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SENATE BILL 38

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Carroll 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

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

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

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1 the bylaws, annual budget or other significant matter as may be
2 provided in the bylaws, the management committee shall consult
3 with and 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
16 director, employees and representatives of the commission shall
17 be immune from suit and liability, either personally or in
18 their official capacity, for any claim for damage to or loss of
19 property or personal injury or other civil liability caused by
20 or arising out of any actual or alleged act, error or omission
21 that occurred, or that the person against whom the claim is
22 made had a reasonable basis for believing occurred within the
23 scope of commission employment, duties or responsibilities;
24 provided, that nothing in this paragraph shall be construed to
25 protect any such person from suit or liability for any damage,

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1 loss, injury or liability caused by the intentional or willful
2 and 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

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 member, to
22 resolve any disputes or other issues that are subject to this
23 compact and which may arise between two or more compacting
24 states, or between compacting states and non-compacting states,
25 and the commission shall promulgate an operating procedure

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1 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 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
21 continue in force and remain binding upon each and every
22 compacting state; provided that a compacting state may withdraw
23 from the 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
15 the date of the withdrawal or default of the compacting state
16 which reduces membership in the compact to one compacting
17 state.

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

23 Article XV. Severability and Construction.

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

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1 deemed unenforceable, the remaining provisions of the compact
2 shall be enforceable.

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

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

6 Other Laws.

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

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

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

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

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1 (iii) state law relating to the
2 construction of insurance contracts; or

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

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

8 Binding Effect of this Compact.

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

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

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

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

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1 remain in the compacting state and shall be exercised by the
2 agency thereof to which those obligations, duties, powers or
3 jurisdiction are delegated by law in effect at the time this
4 compact becomes effective."

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