and reports, including the system of internal  
26 controls and procedures, of the commission shall be audited  
27 annually by an independent certified public accountant. Upon  
28 the determination of the commission, but no less frequently  
29 than every 3 years, the review of such independent auditor  
30 shall include a management and performance audit of the  
31 commission. The report of such independent audit shall be made

1 available to the public and shall be included in and become  
2 part of the annual report of the commission to the Governors  
3 and legislatures of the compacting states. The commission's  
4 internal accounts, any workpapers related to any internal  
5 audit, and any workpapers related to the independent audit  
6 shall be confidential, provided such materials shall be made  
7 available, in compliance with the order of any court of  
8 competent jurisdiction and pursuant to such reasonable rules  
9 as the commission shall adopt, to any commissioner or Governor  
10 of a compacting state, or their duly authorized  
11 representatives.

12 (10) No compacting state shall have any claim to or  
13 ownership of any property held by or vested in the commission  
14 or the commission acting as receiver or to any other  
15 commission funds held pursuant to the provisions of this  
16 compact.

17  
18 ARTICLE XI

19  
20 COMPACTING STATES; EFFECTIVE DATE AND AMENDMENT.--

21 (1) Any state is eligible to become a compacting  
22 state.

23 (2) The compact shall become effective and binding  
24 upon legislative enactment of the compact into law by two  
25 compacting states. Thereafter, it shall become effective and  
26 binding as to any other compacting state upon enactment of the  
27 compact into law by that state.

28 (3) Amendments to the compact may be proposed by the  
29 commission for enactment by the compacting states. No  
30 amendment shall become effective and binding upon the  
31 commission and the compacting states unless and until it is



1 enacted into law by unanimous consent of the compacting  
2 states.

4 ARTICLE XII

6 WITHDRAWAL, DEFAULT, AND TERMINATION.--

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

12 (2) The effective date of withdrawal is the effective  
13 date of the repeal, provided that the repeal shall not apply  
14 to any receiverships, for which the commission is acting as  
15 receiver, pending on the date of the repeal except by mutual  
16 agreement of the commission and the withdrawing state.

17 (3) The withdrawing state shall immediately notify the  
18 chairperson of the commission in writing upon the introduction  
19 of legislation repealing this compact in the withdrawing  
20 state.

21 (4) The commission shall notify the other compacting  
22 states of the withdrawing state's intent to withdraw within 60  
23 days after its receipt thereof.

24 (5) The withdrawing state is responsible for all  
25 assessments, obligations, and liabilities incurred through the  
26 effective date of withdrawal, including any obligations, the  
27 performance of which extend beyond the effective date of  
28 withdrawal, except to the extent those obligations may have  
29 been released or relinquished by mutual agreement of the  
30 commission and the withdrawing state. Notwithstanding the  
31 foregoing, the withdrawing state is responsible for the costs

1 and expenses of its estates subject to this compact pending on  
2 the date of repeal. The commission and the other estates  
3 subject to this compact shall not bear any costs and expenses  
4 related to the withdrawing state's estates unless otherwise  
5 mutually agreed upon between the commission and the  
6 withdrawing state.

7 (6) Reinstatement following withdrawal of any  
8 compacting state shall occur upon the withdrawing state  
9 reenacting the compact or upon such later date as determined  
10 by the commission.

11 (7) If the commission determines that any compacting  
12 state has at any time defaulted in the performance of any of  
13 its obligations or responsibilities under this compact, or the  
14 bylaws and adopted rules, all rights, privileges, and benefits  
15 conferred by this compact and any agreements entered into  
16 pursuant to this compact shall be suspended from the effective  
17 date of default as fixed by the commission. The grounds for  
18 default include, but are not limited to, failure of a  
19 compacting state to perform such obligations or  
20 responsibilities and any other grounds designated in  
21 commission rules. The commission shall immediately notify the  
22 defaulting state in writing of the defaulting state's  
23 suspension pending a cure of the default. The commission shall  
24 stipulate the conditions and the time period within which the  
25 defaulting state must cure its default. If the defaulting  
26 state fails to cure the default within the time period  
27 specified by the commission, the defaulting state shall be  
28 terminated from the compact upon an affirmative vote of a  
29 majority of the compacting states and all rights, privileges,  
30 and benefits conferred by this compact shall be terminated  
31 from the effective date of termination.

1           (8) Within 60 days after the effective date of  
2 termination of a defaulting state, the commission shall notify  
3 the Governor and the majority and minority leaders of the  
4 defaulting state's legislature of such termination.

5           (9) The termination of a defaulting state shall apply  
6 to all receiverships, for which the commission is acting as  
7 receiver, pending on the effective date of termination except  
8 by mutual agreement of the commission and the defaulting  
9 state.

10           (10) The defaulting state is responsible for all  
11 assessments, obligations, and liabilities incurred through the  
12 effective date of termination and is responsible for the costs  
13 and expenses relating to its estates subject to this compact  
14 pending on the date of the termination. The commission and the  
15 other estates subject to this compact shall not bear any costs  
16 relating to the defaulting state's estates unless otherwise  
17 mutually agreed upon between the commission and the defaulting  
18 state.

19           (11) Reinstatement following termination of any  
20 compacting state requires both a reenactment of the compact by  
21 the defaulting state and the approval of the commission  
22 pursuant to the rules.

23           (12) The compact dissolves effective upon the date of  
24 the withdrawal or default of the compacting state which  
25 reduces membership in the compact to one compacting state.

26           (13) Upon the dissolution of this compact, the compact  
27 becomes null and void and shall be of no further force or  
28 effect, and the business and affairs of the commission shall  
29 be wound up and any surplus funds shall be distributed in  
30 accordance with the bylaws.

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ARTICLE XIII

SEVERABILITY AND CONSTRUCTION.--

(1) The provisions of this compact are 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.--

(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.

(3) All lawful actions of the commission, including all rules and operating procedures adopted by the commission, are binding upon the compacting states.

(4) All agreements between the commission and the compacting states are binding in accordance with their terms.

(5) 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.

(6) If any provision of this compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or

**CODING:**Words ~~stricken~~ are deletions; words underlined are additions.

1 jurisdiction sought to be conferred by such provision upon the  
2 commission shall be ineffective and such obligations, duties,  
3 powers, or jurisdiction shall remain in the compacting state  
4 and shall be exercised by the agency thereof to which such  
5 obligations, duties, powers, or jurisdiction are delegated  
6 bylaw in effect at the time this compact becomes effective.

7 Section 2. This act shall take effect October 1, 1998.

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9 \*\*\*\*\*

10 LEGISLATIVE SUMMARY

11 Enacts the Interstate Insurance Receivership Compact to  
12 promote, develop, and facilitate orderly, efficient, cost  
13 effective, and uniform insurer receiverships laws and  
14 operations among compacting states and to coordinate  
15 interaction between insurer receivership and guaranty  
16 fund operations. Creates the Interstate Insurance  
17 Receivership Commission. Provides for the performance of  
18 related functions which are consistent with the state  
19 regulation of the business of insurance pursuant to the  
20 McCarran-Ferguson Act. (See bill for details.)  
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