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SENATE BILL 310

**47TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2006**

INTRODUCED BY

Caroll H. Leavell

AN ACT

RELATING TO INSURANCE; ENACTING THE INTERSTATE INSURANCE  
PRODUCT REGULATION COMPACT.

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

Section 1. 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 of  
individual and group annuity, life insurance, disability income

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1 and long-term care insurance products;

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

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

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

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

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

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

21 Article II. Definitions.

22 For purposes of this compact:

23 1. "advertisement" means any material designed to  
24 create public interest in a product, or induce the public to  
25 purchase, increase, modify, reinstate, borrow on, surrender,

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1 replace or retain a policy, as more specifically defined in the  
2 rules and operating procedures of the commission;

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

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7 enacted this compact and that has not withdrawn pursuant to  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

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

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

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

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

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

24 9. "non-compacting state" means any state that is  
25 not at the time a compacting state;

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

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

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

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

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

24           15. "uniform standard" means a standard adopted by  
25 the commission for a product line pursuant to Article VII of

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

8 Article III. Establishment of the Commission and Venue.

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

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

25 3. The commission is solely responsible for its

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1 liabilities except as otherwise specifically provided in this  
2 compact.

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

7 Article IV. Powers of the Commission.

8 The commission shall have the power to:

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

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

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

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

17 4. receive and review in an expeditious manner  
18 advertisement relating to long-term care insurance products for  
19 which uniform standards have been adopted by the commission,  
20 and give approval to all advertisement that satisfies the  
21 applicable uniform standard. For any product covered under  
22 this compact, other than long-term care insurance products, the  
23 commission shall have the authority to require an insurer to  
24 submit all or any part of its advertisement with respect to  
25 that product for review or approval prior to use, if the

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1 commission determines that the nature of the product is such  
2 that an advertisement of the product could have the capacity or  
3 tendency to mislead the public. The actions of the commission  
4 as provided in this section shall have the force and effect of  
5 law and shall be binding in the compacting states to the extent  
6 and in the manner provided in the compact;

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

11 6. promulgate operating procedures, pursuant to  
12 Article VII of this compact, that shall be binding in the  
13 compacting states to the extent and in the manner provided in  
14 this compact;

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

19 8. issue subpoenas requiring the attendance and  
20 testimony of witnesses and the production of evidence;

21 9. establish and maintain offices;

22 10. purchase and maintain insurance and bonds;

23 11. borrow, accept or contract for services of  
24 personnel, including, but not limited to, employees of a  
25 compacting state;

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

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

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

19           15. sell, convey, mortgage, pledge, lease,  
20 exchange, abandon or otherwise dispose of any property, real,  
21 personal or mixed;

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

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

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1           18. provide for dispute resolution among compacting  
2 states;

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

6           20. provide advice and training to those personnel  
7 in state insurance departments responsible for product review  
8 and be a resource for state insurance departments;

9           21. establish a budget and make expenditures;

10          22. borrow money;

11          23. appoint committees, including advisory  
12 committees comprising members, state insurance regulators,  
13 state legislators or their representatives, insurance industry  
14 and consumer representatives and other interested persons as  
15 may be designated in the bylaws;

16          24. provide and receive information from, and to  
17 cooperate with law enforcement agencies;

18          25. adopt and use a corporate seal; and

19          26. perform such other functions as may be  
20 necessary or appropriate to achieve the purposes of this  
21 compact consistent with the state regulation of the business of  
22 insurance.

23                   Article V. Organization of the Commission.

24                               Membership, Voting and Bylaws.

25           1. (a) Each compacting state shall have and be

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

11 (b) Each member shall be entitled to one vote  
12 and shall have an opportunity to participate in the governance  
13 of the commission in accordance with the bylaws.

14 Notwithstanding any provision herein to the contrary, no action  
15 of the commission with respect to the promulgation of a uniform  
16 standard shall be effective unless two-thirds of the members  
17 vote in favor thereof.

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

22 (i) establishing the fiscal year of the  
23 commission;

24 (ii) providing reasonable procedures for  
25 appointing and electing members, as well as holding meetings,

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1 of the management committee;

2 (iii) providing reasonable standards and  
3 procedures: (i) for the establishment and meetings of other  
4 committees, and (ii) governing any general or specific  
5 delegation of any authority or function of the commission;

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

19 (v) establishing the titles, duties and  
20 authority and reasonable procedures for the election of the  
21 officers of the commission;

22 (vi) providing reasonable standards and  
23 procedures for the establishment of the personnel policies and  
24 programs of the commission. Notwithstanding any civil service  
25 or other similar laws of any compacting state, the bylaws shall

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1 exclusively govern the personnel policies and programs of the  
2 commission;

3 (vii) promulgating a code of ethics to  
4 address permissible and prohibited activities of commission  
5 members and employees; and

6 (viii) providing a mechanism for winding  
7 up the operations of the commission and the equitable  
8 disposition of any surplus funds that may exist after the  
9 termination of the compact after the payment or reserving of  
10 all of its debts and obligations.

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

15 Management Committee, Officers and Personnel.

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

18 (i) one member from each of the six  
19 compacting states with the largest premium volume for  
20 individual and group annuities, life, disability income and  
21 long-term care insurance products, determined from the records  
22 of the national association of insurance commissioners for the  
23 prior year;

24 (ii) four members from those compacting  
25 states with at least two percent of the market based on the

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

4 (iii) four members from those compacting  
5 states with less than two percent of the market, based on the  
6 premium volume described above, with one selected from each of  
7 the four zone regions of the national association of insurance  
8 commissioners as provided in the bylaws.

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

12 (i) managing the affairs of the  
13 commission in a manner consistent with the bylaws and purposes  
14 of the commission;

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

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1 (iii) overseeing the offices of the  
2 commission; and

3 (iv) planning, implementing and  
4 coordinating communications and activities with other state,  
5 federal and local government organizations in order to advance  
6 the goals of the commission.

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

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

18 Legislative and Advisory Committees.

19 3. (a) A legislative committee comprising state  
20 legislators or their designees shall be established to monitor  
21 the operations of, and make recommendations to, the commission,  
22 including the management committee; provided that the manner of  
23 selection and term of any legislative committee member shall be  
24 as set forth in the bylaws. Prior to the adoption by the  
25 commission of any uniform standard, revision to the bylaws,

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1 annual budget or other significant matter as may be provided in  
2 the bylaws, the management committee shall consult with and  
3 report to the legislative committee.

4 (b) The commission shall establish two  
5 advisory committees, one of which shall comprise consumer  
6 representatives independent of the insurance industry, and the  
7 other comprising insurance industry representatives.

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

11 Corporate Records of the Commission.

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

14 Qualified Immunity, Defense and Indemnification.

15 5. (a) The members, officers, executive director,  
16 employees and representatives of the commission shall be immune  
17 from suit and liability, either personally or in their official  
18 capacity, for any claim for damage to or loss of property or  
19 personal injury or other civil liability caused by or arising  
20 out of any actual or alleged act, error or omission that  
21 occurred, or that the person against whom the claim is made had  
22 a reasonable basis for believing occurred within the scope of  
23 commission employment, duties or responsibilities; provided  
24 that nothing in this paragraph shall be construed to protect  
25 any such person from suit or liability for any damage, loss,

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

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

16 (c) The commission shall indemnify and hold  
17 harmless any member, officer, executive director, employee or  
18 representative of the commission for the amount of any  
19 settlement or judgment, obtained against that person arising  
20 out of any actual or alleged act, error or omission that  
21 occurred within the scope of commission employment, duties or  
22 responsibilities, or that such person had a reasonable basis  
23 for believing occurred within the scope of commission  
24 employment, duties or responsibilities; provided that the  
25 actual or alleged act, error or omission did not result from

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1 the intentional or willful and wanton misconduct of that  
2 person.

3 Article VI. Meetings and Acts of the Commission.

4 1. The commission shall meet and take such actions  
5 as are consistent with the provisions of this compact and the  
6 bylaws.

7 2. Each member of the commission shall have the  
8 right and power to cast a vote to which that compacting state  
9 is entitled and to participate in the business and affairs of  
10 the commission. A member shall vote in person or by such other  
11 means as provided in the bylaws. The bylaws may provide for  
12 members' participation in meetings by telephone or other means  
13 of communication.

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

17 Article VII. Rules and Operating Procedures:

18 Rulemaking Functions of the Commission

19 and Opting Out of Uniform Standards.

20 Rulemaking Authority.

21 1. The commission shall promulgate reasonable  
22 rules, including uniform standards, and operating procedures in  
23 order to effectively and efficiently achieve the purposes of  
24 this compact. Notwithstanding the foregoing, in the event the  
25 commission exercises its rulemaking authority in a manner that

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1 is beyond the scope of the purposes of this compact, or the  
2 powers granted hereunder, then such an action by the commission  
3 shall be invalid and have no force and effect.

4 Rulemaking Procedure.

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

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

16 3. A uniform standard shall become effective ninety  
17 days after its promulgation by the commission or such later  
18 date as the commission may determine; provided, however, that a  
19 compacting state may opt out of a uniform standard as provided  
20 in this article. "Opt out" shall be defined as any action by a  
21 compacting state to decline to adopt or participate in a  
22 promulgated uniform standard. All other rules and  
23 operating procedures, and amendments thereto, shall become  
24 effective as of the date specified in each rule, operating  
25 procedure or amendment.

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Opt-Out Procedure.

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

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

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

The commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state which warrant a departure from the uniform standard and determining that the uniform standard would not reasonably protect the citizens of the state. The commissioner must consider and balance the following factors and find that the conditions in the state and needs of the citizens of the state outweigh: (i) the intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the products subject to this compact; and (ii) the presumption that a uniform standard adopted by the

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

#### 13 Effect of Opt-Out.

14 5. If a compacting state elects to opt out of a  
15 uniform standard, the uniform standard shall remain applicable  
16 in the compacting state electing to opt out until such time the  
17 opt-out legislation is enacted into law or the regulation  
18 opting out becomes effective.

19 Once the opt-out of a uniform standard by a compacting  
20 state becomes effective as provided under the laws of that  
21 state, the uniform standard shall have no further force and  
22 effect in that state unless and until the legislation or  
23 regulation implementing the opt-out is repealed or otherwise  
24 becomes ineffective under the laws of the state. If a  
25 compacting state opts out of a uniform standard after the

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1 uniform standard has been made effective in that state, the  
2 opt-out shall have the same prospective effect as provided  
3 under Article XIV of this compact for withdrawals.

4 Stay of Uniform Standard.

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

24 7. Not later than thirty days after a rule or  
25 operating procedure is promulgated, any person may file a

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1 petition for judicial review of the rule or operating  
2 procedure; provided that the filing of such a petition shall  
3 not stay or otherwise prevent the rule or operating procedure  
4 from becoming effective unless the court finds that the  
5 petitioner has a substantial likelihood of success. The court  
6 shall give deference to the actions of the commission  
7 consistent with applicable law and shall not find the rule or  
8 operating procedure to be unlawful if the rule or operating  
9 procedure represents a reasonable exercise of the commission's  
10 authority.

11 Article VIII. Commission Records and Enforcement.

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

23 2. Except as to privileged records, data and  
24 information, the laws of any compacting state pertaining to  
25 confidentiality or nondisclosure shall not relieve any

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

12 3. The commission shall monitor compacting states  
13 for compliance with duly adopted bylaws, rules, including  
14 uniform standards, and operating procedures. The commission  
15 shall notify any noncomplying compacting state in writing of  
16 its noncompliance with commission bylaws, rules or operating  
17 procedures. If a noncomplying compacting state fails to remedy  
18 its noncompliance within the time specified in the notice of  
19 noncompliance, the compacting state shall be deemed to be in  
20 default as set forth in Article XIV of this compact.

21 4. The commissioner of any state in which an  
22 insurer is authorized to do business, or is conducting the  
23 business of insurance, shall continue to exercise his or her  
24 authority to oversee the market regulation of the activities of  
25 the insurer in accordance with the provisions of the state's

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1 law. The commissioner's enforcement of compliance with the  
2 compact is governed by the following provisions:

3 (a) with respect to the commissioner's market  
4 regulation of a product or advertisement that is approved or  
5 certified to the commission, the content of the product or  
6 advertisement shall not constitute a violation of the  
7 provisions, standards or requirements of the compact except  
8 upon a final order of the commission, issued at the request of  
9 a commissioner after prior notice to the insurer and an  
10 opportunity for hearing before the commission; and

11 (b) before a commissioner may bring an action  
12 for violation of any provision, standard or requirement of the  
13 compact relating to the content of an advertisement not  
14 approved or certified to the commission, the commission, or an  
15 authorized commission officer or employee, must authorize the  
16 action. However, authorization pursuant to this paragraph does  
17 not require notice to the insurer, opportunity for hearing or  
18 disclosure of requests for authorization or records of the  
19 commission's action on such requests.

20 Article IX. Dispute Resolution.

21 The commission shall attempt, upon the request of a  
22 member, to resolve any disputes or other issues that are  
23 subject to this compact and which may arise between two or more  
24 compacting states, or between compacting states and  
25 non-compacting states, and the commission shall promulgate an

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1 operating procedure providing for resolution of such disputes.

2 Article X. Product Filing and Approval.

3 1. Insurers and third-party filers seeking to have  
4 a product approved by the commission shall file the product  
5 with, and pay applicable filing fees to, the commission.

6 Nothing in this compact shall be construed to restrict or  
7 otherwise prevent an insurer from filing its product with the  
8 insurance department in any state wherein the insurer is  
9 licensed to conduct the business of insurance, and such filing  
10 shall be subject to the laws of the states where filed.

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

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

25 Article XI. Review of Commission Decisions

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1    Regarding Filings.

2    1. Not later than thirty days after the commission  
3 has given notice of a disapproved product or advertisement  
4 filed with the commission, the insurer or third-party filer  
5 whose filing was disapproved may appeal the determination to a  
6 review panel appointed by the commission. The commission shall  
7 promulgate rules to establish procedures for appointing such  
8 review panels and provide for notice and hearing. An  
9 allegation that the commission, in disapproving a product or  
10 advertisement filed with the commission, acted arbitrarily,  
11 capriciously or in a manner that is an abuse of discretion or  
12 otherwise not in accordance with the law, is subject to  
13 judicial review in accordance with Section 4 of Article III of  
14 this compact.

15    2. The commission shall have authority to monitor,  
16 review and reconsider products and advertisement subsequent to  
17 their filing or approval upon a finding that the product does  
18 not meet the relevant uniform standard. Where appropriate, the  
19 commission may withdraw or modify its approval after proper  
20 notice and hearing, subject to the appeal process in Section 1  
21 of this article.

22    Article XII. Finance.

23    1. The commission shall pay or provide for the  
24 payment of the reasonable expenses of its establishment and  
25 organization. To fund the cost of its initial operations, the

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1 commission may accept contributions and other forms of funding  
2 from the national association of insurance commissioners,  
3 compacting states and other sources. Contributions and other  
4 forms of funding from other sources shall be of such a nature  
5 that the independence of the commission concerning the  
6 performance of its duties shall not be compromised.

7 2. The commission shall collect a filing fee from  
8 each insurer and third-party filer filing a product with the  
9 commission to cover the cost of the operations and activities  
10 of the commission and its staff in a total amount sufficient to  
11 cover the commission's annual budget.

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

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

17 5. The commission shall not pledge the credit of  
18 any compacting state, except by and with the appropriate legal  
19 authority of that compacting state.

20 6. The commission shall keep complete and accurate  
21 accounts of all its internal receipts, including grants and  
22 donations, and disbursements of all funds under its control.  
23 The internal financial accounts of the commission shall be  
24 subject to the accounting procedures established under its  
25 bylaws. The financial accounts and reports, including the

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

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

20 Article XIII. Compacting States, Effective

21 Date and Amendment.

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

24 2. The compact shall become effective and binding  
25 upon legislative enactment of the compact into law by two

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

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

18 Article XIV. Withdrawal, Default and Termination.

19 Withdrawal.

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

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1 (b) The effective date of withdrawal is the  
2 effective date of the repealing statute. However, the  
3 withdrawal shall not apply to any product filings approved or  
4 self-certified, or any advertisement of such products, on the  
5 date the repealing statute becomes effective, except by mutual  
6 agreement of the commission and the withdrawing state unless  
7 the approval is rescinded by the withdrawing state as provided  
8 in Paragraph (e) of this section.

9 (c) The commissioner of the withdrawing state  
10 shall immediately notify the management committee in writing  
11 upon the introduction of legislation repealing this compact in  
12 the withdrawing state.

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

16 (e) The withdrawing state is responsible for  
17 all obligations, duties and liabilities incurred through the  
18 effective date of withdrawal, including any obligations, the  
19 performance of which extend beyond the effective date of  
20 withdrawal, except to the extent those obligations may have  
21 been released or relinquished by mutual agreement of the  
22 commission and the withdrawing state. The commission's  
23 approval of products and advertisement prior to the effective  
24 date of withdrawal shall continue to be effective and be given  
25 full force and effect in the withdrawing state, unless formally

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1 rescinded by the withdrawing state in the same manner as  
2 provided by the laws of the withdrawing state for the  
3 prospective disapproval of products or advertisement previously  
4 approved under state law.

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

8 Default.

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

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1 time period specified by the commission, the defaulting state  
2 shall be terminated from the compact and all rights, privileges  
3 and benefits conferred by this compact shall be terminated from  
4 the effective date of termination.

5 (b) Product approvals by the commission or  
6 product self-certifications, or any advertisement in connection  
7 with such product, that are in force on the effective date of  
8 termination shall remain in force in the defaulting state in  
9 the same manner as if the defaulting state had withdrawn  
10 voluntarily pursuant to Section 1 of this article.

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

13 Dissolution of Compact.

14 3. (a) The compact dissolves effective upon the  
15 date of the withdrawal or default of the compacting state which  
16 reduces membership in the compact to one compacting state.

17 (b) Upon the dissolution of this compact, the  
18 compact becomes null and void and shall be of no further force  
19 or effect, and the business and affairs of the commission shall  
20 be wound up and any surplus funds shall be distributed in  
21 accordance with the bylaws.

22 Article XV. Severability and Construction.

23 1. The provisions of this compact shall be  
24 severable; and if any phrase, clause, sentence or provision is  
25 deemed unenforceable, the remaining provisions of the compact

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1 shall be enforceable.

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

4 Article XVI. Binding Effect of Compact and Other Laws.  
5 Other Laws.

6 1. (a) Nothing herein prevents the enforcement of  
7 any other law of a compacting state, except as provided in  
8 Paragraph (b) of this section.

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

20 (i) the access of any person to state  
21 courts;

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

25 (iii) state law relating to the

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1 construction of insurance contracts; or

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

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

7 Binding Effect of this Compact.

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

11 (b) All agreements between the commission and  
12 the compacting states are binding in accordance with their  
13 terms.

14 (c) Upon the request of a party to a conflict  
15 over the meaning or interpretation of commission actions, and  
16 upon a majority vote of the compacting states, the commission  
17 may issue advisory opinions regarding the meaning or  
18 interpretation in dispute.

19 (d) In the event any provision of this compact  
20 exceeds the constitutional limits imposed on the legislature of  
21 any compacting state, the obligations, duties, powers or  
22 jurisdiction sought to be conferred by that provision upon the  
23 commission shall be ineffective as to that compacting state,  
24 and those obligations, duties, powers or jurisdiction shall  
25 remain in the compacting state and shall be exercised by the

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

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