

By Senator Aronberg

27-1360A-05

See HB 403

1 A bill to be entitled
2 An act relating to the Interstate Insurance
3 Product Regulation Compact; providing
4 legislative findings and intent; providing
5 purposes; providing definitions; providing for
6 establishment of an Interstate Insurance
7 Product Regulation Commission; providing
8 responsibilities of the commission; specifying
9 the commission as an instrumentality of the
10 compact states; providing for venue;
11 providing powers of the commission; providing
12 for organization of the commission; providing
13 for membership, voting, and bylaws; designating
14 the Chief Financial Officer as the
15 representative of this state on the commission;
16 providing for a management committee, officers,
17 and personnel of the commission; providing
18 authority of the management committee;
19 providing for legislative and advisory
20 committees; providing for qualified immunity,
21 defense, and indemnification of members,
22 officers, employees, and representatives of the
23 commission; providing for meetings and acts of
24 the commission; providing rules and operating
25 procedures; providing rulemaking functions of
26 the commission; providing for opting out of
27 uniform standards; providing procedures and
28 requirements; providing for commission records
29 and enforcement; authorizing the commission to
30 adopt rules; providing for disclosure of
31 certain information; requiring the commission

1 to monitor for compliance; providing for
2 dispute resolution; providing for product
3 filing and approval; requiring the commission
4 to establish filing and review processes and
5 procedures; providing for review of commission
6 decisions regarding filings; providing for
7 finance of commission activities; providing for
8 payment of expenses; authorizing the commission
9 to collect filing fees for certain purposes;
10 providing for approval of a commission budget;
11 exempting the commission from all taxation;
12 prohibiting the commission from pledging the
13 credit of any compacting states without
14 authority; requiring the commission to keep
15 complete accurate accounts, provide for audits,
16 and make annual reports to the Governors and
17 Legislatures of compacting states; providing
18 for effective date and amendment of the
19 compact; providing for withdrawal from the
20 compact, default by compacting states, and
21 dissolution of the compact; providing
22 severability and construction; providing for
23 binding effect of compact and other laws;
24 providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Legislative findings; intent.--
29 (1) The Legislature finds that the financial services
30 marketplace has changed significantly in recent years and that
31 asset-based insurance products, which include life insurance,

1 annuities, disability income insurance, and long-term care
2 insurance, now compete directly with other retirement and
3 estate planning instruments that are sold by banks and
4 securities firms.

5 (2) The Legislature further finds that the increased
6 mobility of the population and the risks borne by these
7 asset-based products are not local in nature.

8 (3) The Legislature further finds that the Interstate
9 Insurance Product Regulation Compact Model adopted by the
10 National Association of Insurance Commissioners and endorsed
11 by the National Conference of Insurance Legislators and the
12 National Conference of State Legislatures is designed to
13 address these market changes by providing a uniform set of
14 product standards and a single source for filing of new
15 products.

16 (4) The Legislature further finds that the product
17 standards that have been developed provide a high level of
18 consumer protection. Further, it is noted that the Interstate
19 Insurance Product Regulation Compact Model includes a
20 mechanism for opting out of any product standard that the
21 state determines would not reasonably protect its citizens.
22 With respect to long-term care insurance, the Legislature
23 understands that the compact does not intend to develop a
24 uniform standard for rate increase filings, thereby leaving
25 the authority over long-term care rate increases with the
26 state. The state relies on that understanding in adopting this
27 legislation. The state, pursuant to the terms and conditions
28 of this act, seeks to join with other states and establish the
29 Interstate Insurance Product Regulation Compact, and thus
30 become a member of the Interstate Insurance Product Regulation
31 Commission. The Commissioner of Insurance Regulation is hereby

1 designated to serve as the representative of this state on the
2 commission.

3 Section 2. Interstate Insurance Product Regulation
4 Compact.--The Interstate Insurance Product Regulation Compact
5 is hereby enacted into law and entered into by this state with
6 all states legally joining therein in the form substantially
7 as follows:

8
9 Interstate Insurance Product Regulation Compact

10
11 Preamble

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13 This compact is intended to help states join together to
14 establish an interstate compact to regulate designated
15 insurance products. Pursuant to terms and conditions of this
16 compact, this state seeks to join with other states and
17 establish the Interstate Insurance Product Regulation Compact
18 and thus become a member of the Interstate Insurance Product
19 Regulation Commission.

20
21 Article I

22
23 PURPOSES.--The purposes of this compact are, through
24 means of joint and cooperative action among the compacting
25 states, to:

26 (1) Promote and protect the interest of consumers of
27 individual and group annuity, life insurance, disability
28 income, and long-term care insurance products.

29 (2) Develop uniform standards for insurance products
30 covered under the compact.

31

1 pursuant to subsection (1) of Article XIV or been terminated
2 pursuant to subsection (2) of Article XIV.

3 (4) "Commission" means the "Interstate Insurance
4 Product Regulation Commission" established by this compact.

5 (5) "Commissioner" means the chief insurance
6 regulatory official of a state, including, but not limited to,
7 commissioner, superintendent, director, or administrator. For
8 purposes of this compact, the Chief Financial Officer is the
9 chief insurance regulatory official of this state.

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) "Noncompacting state" means any state which is not
20 at the time a compacting state.

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

24 (11) "Product" means the form of a policy or contract,
25 including any application, endorsement, or related form which
26 is attached to and made a part of the policy or contract, and
27 any evidence of coverage or certificate, for an individual or
28 group annuity, life insurance, disability income, or long-term
29 care insurance product that an insurer is authorized to issue.

30 (12) "Rule" means a statement of general or particular
31 applicability and future effect adopted by the commission,

1 including a uniform standard developed pursuant to Article
2 VII, designed to implement, interpret, or prescribe law or
3 policy or describing the organization, procedure, or practice
4 requirements of the commission, which shall have the force and
5 effect of law in the compacting states.

6 (13) "State" means any state, district, or territory
7 of the United States.

8 (14) "Third-party filer" means an entity that submits
9 a product filing to the commission on behalf of an insurer.

10 (15) "Uniform standard" means a standard adopted by
11 the commission for a product line pursuant to Article VII and
12 shall include all of the product requirements in aggregate;
13 provided, each uniform standard shall be construed, whether
14 express or implied, to prohibit the use of any inconsistent,
15 misleading, or ambiguous provisions in a product and the form
16 of the product made available to the public shall not be
17 unfair, inequitable, or against public policy as determined by
18 the commission.

19
20 Article III
21

22 COMMISSION; ESTABLISHMENT; VENUE.--

23 (1) The compacting states hereby create and establish
24 a joint public agency known as the Interstate Insurance
25 Product Regulation Commission. Pursuant to Article IV, the
26 commission has the power to develop uniform standards for
27 product lines, receive and provide prompt review of products
28 filed with the commission, and give approval to those product
29 filings satisfying applicable uniform standards; provided, it
30 is not intended for the commission to be the exclusive entity
31 for receipt and review of insurance product filings. Nothing

1 in this article shall prohibit any insurer from filing its
2 product in any state in which the insurer is licensed to
3 conduct the business of insurance and any such filing shall be
4 subject to the laws of the state where filed.

5 (2) The commission is a body corporate and politic and
6 an instrumentality of the compacting states.

7 (3) The commission is solely responsible for its
8 liabilities, except as otherwise specifically provided in this
9 compact.

10 (4) Venue is proper and judicial proceedings by or
11 against the commission shall be brought solely and exclusively
12 in a court of competent jurisdiction where the principal
13 office of the commission is located.

14
15 Article IV

16
17 POWERS.--The commission shall have the following powers
18 to:

19 (1) Adopt rules, pursuant to Article VII, which shall
20 have the force and effect of law and shall be binding in the
21 compacting states to the extent and in the manner provided in
22 this compact.

23 (2) Exercise its rulemaking authority and establish
24 reasonable uniform standards for products covered under the
25 compact, and advertisement related thereto, which shall have
26 the force and effect of law and shall be binding in the
27 compacting states, but only for those products filed with the
28 commission; provided a compacting state shall have the right
29 to opt out of such uniform standard pursuant to Article VII to
30 the extent and in the manner provided in this compact and any
31 uniform standard established by the commission for long-term

1 care insurance products may provide the same or greater
2 protections for consumers as, but shall not provide less than,
3 those protections set forth in the National Association of
4 Insurance Commissioners' Long-Term Care Insurance Model Act
5 and Long-Term Care Insurance Model Regulation, respectively,
6 adopted as of 2001. The commission shall consider whether any
7 subsequent amendments to the National Association of Insurance
8 Commissioners' Long-Term Care Insurance Model Act or Long-Term
9 Care Insurance Model Regulation adopted by the National
10 Association of Insurance Commissioners require amending of the
11 uniform standards established by the commission for long-term
12 care insurance products.

13 (3) Receive and review in an expeditious manner
14 products filed with the commission and rate filings for
15 disability income and long-term care insurance products and
16 give approval of those products and rate filings that satisfy
17 the applicable uniform standard, and such approval shall have
18 the force and effect of law and be binding on the compacting
19 states to the extent and in the manner provided in the
20 compact.

21 (4) Receive and review in an expeditious manner
22 advertisement relating to long-term care insurance products
23 for which uniform standards have been adopted by the
24 commission, and give approval to all advertisement that
25 satisfies the applicable uniform standard. For any product
26 covered under this compact, other than long-term care
27 insurance products, the commission shall have the authority to
28 require an insurer to submit all or any part of its
29 advertisement with respect to that product for review or
30 approval prior to use, if the commission determines that the
31 nature of the product is such that an advertisement of the

1 product could have the capacity or tendency to mislead the
2 public. The actions of the commission as provided in this
3 subsection shall have the force and effect of law and shall be
4 binding in the compacting states to the extent and in the
5 manner provided in the compact.

6 (5) Exercise its rulemaking authority and designate
7 products and advertisement that may be subject to a
8 self-certification process without the need for prior approval
9 by the commission.

10 (6) Adopt operating procedures, pursuant to Article
11 VII, which shall be binding in the compacting states to the
12 extent and in the manner provided in this compact.

13 (7) Bring and prosecute legal proceedings or actions
14 in its name as the commission; provided the standing of any
15 state insurance department to sue or be sued under applicable
16 law shall not be affected.

17 (8) Issue subpoenas requiring the attendance and
18 testimony of witnesses and the production of evidence.

19 (9) Establish and maintain offices.

20 (10) Purchase and maintain insurance and bonds.

21 (11) Borrow, accept, or contract for services of
22 personnel, including, but not limited to, employees of a
23 compacting state.

24 (12) Hire employees, professionals, or specialists;
25 elect or appoint officers and fix their compensation, define
26 their duties, give them appropriate authority to carry out the
27 purposes of the compact, and determine their qualifications;
28 and establish the commission's personnel policies and programs
29 relating to, among other things, conflicts of interest, rates
30 of compensation, and qualifications of personnel.

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1 (13) Accept any and all appropriate donations and
2 grants of money, equipment, supplies, materials, and services
3 and to receive, use, and dispose of the same; provided at all
4 times the commission shall strive to avoid any appearance of
5 impropriety.

6 (14) Lease, purchase, and accept appropriate gifts or
7 donations of, or otherwise to own, hold, improve, or use, any
8 property, real, personal, or mixed; provided at all times the
9 commission shall strive to avoid any appearance of
10 impropriety.

11 (15) Sell, convey, mortgage, pledge, lease, exchange,
12 abandon, or otherwise dispose of any property, real, personal,
13 or mixed.

14 (16) Remit filing fees to compacting states as may be
15 set forth in the bylaws, rules, or operating procedures.

16 (17) Enforce compliance by compacting states with
17 rules, uniform standards, operating procedures, and bylaws.

18 (18) Provide for dispute resolution among compacting
19 states.

20 (19) Advise compacting states on issues relating to
21 insurers domiciled or doing business in noncompacting
22 jurisdictions, consistent with the purposes of this compact.

23 (20) Provide advice and training to those personnel in
24 state insurance departments responsible for product review and
25 to be a resource for state insurance departments.

26 (21) Establish a budget and make expenditures.

27 (22) Borrow money.

28 (23) Appoint committees, including advisory
29 committees, comprising members, state insurance regulators,
30 state legislators or their representatives, insurance industry
31

1 and consumer representatives, and such other interested
2 persons as may be designated in the bylaws.

3 (24) Provide and receive information from and to
4 cooperate with law enforcement agencies.

5 (25) Adopt and use a corporate seal.

6 (26) Perform such other functions as may be necessary
7 or appropriate to achieve the purposes of this compact
8 consistent with the state regulation of the business of
9 insurance.

10
11 Article V

12
13 ORGANIZATION.--

14 (1) Membership; voting; bylaws.--

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

26 2. The Chief Financial Officer is hereby designated to
27 serve as the representative of this state on the
28 commission.(b) Each member shall be entitled to one vote and
29 shall have an opportunity to participate in the governance of
30 the commission in accordance with the bylaws. Notwithstanding
31 any other provision of this article, no action of the

1 commission with respect to the adoption of a uniform standard
2 shall be effective unless two-thirds of the members vote in
3 favor of such action.

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

9 1. Establishing the fiscal year of the commission.

10 2. Providing reasonable procedures for appointing and
11 electing members, as well as holding meetings, of the
12 management committee.

13 3. Providing reasonable standards and procedures:

14 a. For the establishment and meetings of other
15 committees.

16 b. Governing any general or specific delegation of any
17 authority or function of the commission.

18 4. Providing reasonable procedures for calling and
19 conducting meetings of the commission that consist of a
20 majority of commission members, ensuring reasonable advance
21 notice of each such meeting, and providing for the right of
22 citizens to attend each such meeting with enumerated
23 exceptions designed to protect the public's interest, the
24 privacy of individuals, and insurers' proprietary information,
25 including, but not limited to, trade secrets. The commission
26 may meet in camera only after a majority of the entire
27 membership votes to close a meeting in total or in part. As
28 soon as practicable, the commission must make public a copy of
29 the vote to close the meeting revealing the vote of each
30 member with no proxy votes allowed, and votes taken during
31 such meeting.

1 5. Establishing the titles, duties, and authority and
2 reasonable procedures for the election of the officers of the
3 commission.

4 6. Providing reasonable standards and procedures for
5 the establishment of the personnel policies and programs of
6 the commission. Notwithstanding any civil service or other
7 similar laws of any compacting state, the bylaws shall
8 exclusively govern the personnel policies and programs of the
9 commission.

10 7. Adopting a code of ethics to address permissible
11 and prohibited activities of commission members and employees.

12 8. Providing a mechanism for winding up the operations
13 of the commission and the equitable disposition of any surplus
14 funds that may exist after the termination of the compact
15 after the payment or reserving of all debts and obligations of
16 the commission.

17 (d) The commission shall publish its bylaws in a
18 convenient form and file a copy of such bylaws and a copy of
19 any amendment to such bylaws, with the appropriate agency or
20 officer in each of the compacting States.

21 (2) Management committee, officers, and personnel.--

22 (a) A management committee comprising no more than 14
23 members shall be established as follows:

24 1. One member from each of the 6 compacting states
25 with the largest premium volume for individual and group
26 annuities, life, disability income, and long-term care
27 insurance products, determined from the records of the
28 National Association of Insurance Commissioners for the prior
29 year.

30 2. Four members from those compacting states with at
31 least 2 percent of the market based on the premium volume

1 described above, other than the 6 compacting states with the
2 largest premium volume, selected on a rotating basis as
3 provided in the bylaws.

4 3. Four members from those compacting states with less
5 than 2 percent of the market, based on the premium volume
6 described above, with 1 selected from each of the 4 zone
7 regions of the National Association of Insurance Commissioners
8 as provided in the bylaws.

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

12 1. Managing the affairs of the commission in a manner
13 consistent with the bylaws and purposes of the commission.

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

25 3. Overseeing the offices of the commission.

26 4. Planning, implementing, and coordinating
27 communications and activities with other state, federal, and
28 local government organizations in order to advance the goals
29 of the commission.

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

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

12 (3) Legislative and advisory committees.--

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

23 (b) The commission shall establish two advisory
24 committees, one comprising consumer representatives
25 independent of the insurance industry and the other comprising
26 insurance industry representatives.

27 (c) The commission may establish additional advisory
28 committees as the bylaws may provide for the carrying out of
29 commission functions.

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1 (4) Corporate records of the commission.--The
2 commission shall maintain its corporate books and records in
3 accordance with the bylaws.

4 (5) Qualified immunity, defense and indemnification.--

5 (a) The members, officers, executive director,
6 employees, and representatives of the commission shall be
7 immune from suit and liability, either personally or in their
8 official capacity, for any claim for damage to or loss of
9 property or personal injury or other civil liability caused by
10 or arising out of any actual or alleged act, error, or
11 omission that occurred, or that the person against whom the
12 claim is made had a reasonable basis for believing occurred
13 within the scope of commission employment, duties, or
14 responsibilities; provided nothing in this paragraph shall be
15 construed to protect any such person from suit or liability
16 for any damage, loss, injury, or liability caused by the
17 intentional or willful and wanton misconduct of that person.

18 (b) The commission shall defend any member, officer,
19 executive director, employee, or representative of the
20 commission in any civil action seeking to impose liability
21 arising out of any actual or alleged act, error, or omission
22 that occurred within the scope of commission employment,
23 duties, or responsibilities, or that the person against whom
24 the claim is made had a reasonable basis for believing
25 occurred within the scope of commission employment, duties, or
26 responsibilities; provided nothing in this article shall be
27 construed to prohibit that person from retaining his or her
28 own counsel and the actual or alleged act, error, or omission
29 did not result from that person's intentional or willful and
30 wanton misconduct.

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1 (c) The commission shall indemnify and hold harmless
2 any member, officer, executive director, employee, or
3 representative of the commission for the amount of any
4 settlement or judgment obtained against that person arising
5 out of any actual or alleged act, error, or omission that
6 occurred within the scope of commission employment, duties, or
7 responsibilities, or that such person had a reasonable basis
8 for believing occurred within the scope of commission
9 employment, duties, or responsibilities; provided the actual
10 or alleged act, error, or omission did not result from the
11 intentional or willful and wanton misconduct of that person.

12
13 Article VI

14
15 MEETINGS; ACTS.--

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

19 (2) Each member of the commission shall have the right
20 and power to cast a vote to which that compacting state is
21 entitled and to participate in the business and affairs of the
22 commission. A member shall vote in person or by such other
23 means as provided in the bylaws. The bylaws may provide for
24 members' participation in meetings by telephone or other means
25 of communication.

26 (3) The commission shall meet at least once during
27 each calendar year. Additional meetings shall be held as set
28 forth in the bylaws.

29
30 Article VII

1 RULES AND OPERATING PROCEDURES; RULEMAKING FUNCTIONS OF
2 THE COMMISSION; OPTING OUT OF UNIFORM STANDARDS.--

3 (1) Rulemaking authority.--The commission shall adopt
4 reasonable rules, including uniform standards, and operating
5 procedures in order to effectively and efficiently achieve the
6 purposes of this compact. Notwithstanding such requirement, if
7 the commission exercises its rulemaking authority in a manner
8 that is beyond the scope of the purposes of this compact or
9 the powers granted under this compact, such action by the
10 commission shall be invalid and have no force and effect.

11 (2) Rulemaking procedure.--Rules and operating
12 procedures shall be made pursuant to a rulemaking process that
13 conforms to the Model State Administrative Procedure Act of
14 1981, as amended, as may be appropriate to the operations of
15 the commission. Before the commission adopts a uniform
16 standard, the commission shall give written notice to the
17 relevant state legislative committees in each compacting state
18 responsible for insurance issues of its intention to adopt the
19 uniform standard. The commission in adopting a uniform
20 standard shall consider fully all submitted materials and
21 issue a concise explanation of its decision.

22 (3) Effective date and opt out of a uniform
23 standard.--A uniform standard shall become effective 90 days
24 after its adoption by the commission or such later date as the
25 commission may determine; provided a compacting state may opt
26 out of a uniform standard as provided in this article. The
27 term "opt out" means any action by a compacting state to
28 decline to adopt or participate in an adopted uniform
29 standard. All other rules and operating procedures, and
30 amendments thereto, shall become effective as of the date
31 specified in each rule, operating procedure, or amendment.

1 (4) Opt out procedure.--

2 (a) A compacting state may opt out of a uniform
3 standard by legislation or regulation adopted by the Office of
4 Insurance Regulation of the Financial Services Commission
5 under such state's Administrative Procedure Act. For purposes
6 of this compact and this state, the Office of Insurance
7 Regulation of the Department of Financial Services constitutes
8 this state's agency for purposes of this subsection. If a
9 compacting state elects to opt out of a uniform standard by
10 regulation, such state must:

11 1. Give written notice to the commission no later than
12 10 business days after the uniform standard is adopted, or at
13 the time the state becomes a compacting state.

14 2. Find that the uniform standard does not provide
15 reasonable protections to the citizens of the state, given the
16 conditions in the state.

17 (b) The commissioner shall make specific findings of
18 fact and conclusions of law, based on a preponderance of the
19 evidence, detailing the conditions in the state which warrant
20 a departure from the uniform standard and determining that the
21 uniform standard would not reasonably protect the citizens of
22 the state. The commissioner must consider and balance the
23 following factors and find that the conditions in the state
24 and needs of the citizens of the state outweigh:

25 1. The intent of the Legislature to participate in,
26 and the benefits of, an interstate agreement to establish
27 national uniform consumer protections for the products subject
28 to this compact.

29 2. The presumption that a uniform standard adopted by
30 the commission provides reasonable protections to consumers of
31 the relevant product.

1
2 Notwithstanding this subsection, a compacting state may, at
3 the time of its enactment of this compact, prospectively opt
4 out of all uniform standards involving long-term care
5 insurance products by expressly providing for such opt out in
6 the enacted compact, and such an opt out shall not be treated
7 as a material variance in the offer or acceptance of any state
8 to participate in this compact. Such an opt out shall be
9 effective at the time of enactment of this compact by the
10 compacting state and shall apply to all existing uniform
11 standards involving long-term care insurance products and
12 those subsequently adopted.

13 (5) Effect of opting out.--If a compacting state
14 elects to opt out of a uniform standard, the uniform standard
15 shall remain applicable in the compacting state electing to
16 opt out until such time the opt out legislation is enacted
17 into law or the regulation opting out becomes effective. Once
18 the opt out of a uniform standard by a compacting state
19 becomes effective as provided under the laws of that state,
20 the uniform standard shall have no further force and effect in
21 that state unless and until the legislation or regulation
22 implementing the opt out is repealed or otherwise becomes
23 ineffective under the laws of the state. If a compacting state
24 opts out of a uniform standard after the uniform standard has
25 been made effective in that state, the opt out shall have the
26 same prospective effect as provided under Article XIV for
27 withdrawals.

28 (6) Stay of uniform standard.--If a compacting state
29 has formally initiated the process of opting out of a uniform
30 standard by regulation, and while the regulatory opt out is
31 pending, the compacting state may petition the commission, at

1 least 15 days before the effective date of the uniform
2 standard, to stay the effectiveness of the uniform standard in
3 that state. The commission may grant a stay if the commission
4 determines the regulatory opt out is being pursued in a
5 reasonable manner and there is a likelihood of success. If a
6 stay is granted or extended by the commission, the stay or
7 extension thereof may postpone the effective date by up to 90
8 days, unless affirmatively extended by the commission;
9 provided a stay may not be permitted to remain in effect for
10 more than 1 year unless the compacting state can show
11 extraordinary circumstances which warrant a continuance of the
12 stay, including, but not limited to, the existence of a legal
13 challenge which prevents the compacting state from opting out.
14 A stay may be terminated by the commission upon notice that
15 the rulemaking process has been terminated.

16 (7) Judicial review.--Not later than 30 days after a
17 rule or operating procedure is adopted, any person may file a
18 petition for judicial review of the rule or operating
19 procedure; provided the filing of such a petition shall not
20 stay or otherwise prevent the rule or operating procedure from
21 becoming effective unless the court finds that the petitioner
22 has a substantial likelihood of success. The court shall give
23 deference to the actions of the commission consistent with
24 applicable law and shall not find the rule or operating
25 procedure to be unlawful if the rule or operating procedure
26 represents a reasonable exercise of the commission's
27 authority.

28
29 Article VIII

30
31 COMMISSION RECORDS AND ENFORCEMENT.--

1 (1) The commission shall adopt rules establishing
2 conditions and procedures for public inspection and copying of
3 its information and official records, except such information
4 and records involving the privacy of individuals and insurers'
5 trade secrets. The commission may adopt additional rules under
6 which the commission may make available to federal and state
7 agencies, including law enforcement agencies, records and
8 information otherwise exempt from disclosure and may enter
9 into agreements with such agencies to receive or exchange
10 information or records subject to nondisclosure and
11 confidentiality provisions.

12 (2) Except as to privileged records, data, and
13 information, the laws of any compacting state pertaining to
14 confidentiality or nondisclosure shall not relieve any
15 compacting state commissioner of the duty to disclose any
16 relevant records, data, or information to the commission;
17 provided disclosure to the commission shall not be deemed to
18 waive or otherwise affect any confidentiality requirement; and
19 further provided, except as otherwise expressly provided in
20 this compact, the commission shall not be subject to the
21 compacting state's laws pertaining to confidentiality and
22 nondisclosure with respect to records, data, and information
23 in its possession. Confidential information of the commission
24 shall remain confidential after such information is provided
25 to any commissioner.

26 (3) The commission shall monitor compacting states for
27 compliance with duly adopted bylaws, rules, uniform standards,
28 and operating procedures. The commission shall notify any
29 noncomplying compacting state in writing of its noncompliance
30 with commission bylaws, rules, or operating procedures. If a
31 noncomplying compacting state fails to remedy its

1 noncompliance within the time specified in the notice of
2 noncompliance, the compacting state shall be deemed to be in
3 default as set forth in Article XIV.

4 (4) The commissioner of any state in which an insurer
5 is authorized to do business or is conducting the business of
6 insurance shall continue to exercise his or her authority to
7 oversee the market regulation of the activities of the insurer
8 in accordance with the provisions of the state's law. The
9 commissioner's enforcement of compliance with the compact is
10 governed by the following provisions:

11 (a) With respect to the commissioner's market
12 regulation of a product or advertisement that is approved or
13 certified to the commission, the content of the product or
14 advertisement shall not constitute a violation of the
15 provisions, standards, or requirements of the compact except
16 upon a final order of the commission, issued at the request of
17 a commissioner after prior notice to the insurer and an
18 opportunity for hearing before the commission.

19 (b) Before a commissioner may bring an action for
20 violation of any provision, standard, or requirement of the
21 compact relating to the content of an advertisement not
22 approved or certified to the commission, the commission, or an
23 authorized commission officer or employee, must authorize the
24 action. However, authorization pursuant to this paragraph does
25 not require notice to the insurer, opportunity for hearing, or
26 disclosure of requests for authorization or records of the
27 commission's action on such requests.

28
29 Article IX
30
31

1 (1) The commission shall pay or provide for the
2 payment of the reasonable expenses of the commission's
3 establishment and organization. To fund the cost of the
4 commission's initial operations, the commission may accept
5 contributions and other forms of funding from the National
6 Association of Insurance Commissioners, compacting states, and
7 other sources. Contributions and other forms of funding from
8 other sources shall be of such a nature that the independence
9 of the commission concerning the performance of commission
10 duties shall not be compromised.

11 (2) The commission shall collect a filing fee from
12 each insurer and third-party filer filing a product with the
13 commission to cover the cost of the operations and activities
14 of the commission and its staff in a total amount sufficient
15 to cover the commission's annual budget.

16 (3) The commission's budget for a fiscal year shall
17 not be approved until the budget has been subject to notice
18 and comment as set forth in Article VII.

19 (4) The commission shall be exempt from all taxation
20 in and by the compacting states.

21 (5) The commission shall not pledge the credit of any
22 compacting state, except by and with the appropriate legal
23 authority of that compacting state.

24 (6) The commission shall keep complete and accurate
25 accounts of all its internal receipts, including grants and
26 donations, and disbursements of all funds under its control.
27 The internal financial accounts of the commission shall be
28 subject to the accounting procedures established under its
29 bylaws. The financial accounts and reports including the
30 system of internal controls and procedures of the commission
31 shall be audited annually by an independent certified public

1 accountant. Upon the determination of the commission, but no
2 less frequently than every 3 years, the review of the
3 independent auditor shall include a management and performance
4 audit of the commission. The commission shall make an annual
5 report to the Governor and the presiding officers of the
6 Legislature of the compacting states, which shall include a
7 report of the independent audit. The commission's internal
8 accounts shall not be confidential and such materials may be
9 shared with the commissioner of any compacting state upon
10 request; provided any work papers related to any internal or
11 independent audit and any information regarding the privacy of
12 individuals and insurers' proprietary information, including
13 trade secrets, shall remain confidential.

14 (7) No compacting state shall have any claim to or
15 ownership of any property held by or vested in the commission
16 or to any commission funds held pursuant to the provisions of
17 this compact.

18
19 Article XIII

20
21 COMPACTING STATES, EFFECTIVE DATE, AMENDMENT.--

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

24 (2) The compact shall become effective and binding
25 upon legislative enactment of the compact into law by two
26 compacting states; provided the commission shall become
27 effective for purposes of adopting uniform standards for,
28 reviewing, and giving approval or disapproval of, products
29 filed with the commission that satisfy applicable uniform
30 standards only after 26 states are compacting states or,
31 alternatively, by states representing greater than 40 percent

1 of the premium volume for life insurance, annuity, disability
2 income, and long-term care insurance products, based on
3 records of the National Association of Insurance Commissioners
4 for the prior year. Thereafter, the compact shall become
5 effective and binding as to any other compacting state upon
6 enactment of the compact into law by that state.

7 (3) Amendments to the compact may be proposed by the
8 commission for enactment by the compacting states. No
9 amendment shall become effective and binding upon the
10 commission and the compacting states unless and until all
11 compacting states enact the amendment into law.

12
13 Article XIV

14
15 WITHDRAWAL; DEFAULT; DISSOLUTION.--

16 (1) Withdrawal.--

17 (a) Once effective, the compact shall continue in
18 force and remain binding upon each and every compacting state;
19 provided a compacting state may withdraw from the compact by
20 enacting a law specifically repealing the law which enacted
21 the compact into law.

22 (b) The effective date of withdrawal is the effective
23 date of the repealing law. However, the withdrawal shall not
24 apply to any product filings approved or self-certified, or
25 any advertisement of such products, on the date the repealing
26 law becomes effective, except by mutual agreement of the
27 commission and the withdrawing state unless the approval is
28 rescinded by the withdrawing state as provided in paragraph
29 (e).

30 (c) The commissioner of the withdrawing state shall
31 immediately notify the management committee in writing upon

1 the introduction of legislation repealing this compact in the
2 withdrawing state.

3 (d) The commission shall notify the other compacting
4 states of the introduction of such legislation within 10 days
5 after the commission's receipt of notice of such legislation.

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

20 (f) Reinstatement following withdrawal of any
21 compacting state shall occur upon the effective date of the
22 withdrawing state reenacting the compact.

23 (2) Default.--

24 (a) If the commission determines that any compacting
25 state has at any time defaulted in the performance of any of
26 its obligations or responsibilities under this compact, the
27 bylaws, or duly adopted rules or operating procedures, after
28 notice and hearing as set forth in the bylaws, all rights,
29 privileges, and benefits conferred by this compact on the
30 defaulting state shall be suspended from the effective date of
31 default as fixed by the commission. The grounds for default

1 include, but are not limited to, failure of a compacting state
2 to perform its obligations or responsibilities, and any other
3 grounds designated in commission rules. The commission shall
4 immediately notify the defaulting state in writing of the
5 defaulting state's suspension pending a cure of the default.
6 The commission shall stipulate the conditions and the time
7 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 subsection (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 a single compacting
25 state.

26 (b) 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 be
29 concluded and any surplus funds shall be distributed in
30 accordance with the bylaws.

31

1 Article XV

2
3 SEVERABILITY; 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 XVI

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

14 (1) Binding effect of this compact.--

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

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

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

25 (d) If any provision of this compact exceeds the
26 constitutional limits imposed on the Legislature of any
27 compacting state, the obligations, duties, powers, or
28 jurisdiction sought to be conferred by that provision upon the
29 commission shall be ineffective as to that compacting state
30 and those obligations, duties, powers, or jurisdiction shall
31 remain in the compacting state and shall be exercised by the

1 agency of such state to which those obligations, duties,
2 powers, or jurisdiction are delegated by law in effect at the
3 time this compact becomes effective.

4 (2) Other laws.--

5 (a) Nothing in this compact prevents the enforcement
6 of any other law of a compacting state, except as provided in
7 paragraph (b).

8 (b) For any product approved or certified to the
9 commission, the rules, uniform standards, and any other
10 requirements of the commission shall constitute the exclusive
11 provisions applicable to the content, approval, and
12 certification of such products. For advertisement that is
13 subject to the commission's authority, any rule, uniform
14 standard, or other requirement of the commission which governs
15 the content of the advertisement shall constitute the
16 exclusive provision that a commissioner may apply to the
17 content of the advertisement. Notwithstanding this paragraph,
18 no action taken by the commission shall abrogate or restrict:

19 1. The access of any person to state courts;

20 2. Remedies available under state law related to
21 breach of contract, tort, or other laws not specifically
22 directed to the content of the product;

23 3. State law relating to the construction of insurance
24 contracts; or

25 4. The authority of the attorney general of the state,
26 including, but not limited to, maintaining any actions or
27 proceedings, as authorized by law.

28 (c) All insurance products filed with individual
29 states shall be subject to the laws of those states.

30 Section 3. This act shall take effect July 1, 2005.

31