

1 State of Arkansas
2 89th General Assembly
3 Regular Session, 2013
4

As Engrossed: S3/20/13

A Bill

SENATE BILL 1170

5 By: Senator Rapert
6 By: Representative Biviano
7

For An Act To Be Entitled

8
9 *AN ACT TO ADOPT THE INTERSTATE INSURANCE PRODUCT*
10 *REGULATION COMPACT; AND FOR OTHER PURPOSES.*
11

Subtitle

12
13
14 *TO ADOPT THE INTERSTATE INSURANCE PRODUCT*
15 *REGULATION COMPACT.*
16
17

18 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
19

20 *SECTION 1. DO NOT CODIFY. Purpose – Findings – Effective date.*

21 *(a) The purpose of this act is to join the other states of the United*
22 *States that have adopted the Interstate Insurance Product Regulation Compact.*

23 *(b) The General Assembly finds that:*

24 *(1) Under Article XIII, Paragraph 2, of the compact:*

25 *(A) The compact becomes effective and binding upon*
26 *legislative enactment of the compact into law by two (2) states; and*

27 *(B) The Interstate Insurance Product Regulation Commission*
28 *becomes effective after adoption of the compact by twenty-six (26) states or*
29 *by states representing greater than forty percent (40%) of the premium volume*
30 *for life insurance, annuity, disability income, and long-term care insurance*
31 *products;*

32 *(2) Forty (40) states and Puerto Rico have already adopted the*
33 *compact and represent approximately seventy percent (70%) of the premium*
34 *volume for life insurance, annuity, disability income, and long-term care*
35 *insurance products nationwide; and*

36 *(3) The State of Arkansas will join the compact on the effective*



1 date of this act.

2
3 SECTION 2. Arkansas Code Title 23, Chapter 67, is amended to add an
4 additional subchapter to read as follows:

5
6 Subchapter 6 – Interstate Insurance Product Regulation Compact

7
8 23-67-601. Title.

9 This subchapter shall be known and may be cited as the "Interstate
10 Insurance Product Regulation Compact".

11
12 23-67-602. Adoption of compact.

13 The Interstate Insurance Product Regulation Compact is enacted into law
14 and entered into with all other jurisdictions legally joining in this compact
15 in the form substantially as follows:

16
17 Interstate Insurance Product Regulation Compact

18
19 ARTICLE I

20 PURPOSES

21
22 The purposes of this Compact are, through means of joint and
23 cooperative action among the Compacting States:

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

27 2. To develop uniform standards for insurance products covered under
28 the Compact;

29 3. To establish a central clearinghouse to receive and provide prompt
30 review of insurance products covered under the Compact and, in certain cases,
31 advertisements related thereto, submitted by insurers authorized to do
32 business in one or more Compacting States;

33 4. To give appropriate regulatory approval to those product filings
34 and advertisements satisfying the applicable uniform standard;

35 5. To improve coordination of regulatory resources and expertise
36 between state insurance departments regarding the setting of uniform

1 standards and review of insurance products covered under the Compact;
2 6. To create the Interstate Insurance Product Regulation Commission;
3 and
4 7. To perform these and such other related functions as may be
5 consistent with the state regulation of the business of insurance.

6
7 ARTICLE II
8 DEFINITIONS
9

10 For purposes of this Compact:

11 1. "Advertisement" means any material designed to create public
12 interest in a Product, or induce the public to purchase, increase, modify,
13 reinstate, borrow on, surrender, replace or retain a policy, as more
14 specifically defined in the Rules and Operating Procedures of the Commission.

15 2. "Bylaws" mean those bylaws established by the Commission for its
16 governance, or for directing or controlling the Commission's actions or
17 conduct.

18 3. "Compacting State" means any State which has enacted this Compact
19 legislation and which has not withdrawn pursuant to Article XIV, Section 1,
20 or been terminated pursuant to Article XIV, Section 2.

21 4. "Commission" means the "Interstate Insurance Product Regulation
22 Commission" established by this Compact.

23 5. "Commissioner" means the chief insurance regulatory official of a
24 State including, but not limited to commissioner, superintendent, director or
25 administrator.

26 6. "Domiciliary State" means the state in which an Insurer is
27 incorporated or organized; or, in the case of an alien Insurer, its state of
28 entry.

29 7. "Insurer" means any entity licensed by a State to issue contracts
30 of insurance for any of the lines of insurance covered by this Act.

31 8. "Member" means the person chosen by a Compacting State as its
32 representative to the Commission, or his or her designee.

33 9. "Non-compacting State" means any State which is not at the time a
34 Compacting State.

35 10. "Operating Procedures" mean procedures promulgated by the
36 Commission implementing a Rule, Uniform Standard or a provision of this

1 Compact.

2 11. "Product" means the form of a policy or contract, including any
3 application, endorsement, or related form which is attached to and made a
4 part of the policy or contract, and any evidence of coverage or certificate,
5 for an individual or group annuity, life insurance, disability income or
6 long-term care insurance product that an Insurer is authorized to issue.

7 12. "Rule" means a statement of general or particular applicability
8 and future effect promulgated by the Commission, including a Uniform Standard
9 developed pursuant to Article VII of this Compact, designed to implement,
10 interpret, or prescribe law or policy or describing the organization,
11 procedure, or practice requirements of the Commission, which shall have the
12 force and effect of law in the Compacting States.

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

15 14. "Third-Party Filer" means an entity that submits a Product filing
16 to the Commission on behalf of an Insurer.

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

24
25 ARTICLE III

26 ESTABLISHMENT OF THE COMMISSION AND VENUE

27
28 1. The Compacting States hereby create and establish a joint public
29 agency known as the "Interstate Insurance Product Regulation Commission."
30 Pursuant to Article IV, the Commission will have the power to develop Uniform
31 Standards for Product lines, receive and provide prompt review of Products
32 filed therewith, and give approval to those Product filings satisfying
33 applicable Uniform Standards; provided, it is not intended for the Commission
34 to be the exclusive entity for receipt and review of insurance product
35 filings. Nothing herein shall prohibit any Insurer from filing its product in
36 any State wherein the Insurer is licensed to conduct the business of

1 insurance; and any such filing shall be subject to the laws of the State
2 where filed.

3 2. The Commission is a body corporate and politic, and an
4 instrumentality of the Compacting States.

5 3. The Commission is solely responsible for its liabilities except as
6 otherwise specifically provided in this Compact.

7 4. Venue is proper and judicial proceedings by or against the
8 Commission shall be brought solely and exclusively in a Court of competent
9 jurisdiction where the principal office of the Commission is located.

10
11 ARTICLE IV

12 POWERS OF THE COMMISSION

13
14 The Commission shall have the following powers:

15 1. To promulgate Rules, pursuant to Article VII of this Compact, which
16 shall have the force and effect of law and shall be binding in the Compacting
17 States to the extent and in the manner provided in this Compact;

18 2. To exercise its rule-making authority and establish reasonable
19 Uniform Standards for Products covered under the Compact, and Advertisement
20 related thereto, which shall have the force and effect of law and shall be
21 binding in the Compacting States, but only for those Products filed with the
22 Commission, provided, that a Compacting State shall have the right to opt out
23 of such Uniform Standard pursuant to Article VII, to the extent and in the
24 manner provided in this Compact, and, provided further, that any Uniform
25 Standard established by the Commission for long-term care insurance products
26 may provide the same or greater protections for consumers as, but shall not
27 provide less than, those protections set forth in the National Association of
28 Insurance Commissioners' Long-Term Care Insurance Model Act and Long-Term
29 Care Insurance Model Regulation, respectively, adopted as of 2001. The
30 Commission shall consider whether any subsequent amendments to the NAIC Long-
31 Term Care Insurance Model Act or Long-Term Care Insurance Model Regulation
32 adopted by the NAIC require amending of the Uniform Standards established by
33 the Commission for long-term care insurance products;

34 3. To receive and review in an expeditious manner Products filed with
35 the Commission, and rate filings for disability income and long-term care
36 insurance Products, and give approval of those Products and rate filings that

1 satisfy the applicable Uniform Standard, where such approval shall have the
2 force and effect of law and be binding on the Compacting States to the extent
3 and in the manner provided in the Compact;

4 4. To receive and review in an expeditious manner Advertisement
5 relating to long-term care insurance products for which Uniform Standards
6 have been adopted by the Commission, and give approval to all Advertisement
7 that satisfies the applicable Uniform Standard. For any product covered under
8 this Compact, other than long-term care insurance products, the Commission
9 shall have the authority to require an insurer to submit all or any part of
10 its Advertisement with respect to that product for review or approval prior
11 to use, if the Commission determines that the nature of the product is such
12 that an Advertisement of the product could have the capacity or tendency to
13 mislead the public. The actions of the Commission as provided in this section
14 shall have the force and effect of law and shall be binding in the Compacting
15 States to the extent and in the manner provided in the Compact;

16 5. To exercise its rule-making authority and designate Products and
17 Advertisement that may be subject to a self-certification process without the
18 need for prior approval by the Commission.

19 6. To promulgate Operating Procedures, pursuant to Article VII of this
20 Compact, which shall be binding in the Compacting States to the extent and in
21 the manner provided in this Compact;

22 7. To bring and prosecute legal proceedings or actions in its name as
23 the Commission; provided, that the standing of any state insurance department
24 to sue or be sued under applicable law shall not be affected;

25 8. To issue subpoenas requiring the attendance and testimony of
26 witnesses and the production of evidence;

27 9. To establish and maintain offices;

28 10. To purchase and maintain insurance and bonds;

29 11. To borrow, accept or contract for services of personnel,
30 including, but not limited to, employees of a Compacting State;

31 12. To hire employees, professionals or specialists, and elect or
32 appoint officers, and to fix their compensation, define their duties and give
33 them appropriate authority to carry out the purposes of the Compact, and
34 determine their qualifications; and to establish the Commission's personnel
35 policies and programs relating to, among other things, conflicts of interest,
36 rates of compensation and qualifications of personnel;

1 13. To accept any and all appropriate donations and grants of money,
2 equipment, supplies, materials and services, and to receive, utilize and
3 dispose of the same; provided that at all times the Commission shall strive
4 to avoid any appearance of impropriety;

5 14. To lease, purchase, accept appropriate gifts or donations of, or
6 otherwise to own, hold, improve or use, any property, real, personal or
7 mixed; provided that at all times the Commission shall strive to avoid any
8 appearance of impropriety;

9 15. To sell, convey, mortgage, pledge, lease, exchange, abandon or
10 otherwise dispose of any property, real, personal or mixed;

11 16. To remit filing fees to Compacting States as may be set forth in
12 the Bylaws, Rules or Operating Procedures;

13 17. To enforce compliance by Compacting States with Rules, Uniform
14 Standards, Operating Procedures and Bylaws;

15 18. To provide for dispute resolution among Compacting States;

16 19. To advise Compacting States on issues relating to Insurers
17 domiciled or doing business in Non-compacting jurisdictions, consistent with
18 the purposes of this Compact;

19 20. To provide advice and training to those personnel in state
20 insurance departments responsible for product review, and to be a resource
21 for state insurance departments;

22 21. To establish a budget and make expenditures;

23 22. To borrow money;

24 23. To appoint committees, including advisory committees comprising
25 Members, state insurance regulators, state legislators or their
26 representatives, insurance industry and consumer representatives, and such
27 other interested persons as may be designated in the Bylaws;

28 24. To provide and receive information from, and to cooperate with law
29 enforcement agencies;

30 25. To adopt and use a corporate seal; and

31 26. To perform such other functions as may be necessary or appropriate
32 to achieve the purposes of this Compact consistent with the state regulation
33 of the business of insurance.

34
35 ARTICLE V

36 ORGANIZATION OF THE COMMISSION

1
2 1. Membership, Voting and Bylaws

3 a. Each Compacting State shall have and be limited to one
4 Member. Each Member shall be qualified to serve in that capacity pursuant to
5 applicable law of the Compacting State. Any Member may be removed or
6 suspended from office as provided by the law of the State from which he or
7 she shall be appointed. Any vacancy occurring in the Commission shall be
8 filled in accordance with the laws of the Compacting State wherein the
9 vacancy exists. Nothing herein shall be construed to affect the manner in
10 which a Compacting State determines the election or appointment and
11 qualification of its own Commissioner.

12 b. Each Member shall be entitled to one vote and shall have an
13 opportunity to participate in the governance of the Commission in accordance
14 with the Bylaws. Notwithstanding any provision herein to the contrary, no
15 action of the Commission with respect to the promulgation of a Uniform
16 Standard shall be effective unless two-thirds (2/3) of the Members vote in
17 favor thereof.

18 c. The Commission shall, by a majority of the Members, prescribe
19 Bylaws to govern its conduct as may be necessary or appropriate to carry out
20 the purposes, and exercise the powers, of the Compact, including, but not
21 limited to:

22 i. Establishing the fiscal year of the Commission;

23 ii. Providing reasonable procedures for appointing and
24 electing members, as well as holding meetings, of the Management Committee;

25 iii. Providing reasonable standards and procedures: (i)
26 for the establishment and meetings of other committees, and (ii) governing
27 any general or specific delegation of any authority or function of the
28 Commission;

29 iv. Providing reasonable procedures for calling and
30 conducting meetings of the Commission that consists of a majority of
31 Commission members, ensuring reasonable advance notice of each such meeting
32 and providing for the right of citizens to attend each such meeting with
33 enumerated exceptions designed to protect the public's interest, the privacy
34 of individuals, and insurers' proprietary information, including trade
35 secrets. The Commission may meet in camera only after a majority of the
36 entire membership votes to close a meeting en toto or in part. As soon as

1 practicable, the Commission must make public (i) a copy of the vote to close
2 the meeting revealing the vote of each Member with no proxy votes allowed,
3 and (ii) votes taken during such meeting;

4 v. Establishing the titles, duties and authority and
5 reasonable procedures for the election of the officers of the Commission;

6 vi. Providing reasonable standards and procedures for the
7 establishment of the personnel policies and programs of the Commission.

8 Notwithstanding any civil service or other similar laws of any Compacting
9 State, the Bylaws shall exclusively govern the personnel policies and
10 programs of the Commission;

11 vii. Promulgating a code of ethics to address permissible
12 and prohibited activities of commission members and employees; and

13 viii. Providing a mechanism for winding up the operations
14 of the Commission and the equitable disposition of any surplus funds that may
15 exist after the termination of the Compact after the payment and/or reserving
16 of all of its debts and obligations.

17 d. The Commission shall publish its bylaws in a convenient form
18 and file a copy thereof and a copy of any amendment thereto, with the
19 appropriate agency or officer in each of the Compacting States.

20 2. Management Committee, Officers and Personnel

21 a. A Management Committee comprising no more than fourteen (14)
22 members shall be established as follows:

23 i. One (1) member from each of the six (6) Compacting
24 States with the largest premium volume for individual and group annuities,
25 life, disability income and long-term care insurance products, determined
26 from the records of the NAIC for the prior year;

27 ii. Four (4) members from those Compacting States with at
28 least two percent (2%) of the market based on the premium volume described
29 above, other than the six (6) Compacting States with the largest premium
30 volume, selected on a rotating basis as provided in the Bylaws; and

31 iii. Four (4) members from those Compacting States with
32 less than two percent (2%) of the market, based on the premium volume
33 described above, with one (1) selected from each of the four (4) zone regions
34 of the NAIC as provided in the Bylaws.

35 b. The Management Committee shall have such authority and duties
36 as may be set forth in the Bylaws, including but not limited to:

1 i. Managing the affairs of the Commission in a manner
2 consistent with the Bylaws and purposes of the Commission;

3 ii. Establishing and overseeing an organizational
4 structure within, and appropriate procedures for, the Commission to provide
5 for the creation of Uniform Standards and other Rules, receipt and review of
6 product filings, administrative and technical support functions, review of
7 decisions regarding the disapproval of a product filing, and the review of
8 elections made by a Compacting State to opt out of a Uniform Standard;
9 provided that a Uniform Standard shall not be submitted to the Compacting
10 States for adoption unless approved by two-thirds (2/3) of the members of the
11 Management Committee;

12 iii. Overseeing the offices of the Commission; and

13 iv. Planning, implementing, and coordinating
14 communications and activities with other state, federal and local government
15 organizations in order to advance the goals of the Commission.

16 c. The Commission shall elect annually officers from the
17 Management Committee, with each having such authority and duties, as may be
18 specified in the Bylaws.

19 d. The Management Committee may, subject to the approval of the
20 Commission, appoint or retain an executive director for such period, upon
21 such terms and conditions and for such compensation as the Commission may
22 deem appropriate. The executive director shall serve as secretary to the
23 Commission, but shall not be a Member of the Commission. The executive
24 director shall hire and supervise such other staff as may be authorized by
25 the Commission.

26 3. Legislative and Advisory Committees

27 a. A legislative committee comprising state legislators or their
28 designees shall be established to monitor the operations of, and make
29 recommendations to, the Commission, including the Management Committee;
30 provided that the manner of selection and term of any legislative committee
31 member shall be as set forth in the Bylaws. Prior to the adoption by the
32 Commission of any Uniform Standard, revision to the Bylaws, annual budget or
33 other significant matter as may be provided in the Bylaws, the Management
34 Committee shall consult with and report to the legislative committee.

35 b. The Commission shall establish two (2) advisory committees,
36 one of which shall comprise consumer representatives independent of the

1 insurance industry, and the other comprising insurance industry
2 representatives.

3 c. The Commission may establish additional advisory committees
4 as its Bylaws may provide for the carrying out of its functions.

5 4. Corporate Records of the Commission

6 The Commission shall maintain its corporate books and records in
7 accordance with the Bylaws.

8 5. Qualified Immunity, Defense and Indemnification

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

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

30 c. The Commission shall indemnify and hold harmless any Member,
31 officer, executive director, employee or representative of the Commission for
32 the amount of any settlement or judgment obtained against that person arising
33 out of any actual or alleged act, error or omission that occurred within the
34 scope of Commission employment, duties or responsibilities, or that such
35 person had a reasonable basis for believing occurred within the scope of
36 Commission employment, duties or responsibilities, provided, that the actual

1 or alleged act, error or omission did not result from the intentional or
2 willful and wanton misconduct of that person.

3
4 ARTICLE VI

5 MEETINGS AND ACTS OF THE COMMISSION

6
7 1. The Commission shall meet and take such actions as are consistent
8 with the provisions of this Compact and the Bylaws.

9 2. Each Member of the Commission shall have the right and power to
10 cast a vote to which that Compacting State is entitled and to participate in
11 the business and affairs of the Commission. A Member shall vote in person or
12 by such other means as provided in the Bylaws. The Bylaws may provide for
13 Members' participation in meetings by telephone or other means of
14 communication.

15 3. The Commission shall meet at least once during each calendar year.
16 Additional meetings shall be held as set forth in the Bylaws.

17
18 ARTICLE VII

19 RULES AND OPERATING PROCEDURES: RULEMAKING FUNCTIONS OF THE COMMISSION AND
20 OPTING OUT OF UNIFORM STANDARDS

21
22 1. Rulemaking Authority. The Commission shall promulgate reasonable
23 Rules, including Uniform Standards, and Operating Procedures in order to
24 effectively and efficiently achieve the purposes of this Compact.
25 Notwithstanding the foregoing, in the event the Commission exercises its
26 rulemaking authority in a manner that is beyond the scope of the purposes of
27 this Act, or the powers granted hereunder, then such an action by the
28 Commission shall be invalid and have no force and effect.

29 2. Rulemaking Procedure. Rules and Operating Procedures shall be made
30 pursuant to a rulemaking process that conforms to the Model State
31 Administrative Procedure Act of 1981 as amended, as may be appropriate to the
32 operations of the Commission. Before the Commission adopts a Uniform
33 Standard, the Commission shall give written notice to the relevant state
34 legislative committee(s) in each Compacting State responsible for insurance
35 issues of its intention to adopt the Uniform Standard. The Commission in
36 adopting a Uniform Standard shall consider fully all submitted materials and

1 issue a concise explanation of its decision.

2 3. Effective Date and Opt Out of a Uniform Standard. A Uniform
3 Standard shall become effective ninety (90) days after its promulgation by
4 the Commission or such later date as the Commission may determine; provided,
5 however, that a Compacting State may opt out of a Uniform Standard as
6 provided in this Article. "Opt out" shall be defined as any action by a
7 Compacting State to decline to adopt or participate in a promulgated Uniform
8 Standard. All other Rules and Operating Procedures, and amendments thereto,
9 shall become effective as of the date specified in each Rule, Operating
10 Procedure or amendment.

11 4. Opt Out Procedure. A Compacting State may opt out of a Uniform
12 Standard, either by legislation or regulation duly promulgated by the
13 Insurance Department under the Compacting State's Administrative Procedure
14 Act. If a Compacting State elects to opt out of a Uniform Standard by
15 regulation, it must (a) give written notice to the Commission no later than
16 ten (10) business days after the Uniform Standard is promulgated, or at the
17 time the State becomes a Compacting State and (b) find that the Uniform
18 Standard does not provide reasonable protections to the citizens of the
19 State, given the conditions in the State. The Commissioner shall make
20 specific findings of fact and conclusions of law, based on a preponderance of
21 the evidence, detailing the conditions in the State which warrant a departure
22 from the Uniform Standard and determining that the Uniform Standard would not
23 reasonably protect the citizens of the State. The Commissioner must consider
24 and balance the following factors and find that the conditions in the State
25 and needs of the citizens of the State outweigh: (i) the intent of the
26 legislature to participate in, and the benefits of, an interstate agreement
27 to establish national uniform consumer protections for the Products subject
28 to this Act; and (ii) the presumption that a Uniform Standard adopted by the
29 Commission provides reasonable protections to consumers of the relevant
30 Product.

31 Notwithstanding the foregoing, a Compacting State may, at the time of
32 its enactment of this Compact, prospectively opt out of all Uniform Standards
33 involving long-term care insurance products by expressly providing for such
34 opt out in the enacted Compact, and such an opt out shall not be treated as a
35 material variance in the offer or acceptance of any State to participate in
36 this Compact. Such an opt out shall be effective at the time of enactment of

1 this Compact by the Compacting State and shall apply to all existing Uniform
2 Standards involving long-term care insurance products and those subsequently
3 promulgated.

4 5. Effect of Opt Out. If a Compacting State elects to opt out of a
5 Uniform Standard, the Uniform Standard shall remain applicable in the
6 Compacting State electing to opt out until such time the opt out legislation
7 is enacted into law or the regulation opting out becomes effective.

8 Once the opt out of a Uniform Standard by a Compacting State becomes
9 effective as provided under the laws of that State, the Uniform Standard
10 shall have no further force and effect in that State unless and until the
11 legislation or regulation implementing the opt out is repealed or otherwise
12 becomes ineffective under the laws of the State. If a Compacting State opts
13 out of a Uniform Standard after the Uniform Standard has been made effective
14 in that State, the opt out shall have the same prospective effect as provided
15 under Article XIV for withdrawals.

16 6. Stay of Uniform Standard. If a Compacting State has formally
17 initiated the process of opting out of a Uniform Standard by regulation, and
18 while the regulatory opt out is pending, the Compacting State may petition
19 the Commission, at least fifteen (15) days before the effective date of the
20 Uniform Standard, to stay the effectiveness of the Uniform Standard in that
21 State. The Commission may grant a stay if it determines the regulatory opt
22 out is being pursued in a reasonable manner and there is a likelihood of
23 success. If a stay is granted or extended by the Commission, the stay or
24 extension thereof may postpone the effective date by up to ninety (90) days,
25 unless affirmatively extended by the Commission; provided, a stay may not be
26 permitted to remain in effect for more than one (1) year unless the
27 Compacting State can show extraordinary circumstances which warrant a
28 continuance of the stay, including, but not limited to, the existence of a
29 legal challenge which prevents the Compacting State from opting out. A stay
30 may be terminated by the Commission upon notice that the rulemaking process
31 has been terminated.

32 7. Not later than thirty (30) days after a Rule or Operating Procedure
33 is promulgated, any person may file a petition for judicial review of the
34 Rule or Operating Procedure; provided, that the filing of such a petition
35 shall not stay or otherwise prevent the Rule or Operating Procedure from
36 becoming effective unless the court finds that the petitioner has a

1 substantial likelihood of success. The court shall give deference to the
2 actions of the Commission consistent with applicable law and shall not find
3 the Rule or Operating Procedure to be unlawful if the Rule or Operating
4 Procedure represents a reasonable exercise of the Commission's authority.

5
6 ARTICLE VIII

7 COMMISSION RECORDS AND ENFORCEMENT

8
9 1. The Commission shall promulgate Rules establishing conditions and
10 procedures for public inspection and copying of its information and official
11 records, except such information and records involving the privacy of
12 individuals and insurers' trade secrets. The Commission may promulgate
13 additional Rules under which it may make available to federal and state
14 agencies, including law enforcement agencies, records and information
15 otherwise exempt from disclosure, and may enter into agreements with such
16 agencies to receive or exchange information or records subject to
17 nondisclosure and confidentiality provisions.

18 2. Except as to privileged records, data and information, the laws of
19 any Compacting State pertaining to confidentiality or nondisclosure shall not
20 relieve any Compacting State Commissioner of the duty to disclose any
21 relevant records, data or information to the Commission; provided, that
22 disclosure to the Commission shall not be deemed to waive or otherwise affect
23 any confidentiality requirement; and further provided, that, except as
24 otherwise expressly provided in this Act, the Commission shall not be subject
25 to the Compacting State's laws pertaining to confidentiality and
26 nondisclosure with respect to records, data and information in its
27 possession. Confidential information of the Commission shall remain
28 confidential after such information is provided to any Commissioner.

29 3. The Commission shall monitor Compacting States for compliance with
30 duly adopted Bylaws, Rules, including Uniform Standards, and Operating
31 Procedures. The Commission shall notify any non-complying Compacting State in
32 writing of its noncompliance with Commission Bylaws, Rules or Operating
33 Procedures. If a non-complying Compacting State fails to remedy its
34 noncompliance within the time specified in the notice of noncompliance, the
35 Compacting State shall be deemed to be in default as set forth in Article
36 XIV.

1 4. The Commissioner of any State in which an Insurer is authorized to
2 do business, or is conducting the business of insurance, shall continue to
3 exercise his or her authority to oversee the market regulation of the
4 activities of the Insurer in accordance with the provisions of the State's
5 law. The Commissioner's enforcement of compliance with the Compact is
6 governed by the following provisions:

7 a. With respect to the Commissioner's market regulation of a
8 Product or Advertisement that is approved or certified to the Commission, the
9 content of the Product or Advertisement shall not constitute a violation of
10 the provisions, standards or requirements of the Compact except upon a final
11 order of the Commission, issued at the request of a Commissioner after prior
12 notice to the Insurer and an opportunity for hearing before the Commission.

13 b. Before a Commissioner may bring an action for violation of
14 any provision, standard or requirement of the Compact relating to the content
15 of an Advertisement not approved or certified to the Commission, the
16 Commission, or an authorized Commission officer or employee, must authorize
17 the action. However, authorization pursuant to this paragraph does not
18 require notice to the Insurer, opportunity for hearing or disclosure of
19 requests for authorization or records of the Commission's action on such
20 requests.

21
22 ARTICLE IX

23 DISPUTE RESOLUTION

24
25 The Commission shall attempt, upon the request of a Member, to resolve
26 any disputes or other issues that are subject to this Compact and which may
27 arise between two or more Compacting States, or between Compacting States and
28 Non-compacting States, and the Commission shall promulgate an Operating
29 Procedure providing for resolution of such disputes.

30
31 ARTICLE X

32 PRODUCT FILING AND APPROVAL

33
34 1. Insurers and Third-Party Filers seeking to have a Product approved
35 by the Commission shall file the Product with, and pay applicable filing fees
36 to, the Commission. Nothing in this Act shall be construed to restrict or

1 otherwise prevent an insurer from filing its Product with the insurance
2 department in any State wherein the insurer is licensed to conduct the
3 business of insurance, and such filing shall be subject to the laws of the
4 States where filed.

5 2. The Commission shall establish appropriate filing and review
6 processes and procedures pursuant to Commission Rules and Operating
7 Procedures. Notwithstanding any provision herein to the contrary, the
8 Commission shall promulgate Rules to establish conditions and procedures
9 under which the Commission will provide public access to Product filing
10 information. In establishing such Rules, the Commission shall consider the
11 interests of the public in having access to such information, as well as
12 protection of personal medical and financial information and trade secrets,
13 that may be contained in a Product filing or supporting information.

14 3. Any Product approved by the Commission may be sold or otherwise
15 issued in those Compacting States for which the Insurer is legally authorized
16 to do business.

17 18 ARTICLE XI

19 REVIEW OF COMMISSION DECISIONS REGARDING FILINGS

20
21 1. Not later than thirty (30) days after the Commission has given
22 notice of a disapproved Product or Advertisement filed with the Commission,
23 the Insurer or Third Party Filer whose filing was disapproved may appeal the
24 determination to a review panel appointed by the Commission. The Commission
25 shall promulgate Rules to establish procedures for appointing such review
26 panels and provide for notice and hearing. An allegation that the Commission,
27 in disapproving a Product or Advertisement filed with the Commission, acted
28 arbitrarily, capriciously, or in a manner that is an abuse of discretion or
29 otherwise not in accordance with the law, is subject to judicial review in
30 accordance with Article III, Section 4.

31 2. The Commission shall have authority to monitor, review and
32 reconsider Products and Advertisement subsequent to their filing or approval
33 upon a finding that the product does not meet the relevant Uniform Standard.
34 Where appropriate, the Commission may withdraw or modify its approval after
35 proper notice and hearing, subject to the appeal process in Section 1 above.

36

ARTICLE XIIFINANCE

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

11 2. The Commission shall collect a filing fee from each Insurer and
12 Third Party Filer filing a product with the Commission to cover the cost of
13 the operations and activities of the Commission and its staff in a total
14 amount sufficient to cover the Commission's annual budget.

15 3. The Commission's budget for a fiscal year shall not be approved
16 until it has been subject to notice and comment as set forth in Article VII
17 of this Compact.

18 4. The Commission shall be exempt from all taxation in and by the
19 Compacting States.

20 5. The Commission shall not pledge the credit of any Compacting State,
21 except by and with the appropriate legal authority of that Compacting State.

22 6. The Commission shall keep complete and accurate accounts of all its
23 internal receipts, including grants and donations, and disbursements of all
24 funds under its control. The internal financial accounts of the Commission
25 shall be subject to the accounting procedures established under its Bylaws.
26 The financial accounts and reports including the system of internal controls
27 and procedures of the Commission shall be audited annually by an independent
28 certified public accountant. Upon the determination of the Commission, but no
29 less frequently than every three (3) years, the review of the independent
30 auditor shall include a management and performance audit of the Commission.
31 The Commission shall make an Annual Report to the Governor and legislature of
32 the Compacting States, which shall include a report of the independent audit.
33 The Commission's internal accounts shall not be confidential and such
34 materials may be shared with the Commissioner of any Compacting State upon
35 request provided, however, that any work papers related to any internal or
36 independent audit and any information regarding the privacy of individuals

1 and insurers' proprietary information, including trade secrets, shall remain
2 confidential.

3 7. No Compacting State shall have any claim to or ownership of any
4 property held by or vested in the Commission or to any Commission funds held
5 pursuant to the provisions of this Compact.

6
7 ARTICLE XIII

8 COMPACTING STATES, EFFECTIVE DATE, AND AMENDMENT

9
10 1. Any State is eligible to become a Compacting State.

11 2. The Compact shall become effective and binding upon legislative
12 enactment of the Compact into law by two Compacting States; provided, the
13 Commission shall become effective for purposes of adopting Uniform Standards
14 for, reviewing, and giving approval or disapproval of, Products filed with
15 the Commission that satisfy applicable Uniform Standards only after twenty-
16 six (26) States are Compacting States or, alternatively, by States
17 representing greater than forty percent (40%) of the premium volume for life
18 insurance, annuity, disability income and long-term care insurance products,
19 based on records of the NAIC for the prior year. Thereafter, it shall become
20 effective and binding as to any other Compacting State upon enactment of the
21 Compact into law by that State.

22 3. Amendments to the Compact may be proposed by the Commission for
23 enactment by the Compacting States. No amendment shall become effective and
24 binding upon the Commission and the Compacting States unless and until all
25 Compacting States enact the amendment into law.

26
27 ARTICLE XIV

28 WITHDRAWAL, DEFAULT, AND TERMINATION

29
30 1. Withdrawal

31 a. Once effective, the Compact shall continue in force and
32 remain binding upon each and every Compacting State; provided, that a
33 Compacting State may withdraw from the Compact ("Withdrawing State") by
34 enacting a statute specifically repealing the statute which enacted the
35 Compact into law.

36 b. The effective date of withdrawal is the effective date of the

1 repealing statute. However, the withdrawal shall not apply to any product
2 filings approved or self-certified, or any Advertisement of such products, on
3 the date the repealing statute becomes effective, except by mutual agreement
4 of the Commission and the Withdrawing State unless the approval is rescinded
5 by the Withdrawing State as provided in Paragraph e of this section.

6 c. The Commissioner of the Withdrawing State shall immediately
7 notify the Management Committee in writing upon the introduction of
8 legislation repealing this Compact in the Withdrawing State.

9 d. The Commission shall notify the other Compacting States of
10 the introduction of such legislation within ten (10) days after its receipt
11 of notice thereof.

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

23 f. Reinstatement following withdrawal of any Compacting State
24 shall occur upon the effective date of the Withdrawing State reenacting the
25 Compact.

26 2. Default

27 a. If the Commission determines that any Compacting State has at
28 any time defaulted ("Defaulting State") in the performance of any of its
29 obligations or responsibilities under this Compact, the Bylaws or duly
30 promulgated Rules or Operating Procedures, then, after notice and hearing as
31 set forth in the Bylaws, all rights, privileges and benefits conferred by
32 this Compact on the Defaulting State shall be suspended from the effective
33 date of default as fixed by the Commission. The grounds for default include,
34 but are not limited to, failure of a Compacting State to perform its
35 obligations or responsibilities, and any other grounds designated in
36 Commission Rules. The Commission shall immediately notify the Defaulting

1 State in writing of the Defaulting State's suspension pending a cure of the
 2 default. The Commission shall stipulate the conditions and the time period
 3 within which the Defaulting State must cure its default. If the Defaulting
 4 State fails to cure the default within the time period specified by the
 5 Commission, the Defaulting State shall be terminated from the Compact and all
 6 rights, privileges and benefits conferred by this Compact shall be terminated
 7 from the effective date of termination.

8 b. Product approvals by the Commission or product self-
 9 certifications, or any Advertisement in connection with such product, that
 10 are in force on the effective date of termination shall remain in force in
 11 the Defaulting State in the same manner as if the Defaulting State had
 12 withdrawn voluntarily pursuant to Section 1 of this article.

13 c. Reinstatement following termination of any Compacting State
 14 requires a reenactment of the Compact.

15 3. Dissolution of Compact

16 a. The Compact dissolves effective upon the date of the
 17 withdrawal or default of the Compacting State which reduces membership in the
 18 Compact to one Compacting State.

19 b. Upon the dissolution of this Compact, the Compact becomes
 20 null and void and shall be of no further force or effect, and the business
 21 and affairs of the Commission shall be wound up and any surplus funds shall
 22 be distributed in accordance with the Bylaws.

23
 24 ARTICLE XV

25 SEVERABILITY AND CONSTRUCTION

26
 27 1. The provisions of this Compact shall be severable; and if any
 28 phrase, clause, sentence or provision is deemed unenforceable, the remaining
 29 provisions of the Compact shall be enforceable.

30 2. The provisions of this Compact shall be liberally construed to
 31 effectuate its purposes.

32
 33 ARTICLE XVI

34 BINDING EFFECT OF COMPACT AND OTHER LAWS

35
 36 1. Other Laws

1 a. Nothing herein prevents the enforcement of any other law of a
2 Compacting State, except as provided in Paragraph b of this section.

3 b. For any Product approved or certified to the Commission, the
4 Rules, Uniform Standards and any other requirements of the Commission shall
5 constitute the exclusive provisions applicable to the content, approval and
6 certification of such Products. For Advertisement that is subject to the
7 Commission's authority, any Rule, Uniform Standard or other requirement of
8 the Commission which governs the content of the Advertisement shall
9 constitute the exclusive provision that a Commissioner may apply to the
10 content of the Advertisement. Notwithstanding the foregoing, no action taken
11 by the Commission shall abrogate or restrict: (i) the access of any person to
12 state courts; (ii) remedies available under state law related to breach of
13 contract, tort, or other laws not specifically directed to the content of the
14 Product; (iii) state law relating to the construction of insurance contracts;
15 or (iv) the authority of the attorney general of the state, including but not
16 limited to maintaining any actions or proceedings, as authorized by law.

17 c. All insurance products filed with individual States shall be
18 subject to the laws of those States.

19 2. Binding Effect of this Compact

20 a. All lawful actions of the Commission, including all Rules and
21 Operating Procedures promulgated by the Commission, are binding upon the
22 Compacting States.

23 b. All agreements between the Commission and the Compacting
24 States are binding in accordance with their terms.

25 c. Upon the request of a party to a conflict over the meaning or
26 interpretation of Commission actions, and upon a majority vote of the
27 Compacting States, the Commission may issue advisory opinions regarding the
28 meaning or interpretation in dispute.

29 d. In the event any provision of this Compact exceeds the
30 constitutional limits imposed on the legislature of any Compacting State, the
31 obligations, duties, powers or jurisdiction sought to be conferred by that
32 provision upon the Commission shall be ineffective as to that Compacting
33 State, and those obligations, duties, powers or jurisdiction shall remain in
34 the Compacting State and shall be exercised by the agency thereof to which
35 those obligations, duties, powers or jurisdiction are delegated by law in
36 effect at the time this Compact becomes effective.

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/s/Rapert