

By Senator Grant

13-1167-99

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.
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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 (12) "Operating procedures" means procedures adopted
2 by the commission implementing a rule, an existing law in a
3 compacting state, or a provision of this compact.

4 (13) "Publication" means the act of publishing in the
5 official state publication in a compacting state or in such
6 other publication as may be established by the commission.

7 (14) "Receivee" means receiver, liquidator,
8 rehabilitator, conservator, or ancillary receiver, as the
9 context requires.

10 (15) "Receivership" means any liquidation,
11 rehabilitation, conservation, or ancillary receivership
12 proceeding as the context requires.

13 (16) "Rules" means acts of the commission, adopted
14 pursuant to Article VII, substantially affecting interested
15 parties in addition to the commission, which shall have the
16 force and effect of law in the compacting states.

17 (17) "State" means any state, district, or territory
18 of the United States.

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ARTICLE III

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22 ESTABLISHMENT OF THE COMMISSION AND VENUE.--

23 (1) The compacting states hereby create and establish
24 an entity known as the "Interstate Insurance Receivership
25 Commission."

26 (2) The commission is a body corporate of each
27 compacting state.

28 (3) The commission is a not-for-profit entity,
29 separate and distinct from the compacting states.

30 (4) The commission is solely responsible for its
31 liabilities except as otherwise provided in this compact.

1 (5) Except as otherwise specifically provided in state
2 or federal law in the jurisdiction where the commission's
3 principal office is located or where the commission is acting
4 as receiver, venue is proper and judicial proceedings for or
5 against the commission shall be brought in a court of
6 competent jurisdiction where the commission's principal office
7 is located.

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9 ARTICLE IV

10
11 POWERS OF THE COMMISSION.--The commission shall have
12 the following powers:

13 (1) To promulgate rules which shall have the force and
14 effect of statutory law and shall be binding in the compacting
15 states to the extent and in the manner provided in this
16 compact.

17 (2) To promulgate operating procedures which shall be
18 binding in the compacting states to the extent and in the
19 manner provided in this compact.

20 (3) To oversee, supervise, and coordinate the
21 activities of receivers in compacting states.

22 (4) To act as receiver of insurers organized under the
23 laws of, engaged in or doing the business of insurance in, a
24 compacting state upon the request of the commissioner of such
25 state or when grounds for receivership by the commission exist
26 under Article IX.

27 (5) To act as deputy receiver of insurers organized
28 under the laws of, engaged in or doing the business of
29 insurance in, a noncompacting state in accordance with Article
30 IX.

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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.

17
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
31

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

15
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.

31

1 ARTICLE XIII

2
3 SEVERABILITY AND CONSTRUCTION.--

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

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

10
11 ARTICLE XIV

12
13 BINDING EFFECT OF COMPACT AND OTHER LAWS.--

14 (1) Nothing herein prevents the enforcement of any
15 other law of a compacting state that is not inconsistent with
16 this compact.

17 (2) All compacting states' laws conflicting with this
18 compact are superseded to the extent of the conflict.

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

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

24 (5) Upon the request of a party to a conflict over
25 meaning or interpretation of commission actions, and upon a
26 majority vote of the compacting states, the commission may
27 issue advisory opinions regarding such meaning or
28 interpretation.

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

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, 1999.

8
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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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