

# State of South Dakota

NINETIETH SESSION  
LEGISLATIVE ASSEMBLY, 2015

841W0144

## HOUSE BILL NO. 1162

Introduced by: Representatives Rounds, Bartling, Bordeaux, Deutsch, Feickert, Gibson, Hawks, Hawley, Killer, Kirschman, McCleerey, Novstrup (Al), Ring, Schoenbeck, Schrempp, Soli, Solum, Stalzer, Tulson, and Willadsen and Senators Brown, Greenfield (Brock), Monroe, Novstrup (David), Olson, Sutton, and Tieszen

1 FOR AN ACT ENTITLED, An Act to enact the Interstate Insurance Product Regulation  
2 Compact.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The State of South Dakota hereby enacts the Interstate Insurance Product  
5 Regulation Compact.

6 Interstate Insurance Product Regulation Compact

7 Article I. Purpose

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

- 10 (1) To promote and protect the interest of consumers of individual and group annuity,  
11 life insurance, disability income, and long-term care insurance products;
- 12 (2) To develop uniform standards for insurance products covered under the compact;
- 13 (3) To establish a central clearinghouse to receive and provide prompt review of



- 1 insurance products covered under the compact and, in certain cases, advertisements  
2 related thereto, submitted by insurers authorized to do business in one or more  
3 compacting states;
- 4 (4) To give appropriate regulatory approval to those product filings and advertisements  
5 satisfying the applicable uniform standard;
- 6 (5) To improve coordination of regulatory resources and expertise between state  
7 insurance departments regarding the setting of uniform standards and review of  
8 insurance products covered under the compact;
- 9 (6) To create the Interstate Insurance Product Regulation Commission; and
- 10 (7) To perform these and such other related functions as may be consistent with the state  
11 regulation of the business of insurance.

12 Article II

13 Terms used in this compact mean:

- 14 (1) "Advertisement," any material designed to create public interest in a product, or  
15 induce the public to purchase, increase, modify, reinstate, borrow on, surrender,  
16 replace, or retain a policy, as more specifically defined in the rules and operating  
17 procedures of the commission;
- 18 (2) "Bylaws," those bylaws established by the commission for its governance, or for  
19 directing or controlling the commission's actions or conduct;
- 20 (3) "Compacting state," any state which has enacted this compact legislation and which  
21 has not withdrawn pursuant to Article XIV, section 1, or been terminated pursuant  
22 to Article XIV, section 2;
- 23 (4) "Commission," the Interstate Insurance Product Regulation Commission established  
24 by this compact;

- 1 (5) "Commissioner," the chief insurance regulatory official of a state including, but not  
2 limited to commissioner, superintendent, director, or administrator;
- 3 (6) "Domiciliary state," the state in which an insurer is incorporated or organized, or, in  
4 the case of an alien insurer, its state of entry;
- 5 (7) "Insurer," any entity licensed by a state to issue contracts of insurance for any of the  
6 lines of insurance covered by this Act;
- 7 (8) "Member," the person chosen by a compacting state as its representative to the  
8 commission, or his or her designee;
- 9 (9) "Noncompacting state," any state which is not at the time a compacting state;
- 10 (10) "Operating procedures," procedures promulgated by the commission implementing  
11 a rule, uniform standard, or a provision of this compact;
- 12 (11) "Product," the form of a policy or contract, including any application, endorsement,  
13 or related form which is attached to and made a part of the policy or contract, and any  
14 evidence of coverage or certificate, for an individual or group annuity, life insurance,  
15 disability income, or long-term care insurance product that an Insurer is authorized  
16 to issue;
- 17 (12) "Rule," a statement of general or particular applicability and future effect  
18 promulgated by the commission, including a uniform standard developed pursuant  
19 to Article VII of this compact, designed to implement, interpret, or prescribe law or  
20 policy or describing the organization, procedure, or practice requirements of the  
21 commission, which shall have the force and effect of law in the compacting states;
- 22 (13) "State," any state, district, or territory of the United States of America;
- 23 (14) "Third-party filer," an entity that submits a product filing to the commission on  
24 behalf of an insurer;

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

8 Article III. Establishment of the Commission and Venue

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

18 (2) The commission is a body corporate and politic, and an instrumentality of the  
19 compacting states.

20 (3) The commission is solely responsible for its liabilities except as otherwise  
21 specifically provided in this compact.

22 (4) Venue is proper and judicial proceedings by or against the commission shall be  
23 brought solely and exclusively in a court of competent jurisdiction where the  
24 principal office of the commission is located.

1 Article IV. Powers of the Commission

2 The commission shall have the following powers:

3 (1) To promulgate rules, pursuant to Article VII of this compact, which shall have the  
4 force and effect of law and shall be binding in the compacting states to the extent and  
5 in the manner provided in this compact;

6 (2) To exercise its rule-making authority and establish reasonable uniform standards for  
7 products covered under the compact, and advertisement related thereto, which shall  
8 have the force and effect of law and shall be binding in the compacting states, but  
9 only for those products filed with the commission, provided, that a compacting state  
10 shall have the right to opt out of such uniform standard pursuant to Article VII, to the  
11 extent and in the manner provided in this compact, and, provided further, that any  
12 uniform standard established by the commission for long-term care insurance  
13 products may provide the same or greater protections for consumers as, but shall not  
14 provide less than, those protections set forth in the National Association of Insurance  
15 Commissioners' Long-Term Care Insurance Model Act and Long-Term Care  
16 Insurance Model Regulation, respectively, adopted as of 2001. The commission shall  
17 consider whether any subsequent amendments to the NAIC Long-Term Care  
18 Insurance Model Act or Long-Term Care Insurance Model Regulation adopted by the  
19 NAIC require amending of the uniform standards established by the commission for  
20 long-term care insurance products;

21 (3) To receive and review in an expeditious manner products filed with the commission,  
22 and rate filings for disability income and long-term care insurance products, and give  
23 approval of those products and rate filings that satisfy the applicable uniform  
24 standard, where such approval shall have the force and effect of law and be binding

- 1 on the compacting states to the extent and in the manner provided in the compact;
- 2 (4) To receive and review in an expeditious manner advertisement relating to long-term  
3 care insurance products for which uniform standards have been adopted by the  
4 commission, and give approval to all advertisement that satisfies the applicable  
5 uniform standard. For any product covered under this compact, other than long-term  
6 care insurance products, the commission shall have the authority to require an insurer  
7 to submit all or any part of its advertisement with respect to that product for review  
8 or approval prior to use, if the commission determines that the nature of the product  
9 is such that an advertisement of the product could have the capacity or tendency to  
10 mislead the public. The actions of commission as provided in this section shall have  
11 the force and effect of law and shall be binding in the compacting states to the extent  
12 and in the manner provided in the compact;
- 13 (5) To exercise its rule-making authority and designate products and advertisement that  
14 may be subject to a self-certification process without the need for prior approval by  
15 the commission;
- 16 (6) To promulgate operating procedures, pursuant to Article VII of this compact, which  
17 shall be binding in the compacting states to the extent and in the manner provided in  
18 this compact;
- 19 (7) To bring and prosecute legal proceedings or actions in its name as the commission;  
20 provided, that the standing of any state insurance department to sue or be sued under  
21 applicable law shall not be affected;
- 22 (8) To issue subpoenas requiring the attendance and testimony of witnesses and the  
23 production of evidence;
- 24 (9) To establish and maintain offices;

- 1 (10) To purchase and maintain insurance and bonds;
- 2 (11) To borrow, accept or contract for services of personnel, including, but not limited to,  
3 employees of a compacting state;
- 4 (12) To hire employees, professionals or specialists, and elect or appoint officers, and to  
5 fix their compensation, define their duties, and give them appropriate authority to  
6 carry out the purposes of the compact, and determine their qualifications; and to  
7 establish the commission's personnel policies and programs relating to, among other  
8 things, conflicts of interest, rates of compensation, and qualifications of personnel;
- 9 (13) To accept any and all appropriate donations and grants of money, equipment,  
10 supplies, materials, and services, and to receive, utilize, and dispose of the same;  
11 provided that at all times the commission shall strive to avoid any appearance of  
12 impropriety;
- 13 (14) To lease, purchase, accept appropriate gifts or donations of, or otherwise to own,  
14 hold, improve, or use any property, real, personal, or mixed; provided that at all times  
15 the commission shall strive to avoid any appearance of impropriety;
- 16 (15) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose  
17 of any property, real, personal, or mixed;
- 18 (16) To remit filing fees to compacting states as may be set forth in the bylaws, rules or  
19 operating procedures;
- 20 (17) To enforce compliance by compacting states with rules, uniform standards, operating  
21 procedures, and bylaws;
- 22 (18) To provide for dispute resolution among compacting states;
- 23 (19) To advise compacting states on issues relating to Insurers domiciled or doing  
24 business in noncompacting jurisdictions, consistent with the purposes of this

- 1 compact;
- 2 (20) To provide advice and training to those personnel in state insurance departments
- 3 responsible for product review, and to be a 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 comprising members, state
- 7 insurance regulators, state legislators or their representatives, insurance industry and
- 8 consumer representatives, and such other interested persons as may be designated in
- 9 the bylaws;
- 10 (24) To provide and receive information from, and to cooperate with law enforcement
- 11 agencies;
- 12 (25) To adopt and use a corporate seal; and
- 13 (26) To perform such other functions as may be necessary or appropriate to achieve the
- 14 purposes of this compact consistent with the state regulation of the business of
- 15 insurance.

16 Article V. Organization of the Commission

- 17 (1) Membership, voting and bylaws
- 18 (a) Each compacting state shall have and be limited to one member. Each member
- 19 shall be qualified to serve in that capacity pursuant to applicable law of the
- 20 compacting state. Any member may be removed or suspended from office as
- 21 provided by the law of the state from which he or she shall be appointed. Any
- 22 vacancy occurring in the commission shall be filled in accordance with the
- 23 laws of the compacting state wherein the vacancy exists. Nothing herein shall
- 24 be construed to affect the manner in which a compacting state determines the



1 election or appointment and qualification of its own commissioner.

2 (b) Each member shall be entitled to one vote and shall have an opportunity to  
3 participate in the governance of the commission in accordance with the  
4 bylaws. Notwithstanding any provision herein to the contrary, no action of the  
5 commission with respect to the promulgation of a uniform standard shall be  
6 effective unless two-thirds of the members vote in favor thereof.

7 (c) The commission shall, by a majority of the members, prescribe bylaws to  
8 govern its conduct as may be necessary or appropriate to carry out the  
9 purposes, and exercise the powers, of the compact, including, but not limited  
10 to:

11 (i) Establishing the fiscal year of the commission;

12 (ii) Providing reasonable procedures for appointing and electing members,  
13 as well as holding meetings, of the management committee;

14 (iii) Providing reasonable standards and procedures for the establishment  
15 and meetings of other committees, and governing any general or  
16 specific delegation of any authority or function of the commission;

17 (iv) Providing reasonable procedures for calling and conducting meetings  
18 of the commission that consists of a majority of commission members,  
19 ensuring reasonable advance notice of each such meeting and providing  
20 for the right of citizens to attend each such meeting with enumerated  
21 exceptions designed to protect the public's interest, the privacy of  
22 individuals, and insurers' proprietary information, including trade  
23 secrets. The commission may meet in camera only after a majority of  
24 the entire membership votes to close a meeting *en toto* or in part. As

1 soon as practicable, the commission must make public a copy of the  
2 vote to close the meeting revealing the vote of each member with no  
3 proxy votes allowed, and votes taken during such meeting;

4 (v) Establishing the titles, duties, and authority and reasonable procedures  
5 for the election of the officers of the commission;

6 (vi) Providing reasonable standards and procedures for the establishment of  
7 the personnel policies and programs of the commission.  
8 Notwithstanding any civil service or other similar laws of any  
9 compacting state, the bylaws shall exclusively govern the personnel  
10 policies and programs of the commission;

11 (vii) Promulgating a code of ethics to address permissible and prohibited  
12 activities of commission members and employees; and

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

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

20 (2) Management committee, officers, and personnel

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

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

1 income, and long-term care insurance products, determined from the  
2 records of the NAIC for the prior year;

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

7 (iii) Four members from those compacting states with less than two percent  
8 of the market, based on the premium volume described above, with one  
9 selected from each of the four zone regions of the NAIC as provided in  
10 the bylaws.

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

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

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

24 (iii) Overseeing the offices of the commission; and

1 (iv) Planning, implementing, and coordinating communications and  
2 activities with other state, federal, and local government organizations  
3 in order to advance the goals of the commission.

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

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

13 (3) Legislative and advisory committees

14 (a) A legislative committee comprising state legislators or their designees shall  
15 be established to monitor the operations of, and make recommendations to, the  
16 commission, including the management committee, provided that the manner  
17 of selection and term of any legislative committee member shall be as set forth  
18 in the bylaws. Prior to the adoption by the commission of any uniform  
19 standard, revision to the bylaws, annual budget, or other significant matter as  
20 may be provided in the bylaws, the management committee shall consult with  
21 and report to the legislative committee.

22 (b) The commission shall establish two advisory committees, one of which shall  
23 comprise consumer representatives independent of the insurance industry, and  
24 the other comprising insurance industry representatives.

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

3 (4) Corporate records of the commission

4 (a) The commission shall maintain its corporate books and records in accordance  
5 with the bylaws.

6 (5) Qualified immunity, defense, and indemnification

7 (a) The members, officers, executive director, employees, and representatives of  
8 the commission shall be immune from suit and liability, either personally or  
9 in their official capacity, for any claim for damage to or loss of property or  
10 personal injury or other civil liability caused by or arising out of any actual or  
11 alleged act, error, or omission that occurred, or that the person against whom  
12 the claim is made had a reasonable basis for believing occurred within the  
13 scope of commission employment, duties, or responsibilities, provided, that  
14 nothing in this paragraph shall be construed to protect any such person from  
15 suit and/or liability for any damage, loss, injury, or liability caused by the  
16 intentional or willful and wanton misconduct of that person.

17 (b) The commission shall defend any member, officer, executive director,  
18 employee, or representative of the commission in any civil action seeking to  
19 impose liability arising out of any actual or alleged act, error, or omission that  
20 occurred within the scope of commission employment, duties, or  
21 responsibilities, or that the person against whom the claim is made had a  
22 reasonable basis for believing occurred within the scope of commission  
23 employment, duties, or responsibilities, provided, that nothing herein shall be  
24 construed to prohibit that person from retaining his or her own counsel, and

1 provided further, that the actual or alleged act, error, or omission did not result  
2 from that person's intentional or willful and wanton misconduct.

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

12 Article VI. Meetings and Acts of the Commission

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

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

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

22 Article VII. Rules and Operating Procedures:

23 Rulemaking Functions of the Commission and

24 Opting Out of Uniform Standards

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

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

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

23      (4) Opt out procedure. A compacting state may opt out of a uniform standard, either by  
24      legislation or regulation duly promulgated by the insurance department under the

1 compacting state's administrative procedure act. If a compacting state elects to opt  
2 out of a uniform standard by regulation, it must give written notice to the commission  
3 no later than ten business days after the uniform standard is promulgated, or at the  
4 time the state becomes a compacting state and find that the uniform standard does not  
5 provide reasonable protections to the citizens of the state, given the conditions in the  
6 state. The commissioner shall make specific findings of fact and conclusions of law,  
7 based on a preponderance of the evidence, detailing the conditions in the state which  
8 warrant a departure from the uniform standard and determining that the uniform  
9 standard would not reasonably protect the citizens of the state. The commissioner  
10 must consider and balance the following factors and find that the conditions in the  
11 state and needs of the citizens of the state outweigh the intent of the Legislature to  
12 participate in, and the benefits of, an interstate agreement to establish national  
13 uniform consumer protections for the products subject to this Act, and the  
14 presumption that a uniform standard adopted by the commission provides reasonable  
15 protections to consumers of the relevant product.

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

24 (5) Effect of opt out. If a compacting state elects to opt out of a uniform standard, the



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

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

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

1 (7) Not later than thirty days after a rule or operating procedure is promulgated, any  
2 person may file a petition for judicial review of the rule or operating procedure,  
3 provided, that the filing of such a petition shall not stay or otherwise prevent the rule  
4 or operating procedure from becoming effective unless the court finds that the  
5 petitioner has a substantial likelihood of success. The court shall give deference to  
6 the actions of the commission consistent with applicable law and shall not find the  
7 rule or operating procedure to be unlawful if the rule or operating procedure  
8 represents a reasonable exercise of the commission's authority.

9 Article VIII. Commission Records and Enforcement

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

18 (2) Except as to privileged records, data and information, the laws of any compacting  
19 state pertaining to confidentiality or nondisclosure shall not relieve any compacting  
20 state commissioner of the duty to disclose any relevant records, data, or information  
21 to the commission, provided, that disclosure to the commission shall not be deemed  
22 to waive or otherwise affect any confidentiality requirement, and further provided,  
23 that, except as otherwise expressly provided in this Act, the commission shall not be  
24 subject to the compacting state's laws pertaining to confidentiality and nondisclosure

1 with respect to records, data, and information in its possession. Confidential  
2 information of the commission shall remain confidential after such information is  
3 provided to any commissioner.

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

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

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

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

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

5 Article IX. Dispute Resolution

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

10 Article X. Product Filing and Approval

11 (1) Insurers and third-party filers seeking to have a product approved by the commission  
12 shall file the product with, and pay applicable filing fees to, the commission. Nothing  
13 in this Act shall be construed to restrict or otherwise prevent an insurer from filing  
14 its product with the insurance department in any state wherein the insurer is licensed  
15 to conduct the business of insurance, and such filing shall be subject to the laws of  
16 the states where filed.

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

1 (3) Any product approved by the commission may be sold or otherwise issued in those  
2 compacting states for which the insurer is legally authorized to do business.

3 Article XI. Review of Commission Decisions Regarding Filings

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

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

18 Article XII. Finance

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

1 shall not be compromised.

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

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

8 (4) The commission shall be exempt from all taxation in and by the compacting states.

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

11 (6) The commission shall keep complete and accurate accounts of all its internal receipts,  
12 including grants and donations, and disbursements of all funds under its control. The  
13 internal financial accounts of the commission shall be subject to the accounting  
14 procedures established under its bylaws. The financial accounts and reports including  
15 the system of internal controls and procedures of the commission shall be audited  
16 annually by an independent certified public accountant. Upon the determination of  
17 the commission, but no less frequently than every three years, the review of the  
18 independent auditor shall include a management and performance audit of the  
19 commission. The commission shall make an annual report to the Governor and  
20 Legislature of the compacting states, which shall include a report of the independent  
21 audit. The commission's internal accounts shall not be confidential and such  
22 materials may be shared with the commissioner of any compacting state upon request  
23 provided, however, that any work papers related to any internal or independent audit  
24 and any information regarding the privacy of individuals and insurers' proprietary

1 information, including trade secrets, shall remain confidential.

2 (7) No compacting state shall have any claim to or ownership of any property held by or  
3 vested in the commission or to any commission funds held pursuant to the provisions  
4 of this compact.

5 Article XIII. Compacting States, Effective Date, and Amendment

6 (1) Any state is eligible to become a compacting state.

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

17 (3) Amendments to the compact may be proposed by the commission for enactment by  
18 the compacting states. No amendment shall become effective and binding upon the  
19 commission and the compacting states unless and until all compacting states enact  
20 the amendment into law.

21 Article XIV. Withdrawal, Default, and Termination

22 (1) Withdrawal

23 (a) Once effective, the compact shall continue in force and remain binding upon  
24 each and every compacting state, provided, that a compacting state may

1 withdraw from the compact by enacting a statute specifically repealing the  
2 statute which enacted the compact into law.

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

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

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

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



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

3 (2) Default

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

20 (b) Product approvals by the commission or product self-certifications, or any  
21 advertisement in connection with such product, that are in force on the  
22 effective date of termination shall remain in force in the defaulting state in the  
23 same manner as if the defaulting state had withdrawn voluntarily pursuant to  
24 section 1 of this Article.

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

3 (3) Dissolution of Compact

4 (a) The compact dissolves effective upon the date of the withdrawal or default of  
5 the compacting state which reduces membership in the compact to one  
6 compacting state.

7 (b) Upon the dissolution of this compact, the compact becomes null and void and  
8 shall be of no further force or effect, and the business and affairs of the  
9 commission shall be wound up and any surplus funds shall be distributed in  
10 accordance with the bylaws.

11 Article XV. Severability and Construction

12 (1) The provisions of this compact shall be severable, and if any phrase, clause, sentence,  
13 or provision is deemed unenforceable, the remaining provisions of the compact shall  
14 be enforceable.

15 (2) The provisions of this compact shall be liberally construed to effectuate its purposes.

16 Article XVI. Binding Effect of Compact and Other Laws

17 (1) Other laws

18 (a) Nothing herein prevents the enforcement of any other law of a compacting  
19 state, except as provided in paragraph (b) of this section.

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

1 governs the content of the advertisement shall constitute the exclusive  
2 provision that a commissioner may apply to the content of the advertisement.  
3 Notwithstanding the foregoing, no action taken by the commission shall  
4 abrogate or restrict the access of any person to state courts, remedies available  
5 under state law related to breach of contract, tort, or other laws not specifically  
6 directed to the content of the product, state law relating to the construction of  
7 insurance contracts, or the authority of the attorney general of the state,  
8 including but not limited to maintaining any actions or proceedings, as  
9 authorized by law.

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

12 (2) Binding effect of this compact

13 (a) All lawful actions of the commission, including all rules and operating  
14 procedures promulgated by the commission, are binding upon the compacting  
15 states.

16 (b) All agreements between the commission and the compacting states are binding  
17 in accordance with their terms.

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

22 (d) In the event any provision of this compact exceeds the constitutional limits  
23 imposed on the Legislature of any compacting state, the obligations, duties,  
24 powers, or jurisdiction sought to be conferred by that provision upon the

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