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AN ACT
RELATING TO INSURANCE; ENACTING THE INTERSTATE INSURANCE
PRODUCT REGULATION COMPACT; PROVIDING FOR NON-PREEMPTION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of Chapter 59A, Article 2 NMSA
1978 is enacted to read:

"NONPREEMPTION.--Nothing contained in the Interstate
Insurance Product Regulation Compact, nor any decision or
action by the interstate insurance product regulation
commission, shall preempt, alter or modify any claims or
remedies against insurance companies, agents or other persons
or entities regulated under the Insurance Code that are or
may become available under the common law, the Insurance Code
or other statutes of this state."

Section 2. COMPACT ENACTED AND ENTERED INTO.--The
"Interstate Insurance Product Regulation Compact" is enacted
into law and entered into on behalf of New Mexico with any
and all other states legally joining therein in a form
substantially as follows:

"INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

Article I. Purposes.

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

1. promote and protect the interest of consumers

1 of individual and group annuity, life insurance, disability
2 income and long-term care insurance products;

3 2. develop uniform standards for insurance
4 products covered under the compact;

5 3. establish a central clearinghouse to receive
6 and provide prompt review of insurance products covered under
7 the compact and, in certain cases, related advertisements
8 submitted by insurers authorized to do business in one or
9 more compacting states;

10 4. give appropriate regulatory approval to those
11 product filings and advertisements satisfying the applicable
12 uniform standard;

13 5. improve coordination of regulatory resources
14 and expertise between state insurance departments regarding
15 the setting of uniform standards and review of insurance
16 products covered under the compact;

17 6. create the interstate insurance product
18 regulation commission; and

19 7. perform these and such other related functions
20 as may be consistent with the state regulation of the
21 business of insurance.

22 Article II. Definitions.

23 For purposes of this compact:

24 1. "advertisement" means any material designed to
25 create public interest in a product, or induce the public to

1 purchase, increase, modify, reinstate, borrow on, surrender,
2 replace or retain a policy, as more specifically defined in
3 the rules and operating procedures of the commission;

4 2. "bylaws" means those bylaws established by the
5 commission for its governance or for directing or controlling
6 the commission's actions or conduct;

7 3. "compacting state" means any state that has
8 enacted this compact and that has not withdrawn pursuant to
9 Section 1 of Article XIV of this compact or been terminated
10 pursuant to Section 2 of Article XIV of this compact;

11 4. "commission" means the "interstate insurance
12 product regulation commission" established by this compact;

13 5. "commissioner" means the chief insurance
14 regulatory official of a state, including but not limited to
15 commissioner, superintendent, director or administrator;

16 6. "domiciliary state" means the state in which an
17 insurer is incorporated or organized or, in the case of an
18 alien insurer, its state of entry;

19 7. "insurer" means any entity licensed by a state
20 to issue contracts of insurance for any of the lines of
21 insurance covered by this compact;

22 8. "member" means the person chosen by a
23 compacting state as its representative to the commission, or
24 the person's designee;

25 9. "non-compacting state" means any state that is

1 not at the time a compacting state;

2 10. "operating procedures" means procedures
3 promulgated by the commission implementing a rule, uniform
4 standard or provision of this compact;

5 11. "product" means the form of a policy or
6 contract, including any application, endorsement or related
7 form that is attached to and made a part of the policy or
8 contract, and any evidence of coverage or certificate, for an
9 individual or group annuity, life insurance, disability
10 income or long-term care insurance product that an insurer is
11 authorized to issue;

12 12. "rule" means a statement of general or
13 particular applicability and future effect promulgated by the
14 commission, including a uniform standard developed pursuant
15 to Article VII of this compact, designed to implement,
16 interpret or prescribe law or policy or describe the
17 organization, procedure or practice requirements of the
18 commission, which shall have the force and effect of law in
19 the compacting states;

20 13. "state" means any state, district or territory
21 of the United States of America;

22 14. "third-party filer" means an entity that
23 submits a product filing to the commission on behalf of an
24 insurer; and

25 15. "uniform standard" means a standard adopted by SB 15

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

9 Article III. Establishment of the Commission and Venue.

10 1. The compacting states hereby create and
11 establish a joint public agency known as the "interstate
12 insurance product regulation commission". Pursuant to
13 Article IV of this compact, the commission shall have the
14 power to develop uniform standards for product lines, receive
15 and provide prompt review of products filed therewith and
16 give approval to those product filings satisfying applicable
17 uniform standards; provided that it is not intended for the
18 commission to be the exclusive entity for receipt and review
19 of insurance product filings. Nothing in this compact shall
20 prohibit any insurer from filing its product in any state
21 wherein the insurer is licensed to conduct the business of
22 insurance; and any such filing shall be subject to the laws
23 of the state where filed.

24 2. The commission is a body corporate and politic
25 and an instrumentality of the compacting states.

1 3. The commission is solely responsible for its
2 liabilities except as otherwise specifically provided in this
3 compact.

4 4. Venue is proper, and judicial proceedings by or
5 against the commission shall be brought solely and
6 exclusively in a court of competent jurisdiction where the
7 principal office of the commission is located.

8 Article IV. Powers of the Commission.

9 The commission shall have the power to:

10 1. promulgate rules, pursuant to Article VII of
11 this compact, that shall have the force and effect of law and
12 shall be binding in the compacting states to the extent and
13 in the manner provided in this compact;

14 2. exercise its rulemaking authority and establish
15 reasonable uniform standards for products covered under the
16 compact, and advertisement related thereto, that shall have
17 the force and effect of law and shall be binding in the
18 compacting states, but only for those products filed with the
19 commission; provided that a compacting state shall have the
20 right to opt out of a uniform standard pursuant to Article
21 VII of this compact, to the extent and in the manner provided
22 in this compact; and provided further that any uniform
23 standard established by the commission for long-term care
24 insurance products may provide the same or greater
25 protections for consumers as, but shall not provide less

1 than, those protections set forth in the National Association
2 of Insurance Commissioners' Long-Term Care Insurance Model
3 Act and Long-Term Care Insurance Model Regulation,
4 respectively, adopted as of 2001. The commission shall
5 consider whether any subsequent amendments to the National
6 Association of Insurance Commissioners' Long-Term Care
7 Insurance Model Act or Long-Term Care Insurance Model
8 Regulation adopted by the national association of insurance
9 commissioners require amending of the uniform standards
10 established by the commission for long-term care insurance
11 products;

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

20 4. receive and review in an expeditious manner
21 advertisement relating to long-term care insurance products
22 for which uniform standards have been adopted by the
23 commission, and give approval to all advertisement that
24 satisfies the applicable uniform standard. For any product
25 covered under this compact, other than long-term care

1 insurance products, the commission shall have the authority
2 to require an insurer to submit all or any part of its
3 advertisement with respect to that product for review or
4 approval prior to use, if the commission determines that the
5 nature of the product is such that an advertisement of the
6 product could have the capacity or tendency to mislead the
7 public. The actions of the commission as provided in this
8 section shall have the force and effect of law and shall be
9 binding in the compacting states to the extent and in the
10 manner provided in the compact;

11 5. exercise its rulemaking authority and designate
12 products and advertisement that may be subject to a
13 self-certification process without the need for prior
14 approval by the commission;

15 6. promulgate operating procedures, pursuant to
16 Article VII of this compact, that shall be binding in the
17 compacting states to the extent and in the manner provided in
18 this compact;

19 7. bring and prosecute legal proceedings or
20 actions in its name as the commission; provided that the
21 standing of any state insurance department to sue or be sued
22 under applicable law shall not be affected;

23 8. issue subpoenas requiring the attendance and
24 testimony of witnesses and the production of evidence;

25 9. establish and maintain offices;

1 10. purchase and maintain insurance and bonds;

2 11. borrow, accept or contract for services of
3 personnel, including, but not limited to, employees of a
4 compacting state;

5 12. hire employees, professionals or specialists,
6 and elect or appoint officers, and to fix their compensation,
7 define their duties and give them appropriate authority to
8 carry out the purposes of the compact, and determine their
9 qualifications; and to establish the commission's personnel
10 policies and programs relating to, among other things,
11 conflicts of interest, rates of compensation and
12 qualifications of personnel;

13 13. accept any and all appropriate donations and
14 grants of money, equipment, supplies, materials and services,
15 and to receive, utilize and dispose of the same; provided
16 that at all times the commission shall strive to avoid any
17 appearance of impropriety;

18 14. lease, purchase, accept appropriate gifts or
19 donations of, or otherwise to own, hold, improve or use, any
20 property, real, personal or mixed; provided that at all times
21 the commission shall strive to avoid any appearance of
22 impropriety;

23 15. sell, convey, mortgage, pledge, lease,
24 exchange, abandon or otherwise dispose of any property, real,
25 personal or mixed;

1 16. remit filing fees to compacting states as may
2 be set forth in the bylaws, rules or operating procedures;

3 17. enforce compliance by compacting states with
4 rules, uniform standards, operating procedures and bylaws;

5 18. provide for dispute resolution among
6 compacting states;

7 19. advise compacting states on issues relating to
8 insurers domiciled or doing business in non-compacting
9 jurisdictions, consistent with the purposes of this compact;

10 20. provide advice and training to those personnel
11 in state insurance departments responsible for product review
12 and be a resource for state insurance departments;

13 21. establish a budget and make expenditures;

14 22. borrow money;

15 23. appoint committees, including advisory
16 committees comprising members, state insurance regulators,
17 state legislators or their representatives, insurance
18 industry and consumer representatives and other interested
19 persons as may be designated in the bylaws;

20 24. provide information to, receive information
21 from and cooperate with law enforcement agencies;

22 25. adopt and use a corporate seal; and

23 26. perform such other functions as may be
24 necessary or appropriate to achieve the purposes of this

25 compact consistent with the state regulation of the business

1 of insurance.

2 Article V. Organization of the Commission.

3 Membership, Voting and Bylaws.

4 1. (a) Each compacting state shall have and be
5 limited to one member. Each member shall be qualified to
6 serve in that capacity pursuant to applicable law of the
7 compacting state. Any member may be removed or suspended
8 from office as provided by the law of the state from which
9 the member shall be appointed. Any vacancy occurring in the
10 commission shall be filled in accordance with the laws of the
11 compacting state wherein the vacancy exists. Nothing herein
12 shall be construed to affect the manner in which a compacting
13 state determines the election or appointment and
14 qualification of its own commissioner.

15 (b) Each member shall be entitled to one
16 vote and shall have an opportunity to participate in the
17 governance of the commission in accordance with the bylaws.
18 Notwithstanding any provision herein to the contrary, no
19 action of the commission with respect to the promulgation of
20 a uniform standard shall be effective unless two-thirds of
21 the members vote in favor thereof.

22 (c) The commission shall, by a majority of
23 the members, prescribe bylaws to govern its conduct as may be
24 necessary or appropriate to carry out the purposes, and
25 exercise the powers, of the compact, including:

1 (i) establishing the fiscal year of the
2 commission;

3 (ii) providing reasonable procedures
4 for appointing and electing members, as well as holding
5 meetings, of the management committee;

6 (iii) providing reasonable standards
7 and procedures: (i) for the establishment and meetings of
8 other committees, and (ii) governing any general or specific
9 delegation of any authority or function of the commission;

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

24 (v) establishing the titles, duties and
25 authority and reasonable procedures for the election of the

1 officers of the commission;

2 (vi) providing reasonable standards and
3 procedures for the establishment of the personnel policies
4 and programs of the commission. Notwithstanding any civil
5 service or other similar laws of any compacting state, the
6 bylaws shall exclusively govern the personnel policies and
7 programs of the commission;

8 (vii) promulgating a code of ethics to
9 address permissible and prohibited activities of commission
10 members and employees; and

11 (viii) providing a mechanism for
12 winding up the operations of the commission and the equitable
13 disposition of any surplus funds that may exist after the
14 termination of the compact after the payment or reserving of
15 all of its debts and obligations.

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

20 Management Committee, Officers and Personnel.

21 2. (a) A management committee, comprising no more
22 than fourteen members, shall be established as follows:

23 (i) one member from each of the six
24 compacting states with the largest premium volume for
25 individual and group annuities, life, disability income and

1 long-term care insurance products, determined from the
2 records of the national association of insurance
3 commissioners for the prior year;

4 (ii) four members from those compacting
5 states with at least two percent of the market based on the
6 premium volume described above, other than the six compacting
7 states with the largest premium volume, selected on a
8 rotating basis as provided in the bylaws; and

9 (iii) four members from those
10 compacting states with less than two percent of the market,
11 based on the premium volume described above, with one
12 selected from each of the four zone regions of the national
13 association of insurance commissioners as provided in the
14 bylaws.

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

18 (i) managing the affairs of the
19 commission in a manner consistent with the bylaws and
20 purposes of the commission;

21 (ii) establishing and overseeing an
22 organizational structure within, and appropriate procedures
23 for, the commission to provide for the creation of uniform
24 standards and other rules, receipt and review of product
25 filings, administrative and technical support functions,

1 review of decisions regarding the disapproval of a product
2 filing and the review of elections made by a compacting state
3 to opt out of a uniform standard; provided that a uniform
4 standard shall not be submitted to the compacting states for
5 adoption unless approved by two-thirds of the members of the
6 management committee;

7 (iii) overseeing the offices of the
8 commission; and

9 (iv) planning, implementing and
10 coordinating communications and activities with other state,
11 federal and local government organizations in order to
12 advance the goals of the commission.

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

16 (d) The management committee may, subject to
17 the approval of the commission, appoint or retain an
18 executive director for such period, upon such terms and
19 conditions and for such compensation as the commission may
20 deem appropriate. The executive director shall serve as
21 secretary to the commission, but shall not be a member of the
22 commission. The executive director shall hire and supervise
23 such other staff as may be authorized by the commission.

24 Legislative and Advisory Committees.

25 3. (a) A legislative committee comprising state

1 legislators or their designees shall be established to
2 monitor the operations of, and make recommendations to, the
3 commission, including the management committee; provided that
4 the manner of selection and term of any legislative committee
5 member shall be as set forth in the bylaws. Prior to the
6 adoption by the commission of any uniform standard, revision
7 to the bylaws, annual budget or other significant matter as
8 may be provided in the bylaws, the management committee shall
9 consult with and report to the legislative committee.

10 (b) The commission shall establish two
11 advisory committees, one of which shall comprise consumer
12 representatives independent of the insurance industry, and
13 the other comprising insurance industry representatives.

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

17 Corporate Records of the Commission.

18 4. The commission shall maintain its corporate
19 books and records in accordance with the bylaws.

20 Qualified Immunity, Defense and Indemnification.

21 5. (a) The members, officers, executive
22 director, employees and representatives of the commission
23 shall be immune from suit and liability, either personally or
24 in their official capacity, for any claim for damage to or
25 loss of property or personal injury or other civil liability

1 caused by or arising out of any actual or alleged act, error
2 or omission that occurred, or that the person against whom
3 the claim is made had a reasonable basis for believing
4 occurred within the scope of commission employment, duties or
5 responsibilities; provided that nothing in this paragraph
6 shall be construed to protect any such person from suit or
7 liability for any damage, loss, injury or liability caused by
8 the intentional or willful and wanton misconduct of that
9 person.

10 (b) The commission shall defend any member,
11 officer, executive director, employee or representative of
12 the commission in any civil action seeking to impose
13 liability arising out of any actual or alleged act, error or
14 omission that occurred within the scope of commission
15 employment, duties or responsibilities, or that the person
16 against whom the claim is made had a reasonable basis for
17 believing occurred within the scope of commission employment,
18 duties or responsibilities; provided that nothing herein
19 shall be construed to prohibit that person from retaining his
20 or her own counsel; and provided further that the actual or
21 alleged act, error or omission did not result from that
22 person's intentional or willful and wanton misconduct.

23 (c) The commission shall indemnify and hold
24 harmless any member, officer, executive director, employee or
25 representative of the commission for the amount of any

1 settlement or judgment, obtained against that person arising
2 out of any actual or alleged act, error or omission that
3 occurred within the scope of commission employment, duties or
4 responsibilities, or that such person had a reasonable basis
5 for believing occurred within the scope of commission
6 employment, duties or responsibilities; provided that the
7 actual or alleged act, error or omission did not result from
8 the intentional or willful and wanton misconduct of that
9 person.

10 Article VI. Meetings and Acts of the Commission.

11 1. The commission shall meet and take such actions
12 as are consistent with the provisions of this compact and the
13 bylaws.

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

21 3. The commission shall meet at least once during
22 each calendar year. Additional meetings shall be held as set
23 forth in the bylaws.

24 Article VII. Rules and Operating Procedures:

25 Rulemaking Functions of the Commission

1 and Opting Out of Uniform Standards.

2 Rulemaking Authority.

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

11 Rulemaking Procedure.

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

23 Effective Date and Opt-Out of a Uniform Standard.

24 3. A uniform standard shall become effective
25 ninety days after its promulgation by the commission or such

1 later date as the commission may determine; provided,
2 however, that a compacting state may opt out of a uniform
3 standard as provided in this article. "Opt out" shall be
4 defined as any action by a compacting state to decline to
5 adopt or participate in a promulgated uniform standard. All
6 other rules and operating procedures, and amendments thereto,
7 shall become effective as of the date specified in each rule,
8 operating procedure or amendment.

9 Opt-Out Procedure.

10 4. A compacting state may opt out of a uniform
11 standard, either by legislation or regulation duly
12 promulgated by the insurance department under the compacting
13 state's administrative procedure act. If a compacting state
14 elects to opt out of a uniform standard by regulation, it
15 must:

16 (a) give written notice to the commission no
17 later than ten business days after the uniform standard is
18 promulgated, or at the time the state becomes a compacting
19 state; and

20 (b) find that the uniform standard does not
21 provide reasonable protections to the citizens of the state,
22 given the conditions in the state.

23 The commissioner shall make specific findings of fact
24 and conclusions of law, based on a preponderance of the
25 evidence, detailing the conditions in the state which warrant

1 a departure from the uniform standard and determining that
2 the uniform standard would not reasonably protect the
3 citizens of the state. The commissioner must consider and
4 balance the following factors and find that the conditions in
5 the state and needs of the citizens of the state outweigh:
6 (i) the intent of the legislature to participate in, and the
7 benefits of, an interstate agreement to establish national
8 uniform consumer protections for the products subject to this
9 compact; and (ii) the presumption that a uniform standard
10 adopted by the commission provides reasonable protections to
11 consumers of the relevant product. Notwithstanding the
12 foregoing, a compacting state may, at the time of its
13 enactment of this compact, prospectively opt out of all
14 uniform standards involving long-term care insurance products
15 by expressly providing for such opt-out in the enacted
16 compact, and such an opt-out shall not be treated as a
17 material variance in the offer or acceptance of any state to
18 participate in this compact. Such an opt-out shall be
19 effective at the time of enactment of this compact by the
20 compacting state and shall apply to all existing uniform
21 standards involving long-term care insurance products and
22 those subsequently promulgated.

23 Effect of Opt-Out.

24 5. If a compacting state elects to opt out of a
25 uniform standard, the uniform standard shall remain

1 applicable in the compacting state electing to opt out until
2 such time the opt-out legislation is enacted into law or the
3 regulation opting out becomes effective.

4 Once the opt-out of a uniform standard by a compacting
5 state becomes effective as provided under the laws of that
6 state, the uniform standard shall have no further force and
7 effect in that state unless and until the legislation or
8 regulation implementing the opt-out is repealed or otherwise
9 becomes ineffective under the laws of the state. If a
10 compacting state opts out of a uniform standard after the
11 uniform standard has been made effective in that state, the
12 opt-out shall have the same prospective effect as provided
13 under Article XIV of this compact for withdrawals.

14 Stay of Uniform Standard.

15 6. If a compacting state has formally initiated
16 the process of opting out of a uniform standard by
17 regulation, and while the regulatory opt-out is pending, the
18 compacting state may petition the commission, at least
19 fifteen days before the effective date of the uniform
20 standard, to stay the effectiveness of the uniform standard
21 in that state. The commission may grant a stay if it
22 determines the regulatory opt-out is being pursued in a
23 reasonable manner and there is a likelihood of success. If a
24 stay is granted or extended by the commission, the stay or
25 extension thereof may postpone the effective date by up to

1 ninety days, unless affirmatively extended by the commission;
2 provided that a stay may not be permitted to remain in effect
3 for more than one year unless the compacting state can show
4 extraordinary circumstances which warrant a continuance of
5 the stay, including, but not limited to, the existence of a
6 legal challenge which prevents the compacting state from
7 opting out. A stay may be terminated by the commission upon
8 notice that the rulemaking process has been terminated.

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

21 Article VIII. Commission Records and Enforcement.

22 1. The commission shall promulgate rules
23 establishing conditions and procedures for public inspection
24 and copying of its information and official records, except
25 such information and records involving the privacy of

1 individuals and insurers' trade secrets. The commission may
2 promulgate additional rules under which it may make available
3 to federal and state agencies, including law enforcement
4 agencies, records and information otherwise exempt from
5 disclosure, and may enter into agreements with such agencies
6 to receive or exchange information or records subject to
7 nondisclosure and confidentiality provisions.

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

22 3. The commission shall monitor compacting states
23 for compliance with duly adopted bylaws, rules, including
24 uniform standards, and operating procedures. The commission
25 shall notify any noncomplying compacting state in writing of

1 its noncompliance with commission bylaws, rules or operating
2 procedures. If a noncomplying compacting state fails to
3 remedy its noncompliance within the time specified in the
4 notice of noncompliance, the compacting state shall be deemed
5 to be in default as set forth in Article XIV of this compact.

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

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

21 (b) before a commissioner may bring an
22 action for violation of any provision, standard or
23 requirement of the compact relating to the content of an
24 advertisement not approved or certified to the commission,
25 the commission, or an authorized commission officer or

1 employee, must authorize the action. However, authorization
2 pursuant to this paragraph does not require notice to the
3 insurer, opportunity for hearing or disclosure of requests
4 for authorization or records of the commission's action on
5 such requests.

6 Article IX. Dispute Resolution.

7 The commission shall attempt, upon the request of a
8 member, to resolve any disputes or other issues that are
9 subject to this compact and which may arise between two or
10 more compacting states, or between compacting states and
11 non-compacting states, and the commission shall promulgate an
12 operating procedure providing for resolution of such
13 disputes.

14 Article X. Product Filing and Approval.

15 1. Insurers and third-party filers seeking to have
16 a product approved by the commission shall file the product
17 with, and pay applicable filing fees to, the commission.
18 Nothing in this compact shall be construed to restrict or
19 otherwise prevent an insurer from filing its product with the
20 insurance department in any state wherein the insurer is
21 licensed to conduct the business of insurance, and such
22 filing shall be subject to the laws of the states where
23 filed.

24 2. The commission shall establish appropriate
25 filing and review processes and procedures pursuant to

1 commission rules and operating procedures. Notwithstanding
2 any provision herein to the contrary, the commission shall
3 promulgate rules to establish conditions and procedures under
4 which the commission will provide public access to product
5 filing information. In establishing such rules, the
6 commission shall consider the interests of the public in
7 having access to such information, as well as protection of
8 personal medical and financial information and trade secrets,
9 that may be contained in a product filing or supporting
10 information.

11 3. Any product approved by the commission may be
12 sold or otherwise issued in those compacting states for which
13 the insurer is legally authorized to do business.

14 Article XI. Review of Commission Decisions
15 Regarding Filings.

16 1. Not later than thirty days after the commission
17 has given notice of a disapproved product or advertisement
18 filed with the commission, the insurer or third-party filer
19 whose filing was disapproved may appeal the determination to
20 a review panel appointed by the commission. The commission
21 shall promulgate rules to establish procedures for appointing
22 such review panels and provide for notice and hearing. An
23 allegation that the commission, in disapproving a product or
24 advertisement filed with the commission, acted arbitrarily,
25 capriciously or in a manner that is an abuse of discretion or

1 otherwise not in accordance with the law, is subject to
2 judicial review in accordance with Section 4 of Article III
3 of this compact.

4 2. The commission shall have authority to monitor,
5 review and reconsider products and advertisement subsequent
6 to their filing or approval upon a finding that the product
7 does not meet the relevant uniform standard. Where
8 appropriate, the commission may withdraw or modify its
9 approval after proper notice and hearing, subject to the
10 appeal process in Section 1 of this article.

11 Article XII. Finance.

12 1. The commission shall pay or provide for the
13 payment of the reasonable expenses of its establishment and
14 organization. To fund the cost of its initial operations,
15 the commission may accept contributions and other forms of
16 funding from the national association of insurance
17 commissioners, compacting states and other sources.
18 Contributions and other forms of funding from other sources
19 shall be of such a nature that the independence of the
20 commission concerning the performance of its duties shall not
21 be compromised.

22 2. The commission shall collect a filing fee from
23 each insurer and third-party filer filing a product with the
24 commission to cover the cost of the operations and activities
25 of the commission and its staff in a total amount sufficient

1 to cover the commission's annual budget.

2 3. The commission's budget for a fiscal year shall
3 not be approved until it has been subject to notice and
4 comment as set forth in Article VII of this compact.

5 4. The commission shall be exempt from all
6 taxation in and by the compacting states.

7 5. The commission shall not pledge the credit of
8 any compacting state, except by and with the appropriate
9 legal authority of that compacting state.

10 6. The commission shall keep complete and accurate
11 accounts of all its internal receipts, including grants and
12 donations, and disbursements of all funds under its control.
13 The internal financial accounts of the commission shall be
14 subject to the accounting procedures established under its
15 bylaws. The financial accounts and reports, including the
16 system of internal controls and procedures of the commission,
17 shall be audited annually by an independent certified public
18 accountant. Upon the determination of the commission, but no
19 less frequently than every three years, the review of the
20 independent auditor shall include a management and
21 performance audit of the commission. The commission shall
22 make an annual report to the governor and legislature of the
23 compacting states, which shall include a report of the
24 independent audit. The commission's internal accounts shall
25 not be confidential, and such materials may be shared with

1 the commissioner of any compacting state upon request;
2 provided, however, that any work papers related to any
3 internal or independent audit and any information regarding
4 the privacy of individuals and insurers' proprietary
5 information, including trade secrets, shall remain
6 confidential.

7 7. No compacting state shall have any claim to or
8 ownership of any property held by or vested in the commission
9 or to any commission funds held pursuant to the provisions of
10 this compact.

11 Article XIII. Compacting States, Effective
12 Date and Amendment.

13 1. Any state is eligible to become a compacting
14 state.

15 2. The compact shall become effective and binding
16 upon legislative enactment of the compact into law by two
17 compacting states; provided that the commission shall become
18 effective for purposes of adopting uniform standards for,
19 reviewing, and giving approval or disapproval of, products
20 filed with the commission that satisfy applicable uniform
21 standards only after twenty-six states are compacting states
22 or, alternatively, by states representing greater than forty
23 percent of the premium volume for life insurance, annuity,
24 disability income and long-term care insurance products,
25 based on records of the national association of insurance

1 commissioners for the prior year. Thereafter, it shall
2 become effective and binding as to any other compacting state
3 upon enactment of the compact into law by that state.

4 3. Amendments to the compact may be proposed by
5 the commission for enactment by the compacting states. No
6 amendment shall become effective and binding upon the
7 commission and the compacting states unless and until all
8 compacting states enact the amendment into law.

9 Article XIV. Withdrawal, Default and Termination.

10 Withdrawal.

11 1. (a) Once effective, the compact shall continue
12 in force and remain binding upon each and every compacting
13 state; provided that a compacting state may withdraw from the
14 compact ("withdrawing state") by enacting a statute
15 specifically repealing the statute which enacted the compact
16 into law.

17 (b) The effective date of withdrawal is the
18 effective date of the repealing statute. However, the
19 withdrawal shall not apply to any product filings approved or
20 self-certified, or any advertisement of such products, on the
21 date the repealing statute becomes effective, except by
22 mutual agreement of the commission and the withdrawing state
23 unless the approval is rescinded by the withdrawing state as
24 provided in Paragraph (e) of this section.

25 (c) The commissioner of the withdrawing

1 state shall immediately notify the management committee in
2 writing upon the introduction of legislation repealing this
3 compact in the withdrawing state.

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

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

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

24 Default.

25 2. (a) If the commission determines that any

1 compacting state has at any time defaulted ("defaulting
2 state") in the performance of any of its obligations or
3 responsibilities under this compact, the bylaws or duly
4 promulgated rules or operating procedures, then, after notice
5 and hearing as set forth in the bylaws, all rights,
6 privileges and benefits conferred by this compact on the
7 defaulting state shall be suspended from the effective date
8 of default as fixed by the commission. The grounds for
9 default include, but are not limited to, failure of a
10 compacting state to perform its obligations or
11 responsibilities, and any other grounds designated in
12 commission rules. The commission shall immediately notify
13 the defaulting state in writing of the defaulting state's
14 suspension pending a cure of the default. The commission
15 shall stipulate the conditions and the time period within
16 which the defaulting state must cure its default. If the
17 defaulting state fails to cure the default within the time
18 period specified by the commission, the defaulting state
19 shall be terminated from the compact and all rights,
20 privileges and benefits conferred by this compact shall be
21 terminated from the effective date of termination.

22 (b) Product approvals by the commission or
23 product self-certifications, or any advertisement in
24 connection with such product, that are in force on the
25 effective date of termination shall remain in force in the

1 defaulting state in the same manner as if the defaulting
2 state had withdrawn voluntarily pursuant to Section 1 of this
3 article.

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

6 Dissolution of Compact.

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

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

16 Article XV. Severability and Construction.

17 1. The provisions of this compact shall be
18 severable; and if any phrase, clause, sentence or provision
19 is deemed unenforceable, the remaining provisions of the
20 compact shall be enforceable.

21 2. The provisions of this compact shall be
22 liberally construed to effectuate its purposes.

23 Article XVI. Binding Effect of Compact and Other Laws.

24 Other Laws.

25 1. (a) Nothing herein prevents the enforcement

1 of any other law of a compacting state, except as provided in
2 Paragraph (b) of this section.

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

14 (i) the access of any person to state
15 courts;

16 (ii) remedies available under state law
17 related to breach of contract, tort or other laws not
18 specifically directed to the content of the product;

19 (iii) state law relating to the
20 construction of insurance contracts; or

21 (iv) the authority of the attorney
22 general of the state, including but not limited to
23 maintaining any actions or proceedings, as authorized by law.

24 (c) All insurance products filed with
25 individual states shall be subject to the laws of those

1 states.

2 Binding Effect of this Compact.

3 2. (a) All lawful actions of the commission,
4 including all rules and operating procedures promulgated by
5 the commission, are binding upon the compacting states.

6 (b) All agreements between the commission
7 and the compacting states are binding in accordance with
8 their terms.

9 (c) Upon the request of a party to a
10 conflict over the meaning or interpretation of commission
11 actions, and upon a majority vote of the compacting states,
12 the commission may issue advisory opinions regarding the
13 meaning or interpretation in dispute.

14 (d) In the event any provision of this
15 compact exceeds the constitutional limits imposed on the
16 legislature of any compacting state, the obligations, duties,
17 powers or jurisdiction sought to be conferred by that
18 provision upon the commission shall be ineffective as to that
19 compacting state, and those obligations, duties, powers or
20 jurisdiction shall remain in the compacting state and shall be
21 exercised by the agency thereof to which those obligations,
22 duties, powers or jurisdiction are delegated by law in effect
23 at the time this compact becomes effective." _____

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