



2024 South Dakota Legislature

House Bill 1091

Introduced by: **Representative** Arlint at the request of the Department of Labor and Regulation

1 **An Act to enact the Interstate Insurance Product Regulation Compact.**

2 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

3 **Section 1. That a NEW SECTION be added to title 58:**

4 The state of South Dakota hereby enacts the Interstate Insurance Product
 5 Regulation Compact:

6 Interstate Insurance Product Regulation Compact

7 Article I. Purposes

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

- 10 (1) To promote and protect the interest of consumers of individual and group annuity,
 11 life insurance, disability income and long-term care insurance products;
 12 (2) To develop uniform standards for insurance products covered under the compact;
 13 (3) To establish a central clearinghouse to receive and provide prompt review of
 14 insurance products covered under the compact and, in certain cases,
 15 advertisements related thereto, submitted by insurers authorized to do business in
 16 one or more compacting states;
 17 (4) To give appropriate regulatory approval to those product filings and advertisements
 18 satisfying the applicable uniform standard;
 19 (5) To improve coordination of regulatory resources and expertise between state
 20 insurance departments regarding the setting of uniform standards and review of
 21 insurance products covered under the compact;
 22 (6) To create the Interstate Insurance Product Regulation Commission; and
 23 (7) To perform these and such other related functions as may be consistent with the
 24 state regulation of the business of insurance.

25 Article II. Definitions

26 For the purposes of this compact:

- 1 (1) "Advertisement" means any material designed to create public interest in a product
2 or induce the public to purchase, increase, modify, reinstate, borrow on, surrender,
3 replace, or retain a policy as more specifically defined in the rules and operating
4 procedures of the commission;
- 5 (2) "Bylaws" mean those bylaws established by the commission for its governance or
6 for directing or controlling the commission's actions or conduct;
- 7 (3) "Commission" means the Interstate Insurance Product Regulation Commission
8 established by this compact;
- 9 (4) "Commissioner" means the chief insurance regulatory official of a state including,
10 but not limited to commissioner, superintendent, director, or administrator;
- 11 (5) "Compacting state" means any state which has enacted this compact legislation
12 and which has not withdrawn pursuant to article XIV, section 1, or been terminated
13 pursuant to article XIV, section 2;
- 14 (6) "Domiciliary state" means the state in which an insurer is incorporated or
15 organized; or, in the case of an alien insurer, its state of entry;
- 16 (7) "Insurer" means any entity licensed by a state to issue contracts of insurance for
17 any of the lines of insurance covered by this Act;
- 18 (8) "Member" means the person chosen by a compacting state as its representative to
19 the commission, or his or her designee;
- 20 (9) "Non-compacting state" means any state which is not at the time a compacting
21 state;
- 22 (10) "Operating procedures" mean procedures promulgated by the commission
23 implementing a rule, uniform standard, or a provision of this compact;
- 24 (11) "Product" means the form of a policy or contract, including any application,
25 endorsement, or related form which is attached to and made a part of the policy
26 or contract, and any evidence of coverage or certificate, for an individual or group
27 annuity, life insurance, disability income or long-term care insurance product that
28 an insurer is authorized to issue;
- 29 (12) "Rule" means a statement of general or particular applicability and future effect
30 promulgated by the commission, including a uniform standard developed pursuant
31 to article VII of this compact, designed to implement, interpret, or prescribe law or
32 policy or describing the organization, procedure, or practice requirements of the
33 commission, which shall have the force and effect of law in the compacting states;
- 34 (13) "State" means any state, district, or territory of the United States of America;

1 (14) "Third-party filer" means an entity that submits a product filing to the commission
2 on behalf of an insurer; and

3 (15) "Uniform standard" means a standard adopted by the commission for a product
4 line, pursuant to article VII of this compact, and shall include all of the product
5 requirements in aggregate; provided, that each uniform standard shall be
6 construed, whether express or implied, to prohibit the use of any inconsistent,
7 misleading, or ambiguous provisions in a product and the form of the product made
8 available to the public shall not be unfair, inequitable, or against public policy as
9 determined by the commission.

10 Article III. Establishment of the Commission and Venue

11 (1) The compacting states hereby create and establish a joint public agency known as
12 the Interstate Insurance Product Regulation Commission. Pursuant to article IV,
13 the commission will have the power to develop uniform standards for product lines,
14 receive and provide prompt review of products filed therewith, and give approval
15 to those product filings satisfying applicable uniform standards; provided, it is not
16 intended for the commission to be the exclusive entity for receipt and review of
17 insurance product filings. Nothing herein shall prohibit any insurer from filing its
18 product in any state wherein the Insurer is licensed to conduct the business of
19 insurance; and any such filing shall be subject to the laws of the state where filed.

20 (2) The commission is a body corporate and politic, and an instrumentality of the
21 compacting states.

22 (3) The commission is solely responsible for its liabilities except as otherwise
23 specifically provided in this compact.

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

27 Article IV. Powers of the Commission

28 The commission shall have the following powers:

29 (1) To promulgate rules, pursuant to article VII of this compact, which shall have the
30 force and effect of law and shall be binding in the compacting states to the extent
31 and in the manner provided in this compact;

32 (2) To exercise its rule-making authority and establish reasonable uniform standards
33 for products covered under the compact, and advertisement related thereto, which
34 shall have the force and effect of law and shall be binding in the compacting states,
35 but only for those products filed with the commission, provided that a compacting

- 1 state shall have the right to opt out of such uniform standard pursuant to article
2 VII, to the extent and in the manner provided in this compact, and, provided
3 further, that any uniform standard established by the commission for long-term
4 care insurance products may provide the same or greater protections for
5 consumers as, but shall not provide less than, those protections set forth in the
6 National Association of Insurance Commissioners' Long-Term Care Insurance
7 Model Act and Long-Term Care Insurance Model Regulation, respectively, adopted
8 as of 2001. The commission shall consider whether any subsequent amendments
9 to the NAIC Long-Term Care Insurance Model Act or Long-Term Care Insurance
10 Model Regulation adopted by the NAIC require amending of the uniform standards
11 established by the commission for long-term care insurance products;
- 12 (3) To receive and review in an expeditious manner products filed with the commission,
13 rate filings for disability income and long-term care insurance products, and give
14 approval of those products and rate filings that satisfy the applicable uniform
15 standard, where such approval shall have the force and effect of law and be binding
16 on the compacting states to the extent and in the manner provided in the compact;
- 17 (4) To receive and review in an expeditious manner advertisement relating to long-
18 term care insurance products for which uniform standards have been adopted by
19 the commission and give approval to all advertisement that satisfies the applicable
20 uniform standard. For any product covered under this compact, other than long-
21 term care insurance products, the commission shall have the authority to require
22 an insurer to submit all or any part of its advertisement with respect to that product
23 for review or approval prior to use, if the commission determines that the nature
24 of the product is such that an advertisement of the product could have the capacity
25 or tendency to mislead the public. The actions of the commission as provided in
26 this section shall have the force and effect of law and shall be binding in the
27 compacting states to the extent and in the manner provided in the compact;
- 28 (5) To exercise its rule-making authority and designate products and advertisement
29 that may be subject to a self-certification process without the need for prior
30 approval by the commission;
- 31 (6) To promulgate operating procedures, pursuant to article VII of this compact, which
32 shall be binding in the compacting states to the extent and in the manner provided
33 in this compact;

- 1 (7) To bring and prosecute legal proceedings or actions in its name as the commission;
2 provided, that the standing of any state insurance department to sue or be sued
3 under applicable law shall not be affected;
- 4 (8) To issue subpoenas requiring the attendance and testimony of witnesses and the
5 production of evidence;
- 6 (9) To establish and maintain offices;
- 7 (10) To purchase and maintain insurance and bonds;
- 8 (11) To borrow, accept, or contract for services of personnel, including, but not limited
9 to, employees of a compacting state;
- 10 (12) To hire employees, professionals, or specialists, and elect or appoint officers, and
11 to fix their compensation, define their duties and give them appropriate authority
12 to carry out the purposes of the compact, and determine their qualifications; and
13 to establish the commission's personnel policies and programs relating to, among
14 other things, conflicts of interest, rates of compensation, and qualifications of
15 personnel;
- 16 (13) To accept any and all appropriate donations and grants of money, equipment,
17 supplies, materials, and services and to receive, utilize, and dispose of the same,
18 provided that at all times the commission shall strive to avoid any appearance of
19 impropriety;
- 20 (14) To lease, purchase, accept appropriate gifts or donations of, or otherwise to own,
21 hold, improve, or use any property, real, personal, or mixed, provided that at all
22 times the commission shall strive to avoid any appearance of impropriety;
- 23 (15) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose
24 of any property, real, personal, or mixed;
- 25 (16) To remit filing fees to compacting states as may be set forth in the bylaws, rules,
26 or operating procedures;
- 27 (17) To enforce compliance by compacting states with rules, uniform standards,
28 operating procedures, and bylaws;
- 29 (18) To provide for dispute resolution among compacting states;
- 30 (19) To advise compacting states on issues relating to insurers domiciled or doing
31 business in non-compacting jurisdictions, consistent with the purposes of this
32 compact;
- 33 (20) To provide advice and training to those personnel in state insurance departments
34 responsible for product review and to be a resource for state insurance
35 departments;

- 1 (21) To establish a budget and make expenditures;
2 (22) To borrow money;
3 (23) To appoint committees, including advisory committees comprising of members,
4 state insurance regulators, state legislators or their representatives, insurance
5 industry and consumer representatives, and such other interested persons as may
6 be designated in the bylaws;
7 (24) To provide and receive information from and to cooperate with law enforcement
8 agencies;
9 (25) To adopt and use a corporate seal; and
10 (26) To perform such other functions as may be necessary or appropriate to achieve
11 the purposes of this compact consistent with the state regulation of the business
12 of insurance.

13 Article V. Organization of the Commission

- 14 (1) Membership, Voting, and Bylaws
15 (a) Each compacting state shall have and be limited to one member. Each
16 member shall be qualified to serve in that capacity pursuant to applicable
17 law of the compacting state. Any member may be removed or suspended
18 from office as provided by the law of the state from which he or she shall
19 be appointed. Any vacancy occurring in the commission shall be filled in
20 accordance with the laws of the compacting state wherein the vacancy
21 exists. Nothing herein shall be construed to affect the manner in which a
22 compacting state determines the election or appointment and qualification
23 of its own commissioner.
24 (b) Each member shall be entitled to one vote and shall have an opportunity to
25 participate in the governance of the commission in accordance with the
26 bylaws. Notwithstanding any provision herein to the contrary, no action of
27 the commission with respect to the promulgation of a uniform standard shall
28 be effective unless two-thirds of the members vote in favor thereof.
29 (c) The commission shall, by a majority of the members, prescribe bylaws to
30 govern its conduct as may be necessary or appropriate to carry out the
31 purposes and exercise the powers of the compact, including, but not limited
32 to:
33 (i) Establishing the fiscal year of the commission;
34 (ii) Providing reasonable procedures for appointing and electing
35 members and holding meetings of the management committee;

- 1 (iii) Providing reasonable standards and procedures: (i) for the
2 establishment and meetings of other committees and (ii) governing
3 any general or specific delegation of any authority or function of the
4 commission;
- 5 (iv) Providing reasonable procedures for calling and conducting meetings
6 of the commission that consists of a majority of commission
7 members, ensuring reasonable advance notice of each such meeting
8 and providing for the right of citizens to attend each such meeting
9 with enumerated exceptions designed to protect the public's
10 interest, the privacy of individuals, and insurers' proprietary
11 information, including trade secrets. The commission may meet in
12 camera only after a majority of the entire membership votes to close
13 a meeting en toto or in part. As soon as practicable, the commission
14 must make public (i) a copy of the vote to close the meeting
15 revealing the vote of each member with no proxy votes allowed, and
16 (ii) votes taken during such meeting;
- 17 (v) Establishing the titles, duties, and authority and reasonable
18 procedures for the election of the officers of the commission;
- 19 (vi) Providing reasonable standards and procedures for the
20 establishment of the personnel policies and programs of the
21 commission. Notwithstanding any civil service or other similar laws
22 of any compacting state, the bylaws shall exclusively govern the
23 personnel policies and programs of the commission;
- 24 (vii) Promulgating a code of ethics to address permissible and prohibited
25 activities of commission members and employees; and
- 26 (viii) Providing a mechanism for winding up the operations of the
27 commission and the equitable disposition of any surplus funds that
28 may exist after the termination of the compact after the payment
29 and/or reserving of all of its debts and obligations.
- 30 (d) The commission shall publish its bylaws in a convenient form and file a copy
31 thereof and a copy of any amendment thereto with the appropriate agency
32 or officer in each of the compacting states.
- 33 (2) Management committee, officers, and personnel
- 34 (a) A management committee, comprising of no more than fourteen members
35 shall be established as follows:

- 1 (i) One member from each of the six compacting states with the largest
2 premium volume for individual and group annuities, life, disability
3 income and long-term care insurance products determined from the
4 records of the NAIC for the prior year;
- 5 (ii) Four members from those compacting states with at least two
6 percent of the market based on the premium volume described
7 above, other than the six compacting states with the largest
8 premium volume, selected on a rotating basis as provided in the
9 bylaws; and
- 10 (iii) Four members from those compacting states with less than two
11 percent of the market, based on the premium volume described
12 above, with one selected from each of the four zone regions of the
13 NAIC as provided in the bylaws.
- 14 (b) The management committee shall have such authority and duties as may
15 be set forth in the bylaws, including but not limited to:
- 16 (i) Managing the affairs of the commission in a manner consistent with
17 the bylaws and purposes of the commission;
- 18 (ii) Establishing and overseeing an organizational structure within, and
19 appropriate procedures for, the commission to provide for the
20 creation of uniform standards and other rules, receipt and review of
21 product filings, administrative and technical support functions,
22 review of decisions regarding the disapproval of a product filing, and
23 the review of elections made by a compacting state to opt out of a
24 uniform standard, provided that a uniform standard shall not be
25 submitted to the compacting states for adoption unless approved by
26 two-thirds of the members of the management committee;
- 27 (iii) Overseeing the offices of the commission; and
- 28 (iv) Planning, implementing, and coordinating communications and
29 activities with other state, federal, and local government
30 organizations in order to advance the goals of the commission.
- 31 (c) The commission shall elect annually officers from the management
32 committee, with each having such authority and duties as may be specified
33 in the bylaws.
- 34 (d) The management committee may, subject to the approval of the
35 commission, appoint or retain an executive director for such period, upon

1 such terms and conditions and for such compensation as the commission
2 may deem appropriate. The executive director shall serve as secretary to
3 the commission but shall not be a member of the commission. The executive
4 director shall hire and supervise ~~such~~ other staff as may be authorized by the
5 Commission.

6 (3) Legislative and advisory committees

7 (a) A legislative committee comprising state legislators or their designees shall
8 be established to monitor the operations of and make recommendations to
9 the commission, including the management committee, provided that the
10 manner of selection and term of any legislative committee member shall be
11 as set forth in the bylaws. Prior to the adoption by the commission of any
12 uniform standard, revision to the bylaws, annual budget or other significant
13 matter as may be provided in the bylaws, the management committee shall
14 consult with and report to the legislative committee.

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

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

20 (4) Corporate records of the commission

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

23 (5) Qualified immunity, defense, and indemnification

24 (a) The members, officers, executive director, employees, and representatives
25 of the commission shall be immune from suit and liability, either personally
26 or in their official capacity, for any claim for damage to or loss of property
27 or personal injury or other civil liability caused by or arising out of any actual
28 or alleged act, error, or omission that occurred or that the person against
29 whom the claim is made had a reasonable basis for believing occurred within
30 the scope of commission employment, duties, or responsibilities, provided
31 that nothing in this paragraph shall be construed to protect any such person
32 from suit and/or liability for any damage, loss, injury, or liability caused by
33 the intentional or willful and wanton misconduct of that person.

34 (b) The commission shall defend any member, officer, executive director,
35 employee, or representative of the commission in any civil action seeking to

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

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

18 Article VI. Meetings and Acts of the Commission

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

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

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

28 Article VII. Rules and operating procedures: Rulemaking functions of the commission 29 and opting out of uniform standards

30 (1) Rulemaking authority. The commission shall promulgate reasonable rules,
31 including uniform standards, and operating procedures in order to effectively and
32 efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in
33 the event the commission exercises its rulemaking authority in a manner that is
34 beyond the scope of the purposes of this Act or the powers granted hereunder,

1 then such an action by the commission shall be invalid and have no force and
2 effect.

3 (2) Rulemaking procedure. Rules and operating procedures shall be made pursuant to
4 a rulemaking process that conforms to the Model State Administrative Procedure
5 Act of 1981 as amended, as may be appropriate to the operations of the
6 commission. Before the commission adopts a uniform standard, the commission
7 shall give written notice to the relevant state legislative committee in each
8 compacting state responsible for insurance issues of its intention to adopt the
9 uniform standard. The commission in adopting a uniform standard shall consider
10 fully all submitted materials and issue a concise explanation of its decision.

11 (3) Effective date and opt out of a uniform standard. A uniform standard shall become
12 effective ninety days after its promulgation by the commission or such later date
13 as the commission may determine, provided, however, that a compacting state may
14 opt out of a uniform standard as provided in this article. "Opt out" shall be defined
15 as any action by a compacting state to decline to adopt or participate in a
16 promulgated uniform standard. All other rules and operating procedures and
17 amendments thereto shall become effective as of the date specified in each rule,
18 operating procedure, or amendment.

19 (4) Opt-out procedure.

20 (a) A compacting state may opt out of a uniform standard, either by legislation
21 or regulation duly promulgated by the insurance department under the
22 compacting state's administrative procedure act. If a compacting state
23 elects to opt out of a uniform standard by regulation, it must (a) give written
24 notice to the commission no later than ten business days after the uniform
25 standard is promulgated or at the time the state becomes a compacting
26 state and (b) find that the uniform standard does not provide reasonable
27 protections to the citizens of the state given the conditions in the state. The
28 commissioner shall make specific findings of fact and conclusions of law,
29 based on a preponderance of the evidence, detailing the conditions in the
30 state which warrant a departure from the uniform standard and determining
31 that the uniform standard would not reasonably protect the citizens of the
32 state. The commissioner must consider and balance the following factors
33 and find that the conditions in the state and needs of the citizens of the
34 state outweigh:

1 (i) The intent of the legislature to participate in, and the benefits of, an
2 interstate agreement to establish national uniform consumer
3 protections for the products subject to this Act; and

4 (ii) The presumption that a uniform standard adopted by the
5 commission provides reasonable protections to consumers of the
6 relevant product.

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

16 (b) In accordance with subdivision (a), South Dakota opts out of all existing
17 and prospective uniform standards involving long-term care insurance
18 products in order to preserve South Dakota's statutory requirements
19 governing long-term care insurance products.

20 (c) In accordance with subdivision (a), South Dakota opts out of all existing
21 uniform standards involving individual and group disability income
22 insurance products in order to preserve South Dakota's statutory
23 requirements governing individual and group disability income insurance
24 products.

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

29 Once the opt out of a uniform standard by a compacting state becomes effective
30 as provided under the laws of that state, the uniform standard shall have no further
31 force and effect in that state unless and until the legislation or regulation
32 implementing the opt out is repealed or otherwise becomes ineffective under the
33 laws of the state. If a compacting state opts out of a uniform Standard after the
34 uniform standard has been made effective in that state, the opt out shall have the
35 same prospective effect as provided under article XIV for withdrawals.

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

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

23 Article VIII. Commission records and enforcement

24 (1) The commission shall promulgate rules establishing conditions and procedures for
25 public inspection and copying of its information and official records, except such
26 information and records involving the privacy of individuals and insurers' trade
27 secrets. The commission may promulgate additional rules under which it may make
28 available to federal and state agencies, including law enforcement agencies,
29 records and information otherwise exempt from disclosure and may enter into
30 agreements with such agencies to receive or exchange information or records
31 subject to nondisclosure and confidentiality provisions.

32 (2) Except as to privileged records, data, and information, the laws of any compacting
33 state pertaining to confidentiality or nondisclosure shall not relieve any compacting
34 state commissioner of the duty to disclose any relevant records, data, or
35 information to the commission, provided that disclosure to the commission shall

1 not be deemed to waive or otherwise affect any confidentiality requirement and
2 further provided, that, except as otherwise expressly provided in this Act, the
3 commission shall not be subject to the compacting state's laws pertaining to
4 confidentiality and nondisclosure with respect to records, data, and information in
5 its possession. Confidential information of the commission shall remain confidential
6 after such information is provided to any commissioner.

7 (3) The commission shall monitor compacting states for compliance with duly adopted
8 bylaws, rules, including uniform standards, and operating procedures. The
9 commission shall notify any non-complying compacting state in writing of its
10 noncompliance with commission bylaws, rules, or operating procedures. If a non-
11 complying compacting state fails to remedy its noncompliance within the time
12 specified in the notice of noncompliance, the compacting state shall be deemed to
13 be in default as set forth in article XIV.

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

19 (a) With respect to the commissioner's market regulation of a product or
20 advertisement that is approved or certified to the commission, the content
21 of the product or advertisement shall not constitute a violation of the
22 provisions, standards, or requirements of the compact except upon a final
23 order of the commission, issued at the request of a commissioner after prior
24 notice to the insurer and an opportunity for hearing before the commission.

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

32 Article IX. Dispute resolution

33 The commission shall attempt, upon the request of a member, to resolve any
34 disputes or other issues that are subject to this compact and which may arise between
35 two or more compacting states, or between compacting states and non-compacting states,

1 and the commission shall promulgate an operating procedure providing for resolution of
2 such disputes.

3 Article X. Product filing and approval

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

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

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

21 Article XI. Review of commission decisions regarding filings

22 (1) Not later than thirty days after the commission has given notice of a disapproved
23 product or advertisement filed with the commission, the insurer or third-party filer
24 whose filing was disapproved may appeal the determination to a review panel
25 appointed by the commission. The commission shall promulgate rules to establish
26 procedures for appointing such review panels and provide for notice and hearing.
27 An allegation that the commission, in disapproving a product or advertisement filed
28 with the commission, acted arbitrarily, capriciously, or in a manner that is an abuse
29 of discretion or otherwise not in accordance with the law, is subject to judicial
30 review in accordance with article III, section 4.

31 (2) The commission shall have authority to monitor, review, and reconsider products
32 and advertisement subsequent to ~~their~~ filing or approval upon a finding that the
33 product does not meet the relevant uniform standard. Where appropriate, the
34 commission may withdraw or modify its approval after proper notice and hearing,
35 subject to the appeal process in section 1 above.

Article XII. Finance

- 1
- 2 (1) The commission shall pay or provide for the payment of the reasonable expenses
3 of its establishment and organization. To fund the cost of its initial operations, the
4 commission may accept contributions and other forms of funding from the National
5 Association of Insurance Commissioners, compacting states, and other sources.
6 Contributions and other forms of funding from other sources shall be of such a
7 nature that the independence of the commission concerning the performance of its
8 duties shall not be compromised.
- 9 (2) The commission shall collect a filing fee from each insurer and third-party filer filing
10 a product with the commission to cover the cost of the operations and activities of
11 the commission and its staff in a total amount sufficient to cover the commission's
12 annual budget.
- 13 (3) The commission's budget for a fiscal year shall not be approved until it has been
14 subject to notice and comment as set forth in article VII of this compact.
- 15 (4) The commission shall be exempt from all taxation in and by the compacting states.
- 16 (5) The commission shall not pledge the credit of any compacting state, except by and
17 with the appropriate legal authority of that compacting state.
- 18 (6) The Commission shall keep complete and accurate accounts of all its internal
19 receipts, including grants and donations, and disbursements of all funds under its
20 control. The internal financial accounts of the commission shall be subject to the
21 accounting procedures established under its bylaws. The financial accounts and
22 reports including the system of internal controls and procedures of the commission
23 shall be audited annually by an independent certified public accountant. Upon the
24 determination of the commission, but no less frequently than every three years,
25 the review of the independent auditor shall include a management and
26 performance audit of the commission. The commission shall make an annual report
27 to the Governor and Legislature of the compacting states, which shall include a
28 report of the independent audit. The commission's internal accounts shall not be
29 confidential, and such materials may be shared with the commissioner of any
30 compacting state upon request, provided, however, that any work papers related
31 to any internal or independent audit and any information regarding the privacy of
32 individuals and insurers' proprietary information, including trade secrets, shall
33 remain confidential.

1 (7) No compacting state shall have any claim to or ownership of any property held by
2 or vested in the commission or to any commission funds held pursuant to the
3 provisions of this compact.

4 Article XIII. Compacting states, effective date, and amendment

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

6 (2) The compact shall become effective and binding upon legislative enactment of the
7 compact into law by two compacting states, provided the commission shall become
8 effective for purposes of adopting uniform standards, for reviewing and giving
9 approval or disapproval of products filed with the commission that satisfy
10 applicable uniform standards only after twenty-six states are compacting states or,
11 alternatively, by states representing greater than forty percent of the premium
12 volume for life insurance, annuity, and disability income and long-term care
13 insurance products, based on records of the NAIC for the prior year. Thereafter, it
14 shall become effective and binding as to any other compacting state upon
15 enactment of the compact into law by that state.

16 (3) Amendments to the compact may be proposed by the commission for enactment
17 by the compacting states. No amendment shall become effective and binding upon
18 the commission and the compacting states unless and until all compacting states
19 enact the amendment into law.

20 Article XIV. Withdrawal, default, and termination

21 (1) Withdrawal

22 (a) Once effective, the compact shall continue in force and remain binding upon
23 each and every compacting state, provided that a compacting state may
24 withdraw from the compact ("withdrawing state") by enacting a statute
25 specifically repealing the statute which enacted the compact into law.

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

32 (c) The commissioner of the withdrawing state shall immediately notify the
33 management committee in writing upon the introduction of legislation
34 repealing this compact in the withdrawing state.

1 (d) The commission shall notify the other compacting states of the introduction
2 of such legislation within ten days after its receipt of notice thereof.

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

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

16 (2) Default

17 (a) If the commission determines that any compacting state has at any time
18 defaulted ("defaulting state") in the performance of any of its obligations or
19 responsibilities under this compact, the bylaws, or duly promulgated rules
20 or operating procedures, then, after notice and hearing as set forth in the
21 bylaws, all rights, privileges, and benefits conferred by this compact on the
22 defaulting state shall be suspended from the effective date of default as
23 fixed by the commission. The grounds for default include, but are not limited
24 to, failure of a compacting state to perform its obligations or responsibilities
25 and any other grounds designated in commission rules. The commission
26 shall immediately notify the defaulting state in writing of the defaulting
27 state's suspension pending a cure of the default. The commission shall
28 stipulate the conditions and the time period within which the defaulting
29 state must cure its default. If the defaulting state fails to cure the default
30 within the time period specified by the commission, the defaulting state
31 shall be terminated from the compact and all rights, privileges and benefits
32 conferred by this Compact shall be terminated from the effective date of
33 termination.

34 (b) Product approvals by the commission, product self-certifications, or any
35 advertisement in connection with such product that are in force on the

1 effective date of termination shall remain in force in the defaulting state in
2 the same manner as if the defaulting state had withdrawn voluntarily
3 pursuant to section 1 of this article.

4 (c) Reinstatement following termination of any compacting state requires a
5 reenactment of the compact.

6 (3) Dissolution of compact

7 (a) The compact dissolves effective upon the date of the withdrawal or default
8 of the compacting state, which reduces membership in the compact to one
9 compacting state.

10 (b) Upon the dissolution of this compact, the compact becomes null and void
11 and shall be of no further force or effect, and the business and affairs of the
12 commission shall be wound up, and any surplus funds shall be distributed
13 in accordance with the bylaws.

14 Article XV. Severability and construction

15 (1) The provisions of this compact shall be severable, and if any phrase, clause,
16 sentence, or provision is deemed unenforceable, the remaining provisions of the
17 compact shall be enforceable.

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

20 Article XVI. Binding effect of compact and other laws

21 (1) Other laws

22 (a) Nothing herein prevents the enforcement of any other law of a compacting
23 state, except as provided in paragraph (b) of this section.

24 (b) For any product approved or certified to the commission, the rules, uniform
25 standards, and any other requirements of the commission shall constitute
26 the exclusive provisions applicable to the content, approval, and certification
27 of such products. For advertisement that is subject to the commission's
28 authority, any rule, uniform standard, or other requirement of the
29 commission which governs the content of the advertisement shall constitute
30 the exclusive provision that a commissioner may apply to the content of the
31 advertisement. Notwithstanding the foregoing, no action taken by the
32 commission shall abrogate or restrict:

33 (i) The access of any person to state courts;

- 1 (ii) Remedies available under state law related to breach of contract,
2 tort, or other laws not specifically directed to the content of the
3 product;
- 4 (iii) State law relating to the construction of insurance contracts; or
5 (iv) The authority of the attorney general of the state, including but not
6 limited to maintaining any actions or proceedings as authorized by
7 law.
- 8 (c) All insurance products filed with individual states shall be subject to the laws
9 of those states.
- 10 (2) Binding effect of this compact
- 11 (a) All lawful actions of the commission, including all rules and operating
12 procedures promulgated by the commission, are binding upon the
13 compacting states.
- 14 (b) All agreements between the commission and the compacting states are
15 binding in accordance with their terms.
- 16 (c) Upon the request of a party to a conflict over the meaning or interpretation
17 of commission actions and upon a majority vote of the compacting states,
18 the commission may issue advisory opinions regarding the meaning or
19 interpretation in dispute.
- 20 (d) In the event any provision of this compact exceeds the constitutional limits
21 imposed on the Legislature of any compacting state, the obligations, duties,
22 powers, or jurisdiction sought to be conferred by that provision upon the
23 commission shall be ineffective as to that compacting state, and those
24 obligations, duties, powers, or jurisdiction shall remain in the compacting
25 state and shall be exercised by the agency thereof to which those
26 obligations, duties, powers, or jurisdiction are delegated by law in effect at
27 the time this compact becomes effective.