

## 2024 South Dakota Legislature

**House Bill 1091****AMENDMENT 1091A  
FOR THE INTRODUCED BILL**

1 **An Act to enact the Interstate Insurance Product Regulation ~~Compact~~ Commission.**

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

3 **Section 1. That a NEW SECTION be added to title 58:**

4 The state of South Dakota hereby enacts the Interstate Insurance Product  
5 Regulation Compact:

6 Interstate Insurance Product Regulation Compact

7 Article I. Purposes

8 The purposes of this compact are, through means of joint and cooperative action  
9 among the 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  
14 insurance products covered under the compact and, in certain cases,  
15 advertisements related thereto, submitted by insurers authorized to do business in  
16 one or more compacting states;

17 (4) To give appropriate regulatory approval to those product filings and advertisements  
18 satisfying the applicable uniform standard;

19 (5) To improve coordination of regulatory resources and expertise between state  
20 insurance departments regarding the setting of uniform standards and review of  
21 insurance products covered under the compact;

22 (6) To create the Interstate Insurance Product Regulation Commission; and

23 (7) To perform these and such other related functions as may be consistent with the  
24 state regulation of the business of insurance.

25 Article II. Definitions

26 For the purposes of this compact:

- 1       (1) "Advertisement" means any material designed to create public interest in a product  
2       or induce the public to purchase, increase, modify, reinstate, borrow on, surrender,  
3       replace, or retain a policy as more specifically defined in the rules and operating  
4       procedures of the commission;
- 5       (2) "Bylaws" mean those bylaws established by the commission for its governance or  
6       for directing or controlling the commission's actions or conduct;
- 7       (3) "Commission" means the Interstate Insurance Product Regulation Commission  
8       established by this compact;
- 9       (4) "Commissioner" means the chief insurance regulatory official of a state including,  
10      but not limited to commissioner, superintendent, director, or administrator;
- 11      (5) "Compacting state" means any state which has enacted this compact legislation  
12      and which has not withdrawn pursuant to article XIV, section 1, or been terminated  
13      pursuant to article XIV, section 2;
- 14      (6) "Domiciliary state" means the state in which an insurer is incorporated or  
15      organized; or, in the case of an alien insurer, its state of entry;
- 16      (7) "Insurer" means any entity licensed by a state to issue contracts of insurance for  
17      any of the lines of insurance covered by this Act;
- 18      (8) "Member" means the person chosen by a compacting state as its representative to  
19      the commission, or his or her designee;
- 20      (9) "Non-compacting state" means any state which is not at the time a compacting  
21      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  
26      or 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  
28      an 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  
31      to article VII of this compact, designed to implement, interpret, or prescribe law or  
32      policy or describing the organization, procedure, or practice requirements of the  
33      commission, which shall have the force and effect of law in the compacting states;
- 34      (13) "State" means any state, district, or territory of the United States of America;

1 (14) "Third-party filer" means an entity that submits a product filing to the commission  
2 on behalf of an insurer; and

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

#### 10 Article III. Establishment of the Commission and Venue

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

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

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

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

#### 27 Article IV. Powers of the Commission

28 The commission shall have the following powers:

29 (1) To promulgate rules, pursuant to article VII of this compact, which shall have the  
30 force and effect of law and shall be binding in the compacting states to the extent  
31 and in the manner provided in this compact;

32 (2) To exercise its rule-making authority and establish reasonable uniform standards  
33 for products covered under the compact, and advertisement related thereto, which  
34 shall have the force and effect of law and shall be binding in the compacting states,  
35 but only for those products filed with the commission, provided that a compacting

1 state shall have the right to opt out of such uniform standard pursuant to article  
2 VII, to the extent and in the manner provided in this compact, and, provided  
3 further, that any uniform standard established by the commission for long-term  
4 care insurance products may provide the same or greater protections for  
5 consumers as, but shall not provide less than, those protections set forth in the  
6 National Association of Insurance Commissioners' Long-Term Care Insurance  
7 Model Act and Long-Term Care Insurance Model Regulation, respectively, adopted  
8 as of 2001. The commission shall consider whether any subsequent amendments  
9 to the NAIC Long-Term Care Insurance Model Act or Long-Term Care Insurance  
10 Model Regulation adopted by the NAIC require amending of the uniform standards  
11 established by the commission for long-term care insurance products;

12 (3) To receive and review in an expeditious manner products filed with the commission,  
13 rate filings for disability income and long-term care insurance products, and give  
14 approval of those products and rate filings that satisfy the applicable uniform  
15 standard, where such approval shall have the force and effect of law and be binding  
16 on the compacting states to the extent and in the manner provided in the compact;

17 (4) To receive and review in an expeditious manner advertisement relating to long-  
18 term care insurance products for which uniform standards have been adopted by  
19 the commission and give approval to all advertisement that satisfies the applicable  
20 uniform standard. For any product covered under this compact, other than long-  
21 term care insurance products, the commission shall have the authority to require  
22 an insurer to submit all or any part of its advertisement with respect to that product  
23 for review or approval prior to use, if the commission determines that the nature  
24 of the product is such that an advertisement of the product could have the capacity  
25 or tendency to mislead the public. The actions of the commission as provided in  
26 this section shall have the force and effect of law and shall be binding in the  
27 compacting states to the extent and in the manner provided in the compact;

28 (5) To exercise its rule-making authority and designate products and advertisement  
29 that may be subject to a self-certification process without the need for prior  
30 approval by the commission;

31 (6) To promulgate operating procedures, pursuant to article VII of this compact, which  
32 shall be binding in the compacting states to the extent and in the manner provided  
33 in this compact;

- 1        (7) To bring and prosecute legal proceedings or actions in its name as the commission;  
2            provided, that the standing of any state insurance department to sue or be sued  
3            under applicable law shall not be affected;
- 4        (8) To issue subpoenas requiring the attendance and testimony of witnesses and the  
5            production of evidence;
- 6        (9) To establish and maintain offices;
- 7        (10) To purchase and maintain insurance and bonds;
- 8        (11) To borrow, accept, or contract for services of personnel, including, but not limited  
9            to, employees of a compacting state;
- 10       (12) To hire employees, professionals, or specialists, and elect or appoint officers, and  
11           to fix their compensation, define their duties and give them appropriate authority  
12           to carry out the purposes of the compact, and determine their qualifications; and  
13           to establish the commission's personnel policies and programs relating to, among  
14           other things, conflicts of interest, rates of compensation, and qualifications of  
15           personnel;
- 16       (13) To accept any and all appropriate donations and grants of money, equipment,  
17           supplies, materials, and services and to receive, utilize, and dispose of the same,  
18           provided that at all times the commission shall strive to avoid any appearance of  
19           impropriety;
- 20       (14) To lease, purchase, accept appropriate gifts or donations of, or otherwise to own,  
21           hold, improve, or use any property, real, personal, or mixed, provided that at all  
22           times the commission shall strive to avoid any appearance of impropriety;
- 23       (15) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose  
24           of any property, real, personal, or mixed;
- 25       (16) To remit filing fees to compacting states as may be set forth in the bylaws, rules,  
26           or operating procedures;
- 27       (17) To enforce compliance by compacting states with rules, uniform standards,  
28           operating procedures, and bylaws;
- 29       (18) To provide for dispute resolution among compacting states;
- 30       (19) To advise compacting states on issues relating to insurers domiciled or doing  
31           business in non-compacting jurisdictions, consistent with the purposes of this  
32           compact;
- 33       (20) To provide advice and training to those personnel in state insurance departments  
34           responsible for product review and to be a resource for state insurance  
35           departments;

- 1       (21) To establish a budget and make expenditures;  
2       (22) To borrow money;  
3       (23) To appoint committees, including advisory committees comprising of members,  
4               state insurance regulators, state legislators or their representatives, insurance  
5               industry and consumer representatives, and such other interested persons as may  
6               be designated in the bylaws;  
7       (24) To provide and receive information from and to cooperate with law enforcement  
8               agencies;  
9       (25) To adopt and use a corporate seal; and  
10       (26) To perform such other functions as may be necessary or appropriate to achieve  
11               the purposes of this compact consistent with the state regulation of the business  
12               of insurance.

#### 13                               Article V. Organization of the Commission

- 14       (1) Membership, Voting, and Bylaws  
15               (a) Each compacting state shall have and be limited to one member. Each  
16               member shall be qualified to serve in that capacity pursuant to applicable  
17               law of the compacting state. Any member may be removed or suspended  
18               from office as provided by the law of the state from which he or she shall  
19               be appointed. Any vacancy occurring in the commission shall be filled in  
20               accordance with the laws of the compacting state wherein the vacancy  
21               exists. Nothing herein shall be construed to affect the manner in which a  
22               compacting state determines the election or appointment and qualification  
23               of its own commissioner.  
24               (b) Each member shall be entitled to one vote and shall have an opportunity to  
25               participate in the governance of the commission in accordance with the  
26               bylaws. Notwithstanding any provision herein to the contrary, no action of  
27               the commission with respect to the promulgation of a uniform standard shall  
28               be effective unless two-thirds of the members vote in favor thereof.  
29               (c) The commission shall, by a majority of the members, prescribe bylaws to  
30               govern its conduct as may be necessary or appropriate to carry out the  
31               purposes and exercise the powers of the compact, including, but not limited  
32               to:  
33                       (i) Establishing the fiscal year of the commission;  
34                       (ii) Providing reasonable procedures for appointing and electing  
35                       members and holding meetings of the management committee;

- 1           (iii) Providing reasonable standards and procedures: (i) for the  
2           establishment and meetings of other committees and (ii) governing  
3           any general or specific delegation of any authority or function of the  
4           commission;
- 5           (iv) Providing reasonable procedures for calling and conducting meetings  
6           of the commission that consists of a majority of commission  
7           members, ensuring reasonable advance notice of each such meeting  
8           and providing for the right of citizens to attend each such meeting  
9           with enumerated exceptions designed to protect the public's  
10           interest, the privacy of individuals, and insurers' proprietary  
11           information, including trade secrets. The commission may meet in  
12           camera only after a majority of the entire membership votes to close  
13           a meeting en toto or in part. As soon as practicable, the commission  
14           must make public (i) a copy of the vote to close the meeting  
15           revealing the vote of each member with no proxy votes allowed, and  
16           (ii) votes taken during such meeting;
- 17           (v) Establishing the titles, duties, and authority and reasonable  
18           procedures for the election of the officers of the commission;
- 19           (vi) Providing reasonable standards and procedures for the  
20           establishment of the personnel policies and programs of the  
21           commission. Notwithstanding any civil service or other similar laws  
22           of any compacting state, the bylaws shall exclusively govern the  
23           personnel policies and programs of the commission;
- 24           (vii) Promulgating a code of ethics to address permissible and prohibited  
25           activities of commission members and employees; and
- 26           (viii) Providing a mechanism for winding up the operations of the  
27           commission and the equitable disposition of any surplus funds that  
28           may exist after the termination of the compact after the payment  
29           and/or reserving of all of its debts and obligations.
- 30           (d) The commission shall publish its bylaws in a convenient form and file a copy  
31           thereof and a copy of any amendment thereto with the appropriate agency  
32           or officer in each of the compacting states.
- 33       (2) Management committee, officers, and personnel
- 34           (a) A management committee, comprising of no more than fourteen members  
35           shall be established as follows:

- 1            (i) One member from each of the six compacting states with the largest  
2            premium volume for individual and group annuities, life, disability  
3            income and long-term care insurance products determined from the  
4            records of the NAIC for the prior year;
- 5            (ii) Four members from those compacting states with at least two  
6            percent of the market based on the premium volume described  
7            above, other than the six compacting states with the largest  
8            premium volume, selected on a rotating basis as provided in the  
9            bylaws; and
- 10          (iii) Four members from those compacting states with less than two  
11          percent of the market, based on the premium volume described  
12          above, with one selected from each of the four zone regions of the  
13          NAIC as provided in the bylaws.
- 14          (b) The management committee shall have such authority and duties as may  
15          be set forth in the bylaws, including but not limited to:
- 16            (i) Managing the affairs of the commission in a manner consistent with  
17            the bylaws and purposes of the commission;
- 18            (ii) Establishing and overseeing an organizational structure within, and  
19            appropriate procedures for, the commission to provide for the  
20            creation of uniform standards and other rules, receipt and review of  
21            product filings, administrative and technical support functions,  
22            review of decisions regarding the disapproval of a product filing, and  
23            the review of elections made by a compacting state to opt out of a  
24            uniform standard, provided that a uniform standard shall not be  
25            submitted to the compacting states for adoption unless approved by  
26            two-thirds of the members of the management committee;
- 27            (iii) Overseeing the offices of the commission; and
- 28            (iv) Planning, implementing, and coordinating communications and  
29            activities with other state, federal, and local government  
30            organizations in order to advance the goals of the commission.
- 31          (c) The commission shall elect annually officers from the management  
32          committee, with each having such authority and duties as may be specified  
33          in the bylaws.
- 34          (d) The management committee may, subject to the approval of the  
35          commission, appoint or retain an executive director for such period, upon

1 such terms and conditions and for such compensation as the commission  
2 may deem appropriate. The executive director shall serve as secretary to  
3 the commission but shall not be a member of the commission. The executive  
4 director shall hire and supervise ~~such~~ other staff as may be authorized by the  
5 Commission.

6 (3) Legislative and advisory committees

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

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

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

20 (4) Corporate records of the commission

21 The commission shall maintain its corporate books and records in accordance with  
22 the bylaws.

23 (5) Qualified immunity, defense, and indemnification

24 (a) The members, officers, executive director, employees, and representatives  
25 of the commission shall be immune from suit and liability, either personally  
26 or in their official capacity, for any claim for damage to or loss of property  
27 or personal injury or other civil liability caused by or arising out of any actual  
28 or alleged act, error, or omission that occurred or that the person against  
29 whom the claim is made had a reasonable basis for believing occurred within  
30 the scope of commission employment, duties, or responsibilities, provided  
31 that nothing in this paragraph shall be construed to protect any such person  
32 from suit and/or liability for any damage, loss, injury, or liability caused by  
33 the intentional or willful and wanton misconduct of that person.

34 (b) The commission shall defend any member, officer, executive director,  
35 employee, or representative of the commission in any civil action seeking to

1 impose liability arising out of any actual or alleged act, error, or omission  
2 that occurred within the scope of commission employment, duties, or  
3 responsibilities or that the person against whom the claim is made had a  
4 reasonable basis for believing occurred within the scope of commission  
5 employment, duties, or responsibilities, provided that nothing herein shall  
6 be construed to prohibit that person from retaining his or her own counsel  
7 and provided further, that the actual or alleged act, error, or omission did  
8 not result from that person's intentional or willful and wanton misconduct.

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

18 Article VI. Meetings and Acts of the Commission

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

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

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

28 Article VII. Rules and operating procedures: Rulemaking functions of the commission  
29 and opting out of uniform standards

30 (1) Rulemaking authority. The commission shall promulgate reasonable rules,  
31 including uniform standards, and operating procedures in order to effectively and  
32 efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in  
33 the event the commission exercises its rulemaking authority in a manner that is  
34 beyond the scope of the purposes of this Act or the powers granted hereunder,

1 then such an action by the commission shall be invalid and have no force and  
2 effect.

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

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

19 (4) Opt-out procedure.

20 (a) A compacting state may opt out of a uniform standard, either by legislation  
21 or regulation duly promulgated by the insurance department under the  
22 compacting state's administrative procedure act. If a compacting state  
23 elects to opt out of a uniform standard by regulation, it must (a) give written  
24 notice to the commission no later than ten business days after the uniform  
25 standard is promulgated or at the time the state becomes a compacting  
26 state and (b) find that the uniform standard does not provide reasonable  
27 protections to the citizens of the state given the conditions in the state. The  
28 commissioner shall make specific findings of fact and conclusions of law,  
29 based on a preponderance of the evidence, detailing the conditions in the  
30 state which warrant a departure from the uniform standard and determining  
31 that the uniform standard would not reasonably protect the citizens of the  
32 state. The commissioner must consider and balance the following factors  
33 and find that the conditions in the state and needs of the citizens of the  
34 state outweigh:

1           (i) The intent of the legislature to participate in, and the benefits of, an  
2           interstate agreement to establish national uniform consumer  
3           protections for the products subject to this Act; and

4           (ii) The presumption that a uniform standard adopted by the  
5           commission provides reasonable protections to consumers of the  
6           relevant product.

7           Notwithstanding the foregoing, a compacting state may, at the time of its  
8           enactment of this compact, prospectively opt out of all uniform standards  
9           involving long-term care insurance products by expressly providing for such  
10          opt out in the enacted compact, and such an opt out shall not be treated as  
11          a material variance in the offer or acceptance of any state to participate in  
12          this compact. Such an opt out shall be effective at the time of enactment of  
13          this compact by the compacting state and shall apply to all existing uniform  
14          standards involving long-term care insurance products and those  
15          subsequently promulgated.

16          (b) In accordance with subdivision (a), South Dakota opts out of all existing  
17          and prospective uniform standards involving long-term care insurance  
18          products in order to preserve South Dakota's statutory requirements  
19          governing long-term care insurance products.

20          (c) In accordance with subdivision (a), South Dakota opts out of all existing  
21          uniform standards involving individual and group disability income  
22          insurance products in order to preserve South Dakota's statutory  
23          requirements governing individual and group disability income insurance  
24          products.

25          (5) Effect of opt out. If a compacting state elects to opt out of a uniform standard, the  
26          uniform standard shall remain applicable in the compacting state electing to opt  
27          out until such time the opt-out legislation is enacted into law or the regulation  
28          opting out becomes effective.

29                 Once the opt out of a uniform standard by a compacting state becomes effective  
30                 as provided under the laws of that state, the uniform standard shall have no further  
31                 force and effect in that state unless and until the legislation or regulation  
32                 implementing the opt out is repealed or otherwise becomes ineffective under the  
33                 laws of the state. If a compacting state opts out of a uniform Standard after the  
34                 uniform standard has been made effective in that state, the opt out shall have the  
35                 same prospective effect as provided under article XIV for withdrawals.

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

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

23 Article VIII. Commission records and enforcement

24 (1) The commission shall promulgate rules establishing conditions and procedures for  
25 public inspection and copying of its information and official records, except such  
26 information and records involving the privacy of individuals and insurers' trade  
27 secrets. The commission may promulgate additional rules under which it may make  
28 available to federal and state agencies, including law enforcement agencies,  
29 records and information otherwise exempt from disclosure and may enter into  
30 agreements with such agencies to receive or exchange information or records  
31 subject to nondisclosure and confidentiality provisions.

32 (2) Except as to privileged records, data, and information, the laws of any compacting  
33 state pertaining to confidentiality or nondisclosure shall not relieve any compacting  
34 state commissioner of the duty to disclose any relevant records, data, or  
35 information to the commission, provided that disclosure to the commission shall

1 not be deemed to waive or otherwise affect any confidentiality requirement and  
2 further provided, that, except as otherwise expressly provided in this Act, the  
3 commission shall not be subject to the compacting state's laws pertaining to  
4 confidentiality and nondisclosure with respect to records, data, and information in  
5 its possession. Confidential information of the commission shall remain confidential  
6 after such information is provided to any commissioner.

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

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

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

25 (b) Before a commissioner may bring an action for violation of any provision,  
26 standard, or requirement of the compact relating to the content of an  
27 advertisement not approved or certified to the commission, the commission  
28 or an authorized commission officer or employee must authorize the action.  
29 However, authorization pursuant to this paragraph does not require notice  
30 to the insurer, opportunity for hearing or disclosure of requests for  
31 authorization or records of the commission's action on such requests.

#### 32 Article IX. Dispute resolution

33 The commission shall attempt, upon the request of a member, to resolve any  
34 disputes or other issues that are subject to this compact and which may arise between  
35 two or more compacting states, or between compacting states and non-compacting states,

1 and the commission shall promulgate an operating procedure providing for resolution of  
2 such disputes.

3 Article X. Product filing and approval

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

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

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

21 Article XI. Review of commission decisions regarding filings

22 (1) Not later than thirty days after the commission has given notice of a disapproved  
23 product or advertisement filed with the commission, the insurer or third-party filer  
24 whose filing was disapproved may appeal the determination to a review panel  
25 appointed by the commission. The commission shall promulgate rules to establish  
26 procedures for appointing such review panels and provide for notice and hearing.  
27 An allegation that the commission, in disapproving a product or advertisement filed  
28 with the commission, acted arbitrarily, capriciously, or in a manner that is an abuse  
29 of discretion or otherwise not in accordance with the law, is subject to judicial  
30 review in accordance with article III, section 4.

31 (2) The commission shall have authority to monitor, review, and reconsider products  
32 and advertisement subsequent to their filing or approval upon a finding that the  
33 product does not meet the relevant uniform standard. Where appropriate, the  
34 commission may withdraw or modify its approval after proper notice and hearing,  
35 subject to the appeal process in section 1 above.

Article XII. Finance

- 1
- 2 (1) The commission shall pay or provide for the payment of the reasonable expenses
- 3 of 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
- 7 nature that the independence of the commission concerning the performance of its
- 8 duties shall not be compromised.
- 9 (2) The commission shall collect a filing fee from each insurer and third-party filer filing
- 10 a product with the commission to cover the cost of the operations and activities of
- 11 the commission and its staff in a total amount sufficient to cover the commission's
- 12 annual 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
- 19 receipts, including grants and donations, and disbursements of all funds under its
- 20 control. The internal financial accounts of the commission shall be subject to the
- 21 accounting procedures established under its bylaws. The financial accounts and
- 22 reports including the system of internal controls and procedures of the commission
- 23 shall be audited annually by an independent certified public accountant. Upon the
- 24 determination of the commission, but no less frequently than every three years,
- 25 the review of the independent auditor shall include a management and
- 26 performance audit of the commission. The commission shall make an annual report
- 27 to the Governor and Legislature of the compacting states, which shall include a
- 28 report of the independent audit. The commission's internal accounts shall not be
- 29 confidential, and such materials may be shared with the commissioner of any
- 30 compacting state upon request, provided, however, that any work papers related
- 31 to any internal or independent audit and any information regarding the privacy of
- 32 individuals and insurers' proprietary information, including trade secrets, shall
- 33 remain confidential.

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

4 Article XIII. Compacting states, effective date, and amendment

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

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

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

20 Article XIV. Withdrawal, default, and termination

21 (1) Withdrawal

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

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

32 (c) The commissioner of the withdrawing state shall immediately notify the  
33 management committee in writing upon the introduction of legislation  
34 repealing this compact in the withdrawing state.

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

3 (e) The withdrawing state is responsible for all obligations, duties, and liabilities  
4 incurred through the effective date of withdrawal, including any obligations,  
5 the performance of which extend beyond the effective date of withdrawal,  
6 except to the extent those obligations may have been released or  
7 relinquished by mutual agreement of the commission and the withdrawing  
8 state. The commission's approval of products and advertisement prior to  
9 the effective date of withdrawal shall continue to be effective and be given  
10 full force and effect in the withdrawing state, unless formally rescinded by  
11 the withdrawing state in the same manner as provided by the laws of the  
12 withdrawing state for the prospective disapproval of products or  
13 advertisement previously approved under state law.

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

16 (2) Default

17 (a) If the commission determines that any compacting state has at any time  
18 defaulted ("defaulting state") in the performance of any of its obligations or  
19 responsibilities under this compact, the bylaws, or duly promulgated rules  
20 or operating procedures, then, after notice and hearing as set forth in the  
21 bylaws, all rights, privileges, and benefits conferred by this compact on the  
22 defaulting state shall be suspended from the effective date of default as  
23 fixed by the commission. The grounds for default include, but are not limited  
24 to, failure of a compacting state to perform its obligations or responsibilities  
25 and any other grounds designated in commission rules. The commission  
26 shall immediately notify the defaulting state in writing of the defaulting  
27 state's suspension pending a cure of the default. The commission shall  
28 stipulate the conditions and the time period within which the defaulting  
29 state must cure its default. If the defaulting state fails to cure the default  
30 within the time period specified by the commission, the defaulting state  
31 shall be terminated from the compact and all rights, privileges and benefits  
32 conferred by this Compact shall be terminated from the effective date of  
33 termination.

34 (b) Product approvals by the commission, product self-certifications, or any  
35 advertisement in connection with such product that are in force on the

1 effective date of termination shall remain in force in the defaulting state in  
2 the same manner as if the defaulting state had withdrawn voluntarily  
3 pursuant to section 1 of this article.

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

6 (3) Dissolution of compact

7 (a) The compact dissolves effective upon the date of the withdrawal or default  
8 of the compacting state, which reduces membership in the compact to one  
9 compacting state.

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

14 Article XV. Severability and construction

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

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

20 Article XVI. Binding effect of compact and other laws

21 (1) Other laws

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

24 (b) For any product approved or certified to the commission, the rules, uniform  
25 standards, and any other requirements of the commission shall constitute  
26 the exclusive provisions applicable to the content, approval, and certification  
27 of such products. For advertisement that is subject to the commission's  
28 authority, any rule, uniform standard, or other requirement of the  
29 commission which governs the content of the advertisement shall constitute  
30 the exclusive provision that a commissioner may apply to the content of the  
31 advertisement. Notwithstanding the foregoing, no action taken by the  
32 commission shall abrogate or restrict:

33 (i) The access of any person to state courts;

- 1                   (ii) Remedies available under state law related to breach of contract,  
2                   tort, or other laws not specifically directed to the content of the  
3                   product;
- 4                   (iii) State law relating to the construction of insurance contracts; or  
5                   (iv) The authority of the attorney general of the state, including but not  
6                   limited to maintaining any actions or proceedings as authorized by  
7                   law.
- 8                   (c) All insurance products filed with individual states shall be subject to the laws  
9                   of those states.
- 10                  (2) Binding effect of this compact
- 11                   (a) All lawful actions of the commission, including all rules and operating  
12                   procedures promulgated by the commission, are binding upon the  
13                   compacting states.
- 14                   (b) All agreements between the commission and the compacting states are  
15                   binding in accordance with their terms.
- 16                   (c) Upon the request of a party to a conflict over the meaning or interpretation  
17                   of commission actions and upon a majority vote of the compacting states,  
18                   the commission may issue advisory opinions regarding the meaning or  
19                   interpretation in dispute.
- 20                   (d) In the event any provision of this compact exceeds the constitutional limits  
21                   imposed on the Legislature of any compacting state, the obligations, duties,  
22                   powers, or jurisdiction sought to be conferred by that provision upon the  
23                   commission shall be ineffective as to that compacting state, and those  
24                   obligations, duties, powers, or jurisdiction shall remain in the compacting  
25                   state and shall be exercised by the agency thereof to which those  
26                   obligations, duties, powers, or jurisdiction are delegated by law in effect at  
27                   the time this compact becomes effective.