

SENATE BILL NO. 2172

Introduced by

Senators Klein, Larsen, Vedaa

Representatives Kasper, Louser

1 A BILL for an Act to create and enact a new chapter to title 26.1 of the North Dakota Century
2 Code, relating to the interstate insurance product regulation compact.

3 **BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:**

4 **SECTION 1.** A new chapter to title 26.1 of the North Dakota Century Code is created and
5 enacted as follows:

6 **ARTICLE I - PURPOSES**

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

- 9 1. To promote and protect the interest of consumers of individual and group annuity, life
10 insurance, disability income, and long-term care insurance products;
- 11 2. To develop uniform standards for insurance products covered under the compact;
- 12 3. To establish a central clearinghouse to receive and provide prompt review of insurance
13 products covered under the compact and, in certain cases, advertisements related
14 thereto, submitted by insurers authorized to do business in one or more compacting
15 states;
- 16 4. To give appropriate regulatory approval to those product filings and advertisements
17 satisfying the applicable uniform standard;
- 18 5. To improve coordination of regulatory resources and expertise between state
19 insurance departments regarding the setting of uniform standards and review of
20 insurance products covered under the compact;
- 21 6. To create the interstate insurance product regulation commission; and
- 22 7. To perform these and such other related functions as may be consistent with the state
23 regulation of the business of insurance.

24 **ARTICLE II - DEFINITIONS**

1 For purposes of this compact:

2 1. "Advertisement" means any material designed to create public interest in a product, or
3 induce the public to purchase, increase, modify, reinstate, borrow on, surrender,
4 replace or retain a policy, as more specifically defined in the rules and operating
5 procedures of the commission.

6 2. "Bylaws" mean those bylaws established by the commission for its governance, or for
7 directing or controlling the commission's actions or conduct.

8 3. "Compacting state" means any state which has enacted this compact legislation and
9 which has not withdrawn pursuant to subsection 1 of article XIV, or been terminated
10 pursuant to subsection 2 of article XIV.

11 4. "Commission" means the "interstate insurance product regulation commission"
12 established by this compact.

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

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

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

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

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

22 10. "Operating procedures" mean procedures promulgated by the commission
23 implementing a rule, uniform standard or a provision of this compact.

24 11. "Product" means the form of a policy or contract, including any application,
25 endorsement, or related form which is attached to and made a part of the policy or
26 contract, and any evidence of coverage or certificate, for an individual or group
27 annuity, life insurance, disability income, or long-term care insurance product that an
28 insurer is authorized to issue.

29 12. "Rule" means a statement of general or particular applicability and future effect
30 promulgated by the commission, including a uniform standard developed pursuant to
31 article VII of this compact, designed to implement, interpret, or prescribe law or policy

1 or describing the organization, procedure, or practice requirements of the commission,
2 which shall have the force and effect of law in the compacting states.

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

4 14. "Third-party filer" means an entity that submits a product filing to the commission on
5 behalf of an insurer.

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

12 **ARTICLE III - ESTABLISHMENT OF THE COMMISSION AND VENUE**

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

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

24 3. The commission is solely responsible for its liabilities except as otherwise specifically
25 provided in this compact.

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

29 **ARTICLE IV - POWERS OF THE COMMISSION**

30 The commission shall have the following powers:

- 1 1. To promulgate rules, pursuant to article VII of this compact, which shall have the force
2 and effect of law and shall be binding in the compacting states to the extent and in the
3 manner provided in this compact;
- 4 2. To exercise its rulemaking authority and establish reasonable uniform standards for
5 products covered under the compact, and advertisement related thereto, which shall
6 have the force and effect of law and shall be binding in the compacting states, but only
7 for those products filed with the commission, provided, that a compacting state shall
8 have the right to opt out of such uniform standard pursuant to article VII, to the extent
9 and in the manner provided in this compact, and, provided further, that any uniform
10 standard established by the commission for long-term care insurance products may
11 provide the same or greater protections for consumers as, but shall not provide less
12 than, those protections set forth in the national association of insurance
13 commissioners' long-term care insurance model act and long-term care insurance
14 model regulation, respectively, adopted as of 2001. The commission shall consider
15 whether any subsequent amendments to the national association of insurance
16 commissioners' long-term care insurance model act or long-term care insurance
17 model regulation adopted by the national association of insurance commissioners
18 require amending of the uniform standards established by the commission for
19 long-term care insurance products;
- 20 3. To receive and review in an expeditious manner products filed with the commission,
21 and rate filings for disability income and long-term care insurance products, and give
22 approval of those products and rate filings that satisfy the applicable uniform standard,
23 where such approval shall have the force and effect of law and be binding on the
24 compacting states to the extent and in the manner provided in the compact;
- 25 4. To receive and review in an expeditious manner advertisement relating to long-term
26 care insurance products for which uniform standards have been adopted by the
27 commission, and give approval to all advertisement that satisfies the applicable
28 uniform standard. For any product covered under this compact, other than long-term
29 care insurance products, the commission shall have the authority to require an insurer
30 to submit all or any part of its advertisement with respect to that product for review or
31 approval prior to use, if the commission determines that the nature of the product is

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

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

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

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

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

16 9. To establish and maintain offices;

17 10. To purchase and maintain insurance and bonds;

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

20 12. To hire employees, professionals, or specialists, and elect or appoint officers, and to
21 fix their compensation, define their duties, and give them appropriate authority to carry
22 out the purposes of the compact, and determine their qualifications; and to establish
23 the commission's personnel policies and programs relating to, among other things,
24 conflicts of interest, rates of compensation, and qualifications of personnel;

25 13. To accept any and all appropriate donations and grants of money, equipment,
26 supplies, materials, and services, and to receive, utilize, and dispose of the same,
27 provided that at all times the commission shall strive to avoid any appearance of
28 impropriety;

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

- 1 15. To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of
- 2 any property, real, personal, or mixed;
- 3 16. To remit filing fees to compacting states as may be set forth in the bylaws, rules, or
- 4 operating procedures;
- 5 17. To enforce compliance by compacting states with rules, uniform standards, operating
- 6 procedures, and bylaws;
- 7 18. To provide for dispute resolution among compacting states;
- 8 19. To advise compacting states on issues relating to insurers domiciled or doing business
- 9 in noncompacting jurisdictions, consistent with the purposes of this compact;
- 10 20. To provide advice and training to those personnel in state insurance departments
- 11 responsible for product review, and to be a resource for state insurance departments;
- 12 21. To establish a budget and make expenditures;
- 13 22. To borrow money;
- 14 23. To appoint committees, including advisory committees comprising members, state
- 15 insurance regulators, state legislators or their representatives, insurance industry and
- 16 consumer representatives, and such other interested persons as may be designated in
- 17 the bylaws;
- 18 24. To provide and receive information from, and to cooperate with, law enforcement
- 19 agencies;
- 20 25. To adopt and use a corporate seal; and
- 21 26. To perform such other functions as may be necessary or appropriate to achieve the
- 22 purposes of this compact consistent with the state regulation of the business of
- 23 insurance.

ARTICLE V - ORGANIZATION OF THE COMMISSION

- 24
- 25 1. Membership, voting, and bylaws.
- 26 a. Each compacting state shall have and be limited to one member. Each member
- 27 shall be qualified to serve in that capacity pursuant to applicable law of the
- 28 compacting state. Any member may be removed or suspended from office as
- 29 provided by the law of the state from which he or she shall be appointed. Any
- 30 vacancy occurring in the commission shall be filled in accordance with the laws of
- 31 the compacting state wherein the vacancy exists. Nothing herein shall be

1 construed to affect the manner in which a compacting state determines the
2 election or appointment and qualification of its own commissioner.

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

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

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

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

14 (3) Providing reasonable standards and procedures:

15 a. For the establishment and meetings of other committees; and

16 b. Governing any general or specific delegation of any authority or
17 function of the commission;

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

27 a. A copy of the vote to close the meeting revealing the vote of each
28 member with no proxy votes allowed; and

29 b. Votes taken during such meeting;

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

- 1 (6) Providing reasonable standards and procedures for the establishment of the
2 personnel policies and programs of the commission. Notwithstanding any
3 civil service or other similar laws of any compacting state, the bylaws shall
4 exclusively govern the personnel policies and programs of the commission;
5 (7) Promulgating a code of ethics to address permissible and prohibited
6 activities of commission members and employees; and
7 (8) Providing a mechanism for winding up the operations of the commission
8 and the equitable disposition of any surplus funds that may exist after the
9 termination of the compact after the payment and/or reserving of all of its
10 debts and obligations.
- 11 d. The commission shall publish its bylaws in a convenient form and file a copy
12 thereof and a copy of any amendment thereto, with the appropriate agency or
13 officer in each of the compacting states.
- 14 2. Management committee, officers, and personnel.
- 15 a. A management committee comprising no more than fourteen members shall be
16 established as follows:
- 17 (1) One member from each of the six compacting states with the largest
18 premium volume for individual and group annuities, life, disability income,
19 and long-term care insurance products, determined from the records of the
20 national association of insurance commissioners for the prior year;
21 (2) Four members from those compacting states with at least two percent of the
22 market based on the premium volume described above, other than the six
23 compacting states with the largest premium volume, selected on a rotating
24 basis as provided in the bylaws; and
25 (3) Four members from those compacting states with less than two percent of
26 the market, based on the premium volume described above, with one
27 selected from each of the four zone regions of the national association of
28 insurance commissioners as provided in the bylaws.
- 29 b. The management committee shall have such authority and duties as may be set
30 forth in the bylaws, including but not limited to:

- 1 (1) Managing the affairs of the commission in a manner consistent with the
2 bylaws and purposes of the commission;
- 3 (2) Establishing and overseeing an organizational structure within, and
4 appropriate procedures for, the commission to provide for the creation of
5 uniform standards and other rules, receipt and review of product filings,
6 administrative and technical support functions, review of decisions regarding
7 the disapproval of a product filing, and the review of elections made by a
8 compacting state to opt out of a uniform standard, provided that a uniform
9 standard shall not be submitted to the compacting states for adoption unless
10 approved by two-thirds of the members of the management committee;
- 11 (3) Overseeing the offices of the commission; and
- 12 (4) Planning, implementing, and coordinating communications and activities
13 with other state, federal, and local government organizations in order to
14 advance the goals of the commission.
- 15 c. The commission shall elect annually officers from the management committee,
16 with each having such authority and duties, as may be specified in the bylaws.
- 17 d. The management committee may, subject to the approval of the commission,
18 appoint or retain an executive director for such period, upon such terms and
19 conditions and for such compensation as the commission may deem appropriate.
20 The executive director shall serve as secretary to the commission, but shall not
21 be a member of the commission. The executive director shall hire and supervise
22 such other staff as may be authorized by the commission.
- 23 3. Legislative and advisory committees.
- 24 a. A legislative committee comprising state legislators or their designees shall be
25 established to monitor the operations of, and make recommendations to, the
26 commission, including the management committee, provided that the manner of
27 selection and term of any legislative committee member shall be as set forth in
28 the bylaws. Prior to the adoption by the commission of any uniform standard,
29 revision to the bylaws, annual budget, or other significant matter as may be
30 provided in the bylaws, the management committee shall consult with and report
31 to the legislative committee.

- 1 b. The commission shall establish two advisory committees, one of which shall
2 comprise consumer representatives independent of the insurance industry, and
3 the other comprising insurance industry representatives.
- 4 c. The commission may establish additional advisory committees as its bylaws may
5 provide for the carrying out of its functions.
- 6 4. Corporate records of the commission. The commission shall maintain its corporate
7 books and records in accordance with the bylaws.
- 8 5. Qualified immunity, defense, and indemnification.
- 9 a. The members, officers, executive director, employees, and representatives of the
10 commission shall be immune from suit and liability, either personally or in their
11 official capacity, for any claim for damage to or loss of property or personal injury
12 or other civil liability caused by or arising out of any actual or alleged act, error, or
13 omission that occurred, or that the person against whom the claim is made had a
14 reasonable basis for believing occurred within the scope of commission
15 employment, duties, or responsibilities, provided that nothing in this paragraph
16 shall be construed to protect any such person from suit and/or liability for any
17 damage, loss, injury, or liability caused by the intentional or willful and wanton
18 misconduct of that person.
- 19 b. The commission shall defend any member, officer, executive director, employee,
20 or representative of the commission in any civil action seeking to impose liability
21 arising out of any actual or alleged act, error, or omission that occurred within the
22 scope of commission employment, duties, or responsibilities, or that the person
23 against whom the claim is made had a reasonable basis for believing occurred
24 within the scope of commission employment, duties, or responsibilities, provided
25 that nothing herein shall be construed to prohibit that person from retaining his or
26 her own counsel, and provided further that the actual or alleged act, error, or
27 omission did not result from that person's intentional or willful and wanton
28 misconduct.
- 29 c. The commission shall indemnify and hold harmless any member, officer,
30 executive director, employee, or representative of the commission for the amount
31 of any settlement or judgment obtained against that person arising out of any

1 actual or alleged act, error, or omission that occurred within the scope of
2 commission employment, duties, or responsibilities, or that such person had a
3 reasonable basis for believing occurred within the scope of commission
4 employment, duties, or responsibilities, provided that the actual or alleged act,
5 error, or omission did not result from the intentional or willful and wanton
6 misconduct of that person.

7 **ARTICLE VI - MEETINGS AND ACTS OF THE COMMISSION**

- 8 1. The commission shall meet and take such actions as are consistent with the
9 provisions of this compact and the bylaws.
- 10 2. Each member of the commission shall have the right and power to cast a vote to
11 which that compacting state is entitled and to participate in the business and affairs of
12 the commission. A member shall vote in person or by such other means as provided in
13 the bylaws. The bylaws may provide for members' participation in meetings by
14 telephone or other means of communication.
- 15 3. The commission shall meet at least once during each calendar year. Additional
16 meetings shall be held as set forth in the bylaws.

17 **ARTICLE VII - RULES AND OPERATING PROCEDURES - RULEMAKING FUNCTIONS OF**
18 **THE COMMISSION AND OPTING OUT OF UNIFORM STANDARDS**

- 19 1. Rulemaking authority. The commission shall promulgate reasonable rules, including
20 uniform standards, and operating procedures in order to effectively and efficiently
21 achieve the purposes of this compact. Notwithstanding the foregoing, in the event the
22 commission exercises its rulemaking authority in a manner that is beyond the scope of
23 the purposes of this chapter, or the powers granted hereunder, then such an action by
24 the commission shall be invalid and have no force and effect.
- 25 2. Rulemaking procedure. Rules and operating procedures shall be made pursuant to a
26 rulemaking process that conforms to the model state administrative procedure act of
27 1981 as amended, as may be appropriate to the operations of the commission. Before
28 the commission adopts a uniform standard, the commission shall give written notice to
29 the relevant state legislative committee(s) in each compacting state responsible for
30 insurance issues of its intention to adopt the uniform standard. The commission in

1 adopting a uniform standard shall consider fully all submitted materials and issue a
2 concise explanation of its decision.

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

11 4. Opt-out procedure.

12 a. A compacting state may opt out of a uniform standard, either by legislation or
13 regulation duly promulgated by the insurance department under the compacting
14 state's administrative procedure act. If a compacting state elects to opt out of a
15 uniform standard by regulation, it must give written notice to the commission no
16 later than ten business days after the uniform standard is promulgated, or at the
17 time the state becomes a compacting state and must find that the uniform
18 standard does not provide reasonable protections to the citizens of the state,
19 given the conditions in the state. The commissioner shall make specific findings
20 of fact and conclusions of law, based on a preponderance of the evidence,
21 detailing the conditions in the state which warrant a departure from the uniform
22 standard and determining that the uniform standard would not reasonably protect
23 the citizens of the state. The commissioner must consider and balance the
24 following factors and find that the conditions in the state and needs of the citizens
25 of the state outweigh the intent of the legislature to participate in, and the benefits
26 of, an interstate agreement to establish national uniform consumer protections for
27 the products subject to this chapter and the presumption that a uniform standard
28 adopted by the commission provides reasonable protections to consumers of the
29 relevant product. Notwithstanding the foregoing, a compacting state may, at the
30 time of its enactment of this compact, prospectively opt out of all uniform
31 standards involving long-term care insurance products by expressly providing for

1 such opt-out in the enacted compact, and such an opt-out shall not be treated as
2 a material variance in the offer or acceptance of any state to participate in this
3 compact. Such an opt-out shall be effective at the time of enactment of this
4 compact by the compacting state and shall apply to all existing uniform standards
5 involving long-term care insurance products and those subsequently
6 promulgated.

7 b. In accordance with subdivision a, North Dakota opts out of all existing and
8 prospective uniform standards involving long-term care insurance products in
9 order to preserve North Dakota's statutory requirements governing long-term
10 care insurance products.

11 5. Effect of opt-out. If a compacting state elects to opt out of a uniform standard, the
12 uniform standard shall remain applicable in the compacting state electing to opt out
13 until such time the opt-out legislation is enacted into law or the regulation opting out
14 becomes effective. Once the opt-out of a uniform standard by a compacting state
15 becomes effective as provided under the laws of that state, the uniform standard shall
16 have no further force and effect in that state unless and until the legislation or
17 regulation implementing the opt-out is repealed or otherwise becomes ineffective
18 under the laws of the state. If a compacting state opts out of a uniform standard after
19 the uniform standard has been made effective in that state, the opt-out shall have the
20 same prospective effect as provided under article XIV for withdrawals.

21 6. Stay of uniform standard. If a compacting state has formally initiated the process of
22 opting out of a uniform standard by regulation, and while the regulatory opt-out is
23 pending, the compacting state may petition the commission, at least fifteen days
24 before the effective date of the uniform standard, to stay the effectiveness of the
25 uniform standard in that state. The commission may grant a stay if it determines the
26 regulatory opt-out is being pursued in a reasonable manner and there is a likelihood of
27 success. If a stay is granted or extended by the commission, the stay or extension
28 thereof may postpone the effective date by up to ninety days, unless affirmatively
29 extended by the commission, provided a stay may not be permitted to remain in effect
30 for more than one year unless the compacting state can show extraordinary
31 circumstances which warrant a continuance of the stay, including, but not limited to,

1 the existence of a legal challenge which prevents the compacting state from opting
2 out. A stay may be terminated by the commission upon notice that the rulemaking
3 process has been terminated.

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

12 **ARTICLE VIII - COMMISSION RECORDS AND ENFORCEMENT**

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

21 2. Except as to privileged records, data, and information, the laws of any compacting
22 state pertaining to confidentiality or nondisclosure shall not relieve any compacting
23 state commissioner of the duty to disclose any relevant records, data, or information to
24 the commission, provided that disclosure to the commission shall not be deemed to
25 waive or otherwise affect any confidentiality requirement, and further provided that,
26 except as otherwise expressly provided in this chapter, the commission shall not be
27 subject to the compacting state's laws pertaining to confidentiality and nondisclosure
28 with respect to records, data, and information in its possession. Confidential
29 information of the commission shall remain confidential after such information is
30 provided to any commissioner.

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

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

- 13 a. With respect to the commissioner's market regulation of a product or
14 advertisement that is approved or certified to the commission, the content of the
15 product or advertisement shall not constitute a violation of the provisions,
16 standards, or requirements of the compact except upon a final order of the
17 commission, issued at the request of a commissioner after prior notice to the
18 insurer and an opportunity for hearing before the commission.
- 19 b. Before a commissioner may bring an action for violation of any provision,
20 standard, or requirement of the compact relating to the content of an
21 advertisement not approved or certified to the commission, the commission, or an
22 authorized commission officer or employee, must authorize the action. However,
23 authorization pursuant to this paragraph does not require notice to the insurer,
24 opportunity for hearing, or disclosure of requests for authorization or records of
25 the commission's action on such requests.

ARTICLE IX - DISPUTE RESOLUTION

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

ARTICLE X - PRODUCT FILING AND APPROVAL

- 1 1. Insurers and third-party filers seeking to have a product approved by the commission
2 shall file the product with, and pay applicable filing fees to, the commission. Nothing in
3 this chapter shall be construed to restrict or otherwise prevent an insurer from filing its
4 product with the insurance department in any state wherein the insurer is licensed to
5 conduct the business of 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 processes and
8 procedures pursuant to commission rules and operating procedures. Notwithstanding
9 any provision herein to the contrary, the commission shall promulgate rules to
10 establish conditions and procedures under which the commission will provide public
11 access to product filing information. In establishing such rules, the commission shall
12 consider the interests of the public in having access to such information, as well as
13 protection of personal medical and financial information and trade secrets, that may be
14 contained in a product filing or supporting information.
- 15 3. Any product approved by the commission may be sold or otherwise issued in those
16 compacting states for which the insurer is legally authorized to do business.

17 **ARTICLE XI - REVIEW OF COMMISSION DECISIONS REGARDING FILINGS**

- 18 1. Not later than thirty days after the commission has given notice of a disapproved
19 product or advertisement filed with the commission, the insurer or third-party filer
20 whose filing was disapproved may appeal the determination to a review panel
21 appointed by the commission. The commission shall promulgate rules to establish
22 procedures for appointing such review panels and provide for notice and hearing. An
23 allegation that the commission, in disapproving a product or advertisement filed with
24 the commission, acted arbitrarily, capriciously, or in a manner that is an abuse of
25 discretion or otherwise not in accordance with the law, is subject to judicial review in
26 accordance with subsection 4 of article III.
- 27 2. The commission shall have authority to monitor, review, and reconsider products and
28 advertisement subsequent to their filing or approval upon a finding that the product
29 does not meet the relevant uniform standard. Where appropriate, the commission may
30 withdraw or modify its approval after proper notice and hearing, subject to the appeal
31 process in subsection 1.

ARTICLE XII - FINANCE

- 1
2 1. The commission shall pay or provide for the payment of the reasonable expenses of
3 its establishment and organization. To fund the cost of its initial operations, the
4 commission may accept contributions and other forms of funding from the national
5 association of insurance commissioners, compacting states, and other sources.
6 Contributions and other forms of funding from other sources shall be of such a nature
7 that the independence of the commission concerning the performance of its duties
8 shall not be compromised.
- 9 2. The commission shall collect a filing fee from each insurer and third-party filer filing a
10 product with the commission to cover the cost of the operations and activities of the
11 commission and its staff in a total amount sufficient to cover the commission's annual
12 budget.
- 13 3. The commission's budget for a fiscal year shall not be approved until it has been
14 subject to notice and comment as set forth in article VII of this compact.
- 15 4. The commission shall be exempt from all taxation in and by the compacting states.
- 16 5. The commission shall not pledge the credit of any compacting state, except by and
17 with the appropriate legal authority of that compacting state.
- 18 6. The commission shall keep complete and accurate accounts of all its internal receipts,
19 including grants and donations, and disbursements of all funds under its control. The
20 internal financial accounts of the commission shall be subject to the accounting
21 procedures established under its bylaws. The financial accounts and reports including
22 the system of internal controls and procedures of the commission shall be audited
23 annually by an independent certified public accountant. Upon the determination of the
24 commission, but no less frequently than every three years, the review of the
25 independent auditor shall include a management and performance audit of the
26 commission. The commission shall make an annual report to the governor and
27 legislature of the compacting states, which shall include a report of the independent
28 audit. The commission's internal accounts shall not be confidential and such materials
29 may be shared with the commissioner of any compacting state upon request provided,
30 however, that any work papers related to any internal or independent audit and any

1 information regarding the privacy of individuals and insurers' proprietary information,
2 including trade secrets, shall remain confidential.

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

6 **ARTICLE XIII - COMPACTING STATES, EFFECTIVE DATE, AND AMENDMENT**

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

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

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

22 **ARTICLE XIV - WITHDRAWAL, DEFAULT, AND TERMINATION**

23 1. Withdrawal.

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

28 b. The effective date of withdrawal is the effective date of the repealing statute.
29 However, the withdrawal shall not apply to any product filings approved or
30 self-certified, or any advertisement of such products, on the date the repealing
31 statute becomes effective, except by mutual agreement of the commission and

- 1 the withdrawing state unless the approval is rescinded by the withdrawing state
2 as provided in subdivision e.
- 3 c. The commissioner of the withdrawing state shall immediately notify the
4 management committee in writing upon the introduction of legislation repealing
5 this compact in the withdrawing state.
- 6 d. The commission shall notify the other compacting states of the introduction of
7 such legislation within ten days after its receipt of notice thereof.
- 8 e. The withdrawing state is responsible for all obligations, duties, and liabilities
9 incurred through the effective date of withdrawal, including any obligations, the
10 performance of which extend beyond the effective date of withdrawal, except to
11 the extent those obligations may have been released or relinquished by mutual
12 agreement of the commission and the withdrawing state. The commission's
13 approval of products and advertisement prior to the effective date of withdrawal
14 shall continue to be effective and be given full force and effect in the withdrawing
15 state, unless formally rescinded by the withdrawing state in the same manner as
16 provided by the laws of the withdrawing state for the prospective disapproval of
17 products or advertisement previously approved under state law.
- 18 f. Reinstatement following withdrawal of any compacting state shall occur upon the
19 effective date of the withdrawing state reenacting the compact.
- 20 2. Default.
- 21 a. If the commission determines that any compacting state has at any time
22 defaulted ("defaulting state") in the performance of any of its obligations or
23 responsibilities under this compact, the bylaws or duly promulgated rules or
24 operating procedures, then, after notice and hearing as set forth in the bylaws, all
25 rights, privileges, and benefits conferred by this compact on the defaulting state
26 shall be suspended from the effective date of default as fixed by the commission.
27 The grounds for default include, but are not limited to, failure of a compacting
28 state to perform its obligations or responsibilities, and any other grounds
29 designated in commission rules. The commission shall immediately notify the
30 defaulting state in writing of the defaulting state's suspension pending a cure of
31 the default. The commission shall stipulate the conditions and the time period

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

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

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

13 3. Dissolution of compact.

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

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

21 **ARTICLE XV - SEVERABILITY AND CONSTRUCTION**

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

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

26 **ARTICLE XVI - BINDING EFFECT OF COMPACT AND OTHER LAWS**

27 1. Other laws.

28 a. Nothing herein prevents the enforcement of any other law of a compacting state,
29 except as provided in subdivision b.

30 b. For any product approved or certified to the commission, the rules, uniform
31 standards, and any other requirements of the commission shall constitute the

1 exclusive provisions applicable to the content, approval, and certification of such
2 products. For advertisement that is subject to the commission's authority, any
3 rule, uniform standard, or other requirement of the commission which governs the
4 content of the advertisement shall constitute the exclusive provision that a
5 commissioner may apply to the content of the advertisement. Notwithstanding the
6 foregoing, no action taken by the commission shall abrogate or restrict:

7 (1) The access of any person to state courts;

8 (2) Remedies available under state law related to breach of contract, tort, or
9 other laws not specifically directed to the content of the product;

10 (3) State law relating to the construction of insurance contracts; or

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

13 c. All insurance products filed with individual states shall be subject to the laws of
14 those states.

15 2. Binding effect of this compact.

16 a. All lawful actions of the commission, including all rules and operating procedures
17 promulgated by the commission, are binding upon the compacting states.

18 b. All agreements between the commission and the compacting states are binding
19 in accordance with their terms.

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

24 d. In the event any provision of this compact exceeds the constitutional limits
25 imposed on the legislature of any compacting state, the obligations, duties,
26 powers, or jurisdiction sought to be conferred by that provision upon the
27 commission shall be ineffective as to that compacting state, and those
28 obligations, duties, powers, or jurisdiction shall remain in the compacting state
29 and shall be exercised by the agency thereof to which those obligations, duties,
30 powers, or jurisdiction are delegated by law in effect at the time this compact
31 becomes effective.