F I S C A L   I M P A C T   R E P O R T

		ORIGINAL DATE	01/28/09		
SPONSOR	Leavell	**LAST UPDATED**	03/06/09	**HB**	
SHORT TITLE	Insurance Product Regulation Act			**SB**	15/aSJC
				ANALYST	Lucero

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Non-Rec	Fund Affected
FY09	**FY10**	**FY11**		
	Neutral	Neutral	Recurring	General Fund

(Parenthesis ( ) Indicate Revenue Decreases)

SOURCES OF INFORMATION
LFC Files

Responses Received From
Public Regulation Commission (PRC)
Attorney General's Office (AGO)
Department of Finance and Administration (DFA)
Aging and Long-Term Services Department (ALTSD)

SUMMARY

Synopsis of SJC Amendment

Senate Judiciary Committee (SJC) amendment to Senate Bill 15 adds a new subsection providing for non-preemption:

> "*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*."

Synopsis of Original Bill

Senate Bill 15 enacts the "Interstate Insurance Product Regulation Compact" which generally allows New Mexico to participate in this Compact which is intended to develop a single, uniform set of product approval standards for life insurance, annuities, disability income and long-term care insurance. The intended purpose is to assist insurance companies in bringing their products to market in a timely manner, to protect consumers through the adoption of a standardized review process for those products, and to uniformly regulate advertising of those products.

Under the terms of the Compact, participating states have created a joint public agency known as the "Interstate Insurance Product Regulation Commission" which has the power to review certain insurance products and their rates submitted by insurance companies in accordance with uniform standards adopted by the Commission.

The Commission has the authority to adopt rules governing those products and their advertisement which are binding on the compacting states and are granted "the force and effect of law". States may "opt-out" of a uniform standard adopted by the Commission, either by legislation or rule of the applicable state insurance department.

The Compact provides for the operation of the Committee, including meetings, management, employees, advisory committees etc.

The Compact requires the Commission to establish procedures for filing insurance products by insurance companies and third parties for review by the Commission, and provides for appeal of a Commission decision rejecting a filing.

The compacting states agree that any insurance produce approved by the Commission may be sold in their respective state if the insurer is otherwise authorized to do business in that state.

The Commission will be funded by filing fees, contributions from participating states and the National Association of Insurance Commissioners, and other sources. The Commission is exempt from taxation by the compacting states.

The Compact directs the Commission to establish advisory committees representing the insurance industry and consumers.

FISCAL IMPLICATIONS

The Public Regulation Commission (PRC) notes that participation in the Compact has no fiscal impact on the participating states. The Compact is financed by filing fees paid by insurers with funding from the National Association of Insurance Commissioners (NAIC). This bill would be revenue neutral. Existing statutory fees associated with forms and rate filings in the New Mexico Insurance Code would be collected by the Interstate Compact Commission and remitted to the State of New Mexico.

SIGNIFICANT ISSUES

The SPAC amendment resolves the AGO technical issue regarding conflicts between current laws and rules adopted by the PRC and those of the Compact.

The Attorney General's Office (AGO) reports that there are thirty-three states have adopted this Compact. It applies to the sale and advertisement of life insurance, annuities, disability income and long-term care insurance products. Participation in the compact has been endorsed by the National Association of Insurance and Financial Advisors, the National Conference of State Legislatures, and the National Association and the NAIC. Its purposes are to increase the speed at which certain insurance products may be marketed and to protect consumers and provide them with increased insurance choices.

The PRC acknowledges that this legislation asks New Mexico state lawmakers to consider whether they should cede a small amount of regulatory authority over life, annuity, disability and long-term care products to an interstate compact, rather than retaining this regulatory authority in

New Mexico under the Insurance Division of the New Mexico Public Regulation Commission. Currently, 33 jurisdictions have joined the Interstate Insurance Product Regulation Commission. Compacting members are Alaska, Colorado, Georgia, Hawaii, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nebraska, New Hampshire, North Carolina, Ohio, Oklahoma, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin and Wyoming.

Proponents argue that this legislation helps prevent federal preemption of insurance regulation by offering a state-based solution that provides uniformity, speed-to-market and single-point filing. Opponents argue that it diminishes the local "hands-on" authority of the Superintendent to regulate the life, annuity, disability and long-term care markets in New Mexico. The Superintendent is highly in favor of this legislation.

The Aging and Long-Term Services Department (ALTSD) has no regulatory function relating to the insurance products that are subject to the Interstate Insurance Compact. However, ALTSD's statutory mandates include the provision of consumer education on issues affecting the elderly and persons with disabilities. Among other responsibilities, ALTSD provides health insurance and benefits counseling and legal services through its Consumer and Elder Rights Division. In addition, ALTSD provides community education and advocacy to residents of long-term care facilities through the State Long-Term Care Ombudsman Program.

ALTSD raises issues for consumers including:

1. State and consumer representation: the issue here is whether the Compact provides for adequate representation for the people of New Mexico in the decision-making activities of the Interstate Insurance Product Regulation Commission [Interstate Insurance Commission, Commission]. The Compact provides that each state is limited to only one member on the Commission itself. Further, positions on the Commission's management committee are allocated according to each respective state's market share. This structural feature may tend to diminish New Mexico's influence upon the development of issues such as compliance with the Commission's bylaws and the appropriate procedures for the adoption of standards and product reviews – matters within the purview of the management committee. The Compact provides for a legislative committee that will consult with the management committee. However, the only provision for direct consumer input is through one of two advisory committees: one comprised of consumer representatives, the other of insurance industry representatives. *Article V, ¶¶ 1, 2.*

2. Open meetings and public records access: As an instrumentality, the Interstate Insurance Product Regulation Commission, although making regulatory decisions affecting the public, would probably be exempt from the Open Meetings Act and the Inspection of Public Records Act. For example, SB 15 (the Compact) provides that the Commission may close its meeting to protect trade secrets among other reasons. Although the Commission must make public the vote of each member on whether to close a Commission meeting, as well as votes taken during such a closed meeting, these disclosures are only made after the meeting has occurred. *Article V, ¶ 1(c)(iv).*

3. Opt-out provisions may be cumbersome and unclear: states may opt-out of the adoption of standards upon a finding that "the uniform standard does not provide reasonable protections to the citizens of the state, given the conditions in the state." To opt-out, the

Commission must make specific findings of fact and conclusions of law detailing the range of factors justifying an opt-out including whether needs of the citizens outweigh the presumed legislative intent to participate and benefit from a system of "national uniform consumer protections …"
The Compact provides an option for participating states to opt-out of all uniform standards involving long-term care insurance, but SB 15 does not appear to address what New Mexico would elect in this regard. *Article VII, ¶ 4.*

4. Appeal rights: Although SB 15 preserves consumers' access to the courts to litigate contract and tort remedies, it does not appear to provide a right of appeal from actions taken by the Interstate Insurance Product Regulation Commission with regard to requests for "opt-outs," uniform standards, and specific product reviews.

PERFORMANCE IMPLICATIONS

The PRC states that this bill would relieve the Insurance Superintendent of some of the day-to-day review and processing of form and rate filing review, approval and fee collection to a certain extent. Companies will retain the choice of filing products through the compact or directly with the Insurance Division. Insurance Division staff resources currently performing these functions may be reassigned and trained for other areas within the Insurance Division. The Superintendent would also be relieved of certain rule-making authority that would be assumed by the Interstate Compact Commission, although New Mexico could opt-out of a proposed uniform standard if it does not provide reasonable protection for the citizens of New Mexico.

ADMINISTRATIVE IMPLICATIONS

According to the terms of the compact, the PRC's Insurance Division would designate one voting member to represent New Mexico in the Compact and may serve on management and legislative committees. This individual, most likely the Insurance Division's Chief Life & Health Actuary, would attend meetings. The Superintendent would continue to perform form and rate review and fee collections for products filed directly by insurance companies.

RELATIONSHIP

Relates to SB75, SB114, SB117

TECHNICAL ISSUES

The AGO suggests that a review of New Mexico's laws governing those insurance products should be undertaken to ensure there are no conflicts between those laws and rules adopted by the Commission.

ALTSD reports that the Consumer Federation of America, in testimony before the Subcommittee on Capital Markets, Insurance, and Government Sponsored Enterprises of the Committee on Financial Services of the U.S. House of Representatives, stated:

> It is essential that any federal legislation to empower the NAIC include standards to prevent undue industry influence and ensure the NAIC can operate as an effective regulatory entity, including:

- Democratic processes/accountability to the public, which must include: notice and comment rulemaking; on the record voting; accurate minutes; rules against ex parte communication; public meeting/disclosure/sunshine rules/FOIA applicability.
- A decision-making process subject to an excellent Administrative Procedures Act.
- Strong conflict of interest and revolving door statutes …
- Independent funding …
- National Independent Advocate …[t]o offset industry domination, an independent, national public insurance counsel/ombudsman with necessary funding …Consumers must be adequately represented in the process for the process to be accountable and credible.

Testimony of J. Robert Hunter, Director of Insurance, Consumer Federation of America, October 30, 2007.

OTHER SUBSTANTIVE ISSUES

Over the past few years, Congress has explored legislative proposals to create an optional federal charter for insurance companies or establish national regulatory standards for insurance companies and producers. These proposals have arisen out of the insurance industry's arguments that States cannot achieve uniformity or speed-to-market goals, hindering their ability to effectively compete in the national and international arenas against other sectors of the financial services industry. These efforts can be categorized in the following proposals:

<u>Federal Charter Proposal</u>
Since the Gramm-Leach-Bliley Act became law in 1999, large insurers have advocated for the option of choosing a federal charter and regulatory structure, similar to banks with the Officer of Comptroller of the Currency. This option would create a federal and state dual system of insurance regulation mirroring the banking regulatory system.

<u>Federal Tools Proposal</u>
The insurance industry has also asked Congress to establish uniform national regulatory standards for licensing requirements, market regulation and speeding products to market. Congress would require mandatory national regulatory standards for States to implement through existing state insurance regulatory systems.

<u>Federal Regulator Proposal</u>
In July 2003, Senator Hollings (D-SC) introduced a bill to establish a federal regulatory agency. Under this proposal, the federal government would totally regulate interstate insurance and effectively repeal the McCarran-Ferguson Act. States would be relegated to regulating intrastate insurance.

The NAIC contends that a federal insurance charter, even if optional, is unnecessary and harmful to current state supervision of insurance by creating a dual federal/state regulatory system, providing different levels of protection to consumers living in the same area.

The NAIC opposes federal legislation to establish mandatory national regulatory standards as being unnecessary because the NAIC and the states have a specific plan to develop and implement national standards in all needed areas by 2008. Identified areas include consumer protection, market regulation, property & casualty rate regulation, insurance policy form approvals, producer licensing, company licensing, financial condition examinations and approval of mergers and acquisitions.

The NAIC also opposes the total regulation of interstate insurance by the federal government. For over 130 years, state insurance departments have regulated the business of insurance. The first insurance department was formed in New York at the request of insurance companies as a result of serious fires that ravaged New York City leaving many insurers bankrupt and unable to pay claims. Insurance companies, at that time, sought to restore public confidence and trust through state regulation. Despite the opinions of modern-day critics, the insurance industry has thrived under the state regulatory system.

Consistent with the NAIC, it is the Superintendent's position that the most valuable feature or legacy of the 130 year-old state insurance regulatory systems is local access. More specifically, having an Insurance Department and an Insurance Superintendent in Santa Fe ensures that each New Mexico consumer, each New Mexico insurance company, each New Mexico bank or investment firm and each New Mexico insurance producer can pick up the phone or drive to Santa Fe and meet face-to-face with the Superintendent and his staff.

New Mexico companies, consumers and producers have a voice that the large national insurance companies cannot avoid. This system allows the Superintendent to protect New Mexico consumers and promote the healthy competitiveness of the New Mexico insurance market, in the interests of New Mexico.

One federal, ill-equipped, ill-funded and ill-experienced agency located over 1,500 miles away in Washington, DC, won't have New Mexico's interests at heart or be inclined to pick up the phone. New Mexico will lose control and local access.

The Interstate Compact proposed in this legislation is a state response to avoid federal preemption through a state-based solution that offers uniform standards, single point filing and speed-to-market.

ADDITIONAL INFORMATION

The following Frequently Asked Questions regarding the Compact was supplied by the PRC (http://www.insurancecompact.org/faq.htm)

Generally, what is an interstate compact?

An interstate compact is a contract between states that allows states to cooperate on multi-state or national issues while retaining state control. Interstate compacts are specifically mentioned in the U.S. Constitution. Although historically used to address border disputes and water rights, the use of interstate compacts has expanded significantly in recent decades to cover tax issues, drivers' licensing and vehicle registration, environmental issues, emergency management and other issues. Over 200 interstate compacts currently exist, and on average every state belongs to at least 25 compacts.

What is the Interstate Insurance Product Regulation Compact (the "Compact")?

The Interstate Insurance Product Regulation Compact which to date has been adopted by 33 Member States representing over half of the premium volume nationwide, created the Interstate Insurance Product Regulation Commission (IIPRC) - a public entity treated as an instrumentality of the Compacting Member States. The IIPRC provides the States with a vehicle to (1) develop uniform national product standards that will afford a high level of protection to consumers of life insurance, annuities, disability income and long-term care insurance products; (2) establish a central point of filing for these insurance products; and (3) thoroughly review product filings and make regulatory decisions according to the uniform product standards.

What are the benefits of the Compact for Member States?

- The Compact is a pro-active speed-to-market initiative implemented by its Member States to provide for increased and cost-effective insurance choices in support of a competitive and modern financial marketplace.
- The standards and operations of the IIPRC uphold strong consumer protections as the hallmark of state-based regulation.
- Membership in the IPRC allows state insurance departments to efficiently re-allocate department resources originally utilized for product review towards other regulatory operations, including a focus on important market conduct.

When was the IIPRC created?

The IIPRC came into existence in March 2004 upon the legislative enactment of two states, Colorado and Utah, respectively. Although the IIPRC was created in March 2004, it did not become operational for purposes of adopting uniform product standards until it met one of its threshold goals. Once twenty-six (26) Member States or, alternatively, Member States representing greater than forty percent (40%) of the premium volume were to join the IIPRC. In May 2006, the IIPRC reached both of these threshold goals for becoming operational.

How is the Compact governed?

The Compact is governed by the IIPRC, which includes one Member from each Compacting State. The Management Committee of 14 Members directs the activities of the IIPRC. The composition of the Management Committee under the Bylaws includes: (1) one member from each of the six largest states by premium volume, (2) four members from states with greater than 2% of premium volume, and (3) four members from states with less than 2% of premium representing each of the four geographic zones recognized by the NAIC. The IIPRC Officers elected from the Management Committee are Commissioner Jane Cline (WV), Chair; Director Mary Jo Hudson (OH), Vice Chair; and Commissioner Sean Dilweg (WI), Treasurer.

How does the IIPRC operate?

The Compact is designed to facilitate transparency and accountability. The activities of the IIPRC are governed by the Bylaws and rulemaking procedures which have been developed through extensive consultations with the Member States, legislators as well as consumer and industry interested parties. The meetings are required to be open to the public, except in very limited situations which are detailed in the Bylaws and rules. As aforementioned, the uniform standard-setting process is conducted through comprehensive public notice and comment procedures which afford all interested parties the opportunity to provide input.

What type of insurance policies would the Compact cover?

The Compact has jurisdiction over four product lines: life insurance, annuities, disability income, and long-term care insurance. In an increasingly mobile society, these are products that have a long life and will travel with people as they move across state lines. As such, they are not as sensitive to local costs and conditions as are products such as automobile, homeowners and health insurance. Also, the chosen products have a common theme of accumulating wealth for people or helping to protect wealth that has been accumulated.

How would uniform product standards be developed?

States participating in the Compact will adopt uniform product standards through a rulemaking process. In order to be adopted, a uniform standard must receive approval by two-thirds of the Management Committee and two-thirds supermajority of the states participating in the Compact. A standard would be effective 90 days after its promulgation or at a later date as determined by the IIPRC.

What guidelines for product standards are included in the Compact?

The Compact requires that product standards be construed to prohibit the use of any inconsistent, misleading or ambiguous provisions in a product. It also requires that the form of the product made available to the public shall not be unfair, inequitable or against public policy as determined by the IIPRC.

How will the Compact raise product standards and consumer protection?

The standard-setting process in the Compact engages the collective expertise of the Member insurance departments as well as seeks the input of the greater state insurance regulatory community through the NAIC. Comments and concerns from legislative representatives, consumers and industry assist in informing our process to ensure high level standards. As the process is open to public participation, all interested parties are invited to comment as well.

Another important feature of the process is its voluntary nature. If product standards created by the IIPRC are not adequate, states will opt-out of the uniform standards, and the Compact will not work. Finally, the Compact requires supermajorities of both the Management Committee and the full Commission membership of the IIPRC to approve uniform product standards.

These features promote a consensus-based approach to decision-making, which promises to produce higher product standards to benefit consumers, in exchange for an effective single point of filing with uniform standards that will provide insurers with the "speed to market" they want in order to compete more effectively.

May a state opt-out of uniform product standards once it joins the Compact?

Member States may opt-out of a uniform product standard in two ways if it does not meet the needs of the state. First, it may enact legislation opting out of any uniform standard at any time for any reason. Second, it may opt-out by regulation following the promulgation of a uniform standard if it meets certain conditions

How do state legislatures participate in the Compact?

A state legislature must enact the Compact Model Statute through legislation in order for a state to join the IIPRC. Under the Compact law, the IIPRC created a Legislative Committee comprised of eight (8) Member State legislators appointed by NCSL and NCOIL which works as an active partner to monitor the operations of the IIPRC and make recommendations. The IIPRC is also required to give notice to all Member State legislatures before any product standards can be adopted; and file an annual report with the governors and legislatures of its Member States. Additionally, state legislatures may opt-out of a uniform standard for any product line at any time through legislation.

How do consumers participate in the Compact?

The Compact legislation directs the IIPRC to establish an advisory committee for consumer representatives. It directs a similar advisory committee for insurance industry representatives. The consumer advisory group provides feedback to the IIPRC on uniform standards, rules, and operating procedures. It serves as a formal mechanism for consumer representatives to monitor the operations of the Compact and to make recommendations.

Is participation with the Compact mandatory for insurance companies?

No. Companies will have the choice of filing products through the IIPRC or filing products directly with a state. If a company chooses the latter course, then the regulator will apply the existing product standard laws and procedures of the state. If a company files with the IIPRC, then the IIPRC standards and review process will apply.

Who enforces decisions of the Compact?

The state insurance commissioner continues to oversee market regulation activities. However, the IIPRC monitors Member States for compliance with the bylaws, rules, uniform standards and operating procedures of the IIPRC. The IIPRC provides assistance to state insurance departments in determining whether a violation of a uniform standard had occurred.

How will the Compact be funded?

The Compact will be financed by insurers who must pay the Annual IIPRC Registration Fee and IIPRC Filing Fees. The Compact authorizes the IIPRC to accept any and all appropriate donations and grants of money. In March 2006, the NAIC provided a contribution to the IIPRC in the amount of $500,000 to help cover its start-up activities. There will be no fiscal impact on states joining the compact as the IIPRC will collect and remit state filing fees.

What will the Commission use for its electronic rate & form filing system?

The IIPRC decided to utilize the System for Electronic Rate and Form Filing (SERFF) maintained by the NAIC for the benefit of state insurance regulators. State regulators and industry participants expressed a strong desire to use a single system for filing and review. SERFF contained the functionality most nearly mirroring IIPRC needs. SERFF is operable in all 51 jurisdictions and over 1,800 companies are licensed and filing with SERFF.

What is the NAIC's role in the Compact?

Shortly after the Compact model was adopted, the NAIC formed several working groups to begin the drafting process for uniform product standards, bylaws, rules and operating procedures. The NAIC realizes it will take the IIPRC a short period to become operational to the point it is generating its own revenues. It has pledged to support the IIPRC through this period. The NAIC also is a useful resource for states interested in getting the Compact legislation adopted.

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