

# HOUSE BILL No. 5608

January 24, 2006, Introduced by Reps. Farrah, Hood, Anderson, Adamini, Brown, Bennett, Polidori, Spade, Wojno, Leland, Condino, Accavitti, Hopgood, Plakas, Espinoza, Clemente, McConico, Hune, Gaffney, Hildenbrand, Mortimer, David Law, Marleau, Sheen, Ball, Clack and Lemmons, III and referred to the Committee on Insurance.

A bill entering into the interstate insurance product regulation compact; and for related purposes.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

ARTICLE I. PURPOSES

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

1. To promote and protect the interest of consumers of individual and group annuity, life insurance, disability income, and long-term care insurance products.
2. To develop uniform standards for insurance products covered under the compact.
3. To establish a central clearinghouse to receive and provide

1 prompt review of insurance products covered under the compact and,  
2 in certain cases, advertisements related to those products,  
3 submitted by insurers authorized to do business in 1 or more  
4 compacting states.

5 4. To give appropriate regulatory approval to those product  
6 filings and advertisements satisfying the applicable uniform  
7 standard.

8 5. To improve coordination of regulatory resources and  
9 expertise between state insurance departments regarding the setting  
10 of uniform standards and review of insurance products covered under  
11 the compact.

12 6. To create the interstate insurance product regulation  
13 commission.

14 7. To perform these and such other related functions as may be  
15 consistent with the state regulation of the business of insurance.

## 16 ARTICLE II. DEFINITIONS

17 For purposes of this compact:

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

23 2. "Bylaws" means those bylaws established by the commission  
24 for its governance or for directing or controlling the commission's  
25 actions or conduct.

26 3. "Compacting state" means any state which has enacted this  
27 compact legislation and which has not withdrawn pursuant to article

1 XIV, section 1 of this compact, or been terminated pursuant to  
2 article XIV, section 2 of this compact.

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

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

8 6. "Domiciliary state" means the state in which an insurer is  
9 incorporated or organized or, in the case of an alien insurer, its  
10 state of entry.

11 7. "Insurer" means any entity licensed by a state to issue  
12 contracts of insurance for any of the lines of insurance covered by  
13 this compact.

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

16 9. "Non-compacting state" means any state that is not at the  
17 time a compacting state.

18 10. "Operating procedures" means procedures promulgated by the  
19 commission implementing a rule, uniform standard, or a provision of  
20 this compact.

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

27 12. "Rule" means a statement of general or particular

1 applicability and future effect promulgated by the commission,  
2 including a uniform standard developed pursuant to article VII of  
3 this compact, designed to implement, interpret, or prescribe law or  
4 policy or describing the organization, procedure, or practice  
5 requirements of the commission, which shall have the force and  
6 effect of law in the compacting states.

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

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

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

20 ARTICLE III. ESTABLISHMENT OF THE COMMISSION AND VENUE

21 1. The compacting states hereby create and establish a joint  
22 public agency known as the "interstate insurance product regulation  
23 commission". Pursuant to article IV of this compact, the commission  
24 will have the power to develop uniform standards for product lines,  
25 receive and provide prompt review of filed products, and give  
26 approval to those product filings satisfying applicable uniform  
27 standards; provided, it is not intended for the commission to be

1 the exclusive entity for receipt and review of insurance product  
2 filings. This compact does not prohibit any insurer from filing its  
3 product in any state wherein the insurer is licensed to conduct the  
4 business of insurance, and any such filing shall be subject to the  
5 laws of the state where filed.

6 2. The commission is a body corporate and politic and an  
7 instrumentality of the compacting states.

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

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

#### 14 ARTICLE IV. POWERS OF THE COMMISSION

15 The commission shall have the following powers:

16 1. To promulgate rules, pursuant to article VII of this  
17 compact, which shall have the force and effect of law and shall be  
18 binding in the compacting states to the extent and in the manner  
19 provided in this compact.

20 2. To exercise its rule-making authority and establish  
21 reasonable uniform standards for products covered under the  
22 compact, and advertisement related to those products, which shall  
23 have the force and effect of law and shall be binding in the  
24 compacting states, but only for those products filed with the  
25 commission, provided, that a compacting state shall have the right  
26 to opt out of such uniform standard pursuant to article VII of this  
27 compact, to the extent and in the manner provided in this compact,

1 and, provided further, that any uniform standard established by the  
2 commission for long-term care insurance products may provide the  
3 same or greater protections for consumers as, but shall not provide  
4 less than, those protections set forth in the national association  
5 of insurance commissioners' long-term care insurance model act and  
6 long-term care insurance model regulation, respectively, adopted as  
7 of 2001. The commission shall consider whether any subsequent  
8 amendments to the national association of insurance commissioners'  
9 long-term care insurance model act or long-term care insurance  
10 model regulation adopted by the national association of insurance  
11 commissioners require amending of the uniform standards established  
12 by the commission for long-term care insurance products.

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

20 4. To receive and review in an expeditious manner  
21 advertisement relating to long-term care insurance products for  
22 which uniform standards have been adopted by the commission, and  
23 give approval to all advertisement that satisfies the applicable  
24 uniform standard. For any product covered under this compact, other  
25 than long-term care insurance products, the commission shall have  
26 the authority to require an insurer to submit all or any part of  
27 its advertisement with respect to that product for review or

1 approval prior to use, if the commission determines that the nature  
2 of the product is such that an advertisement of the product could  
3 have the capacity or tendency to mislead the public. The actions of  
4 the commission as provided in this section shall have the force and  
5 effect of law and shall be binding in the compacting states to the  
6 extent and in the manner provided in the compact.

7         5. To exercise its rule-making authority and designate  
8 products and advertisement that may be subject to a self-  
9 certification process without the need for prior approval by the  
10 commission.

11         6. To promulgate operating procedures, pursuant to article VII  
12 of this compact, which shall be binding in the compacting states to  
13 the extent and in the manner provided in this compact.

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

18         8. To issue subpoenas requiring the attendance and testimony  
19 of witnesses and the production of evidence.

20         9. To establish and maintain offices.

21         10. To purchase and maintain insurance and bonds.

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

24         12. To hire employees, professionals, or specialists, and  
25 elect or appoint officers, and to fix their compensation, define  
26 their duties, and give them appropriate authority to carry out the  
27 purposes of the compact, and determine their qualifications, and to

1 establish the commission's personnel policies and programs relating  
2 to, among other things, conflicts of interest, rates of  
3 compensation, and qualifications of personnel.

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

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

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

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

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

20 18. To provide for dispute resolution among compacting states.

21 19. To advise compacting states on issues relating to insurers  
22 domiciled or doing business in non-compacting jurisdictions,  
23 consistent with the purposes of this compact.

24 20. To provide advice and training to those personnel in state  
25 insurance departments responsible for product review and to be a  
26 resource for state insurance departments.

27 21. To establish a budget and make expenditures.



1           22. To borrow money.

2           23. To appoint committees, including advisory committees  
3 comprising members, state insurance regulators, state legislators  
4 or their representatives, insurance industry and consumer  
5 representatives, and such other interested persons as may be  
6 designated in the bylaws.

7           24. To provide and receive information from, and to cooperate  
8 with, law enforcement agencies.

9           25. To adopt and use a corporate seal.

10          26. To perform such other functions as may be necessary or  
11 appropriate to achieve the purposes of this compact consistent with  
12 the state regulation of the business 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 1  
16 member. Each member shall be qualified to serve in that capacity  
17 pursuant to applicable law of the compacting state. Any member may  
18 be removed or suspended from office as provided by the law of the  
19 state from which he or she shall be appointed. Any vacancy  
20 occurring in the commission shall be filled in accordance with the  
21 laws of the compacting state where the vacancy exists. Nothing in  
22 this compact shall be construed to affect the manner in which a  
23 compacting state determines the election or appointment and  
24 qualification of its own commissioner.

25           b. Each member shall be entitled to 1 vote and shall have an  
26 opportunity to participate in the governance of the commission in  
27 accordance with the bylaws. Notwithstanding any provision in this

1 compact to the contrary, no action of the commission with respect  
2 to the promulgation of a uniform standard shall be effective unless  
3 2/3 of the members vote in favor of it.

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

8 i. Establishing the fiscal year of the commission.

9 ii. Providing reasonable procedures for appointing and  
10 electing members, as well as holding meetings, of the management  
11 committee.

12 iii. Providing reasonable standards and procedures: for the  
13 establishment and meetings of other committees, and governing any  
14 general or specific delegation of any authority or function of the  
15 commission.

16 iv. Providing reasonable procedures for calling and conducting  
17 meetings of the commission that consist of a majority of commission  
18 members, ensuring reasonable advance notice of each such meeting,  
19 and providing for the right of citizens to attend each such meeting  
20 with enumerated exceptions designed to protect the public's  
21 interest, the privacy of individuals, and insurers' proprietary  
22 information, including trade secrets. The commission may meet in  
23 camera only after a majority of the entire membership votes to  
24 close a meeting en toto or in part. As soon as practicable, the  
25 commission must make public a copy of the vote to close the meeting  
26 revealing the vote of each member with no proxy votes allowed and  
27 votes taken during such meeting.

1 v. Establishing the titles, duties, and authority and  
2 reasonable procedures for the election of the officers of the  
3 commission.

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

9 vii. Promulgating a code of ethics to address permissible and  
10 prohibited activities of commission members and employees.

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

15 d. The commission shall publish its bylaws in a convenient  
16 form and file a copy of the bylaws and a copy of any amendment to  
17 the bylaws with the appropriate agency or officer in each of the  
18 compacting states.

19 2. Management Committee, Officers, and Personnel

20 a. A management committee comprising no more than 14 members  
21 shall be established as follows:

22 i. One member from each of the 6 compacting states with the  
23 largest premium volume for individual and group annuities, life,  
24 disability income, and long-term care insurance products,  
25 determined from the records of the national association of  
26 insurance commissioners for the prior year.

27 ii. Four members from those compacting states with at least 2%

1 of the market based on the premium volume described above, other  
2 than the 6 compacting states with the largest premium volume,  
3 selected on a rotating basis as provided in the bylaws.

4         iii. Four members from those compacting states with less than  
5 2% of the market, based on the premium volume described above, with  
6 1 selected from each of the 4 zone regions of the national  
7 association of insurance commissioners as provided in the bylaws.

8         b. The management committee shall have such authority and  
9 duties as may be set forth in the bylaws, including, but not  
10 limited to:

11         i. Managing the affairs of the commission in a manner  
12 consistent with the bylaws and purposes of the commission.

13         ii. Establishing and overseeing an organizational structure  
14 within, and appropriate procedures for, the commission to provide  
15 for the creation of uniform standards and other rules, receipt and  
16 review of product filings, administrative and technical support  
17 functions, review of decisions regarding the disapproval of a  
18 product filing, and the review of elections made by a compacting  
19 state to opt out of a uniform standard; provided that a uniform  
20 standard shall not be submitted to the compacting states for  
21 adoption unless approved by 2/3 of the members of the management  
22 committee.

23         iii. Overseeing the offices of the commission.

24         iv. Planning, implementing, and coordinating communications  
25 and activities with other state, federal, and local government  
26 organizations in order to advance the goals of the commission.

27         c. The commission shall elect annually officers from the

1 management committee, with each having such authority and duties,  
2 as may be specified in the bylaws.

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

### 10 3. Legislative and Advisory Committees

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

21 b. The commission shall establish 2 advisory committees, 1 of  
22 which shall comprise consumer representatives independent of the  
23 insurance industry and the other comprising insurance industry  
24 representatives.

25 c. The commission may establish additional advisory committees  
26 as its bylaws may provide for the carrying out of its functions.

### 27 4. Corporate Records of the Commission

1           The commission shall maintain its corporate books and records  
2 in accordance with the bylaws.

3           5. Qualified Immunity, Defense, and Indemnification

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

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

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

12                           ARTICLE VI. MEETINGS AND ACTS OF THE COMMISSION

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

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

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

24                           ARTICLE VII. RULES & OPERATING PROCEDURES: RULEMAKING FUNCTIONS OF  
25                           THE COMMISSION AND OPTING OUT OF UNIFORM STANDARDS

26           1. Rulemaking authority. The commission shall promulgate  
27 reasonable rules, including uniform standards, and operating

1 procedures in order to effectively and efficiently achieve the  
2 purposes of this compact. Notwithstanding the foregoing, in the  
3 event the commission exercises its rulemaking authority in a manner  
4 that is beyond the scope of the purposes of this compact, or the  
5 powers granted under this compact, then such an action by the  
6 commission shall be invalid and have no force and effect.

7         2. Rulemaking procedure. Rules and operating procedures shall  
8 be made pursuant to a rulemaking process that conforms to the model  
9 state administrative procedure act of 1981 as amended, as may be  
10 appropriate to the operations of the commission. Before the  
11 commission adopts a uniform standard, the commission shall give  
12 written notice to the relevant state legislative committees in each  
13 compacting state responsible for insurance issues of its intention  
14 to adopt the uniform standard. The commission in adopting a uniform  
15 standard shall consider fully all submitted materials and issue a  
16 concise explanation of its decision.

17         3. Effective date and opt out of a uniform standard. A uniform  
18 standard shall become effective 90 days after its promulgation by  
19 the commission or such later date as the commission may determine;  
20 provided, however, that a compacting state may opt out of a uniform  
21 standard as provided in this article. "Opt out" shall be defined as  
22 any action by a compacting state to decline to adopt or participate  
23 in a promulgated uniform standard. All other rules and operating  
24 procedures, and amendments to those rules and operating procedures,  
25 shall become effective as of the date specified in each rule,  
26 operating procedure, or amendment.

27         4. Opt out procedure. A compacting state may opt out of a



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

23 Notwithstanding the foregoing, a compacting state may, at the  
24 time of its enactment of this compact, prospectively opt out of all  
25 uniform standards involving long-term care insurance products by  
26 expressly providing for such opt out in the enacted compact, and  
27 such an opt out shall not be treated as a material variance in the

1 offer or acceptance of any state to participate in this compact.  
2 Such an opt out shall be effective at the time of enactment of this  
3 compact by the compacting state and shall apply to all existing  
4 uniform standards involving long-term care insurance products and  
5 those subsequently promulgated.

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

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

20         6. Stay of uniform standard. If a compacting state has  
21 formally initiated the process of opting out of a uniform standard  
22 by regulation, and while the regulatory opt out is pending, the  
23 compacting state may petition the commission, at least 15 days  
24 before the effective date of the uniform standard, to stay the  
25 effectiveness of the uniform standard in that state. The commission  
26 may grant a stay if it determines the regulatory opt out is being  
27 pursued in a reasonable manner and there is a likelihood of

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

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

21 ARTICLE VIII. COMMISSION RECORDS AND ENFORCEMENT

22 1. The commission shall promulgate rules establishing  
23 conditions and procedures for public inspection and copying of its  
24 information and official records, except such information and  
25 records involving the privacy of individuals and insurers' trade  
26 secrets. The commission may promulgate additional rules under which  
27 it may make available to federal and state agencies, including law

1 enforcement agencies, records and information otherwise exempt from  
2 disclosure, and may enter into agreements with such agencies to  
3 receive or exchange information or records subject to nondisclosure  
4 and confidentiality provisions.

5         2. Except as to privileged records, data, and information, the  
6 laws of any compacting state pertaining to confidentiality or  
7 nondisclosure shall not relieve any compacting state commissioner  
8 of the duty to disclose any relevant records, data, or information  
9 to the commission; provided, that disclosure to the commission  
10 shall not be deemed to waive or otherwise affect any  
11 confidentiality requirement; and further provided, that, except as  
12 otherwise expressly provided in this compact, the commission shall  
13 not be subject to the compacting state's laws pertaining to  
14 confidentiality and nondisclosure with respect to records, data,  
15 and information in its possession. Confidential information of the  
16 commission shall remain confidential after such information is  
17 provided to any commissioner.

18         3. The commission shall monitor compacting states for  
19 compliance with duly adopted bylaws, rules, including uniform  
20 standards, and operating procedures. The commission shall notify  
21 any non-complying compacting state in writing of its noncompliance  
22 with commission bylaws, rules, or operating procedures. If a non-  
23 complying compacting state fails to remedy its noncompliance within  
24 the time specified in the notice of noncompliance, the compacting  
25 state shall be deemed to be in default as set forth in article XIV  
26 of this compact.

27         4. The commissioner of any state in which an insurer is

1 authorized to do business, or is conducting the business of  
2 insurance, shall continue to exercise his or her authority to  
3 oversee the market regulation of the activities of the insurer in  
4 accordance with the provisions of the state's law. The  
5 commissioner's enforcement of compliance with the compact is  
6 governed by the following provisions:

7 a. With respect to the commissioner's market regulation of a  
8 product or advertisement that is approved or certified to the  
9 commission, the content of the product or advertisement shall not  
10 constitute a violation of the provisions, standards, or  
11 requirements of the compact except upon a final order of the  
12 commission, issued at the request of a commissioner after prior  
13 notice to the insurer and an opportunity for hearing before the  
14 commission.

15 b. Before a commissioner may bring an action for violation of  
16 any provision, standard, or requirement of the compact relating to  
17 the content of an advertisement not approved or certified to the  
18 commission, the commission, or an authorized commission officer or  
19 employee, must authorize the action. However, authorization  
20 pursuant to this paragraph does not require notice to the insurer,  
21 opportunity for hearing, or disclosure of requests for  
22 authorization or records of the commission's action on such  
23 requests.

#### 24 ARTICLE IX. DISPUTE RESOLUTION

25 The commission shall attempt, upon the request of a member, to  
26 resolve any disputes or other issues that are subject to this  
27 compact and that may arise between 2 or more compacting states, or

1 between compacting states and non-compacting states, and the  
2 commission shall promulgate an operating procedure providing for  
3 resolution of such disputes.

4 ARTICLE X. PRODUCT FILING AND APPROVAL

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

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

22 3. Any product approved by the commission may be sold or  
23 otherwise issued in those compacting states for which the insurer  
24 is legally authorized to do business.

25 ARTICLE XI. REVIEW OF COMMISSION DECISIONS REGARDING FILINGS

26 1. Not later than 30 days after the commission has given  
27 notice of a disapproved product or advertisement filed with the

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

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

#### 17 ARTICLE XII. FINANCE

18 1. The commission shall pay or provide for the payment of the  
19 reasonable expenses of its establishment and organization. To fund  
20 the cost of its initial operations, the commission may accept  
21 contributions and other forms of funding from the national  
22 association of insurance commissioners, compacting states, and  
23 other sources. Contributions and other forms of funding from other  
24 sources shall be of such a nature that the independence of the  
25 commission concerning the performance of its duties shall not be  
26 compromised.

27 2. The commission shall collect a filing fee from each insurer

1 and third party filer filing a product with the commission to cover  
2 the cost of the operations and activities of the commission and its  
3 staff in a total amount sufficient to cover the commission's annual  
4 budget.

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

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

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

13 6. The commission shall keep complete and accurate accounts of  
14 all its internal receipts, including grants and donations, and  
15 disbursements of all funds under its control. The internal  
16 financial accounts of the commission shall be subject to the  
17 accounting procedures established under its bylaws. The financial  
18 accounts and reports, including the system of internal controls and  
19 procedures of the commission, shall be audited annually by an  
20 independent certified public accountant. Upon the determination of  
21 the commission, but no less frequently than every 3 years, the  
22 review of the independent auditor shall include a management and  
23 performance audit of the commission. The commission shall make an  
24 annual report to the governor and legislature of the compacting  
25 states, which shall include a report of the independent audit. The  
26 commission's internal accounts shall not be confidential and such  
27 materials may be shared with the commissioner of any compacting



1 state upon request, provided, however, that any work papers related  
2 to any internal or independent audit and any information regarding  
3 the privacy of individuals and insurers' proprietary information,  
4 including trade secrets, shall remain confidential.

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

8 ARTICLE XIII. COMPACTING STATES, EFFECTIVE DATE, AND AMENDMENT

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

10 2. The compact shall become effective and binding upon  
11 legislative enactment of the compact into law by 2 compacting  
12 states; provided, the commission shall become effective for  
13 purposes of adopting uniform standards for, reviewing, and giving  
14 approval or disapproval of, products filed with the commission that  
15 satisfy applicable uniform standards only after 26 states are  
16 compacting states or, alternatively, by states representing greater  
17 than 40% of the premium volume for life insurance, annuity,  
18 disability income, and long-term care insurance products, based on  
19 records of the national association of insurance commissioners for  
20 the prior year. Thereafter, it shall become effective and binding  
21 as to any other compacting state upon enactment of the compact into  
22 law by that state.

23 3. Amendments to the compact may be proposed by the commission  
24 for enactment by the compacting states. No amendment shall become  
25 effective and binding upon the commission and the compacting states  
26 unless and until all compacting states enact the amendment into  
27 law.

## ARTICLE XIV. WITHDRAWAL, DEFAULT, AND TERMINATION

## 1. Withdrawal

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

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

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

d. The commission shall notify the other compacting states of the introduction of such legislation within 10 days after its receipt of notice of the introduction of withdrawing legislation.

e. The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state. The commission's approval of products and advertisement prior to the

1 effective date of withdrawal shall continue to be effective and be  
2 given full force and effect in the withdrawing state, unless  
3 formally rescinded by the withdrawing state in the same manner as  
4 provided by the laws of the withdrawing state for the prospective  
5 disapproval of products or advertisement previously approved under  
6 state law.

7 f. Reinstatement following withdrawal of any compacting state  
8 shall occur upon the effective date of the withdrawing state  
9 reenacting the compact.

10 2. Default

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

1 compact and all rights, privileges, and benefits conferred by this  
2 compact shall be terminated from the effective date of termination.

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

9 c. Reinstatement following termination of any compacting state  
10 requires a reenactment of the compact.

### 11 3. Dissolution of Compact

12 a. The compact dissolves effective upon the date of the  
13 withdrawal or default of the compacting state that reduces  
14 membership in the compact to 1 compacting state.

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

### 19 ARTICLE XV. SEVERABILITY AND CONSTRUCTION

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

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

### 25 ARTICLE XVI. BINDING EFFECT OF COMPACT AND OTHER LAWS

#### 26 1. Other Laws

27 a. Nothing herein prevents the enforcement of any other law of

1 a compacting state, except as provided in paragraph b. of this  
2 section.

3 b. For any product approved or certified to the commission,  
4 the rules, uniform standards, and any other requirements of the  
5 commission shall constitute the exclusive provisions applicable to  
6 the content, approval, and certification of such products. For  
7 advertisement that is subject to the commission's authority, any  
8 rule, uniform standard, or other requirement of the commission that  
9 governs the content of the advertisement shall constitute the  
10 exclusive provision that a commissioner may apply to the content of  
11 the advertisement. Notwithstanding the foregoing, no action taken  
12 by the commission shall abrogate or restrict the access of any  
13 person to state courts, remedies available under state law related  
14 to breach of contract, tort, or other laws not specifically  
15 directed to the content of the product, state law relating to the  
16 construction of insurance contracts, or the authority of the  
17 attorney general of the state, including, but not limited to,  
18 maintaining any actions or proceedings, as authorized by law.

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

## 21 2. Binding Effect of This Compact

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

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

27 c. Upon the request of a party to a conflict over the meaning

1 or interpretation of commission actions, and upon a majority vote  
2 of the compacting states, the commission may issue advisory  
3 opinions regarding the meaning or interpretation in dispute.

4 d. In the event any provision of this compact exceeds the  
5 constitutional limits imposed on the legislature of any compacting  
6 state, the obligations, duties, powers, or jurisdiction sought to  
7 be conferred by that provision upon the commission shall be  
8 ineffective as to that compacting state, and those obligations,  
9 duties, powers, or jurisdiction shall remain in the compacting  
10 state and shall be exercised by the agency to which those  
11 obligations, duties, powers, or jurisdiction is delegated by law in  
12 effect at the time this compact becomes effective.