

EHB 2685

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39

THE STATE SENATE
Wednesday, April 5, 2006

ENGROSSED

House Bill No. 2685

ENGROSSED HOUSE BILL NO. 2685 - By: NEWPORT, PETERSON (Ron), SHELTON and ROUSSELOT of the House and ALDRIDGE and FISHER of the Senate.

An Act relating to insurance; establishing the Interstate Insurance Product Regulation Compact; stating the intent of the state to join in the Compact and become a member of the Interstate Insurance Product Regulation Commission; designating the representative from this state to serve on the Commission; providing purposes of the Compact; authorizing the Governor to execute the Compact on behalf of the state; defining terms; providing for the establishment of the Commission; providing for venue; providing powers of the Commission; providing for the organization of the Commission; providing for meetings and actions of the Commission; providing for rules and operating procedures of the Commission; providing for rulemaking authority, procedure and functions of the Commission; providing for uniform standards; authorizing a compacting state to opt out of a uniform standard; providing opt-out procedure and effect of opting out; providing Commission records; providing for enforcement of compliance with Compact; providing for dispute resolution; providing for product filing and approval; providing for review of Commission decisions regarding filings; providing for financing of the Commission; authorizing the Commission to pay for reasonable expenses; providing for funding; providing for filing fees; exempting Commission from taxation; requiring the Commission to keep complete and accurate accounts; providing that compacting states have no claim to Commission property or funds; providing that Commission shall not pledge credit of compacting states; providing for effective date of Compact; providing for amendments; providing for withdrawal, default and termination; providing for severability and construction; providing binding effect of Compact and other laws; and providing for codification.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

1 SECTION 1. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 7004 of Title 36, unless there
3 is created a duplication in numbering, reads as follows:

4 A. Pursuant to terms and conditions of this act, the State of
5 Oklahoma seeks to join with other states and establish the
6 Interstate Insurance Product Regulation Compact, and thus become a
7 member of the Interstate Insurance Product Regulation Commission.

8 B. The Insurance Commissioner of the State of Oklahoma is
9 hereby designated to serve as the representative of this state to
10 the Commission.

11 C. The Governor is hereby authorized and directed to execute a
12 Compact on behalf of this state with any other state or states
13 legally joining therein in the form substantially as follows:

14 INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

15 ARTICLE I. PURPOSES

16 The purposes of this Compact are, through means of joint and
17 cooperative action among the compacting states:

18 1. To promote and protect the interest of consumers of
19 individual and group annuity, life insurance, disability income and
20 long-term care insurance products;

21 2. To develop uniform standards for insurance products covered
22 under the Compact;

1 2. "Bylaws" means those bylaws established by the Commission
2 for its governance, or for directing or controlling the Commission's
3 actions or conduct;

4 3. "Compacting state" means any state which has enacted this
5 Compact legislation and which has not withdrawn pursuant to Section
6 1 of Article XIV of this Compact, or been terminated pursuant to
7 Section 2 of Article XIV of this Compact;

8 4. "Commission" means the "Interstate Insurance Product
9 Regulation Commission" established by this Compact;

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

13 6. "Domiciliary state" means the state in which an insurer is
14 incorporated or organized or, in the case of an alien insurer, its
15 state of entry;

16 7. "Insurer" means any entity licensed by a state to issue
17 contracts of insurance for any of the lines of insurance covered by
18 this act;

19 8. "Member" means the person chosen by a compacting state as
20 its representative to the Commission, or his or her designee;

21 9. "Noncompacting state" means any state which is not at the
22 time a compacting state;

1 10. "Operating procedures" means procedures promulgated by the
2 Commission implementing a rule, uniform standard or a provision of
3 this Compact;

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

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

17 13. "State" means any state, district or territory of the
18 United States of America;

19 14. "Third-party filer" means an entity that submits a product
20 filing to the Commission on behalf of an insurer; and

21 15. "Uniform standard" means a standard adopted by the
22 Commission for a product line, pursuant to Article VII of this
23 Compact, and shall include all of the product requirements in

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

7 ARTICLE III. ESTABLISHMENT OF THE COMMISSION AND VENUE

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

20 2. The Commission is a body corporate and politic, and an
21 instrumentality of the compacting states.

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

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

5 ARTICLE IV. POWERS OF THE COMMISSION

6 The Commission shall have the following powers:

7 1. To promulgate rules, pursuant to Article VII of this
8 Compact, which shall have the force and effect of law and shall be
9 binding in the compacting states to the extent and in the manner
10 provided in this Compact;

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

1 Model Regulation, respectively, adopted as of 2001. The Commission
2 shall consider whether any subsequent amendments to the NAIC Long-
3 Term Care Insurance Model Act or Long-Term Care Insurance Model
4 Regulation adopted by the NAIC require amending of the uniform
5 standards established by the Commission for long-term care insurance
6 products;

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

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

1 tendency to mislead the public. The actions of the Commission as
2 provided in this section shall have the force and effect of law and
3 shall be binding in the compacting states to the extent and in the
4 manner provided in the Compact;

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

8 6. To promulgate operating procedures, pursuant to Article VII
9 of this Compact, which shall be binding in the compacting states to
10 the extent and in the manner provided in this Compact;

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

15 8. To issue subpoenas requiring the attendance and testimony of
16 witnesses and the production of evidence;

17 9. To establish and maintain offices;

18 10. To purchase and maintain insurance and bonds;

19 11. To borrow, accept or contract for services of personnel,
20 including, but not limited to, employees of a compacting state;

21 12. To hire employees, professionals or specialists, and elect
22 or appoint officers, and to fix their compensation, define their
23 duties and give them appropriate authority to carry out the purposes

1 of the Compact, and determine their qualifications; and to establish
2 the Commission's personnel policies and programs relating to, among
3 other things, conflicts of interest, rates of compensation and
4 qualifications of personnel;

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

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

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

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

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

19 18. To provide for dispute resolution among compacting states;

20 19. To advise compacting states on issues relating to insurers
21 domiciled or doing business in noncompacting jurisdictions,
22 consistent with the purposes of this Compact;

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

4 21. To establish a budget and make expenditures;

5 22. To borrow money;

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

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

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

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

17 ARTICLE V. ORGANIZATION OF THE COMMISSION

18 1. Membership, Voting and Bylaws:

19 a. Each compacting state shall have and be limited to one
20 member. Each member shall be qualified to serve in
21 that capacity pursuant to applicable law of the
22 compacting state. Any member may be removed or
23 suspended from office as provided by the law of the

1 state from which he or she shall be appointed. Any
2 vacancy occurring in the Commission shall be filled in
3 accordance with the laws of the compacting state
4 wherein the vacancy exists. Nothing herein shall be
5 construed to affect the manner in which a compacting
6 state determines the election or appointment and
7 qualification of its own Commissioner.

8 b. Each member shall be entitled to one vote and shall
9 have an opportunity to participate in the governance
10 of the Commission in accordance with the bylaws.
11 Notwithstanding any provision herein to the contrary,
12 no action of the Commission with respect to the
13 promulgation of a uniform standard shall be effective
14 unless two-thirds (2/3) of the members vote in favor
15 thereof.

16 c. The Commission shall, by a majority of the members,
17 prescribe bylaws to govern its conduct as may be
18 necessary or appropriate to carry out the purposes,
19 and exercise the powers, of the Compact, including,
20 but not limited to:

21 i. Establishing the fiscal year of the Commission;

- 1 (1) a copy of the vote to close the meeting
2 revealing the vote of each member with no
3 proxy votes allowed, and
4 (2) votes taken during such meeting;
- 5 v. Establishing the titles, duties and authority and
6 reasonable procedures for the election of the
7 officers of the Commission;
- 8 vi. Providing reasonable standards and procedures for
9 the establishment of the personnel policies and
10 programs of the Commission. Notwithstanding any
11 civil service or other similar laws of any
12 compacting state, the bylaws shall exclusively
13 govern the personnel policies and programs of the
14 Commission;
- 15 vii. Promulgating a code of ethics to address
16 permissible and prohibited activities of
17 Commission members and employees; and
- 18 viii. Providing a mechanism for winding up the
19 operations of the Commission and the equitable
20 disposition of any surplus funds that may exist
21 after the termination of the Compact after the
22 payment and/or reserving of all of its debts and
23 obligations.

1 d. The Commission shall publish its bylaws in a
2 convenient form and file a copy thereof and a copy of
3 any amendment thereto with the appropriate agency or
4 officer in each of the compacting states.

5 2. Management Committee, Officers and Personnel

6 a. A Management Committee comprising no more than
7 fourteen members shall be established as follows:

8 i. one member from each of the six compacting states
9 with the largest premium volume for individual
10 and group annuities, life, disability income and
11 long-term care insurance products, determined
12 from the records of the NAIC for the prior year;

13 ii. Four members from those compacting states with at
14 least two percent (2%) of the market based on the
15 premium volume described above, other than the
16 six compacting states with the largest premium
17 volume, selected on a rotating basis as provided
18 in the bylaws; and

19 iii. Four members from those compacting states with
20 less than two percent (2%) of the market, based
21 on the premium volume described above, with one
22 selected from each of the four zone regions of
23 the NAIC as provided in the bylaws.

- 1 b. The Management Committee shall have such authority and
2 duties as may be set forth in the bylaws including,
3 but not limited to:
- 4 i. Managing the affairs of the Commission in a
5 manner consistent with the bylaws and purposes of
6 the Commission;
- 7 ii. Establishing and overseeing an organizational
8 structure within, and appropriate procedures for,
9 the Commission to provide for the creation of
10 uniform standards and other rules, receipt and
11 review of product filings, administrative and
12 technical support functions, review of decisions
13 regarding the disapproval of a product filing,
14 and the review of elections made by a compacting
15 state to opt out of uniform standard; provided,
16 that a uniform standard shall not be submitted to
17 the compacting states for adoption unless
18 approved by two-thirds (2/3) of the members of
19 the Management Committee;
- 20 iii. Overseeing the offices of the Commission; and
- 21 iv. Planning, implementing, and coordinating
22 communications and activities with other state,

1 federal and local government organizations in
2 order to advance the goals of the Commission.

3 c. The Commission shall elect annually officers from the
4 Management Committee, with each having such authority
5 and duties as may be specified in the bylaws.

6 d. The Management Committee may, subject to the approval
7 of the Commission, appoint or retain an executive
8 director for such period, upon such terms and
9 conditions and for such compensation as the Commission
10 may deem appropriate. The executive director shall
11 serve as secretary to the Commission, but shall not be
12 a member of the Commission. The executive director
13 shall hire and supervise such other staff as may be
14 authorized by the Commission.

15 3. Legislative and Advisory Committees

16 a. A legislative committee comprising state legislators
17 or their designees shall be established to monitor the
18 operations of, and make recommendations to, the
19 Commission, including the Management Committee;
20 provided, that the manner of selection and term of any
21 legislative committee member shall be as set forth in
22 the bylaws. Prior to the adoption by the Commission
23 of any uniform standard, revision to the bylaws,

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

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

9 c. The Commission may establish additional advisory
10 committees as its bylaws may provide for the carrying
11 out of its functions.

12 4. Corporate Records of the Commission

13 The Commission shall maintain its corporate books and records in
14 accordance with the bylaws.

15 5. Qualified Immunity, Defense and Indemnification

16 a. The members, officers, executive director, employees
17 and representatives of the Commission shall be immune
18 from suit and liability, either personally or in their
19 official capacity, for any claim for damage to or loss
20 of property or personal injury or other civil
21 liability caused by or arising out of any actual or
22 alleged act, error or omission that occurred, or that
23 the person against whom the claim is made had a

1 reasonable basis for believing occurred, within the
2 scope of Commission employment, duties or
3 responsibilities; provided, that nothing in this
4 paragraph shall be construed to protect any such
5 person from suit and/or liability for any damage,
6 loss, injury or liability caused by the intentional or
7 willful and wanton misconduct of that person.

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

1 c. The Commission shall indemnify and hold harmless any
2 member, officer, executive director, employee or
3 representative of the Commission for the amount of any
4 settlement or judgment obtained against that person
5 arising out of any actual or alleged act, error or
6 omission that occurred within the scope of Commission
7 employment, duties or responsibilities, or that such
8 person had a reasonable basis for believing occurred
9 within the scope of Commission employment, duties or
10 responsibilities, provided that the actual or alleged
11 act, error or omission did not result from the
12 intentional or willful and wanton misconduct of that
13 person.

14 ARTICLE VI. MEETINGS AND ACTS OF THE COMMISSION

15 1. The Commission shall meet and take such actions as are
16 consistent with the provisions of this Compact and the bylaws.

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

1 3. The Commission shall meet at least once during each calendar
2 year. Additional meetings shall be held as set forth in the bylaws.

3 ARTICLE VII. RULES AND OPERATING PROCEDURES:

4 RULEMAKING FUNCTIONS OF THE COMMISSION AND

5 OPTING OUT OF UNIFORM STANDARDS

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

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

1 3. Effective Date and Opt Out of a Uniform Standard. A uniform
2 standard shall become effective ninety (90) days after its
3 promulgation by the Commission or such later date as the Commission
4 may determine; provided, however, that a compacting state may opt
5 out of a uniform standard as provided in this Article. "Opt out"
6 shall be defined as any action by a compacting state to decline to
7 adopt or participate in a promulgated uniform standard. All other
8 rules and operating procedures, and amendments thereto, shall become
9 effective as of the date specified in each rule, operating procedure
10 or amendment.

11 4. Opt Out Procedure. A compacting state may opt out of a
12 uniform standard, either by legislation or regulation duly
13 promulgated by the Insurance Department under the compacting state's
14 Administrative Procedure Act. If a compacting state elects to opt
15 out of a uniform standard by regulation, it must:

- 16 a. Give written notice to the Commission no later than
17 ten (10) business days after the uniform standard is
18 promulgated, or at the time the state becomes a
19 compacting state; and
- 20 b. Find that the uniform standard does not provide
21 reasonable protections to the citizens of the state,
22 given the conditions in the state. The Commissioner
23 shall make specific findings of fact and conclusions

1 of law, based on a preponderance of the evidence,
2 detailing the conditions in the state which warrant a
3 departure from the uniform standard and determining
4 that the uniform standard would not reasonably protect
5 the citizens of the state. The Commissioner must
6 consider and balance the following factors and find
7 that the conditions in the state and needs of the
8 citizens of the state outweigh:

- 9 i. The intent of the Legislature to participate in,
10 and the benefits of, an interstate agreement to
11 establish national uniform consumer protections
12 for the products subject to this act; and
- 13 ii. The presumption that a uniform standard adopted
14 by the Commission provides reasonable protections
15 to consumers of the relevant product.

16 Notwithstanding the foregoing, a compacting state may, at the time
17 of its enactment of this Compact, prospectively opt out of all
18 uniform standards involving long-term care insurance products by
19 expressly providing for such opt out in the enacted Compact, and
20 such an opt out shall not be treated as a material variance in the
21 offer or acceptance of any state to participate in this Compact.

22 Such an opt out shall be effective at the time of enactment of this
23 Compact by the compacting state and shall apply to all existing

1 uniform standards involving long-term care insurance products and
2 those subsequently promulgated.

3 5. Effect of Opt Out. If a compacting state elects to opt out
4 of a uniform standard, the uniform standard shall remain applicable
5 in the compacting state electing to opt out until such time the opt
6 out legislation is enacted into law or the regulation opting out
7 becomes effective.

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

17 6. Stay of Uniform Standard. If a compacting state has
18 formally initiated the process of opting out of a uniform standard
19 by regulation, and while the regulatory opt out is pending, the
20 compacting state may petition the Commission, at least fifteen (15)
21 days before the effective date of the uniform standard, to stay the
22 effectiveness of the uniform standard in that state. The Commission
23 may grant a stay if it determines the regulatory opt out is being

1 pursued in a reasonable manner and there is a likelihood of success.
2 If a stay is granted or extended by the Commission, the stay or
3 extension thereof may postpone the effective date by up to ninety
4 (90) days, unless affirmatively extended by the Commission;
5 provided, a stay may not be permitted to remain in effect for more
6 than one (1) year unless the compacting state can show extraordinary
7 circumstances which warrant a continuance of the stay, including,
8 but not limited to, the existence of a legal challenge which
9 prevents the compacting state from opting out. A stay may be
10 terminated by the Commission upon notice that the rulemaking process
11 has been terminated.

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

23 ARTICLE VIII. COMMISSION RECORDS AND ENFORCEMENT

1 1. The Commission shall promulgate rules establishing
2 conditions and procedures for public inspection and copying of its
3 information and official records, except such information and
4 records involving the privacy of individuals and insurers' trade
5 secrets. The Commission may promulgate additional rules under which
6 it may make available to federal and state agencies, including law
7 enforcement agencies, records and information otherwise exempt from
8 disclosure, and may enter into agreements with such agencies to
9 receive or exchange information or records subject to nondisclosure
10 and confidentiality provisions.

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

1 3. The Commission shall monitor compacting states for
2 compliance with duly adopted bylaws, rules, including uniform
3 standards, and operating procedures. The Commission shall notify
4 any noncomplying compacting state in writing of its noncompliance
5 with Commission bylaws, rules or operating procedures. If a
6 noncomplying compacting state fails to remedy its noncompliance
7 within the time specified in the notice of noncompliance, the
8 compacting state shall be deemed to be in default as set forth in
9 Article XIV of this Compact.

10 4. The Commissioner of any state in which an insurer is
11 authorized to do business, or is conducting the business of
12 insurance, shall continue to exercise his or her authority to
13 oversee the market regulation of the activities of the insurer in
14 accordance with the provisions of the state's law. The
15 Commissioner's enforcement of compliance with the Compact is
16 governed by the following provisions:

17 a. With respect to the Commissioner's market regulation
18 of a product or advertisement that is approved or
19 certified to the Commission, the content of the
20 product or advertisement shall not constitute a
21 violation of the provisions, standards or requirements
22 of the Compact except upon a final order of the
23 Commission, issued at the request of a Commissioner

1 after prior notice to the insurer and an opportunity
2 for hearing before the Commission.

3 b. Before a Commissioner may bring an action for
4 violation of any provision, standard or requirement of
5 the Compact relating to the content of an
6 advertisement not approved or certified to the
7 Commission, the Commission, or an authorized
8 Commission officer or employee, must authorize the
9 action. However, authorization pursuant to this
10 paragraph does not require notice to the insurer,
11 opportunity for hearing or disclosure of requests for
12 authorization or records of the Commission's action on
13 such requests.

14 ARTICLE IX. DISPUTE RESOLUTION

15 The Commission shall attempt, upon the request of a member, to
16 resolve any disputes or other issues that are subject to this
17 Compact and which may arise between two or more compacting states,
18 or between compacting states and noncompacting states, and the
19 Commission shall promulgate an operating procedure providing for
20 resolution of such disputes.

21 ARTICLE X. PRODUCT FILING AND APPROVAL

22 1. Insurers and third-party filers seeking to have a product
23 approved by the Commission shall file the product with, and pay

1 applicable filing fees to, the Commission. Nothing in this act
2 shall be construed to restrict or otherwise prevent an insurer from
3 filing its product with the insurance department in any state
4 wherein the insurer is licensed to conduct the business of
5 insurance, and such filing shall be subject to the laws of the
6 states where filed.

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

17 3. Any product approved by the Commission may be sold or
18 otherwise issued in those compacting states for which the insurer is
19 legally authorized to do business.

20 ARTICLE XI. REVIEW OF COMMISSION DECISIONS REGARDING FILINGS

21 1. Not later than thirty (30) days after the Commission has
22 given notice of a disapproved product or advertisement filed with
23 the Commission, the insurer or third-party filer whose filing was

1 disapproved may appeal the determination to a review panel appointed
2 by the Commission. The Commission shall promulgate rules to
3 establish procedures for appointing such review panels and provide
4 for notice and hearing. An allegation that the Commission, in
5 disapproving a product or advertisement filed with the Commission,
6 acted arbitrarily, capriciously, or in a manner that is an abuse of
7 discretion or otherwise not in accordance with the law, is subject
8 to judicial review in accordance with Section 4 of Article III of
9 this Compact.

10 2. The Commission shall have authority to monitor, review and
11 reconsider products and advertisement subsequent to their filing or
12 approval upon a finding that the product does not meet the relevant
13 uniform standard. Where appropriate, the Commission may withdraw or
14 modify its approval after proper notice and hearing, subject to the
15 appeal process in Section 1 of this article.

16 ARTICLE XII. FINANCE

17 1. The Commission shall pay or provide for the payment of the
18 reasonable expenses of its establishment and organization. To fund
19 the cost of its initial operations, the Commission may accept
20 contributions and other forms of funding from the National
21 Association of Insurance Commissioners, compacting states and other
22 sources. Contributions and other forms of funding from other
23 sources shall be of such a nature that the independence of the

1 Commission concerning the performance of its duties shall not be
2 compromised.

3 2. The Commission shall collect a filing fee from each insurer
4 and third-party filer filing a product with the Commission to cover
5 the cost of the operations and activities of the Commission and its
6 staff in a total amount sufficient to cover the Commission's annual
7 budget.

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

11 4. The Commission shall be exempt from all taxation in and by
12 the compacting states.

13 5. The Commission shall not pledge the credit of any compacting
14 state, except by and with the appropriate legal authority of that
15 compacting state.

16 6. The Commission shall keep complete and accurate accounts of
17 all its internal receipts, including grants and donations, and
18 disbursements of all funds under its control. The internal
19 financial accounts of the Commission shall be subject to the
20 accounting procedures established under its bylaws. The financial
21 accounts and reports including the system of internal controls and
22 procedures of the Commission shall be audited annually by an
23 independent certified public accountant. Upon the determination of

1 the Commission, but no less frequently than every three (3) years,
2 the review of the independent auditor shall include a management and
3 performance audit of the Commission. The Commission shall make an
4 annual report to the Governor and Legislature of the compacting
5 states, which shall include a report of the independent audit. The
6 Commission's internal accounts shall not be confidential and such
7 materials may be shared with the Commissioner of any compacting
8 state upon request; provided, however, that any work papers related
9 to any internal or independent audit and any information regarding
10 the privacy of individuals and insurers' proprietary information,
11 including trade secrets, shall remain confidential.

12 7. No compacting state shall have any claim to or ownership of
13 any property held by or vested in the Commission or to any
14 Commission funds held pursuant to the provisions of this Compact.

15 ARTICLE XIII. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

16 1. Any state is eligible to become a compacting state.

17 2. The Compact shall become effective and binding upon
18 legislative enactment of the Compact into law by two compacting
19 states; provided, the Commission shall become effective for purposes
20 of adopting uniform standards for, reviewing, and giving approval or
21 disapproval of, products filed with the Commission that satisfy
22 applicable uniform standards only after twenty-six (26) states are
23 compacting states or, alternatively, by states representing greater

1 than forty percent (40%) of the premium volume for life insurance,
2 annuity, disability income and long-term care insurance products,
3 based on records of the NAIC for the prior year. Thereafter, it
4 shall become effective and binding as to any other compacting state
5 upon enactment of the Compact into law by that state.

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

10 ARTICLE XIV. WITHDRAWAL, DEFAULT AND TERMINATION

11 1. Withdrawal

- 12 a. Once effective, the Compact shall continue in force
13 and remain binding upon each and every compacting
14 state; provided, that a compacting state may withdraw
15 from the Compact ("withdrawing state") by enacting a
16 statute specifically repealing the statute which
17 enacted the Compact into law.
- 18 b. The effective date of withdrawal is the effective date
19 of the repealing statute. However, the withdrawal
20 shall not apply to any product filings approved or
21 self-certified, or any advertisement of such products,
22 on the date the repealing statute becomes effective,
23 except by mutual agreement of the Commission and the

1 withdrawing state unless the approval is rescinded by
2 the withdrawing state as provided in paragraph e of
3 this section.

4 c. The Commissioner of the withdrawing state shall
5 immediately notify the Management Committee in writing
6 upon the introduction of legislation repealing this
7 Compact in the withdrawing state.

8 d. The Commission shall notify the other compacting
9 states of the introduction of such legislation within
10 ten (10) days after its receipt of notice thereof.

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

1 withdrawing state for the prospective disapproval of
2 products or advertisement previously approved under
3 state law.

4 f. Reinstatement following withdrawal of any compacting
5 state shall occur upon the effective date of the
6 withdrawing state reenacting the Compact.

7 2. Default

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

1 stipulate the conditions and the time period within
2 which the defaulting state must cure its default. If
3 the defaulting state fails to cure the default within
4 the time period specified by the Commission, the
5 defaulting state shall be terminated from the Compact
6 and all rights, privileges and benefits conferred by
7 this Compact shall be terminated from the effective
8 date of termination.

9 b. Product approvals by the Commission or product self-
10 certifications, or any advertisement in connection
11 with such product, that is in force on the effective
12 date of termination shall remain in force in the
13 defaulting state in the same manner as if the
14 defaulting state had withdrawn voluntarily pursuant to
15 Section 1 of this article.

16 c. Reinstatement following termination of any compacting
17 state requires a reenactment of the Compact.

18 3. Dissolution of Compact

19 a. The Compact dissolves effective upon the date of the
20 withdrawal or default of the compacting state which
21 reduces membership in the Compact to one compacting
22 state.

1 b. Upon the dissolution of this Compact, the Compact
2 becomes null and void and shall be of no further force
3 or effect, and the business and affairs of the
4 Commission shall be wound up and any surplus funds
5 shall be distributed in accordance with the bylaws.

6 ARTICLE XV. SEVERABILITY AND CONSTRUCTION

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

10 2. The provisions of this Compact shall be liberally construed
11 to effectuate its purposes.

12 ARTICLE XVI. BINDING EFFECT OF COMPACT AND OTHER LAWS

13 1. Other Laws

14 a. Nothing herein prevents the enforcement of any other
15 law of a compacting state, except as provided in
16 paragraph b of this section.

17 b. For any product approved or certified to the
18 Commission, the rules, uniform standards and any other
19 requirements of the Commission shall constitute the
20 exclusive provisions applicable to the content,
21 approval and certification of such products. For
22 advertisement that is subject to the Commission's
23 authority, any rule, uniform standard or other

1 requirement of the Commission which governs the
2 content of the advertisement shall constitute the
3 exclusive provision that a Commissioner may apply to
4 the content of the advertisement. Notwithstanding the
5 foregoing, no action taken by the Commission shall
6 abrogate or restrict:

- 7 i. the access of any person to state courts,
- 8 ii. remedies available under state law related to
9 breach of contract, tort, or other laws not
10 specifically directed to the content of the
11 product,
- 12 iii. state law relating to the construction of
13 insurance contracts, or
- 14 iv. the authority of the Attorney General of the
15 state including, but not limited to, maintaining
16 any actions or proceedings, as authorized by law.

- 17 c. All insurance products filed with individual states
18 shall be subject to the laws of those states.

19 2. Binding Effect of this Compact

- 20 a. All lawful actions of the Commission, including all
21 rules and operating procedures promulgated by the
22 Commission, are binding upon the compacting states.

1 b. All agreements between the Commission and the
2 compacting states are binding in accordance with their
3 terms.

4 c. Upon the request of a party to a conflict over the
5 meaning or interpretation of Commission actions, and
6 upon a majority vote of the compacting states, the
7 Commission may issue advisory opinions regarding the
8 meaning or interpretation in dispute.

9 d. In the event any provision of the Compact exceeds the
10 constitutional limits imposed on the Legislature of any compacting
11 state, the obligations, duties, powers or jurisdiction sought to be
12 conferred by that provision upon the Commission shall be ineffective
13 as to that compacting state, and those obligations, duties, powers
14 or jurisdiction shall remain in the compacting state and shall be
15 exercised by the agency thereof to which those obligations, duties,
16 powers or jurisdiction are delegated by law in effect at the time
17 this Compact becomes effective.

18 COMMITTEE REPORT BY: COMMITTEE ON BUSINESS AND LABOR, dated 4-3-06 -
19 DO PASS, As Coauthored.