

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.

1 State of Arkansas
2 86th General Assembly
3 Regular Session, 2007
4

A Bill

SENATE BILL 178

5 By: Senators Horn, Altes
6 By: Representative Rosenbaum
7

For An Act To Be Entitled

10 AN ACT TO HELP STATES JOIN TOGETHER TO ESTABLISH
11 AN INTERSTATE COMPACT TO REGULATE DESIGNATED
12 INSURANCE PRODUCTS; TO ADOPT THE INTERSTATE
13 INSURANCE PRODUCT REGULATION COMPACT; AND FOR
14 OTHER PURPOSES.

Subtitle

16 TO HELP STATES JOIN TOGETHER TO
17 ESTABLISH AN INTERSTATE COMPACT TO
18 REGULATE DESIGNATED INSURANCE PRODUCTS.
19

20
21
22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code Title 23, Chapter 63 is amended to add an
25 additional subchapter to read as follows:

26 23-63-1901. Preamble.

27 Pursuant to the terms and conditions of this subchapter, the State of
28 Arkansas seeks to join with other states and establish the Interstate
29 Insurance Product Regulation Compact, and thus become a member of the
30 Interstate Insurance Product Regulation Commission.

31
32 23-63-1902. Compact adopted.

33 The Interstate Insurance Product Regulation Compact is enacted into law
34 and entered into by this state with any other states legally joining the
35 compact in the form substantially as provided in § 23-63-1903. The Insurance
36 Commissioner is designated to serve as the representative of this state to



1 the Interstate Insurance Product Regulation Commission.

2
3 23-63-1903. Text of compact.

4
5 ARTICLE I.

6 Purposes

7 The purposes of this Compact are, through means of joint and
8 cooperative action among the Compacting States:

9 1. To promote and protect the interest of consumers of individual and
10 group annuity, life insurance, disability income and long-term care insurance
11 Products;

12 2. To develop uniform standards for insurance products covered under
13 the Compact;

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

18 4. To give appropriate regulatory approval to those product filings
19 and advertisements satisfying the applicable Uniform Standard;

20 5. To improve coordination of regulatory resources and expertise
21 between state insurance departments regarding the setting of uniform
22 standards and review of insurance products covered under the Compact;

23 6. To create the Interstate Insurance Product Regulation Commission;
24 and

25 7. To perform these and such other related functions as may be
26 consistent with the state regulation of the business of insurance.

27
28 ARTICLE II.

29 Definitions

30 For purposes of this Compact:

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

35 2. "Bylaws" mean those Bylaws established by the Commission for its
36 governance, or for directing or controlling the Commission's actions or

1 conduct.

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

6 4. "Commission" means the "Interstate Insurance Product Regulation
7 Commission" established by this Compact.

8 5. "Commissioner" means the chief insurance regulatory official of a
9 State including, but not limited to Commissioner, superintendent, director or
10 administrator.

11 6. "Domiciliary State" means the state in which an Insurer is
12 incorporated or organized; or, in the case of an alien Insurer, its state of
13 entry.

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

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

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

20 10. "Operating Procedures" mean procedures promulgated by the
21 Commission implementing a Rule, Uniform Standard or a provision of this
22 Compact.

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

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

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

36 14. "Third-Party Filer" means an entity that submits a Product filing

1 to the Commission on behalf of an Insurer.

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

9
10 ARTICLE III.

11 Establishment of the Commission and Venue

12 1. The Compacting States hereby create and establish a joint public
13 agency known as the "Interstate Insurance Product Regulation Commission."
14 Pursuant to Article IV, the Commission will have the power to develop Uniform
15 Standards for Product lines, receive and provide prompt review of Products
16 filed therewith, and give approval to those Product filings satisfying
17 applicable Uniform Standards; provided, it is not intended for the Commission
18 to be the exclusive entity for receipt and review of insurance product
19 filings. Nothing herein shall prohibit any Insurer from filing its product
20 in any State wherein the Insurer is licensed to conduct the business of
21 insurance; and any such filing shall be subject to the laws of the State
22 where filed.

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

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

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

30
31 ARTICLE IV.

32 Powers of the Commission

33 The Commission shall have the following powers:

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

1 2. To exercise its rule-making authority and establish reasonable
2 Uniform Standards for Products covered under the Compact, and Advertisement
3 related thereto, which shall have the force and effect of law and shall be
4 binding in the Compacting States, but only for those products filed with the
5 Commission, provided, that a Compacting State shall have the right to opt out
6 of such Uniform Standard pursuant to Article VII, to the extent and in the
7 manner provided in this Compact, and, provided further, that any Uniform
8 Standard established by the Commission for long-Term care insurance products
9 may provide the same or greater protections for consumers as, but shall not
10 provide less than, those protections set forth in the National Association of
11 Insurance Commissioners' Long-Term Care Insurance Model Act and Long-Term
12 Care Insurance Model Regulation, respectively, adopted as of 2001. The
13 Commission shall consider whether any subsequent amendments to the NAIC Long-
14 term Care Insurance Model Act or Long-Term Care Insurance Model Regulation
15 adopted by the NAIC require amending of the Uniform Standards established by
16 the Commission for long-term care insurance products;

17 3. To receive and review in an expeditious manner Products filed with
18 the Commission, and rate filings for disability income and long-term care
19 insurance Products, and give approval of those products and rate filings that
20 satisfy the applicable Uniform Standard, where such approval shall have the
21 force and effect of law and be binding on the Compacting States to the extent
22 and in the manner provided in the Compact;

23 4. To receive and review in an expeditious manner Advertisement
24 relating to long-term care insurance Products for which Uniform Standards
25 have been adopted by the Commission, and give approval to all Advertisement
26 that satisfies the applicable Uniform Standard. For any product covered
27 under this Compact, other than long-term care insurance products, the
28 Commission shall have the authority to require an insurer to submit all or
29 any part of its Advertisement with respect to that product for review or
30 approval prior to use, if the Commission determines that the nature of the
31 product is such that an Advertisement of the product could have the capacity
32 or tendency to mislead the public. The actions of the Commission as provided
33 in this section shall have the force and effect of law and shall be binding
34 in the Compacting States to the extent and in the manner provided in the
35 Compact;

36 5. To exercise its rule-making authority and designate Products and

1 Advertisement that may be subject to a self-certification process without
2 the need for prior approval by the Commission;

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

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

9 8. To issue subpoenas requiring the attendance and testimony of
10 witnesses and the production of evidence;

11 9. To establish and maintain offices;

12 10. To purchase and maintain insurance and bonds;

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

15 12. To hire employees, professionals or specialists, and elect or
16 appoint officers, and to fix their compensation, define their duties and give
17 them appropriate authority to carry out the purposes of the Compact, and
18 determine their qualifications; and to establish the Commission's personnel
19 policies and programs relating to, among other things, conflicts of interest,
20 rates of compensation and qualifications of personnel;

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

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

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

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

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

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

36 19. To advise Compacting States on issues relating to Insurers

1 domiciled or doing business in Non-compacting jurisdictions, consistent with
2 the purposes of this Compact;

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

6 21. To establish a budget and make expenditures;

7 22. To borrow money;

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

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

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

15 26. To perform such other functions as may be necessary or
16 appropriate to achieve the purposes of this Compact consistent with the State
17 regulation of the business of insurance.

18
19 ARTICLE V.

20 Organization of the Commission

21 1. Membership, Voting and Bylaws

22 a. Each Compacting State shall have and be limited to one
23 Member. Each Member shall be qualified to serve in that capacity pursuant to
24 applicable law of the Compacting State. Any Member may be removed or
25 suspended from office as provided by the law of the State from which he or
26 she shall be appointed. Any vacancy occurring in the Commission shall be
27 filled in accordance with the laws of the Compacting State wherein the
28 vacancy exists. Nothing herein shall be construed to affect the manner in
29 which a Compacting State determines the election or appointment and
30 qualification of its own Commissioner.

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

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

5 i. Establishing the fiscal year of the Commission;

6 ii. Providing reasonable procedures for appointing and
7 electing Members, as well as holding meetings, of the Management Committee;

8 iii. Providing reasonable standards and procedures: (i)
9 for the establishment and meetings of other committees, and (ii) governing
10 any general or specific delegation of any authority or function of the
11 Commission;

12 iv. Providing reasonable procedures for calling and
13 conducting meetings of the Commission that consists of a majority of
14 Commission members, ensuring reasonable advance notice of each such meeting
15 and providing for the right of citizens to attend each such meeting with
16 enumerated exceptions designed to protect the public's interest, the privacy
17 of individuals, and Insurers' proprietary information, including trade
18 secrets. The Commission may meet in camera only after a majority of the
19 entire Membership votes to close a meeting en toto or in part. As soon as
20 practicable, the Commission must make public (i) a copy of the vote to close
21 the meeting revealing the vote of each Member with no proxy votes allowed;
22 and (ii) votes taken during such meeting;

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

25 vi. Providing reasonable standards and procedures for the
26 establishment of the personnel policies and programs of the Commission.
27 Notwithstanding any civil service or other similar laws of any Compacting
28 State, the Bylaws shall exclusively govern the personnel policies and
29 programs of the Commission;

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

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

36 d. The Commission shall publish its bylaws in a convenient form

1 and file a copy thereof and a copy of any amendment thereto, with the
2 appropriate agency or officer in each of the Compacting States.

3 2. Management Committee, Officers and Personnel

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

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

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

14 iii. Four (4) Members from those Compacting States with
15 less than two percent (2%) of the market, based on the premium volume
16 described above, with one (1) selected from each of the four (4) zone regions
17 of the NAIC as provided in the Bylaws.

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

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

22 ii. Establishing and overseeing an organizational
23 structure within, and appropriate procedures for, the Commission to provide
24 for the creation of Uniform Standards and other Rules, receipt and review of
25 product filings, administrative and technical support functions, review of
26 decisions regarding the disapproval of a Product filing, and the review of
27 elections made by a Compacting State to opt out of a Uniform Standard;
28 provided that a Uniform Standard shall not be submitted to the Compacting
29 States for adoption unless approved by two-thirds (2/3) of the members of the
30 Management Committee;

31 iii. Overseeing the offices of the Commission; and

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

35 c. The Commission shall elect annually officers from the
36 Management Committee, with each having such authority and duties, as may be

1 specified in the Bylaws.

2 d. The Management Committee may, subject to the approval of the
3 Commission, appoint or retain an executive director for such period, upon
4 such terms and conditions and for such compensation as the Commission may
5 deem appropriate. The executive director shall serve as secretary to the
6 Commission, but shall not be a Member of the Commission. The executive
7 director shall hire and supervise such other staff as may be authorized by
8 the Commission.

9 3. Legislative and Advisory Committees

10 a. A legislative committee comprising state legislators or their
11 designees shall be established to monitor the operations of, and make
12 recommendations to, the Commission, including the Management Committee;
13 provided that the manner of selection and term of any legislative committee
14 Member shall be as set forth in the Bylaws. Prior to the adoption by the
15 Commission of any Uniform Standard, revision to the Bylaws, annual budget or
16 other significant matter as may be provided in the Bylaws, the Management
17 Committee shall consult with and report to the legislative committee.

18 b. The Commission shall establish two (2) advisory committees,
19 one (1) of which shall comprise consumer representatives independent of the
20 insurance industry, and the other comprising insurance industry
21 representatives.

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

24 4. Corporate Records of the Commission

25 The Commission shall maintain its corporate books and records in
26 accordance with the Bylaws.

27 5. Qualified Immunity, Defense and Indemnification

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

1 injury or liability caused by the intentional or willful and wanton
 2 misconduct of that person.

3 b. The Commission shall defend any Member, officer, executive
 4 director, employee or representative of the Commission in any civil action
 5 seeking to impose liability arising out of any actual or alleged act, error
 6 or omission that occurred within the scope of Commission employment, duties
 7 or responsibilities, or that the person against whom the claim is made had a
 8 reasonable basis for believing occurred within the scope of Commission
 9 employment, duties or responsibilities; provided, that nothing herein shall
 10 be construed to prohibit that person from retaining his or her own counsel;
 11 and provided further, that the actual or alleged act, error or omission did
 12 not result from that person's intentional or willful and wanton misconduct.

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

22
 23 ARTICLE VI.

24 Meetings and Acts of the Commission

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

27 2. Each Member of the Commission shall have the right and power to
 28 cast a vote to which that Compacting State is entitled and to participate in
 29 the business and affairs of the Commission. A Member shall vote in person or
 30 by such other means as provided in the Bylaws. The Bylaws may provide for
 31 Members' participation in meetings by telephone or other means of
 32 communication.

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

35
 36 ARTICLE VII.

1 Rules and Operating Procedures: Rulemaking Functions of the Commission and
2 Opting Out of Uniform Standards

3 1. Rule-making Authority. The Commission shall promulgate reasonable
4 Rules, including Uniform Standards, and Operating Procedures in order to
5 effectively and efficiently achieve the purposes of this Compact.

6 Notwithstanding the foregoing, in the event the Commission exercises its
7 Rulemaking authority in a manner that is beyond the scope of the purposes of
8 this Act, or the powers granted hereunder, then such an action by the
9 Commission shall be invalid and have no force and effect.

10 2. Rule-making Procedure. Rules and Operating Procedures shall be
11 made pursuant to a rule-making process that conforms to the Model State
12 Administrative Procedure Act of 1981 as amended, as may be appropriate to the
13 operations of the Commission. Before the Commission adopts a Uniform
14 Standard, the Commission shall give written notice to the relevant State
15 legislative committee(s) in each Compacting State responsible for insurance
16 issues of its intention to adopt the Uniform Standard. The Commission in
17 adopting a Uniform Standard shall consider fully all submitted materials and
18 issue a concise explanation of its decision.

19 3. Effective Date and Opt Out of a Uniform Standard. A Uniform
20 Standard shall become effective ninety (90) days after its promulgation by
21 the Commission or such later date as the Commission may determine; provided,
22 however, that a Compacting State may opt out of a Uniform Standard as
23 provided in this Article. "Opt out" shall be defined as any action by a
24 Compacting State to decline to adopt or participate in a promulgated Uniform
25 Standard. All other Rules and Operating Procedures, and amendments thereto,
26 shall become effective as of the date specified in each Rule, Operating
27 Procedure or amendment.

28 4. Opt Out Procedure. A Compacting State may opt out of a Uniform
29 Standard, either by legislation or regulation duly promulgated by the
30 insurance department under the Compacting State's Administrative Procedure
31 Act. If a Compacting State elects to opt out of a Uniform Standard by
32 regulation, it must (a) give written notice to the Commission no later than
33 ten (10) business days after the Uniform Standard is promulgated, or at the
34 time the State becomes a Compacting State and (b) find that the Uniform
35 Standard does not provide reasonable protections to the citizens of the
36 State, given the conditions in the State. The Commissioner shall make

1 specific findings of fact and conclusions of law, based on a preponderance of
2 the evidence, detailing the conditions in the State which warrant a departure
3 from the Uniform Standard and determining that the Uniform Standard would not
4 reasonably protect the citizens of the State. The Commissioner must consider
5 and balance the following factors and find that the conditions in the State
6 and needs of the citizens of the State outweigh: (i) the intent of the
7 legislature to participate in, and the benefits of, an interstate agreement
8 to establish national uniform consumer protections for the Products subject
9 to this Act; and (ii) the presumption that a Uniform Standard adopted by the
10 Commission provides reasonable protections to consumers of the relevant
11 Product.

12 Notwithstanding the foregoing, a Compacting State may, at the time of
13 its enactment of this Compact, prospectively opt out of all Uniform Standards
14 involving long-term care insurance products by expressly providing for such
15 opt out in the enacted Compact, and such an opt out shall not be treated as a
16 material variance in the offer or acceptance of any State to participate in
17 this Compact. Such an opt out shall be effective at the time of enactment of
18 this Compact by the Compacting State and shall apply to all existing Uniform
19 Standards involving long-term care insurance products and those subsequently
20 promulgated.

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

26 Once the opt out of a Uniform Standard by a Compacting State becomes
27 effective as provided under the laws of that State, the Uniform Standard
28 shall have no further force and effect in that State unless and until the
29 legislation or regulation implementing the opt out is repealed or otherwise
30 becomes ineffective under the laws of the State. If a Compacting State opts
31 out of a Uniform Standard after the Uniform Standard has been made effective
32 in that State, the opt out shall have the same prospective effect as provided
33 under Article XIV for withdrawals.

34 6. Stay of Uniform Standard. If a Compacting State has formally
35 initiated the process of opting out of a Uniform Standard by regulation, and
36 while the regulatory opt out is pending, the Compacting State may petition

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

14 7. Not later than thirty (30) days after a Rule or Operating Procedure
15 is promulgated, any person may file a petition for judicial review of the
16 Rule or Operating Procedure; provided, that the filing of such a petition
17 shall not stay or otherwise prevent the Rule or Operating Procedure from
18 becoming effective unless the court finds that the petitioner has a
19 substantial likelihood of success. The court shall give deference to the
20 actions of the Commission consistent with applicable law and shall not find
21 the Rule or Operating Procedure to be unlawful if the Rule or Operating
22 Procedure represents a reasonable exercise of the Commission's authority.

23 24 ARTICLE VIII.

25 Commission Records and Enforcement

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

35 2. Except as to privileged records, data and information, the laws of
36 any Compacting State pertaining to confidentiality or nondisclosure shall not

1 relieve any Compacting State Commissioner of the duty to disclose any
2 relevant records, data or information to the Commission; provided, that
3 disclosure to the Commission shall not be deemed to waive or otherwise affect
4 any confidentiality requirement; and further provided, that, except as
5 otherwise expressly provided in this Act, the Commission shall not be subject
6 to the Compacting State's laws pertaining to confidentiality and
7 nondisclosure with respect to records, data and information in its
8 possession. Confidential information of the Commission shall remain
9 confidential after such information is provided to any Commissioner.

10 3. The Commission shall monitor Compacting States for compliance with
11 duly adopted Bylaws, Rules, including Uniform Standards, and Operating
12 Procedures. The Commission shall notify any non-complying Compacting State
13 in writing of its noncompliance with Commission Bylaws, Rules or Operating
14 Procedures. If a non-complying Compacting State fails to remedy its
15 noncompliance within the time specified in the notice of noncompliance, the
16 Compacting State shall be deemed to be in default as set forth in Article
17 XIV.

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

24 a. With respect to the Commissioner's market regulation of a
25 Product or Advertisement that is approved or certified to the Commission, the
26 content of the Product or Advertisement shall not constitute a violation of
27 the provisions, standards or requirements of the Compact except upon a final
28 order of the Commission, issued at the request of a Commissioner after prior
29 notice to the Insurer and an opportunity for hearing before the Commission.

30 b. Before a Commissioner may bring an action for violation of
31 any provision, standard or requirement of the Compact relating to the content
32 of an Advertisement not approved or certified to the Commission, the
33 Commission, or an authorized Commission officer or employee, must authorize
34 the action. However, authorization pursuant to this paragraph does not
35 require notice to the Insurer, opportunity for hearing or disclosure of
36 requests for authorization or records of the Commission's action on such

1 requests.

3 ARTICLE IX.

4 Dispute Resolution

5 The Commission shall attempt, upon the request of a Member, to resolve
 6 any disputes or other issues that are subject to this Compact and which may
 7 arise between two or more Compacting States, or between Compacting States and
 8 Non-Compacting States, and the Commission shall promulgate an Operating
 9 Procedure providing for resolution of such disputes.

11 ARTICLE X.

12 Product Filing and Approval

13 1. Insurers and Third-Party Filers seeking to have a Product approved
 14 by the Commission shall file the Product with, and pay applicable filing fees
 15 to, the Commission. Nothing in this Act shall be construed to restrict or
 16 otherwise prevent an insurer from filing its Product with the insurance
 17 department in any State wherein the insurer is licensed to conduct the
 18 business of insurance, and such filing shall be subject to the laws of the
 19 States where filed.

20 2. The Commission shall establish appropriate filing and review
 21 processes and procedures pursuant to Commission Rules and Operating
 22 Procedures. Notwithstanding any provision herein to the contrary, the
 23 Commission shall promulgate Rules to establish conditions and procedures
 24 under which the Commission will provide public access to Product filing
 25 information. In establishing such Rules, the Commission shall consider the
 26 interests of the public in having access to such information, as well as
 27 protection of personal medical and financial information and trade secrets,
 28 that may be contained in a Product filing or supporting information.

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

33 ARTICLE XI.

34 Review of Commission Decisions Regarding Filings

35 1. Not later than thirty (30) days after the Commission has given
 36 notice of a disapproved Product or Advertisement filed with the Commission,

1 the Insurer or Third-Party Filer whose filing was disapproved may appeal the
2 determination to a review panel appointed by the Commission. The Commission
3 shall promulgate Rules to establish procedures for appointing such review
4 panels and provide for notice and hearing. An allegation that the
5 Commission, in disapproving a Product or Advertisement filed with the
6 Commission, acted arbitrarily, capriciously, or in a manner that is an abuse
7 of discretion or otherwise not in accordance with the law, is subject to
8 judicial review in accordance with Article III, Section 4.

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

14
15 ARTICLE XII.

16 Finance

17 1. The Commission shall pay or provide for the payment of the
18 reasonable expenses of its establishment and organization. To fund the cost
19 of its initial operations, the Commission may accept contributions and other
20 forms of funding from the National Association of Insurance Commissioners,
21 Compacting States and other sources. Contributions and other forms of
22 funding from other sources shall be of such a nature that the independence of
23 the Commission concerning the performance of its duties shall not be
24 compromised.

25 2. The Commission shall collect a filing fee from each Insurer and
26 Third-Party Filer filing a product with the Commission to cover the cost of
27 the operations and activities of the Commission and its staff in a total
28 amount sufficient to cover the Commission's annual budget.

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

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

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

36 6. The Commission shall keep complete and accurate accounts of all its

1 internal receipts, including grants and donations, and disbursements of all
2 funds under its control. The internal financial accounts of the Commission
3 shall be subject to the accounting procedures established under its Bylaws.
4 The financial accounts and reports including the system of internal controls
5 and procedures of the Commission shall be audited annually by an independent
6 certified public accountant. Upon the determination of the Commission, but
7 no less frequently than every three (3) years, the review of the independent
8 auditor shall include a management and performance audit of the Commission.
9 The Commission shall make an Annual Report to the Governor and legislature of
10 the Compacting States, which shall include a report of the independent audit.
11 The Commission's internal accounts shall not be confidential and such
12 materials may be shared with the Commissioner of any Compacting State upon
13 request provided, however, that any work papers related to any internal or
14 independent audit and any information regarding the privacy of individuals
15 and Insurers' proprietary information, including trade secrets, shall remain
16 confidential.

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

20
21 ARTICLE XIII.

22 Compacting States, Effective Date and Amendment

23 1. Any State is eligible to become a Compacting State.

24 2. The Compact shall become effective and binding upon legislative
25 enactment of the Compact into law by two Compacting States; provided, the
26 Commission shall become effective for purposes of adopting Uniform Standards
27 for, reviewing, and giving approval or disapproval of, products filed with
28 the Commission that satisfy applicable Uniform Standards only after twenty-
29 six (26) States are Compacting States or, alternatively, by States
30 representing greater than forty percent (40%) of the premium volume for life
31 insurance, annuity, disability income and long-term care insurance products,
32 based on records of the NAIC for the prior year. Thereafter, it shall become
33 effective and binding as to any other Compacting State upon enactment of the
34 Compact into law by that State.

35 3. Amendments to the Compact may be proposed by the Commission for
36 enactment by the Compacting States. No amendment shall become effective and

1 binding upon the Commission and the Compacting States unless and until all
2 Compacting States enact the amendment into law.

3
4 ARTICLE XIV.

5 Withdrawal, Default, and Termination

6 1. Withdrawal

7 a. Once effective, the Compact shall continue in force and
8 remain binding upon each and every Compacting State; provided, that a
9 Compacting State may withdraw from the Compact ("Withdrawing State") by
10 enacting a statute specifically repealing the statute which enacted the
11 Compact into law.

12 b. The effective date of withdrawal is the effective date of the
13 repealing statute. However, the withdrawal shall not apply to any Product
14 filings approved or self-certified, or any Advertisement of such Products, on
15 the date the repealing statute becomes effective, except by mutual agreement
16 of the Commission and the Withdrawing State unless the approval is rescinded
17 by the Withdrawing State as provided in paragraph e of this section.

18 c. The Commissioner of the Withdrawing State shall immediately
19 notify the Management Committee in writing upon the introduction of
20 legislation repealing this Compact in the Withdrawing State.

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

24 e. The Withdrawing State is responsible for all obligations,
25 duties and liabilities incurred through the effective date of withdrawal,
26 including any obligations, the performance of which extends beyond the
27 effective date of withdrawal, except to the extent those obligations may have
28 been released or relinquished by mutual agreement of the Commission and the
29 Withdrawing State. The Commission's approval of Products and Advertisement
30 prior to the effective date of withdrawal shall continue to be effective and
31 be given full force and effect in the Withdrawing State, unless formally
32 rescinded by the Withdrawing State in the same manner as provided by the laws
33 of the Withdrawing State for the prospective disapproval of products or
34 advertisement previously approved under state law.

35 f. Reinstatement following withdrawal of any Compacting State
36 shall occur upon the effective date of the Withdrawing State reenacting the

1 Compact.

2 2. Default

3 a. If the Commission determines that any Compacting State has at
4 any time defaulted ("Defaulting State") in the performance of any of its
5 obligations or responsibilities under this Compact, the Bylaws or duly
6 promulgated Rules or Operating Procedures, then, after notice and hearing as
7 set forth in the Bylaws, all rights, privileges and benefits conferred by
8 this Compact on the Defaulting State shall be suspended from the effective
9 date of default as fixed by the Commission. The grounds for default include,
10 but are not limited to, failure of a Compacting State to perform its
11 obligations or responsibilities, and any other grounds designated in
12 Commission Rules. The Commission shall immediately notify the Defaulting
13 State in writing of the Defaulting State's suspension pending a cure of the
14 default. The Commission shall stipulate the conditions and the time period
15 within which the Defaulting State must cure its default. If the Defaulting
16 State fails to cure the default within the time period specified by the
17 Commission, the Defaulting State shall be terminated from the Compact and all
18 rights, privileges and benefits conferred by this Compact shall be terminated
19 from the effective date of termination.

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

25 c. Reinstatement following termination of any Compacting State
26 requires a reenactment of the Compact.

27 3. Dissolution of Compact

28 a. The Compact dissolves effective upon the date of the
29 withdrawal or default of the Compacting State which reduces membership in the
30 Compact to one Compacting State.

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

35
36 ARTICLE XV.

1 Severability and Construction

2 1. The provisions of this Compact shall be severable; and if any
3 phrase, clause, sentence or provision is deemed unenforceable, the remaining
4 provisions of the Compact shall be enforceable.

5 2. The provisions of this Compact shall be liberally construed to
6 effectuate its purposes.

7
8 ARTICLE XVI.

9 Binding Effect of Compact and other Laws

10 1. Other Laws

11 a. Nothing herein prevents the enforcement of any other law of a
12 Compacting State, except as provided in paragraph b of this section.

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

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

29 2. Binding Effect of this Compact

30 a. All lawful actions of the Commission, including all Rules and
31 Operating Procedures promulgated by the Commission, are binding upon the
32 Compacting States.

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

35 c. Upon the request of a party to a conflict over the meaning or
36 interpretation of Commission actions, and upon a majority vote of the

1 Compacting States, the Commission may issue advisory opinions regarding the
2 meaning or interpretation in dispute.

3 d. In the event any provision of this Compact exceeds the
4 constitutional limits imposed on the legislature of any Compacting State, the
5 obligations, duties, powers or jurisdiction sought to be conferred by that
6 provision upon the Commission shall be ineffective as to that Compacting
7 State, and those obligations, duties, powers or jurisdiction shall remain in
8 the Compacting State and shall be exercised by the agency thereof to which
9 those obligations, duties, powers or jurisdiction are delegated by law in
10 effect at the time this Compact becomes effective.

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