

SECOND REGULAR SESSION

SENATE BILL NO. 1071

93RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR LOUDON.

Read 1st time February 16, 2006, and ordered printed.

TERRY L. SPIELER, Secretary.

4904S.02I

AN ACT

To amend chapter 374, RSMo, by adding thereto three new sections relating to the Interstate Insurance Product Regulation Compact, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 374, RSMo, is amended by adding thereto three new sections, to be known as sections 374.350, 374.351, and 374.352, to read as follows:

374.350. Sections 374.350 to 374.352 may be cited as the "Interstate Insurance Product Regulation Compact".

374.351. The Interstate Insurance Product Regulation Compact is intended to help States join together to establish an interstate compact to regulate designated insurance products. Pursuant to terms and conditions of this Act, the State of Missouri seeks to join with other States and establish the Interstate Insurance Product Regulation Compact, and thus become a member of the Interstate Insurance Product Regulation Commission. The Director of Insurance is hereby designated to serve as the representative of this State to the Commission.

374.352. The State of Missouri ratifies, approves, and adopts the following interstate 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

10 under the Compact;

11 3. To establish a central clearinghouse to receive and provide
12 prompt review of insurance products covered under the Compact and,
13 in certain cases, advertisements related thereto, submitted by insurers
14 authorized to do business in one or more Compacting States;

15 4. To give appropriate regulatory approval to those product
16 filings and advertisements satisfying the applicable uniform standard;

17 5. To improve coordination of regulatory resources and expertise
18 between state insurance departments regarding the setting of uniform
19 standards and review of insurance products covered under the
20 Compact;

21 6. To create the Interstate Insurance Product Regulation
22 Commission; and

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

25 ARTICLE II. DEFINITIONS

26 For purposes of this Compact:

27 1. "Advertisement" means any material designed to create public
28 interest in a Product, or induce the public to purchase, increase,
29 modify, reinstate, borrow on, surrender, replace or retain a policy, as
30 more specifically defined in the Rules and Operating Procedures of the
31 Commission.

32 2. "Bylaws" mean those bylaws established by the Commission for
33 its governance, or for directing or controlling the Commission's actions
34 or conduct.

35 3. "Compacting State" means any State which has enacted this
36 Compact legislation and which has not withdrawn pursuant to Article
37 XIV, Section 1, or been terminated pursuant to Article XIV, Section 2.

38 4. "Commission" means the "Interstate Insurance Product
39 Regulation Commission" established by this Compact.

40 5. "Commissioner" means the chief insurance regulatory official
41 of a State including, but not limited to commissioner, superintendent,
42 director or administrator.

43 6. "Domiciliary State" means the state in which an Insurer is
44 incorporated or organized; or, in the case of an alien Insurer, its state
45 of entry.

46 7. "Insurer" means any entity licensed by a State to issue

47 contracts of insurance for any of the lines of insurance covered by this
48 Act.

49 8. "Member" means the person chosen by a Compacting State as
50 its representative to the Commission, or his or her designee.

51 9. "Non-compacting State" means any State which is not at the
52 time a Compacting State.

53 10. "Operating Procedures" mean procedures promulgated by the
54 Commission implementing a Rule, Uniform Standard or a provision of
55 this Compact.

56 11. "Product" means the form of a policy or contract, including
57 any application, endorsement, or related form which is attached to and
58 made a part of the policy or contract, and any evidence of coverage or
59 certificate, for an individual or group annuity, life insurance, disability
60 income or long-term care insurance product that an Insurer is
61 authorized to issue.

62 12. "Rule" means a statement of general or particular
63 applicability and future effect promulgated by the Commission,
64 including a Uniform Standard developed pursuant to Article VII of this
65 Compact, designed to implement, interpret, or prescribe law or policy
66 or describing the organization, procedure, or practice requirements of
67 the Commission, which shall have the force and effect of law in the
68 Compacting States.

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

71 14. "Third-Party Filer" means an entity that submits a Product
72 filing to the Commission on behalf of an Insurer.

73 15. "Uniform Standard" means a standard adopted by the
74 Commission for a Product line, pursuant to Article VII of this Compact,
75 and shall include all of the Product requirements in aggregate;
76 provided, that each Uniform Standard shall be construed, whether
77 express or implied, to prohibit the use of any inconsistent, misleading
78 or ambiguous provisions in a Product and the form of the Product made
79 available to the public shall not be unfair, inequitable or against public
80 policy as determined by the Commission.

81 ARTICLE III. ESTABLISHMENT OF THE COMMISSION AND VENUE

82 1. The Compacting States hereby create and establish a joint
83 public agency known as the "Interstate Insurance Product Regulation

84 Commission." Pursuant to Article IV, the Commission will have the
85 power to develop Uniform Standards for Product lines, receive and
86 provide prompt review of Products filed therewith, and give approval
87 to those Product filings satisfying applicable Uniform Standards;
88 provided, it is not intended for the Commission to be the exclusive
89 entity for receipt and review of insurance product filings. Nothing
90 herein shall prohibit any Insurer from filing its product in any State
91 wherein the Insurer is licensed to conduct the business of insurance;
92 and any such filing shall be subject to the laws of the State where filed.

93 2. The Commission is a body corporate and politic, and an
94 instrumentality of the Compacting States.

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

97 4. Venue is proper and judicial proceedings by or against the
98 Commission shall be brought solely and exclusively in a Court of
99 competent jurisdiction where the principal office of the Commission is
100 located.

101 ARTICLE IV. POWERS OF THE COMMISSION

102 The Commission shall have the following powers:

103 1. To promulgate Rules, pursuant to Article VII of this Compact,
104 which shall have the force and effect of law and shall be binding in the
105 Compacting States to the extent and in the manner provided in this
106 Compact;

107 2. To exercise its rule-making authority and establish reasonable
108 Uniform Standards for Products covered under the Compact, and
109 Advertisement related thereto, which shall have the force and effect of
110 law and shall be binding in the Compacting States, but only for those
111 Products filed with the Commission, provided, that a Compacting State
112 shall have the right to opt out of such Uniform Standard pursuant to
113 Article VII, to the extent and in the manner provided in this Compact,
114 and, provided further, that any Uniform Standard established by the
115 Commission for long-term care insurance products may provide the
116 same or greater protections for consumers as, but shall not provide less
117 than, those protections set forth in the National Association of
118 Insurance Commissioners' Long-Term Care Insurance Model Act and
119 Long-Term Care Insurance Model Regulation, respectively, adopted as
120 of 2001. The Commission shall consider whether any subsequent

121 amendments to the NAIC Long-Term Care Insurance Model Act or Long-
122 Term Care Insurance Model Regulation adopted by the NAIC require
123 amending of the Uniform Standards established by the Commission for
124 long-term care insurance products;

125 3. To receive and review in an expeditious manner Products filed
126 with the Commission, and rate filings for disability income and long-
127 term care insurance Products, and give approval of those Products and
128 rate filings that satisfy the applicable Uniform Standard, where such
129 approval shall have the force and effect of law and be binding on the
130 Compacting States to the extent and in the manner provided in the
131 Compact;

132 4. To receive and review in an expeditious manner
133 Advertisement relating to long-term care insurance products for which
134 Uniform Standards have been adopted by the Commission, and give
135 approval to all Advertisement that satisfies the applicable Uniform
136 Standard. For any product covered under this Compact, other than
137 long-term care insurance products, the Commission shall have the
138 authority to require an insurer to submit all or any part of its
139 Advertisement with respect to that product for review or approval
140 prior to use, if the Commission determines that the nature of the
141 product is such that an Advertisement of the product could have the
142 capacity or tendency to mislead the public. The actions of Commission
143 as provided in this section shall have the force and effect of law and
144 shall be binding in the Compacting States to the extent and in the
145 manner provided in the Compact;

146 5. To exercise its rule-making authority and designate Products
147 and Advertisement that may be subject to a self-certification process
148 without the need for prior approval by the Commission.

149 6. To promulgate Operating Procedures, pursuant to Article VII
150 of this Compact, which shall be binding in the Compacting States to the
151 extent and in the manner provided in this Compact;

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

156 8. To issue subpoenas requiring the attendance and testimony of
157 witnesses and the production of evidence;

- 158 **9. To establish and maintain offices;**
- 159 **10. To purchase and maintain insurance and bonds;**
- 160 **11. To borrow, accept or contract for services of personnel,**
161 **including, but not limited to, employees of a Compacting State;**
- 162 **12. To hire employees, professionals or specialists, and elect or**
163 **appoint officers, and to fix their compensation, define their duties and**
164 **give them appropriate authority to carry out the purposes of the**
165 **Compact, and determine their qualifications; and to establish the**
166 **Commission's personnel policies and programs relating to, among other**
167 **things, conflicts of interest, rates of compensation and qualifications of**
168 **personnel;**
- 169 **13. To accept any and all appropriate donations and grants of**
170 **money, equipment, supplies, materials and services, and to receive,**
171 **utilize and dispose of the same; provided that at all times the**
172 **Commission shall strive to avoid any appearance of impropriety;**
- 173 **14. To lease, purchase, accept appropriate gifts or donations of,**
174 **or otherwise to own, hold, improve or use, any property, real, personal**
175 **or mixed; provided that at all times the Commission shall strive to**
176 **avoid any appearance of impropriety;**
- 177 **15. To sell, convey, mortgage, pledge, lease, exchange, abandon**
178 **or otherwise dispose of any property, real, personal or mixed;**
- 179 **16. To remit filing fees to Compacting States as may be set forth**
180 **in the Bylaws, Rules or Operating Procedures;**
- 181 **17. To enforce compliance by Compacting States with Rules,**
182 **Uniform Standards, Operating Procedures and Bylaws;**
- 183 **18. To provide for dispute resolution among Compacting States;**
- 184 **19. To advise Compacting States on issues relating to Insurers**
185 **domiciled or doing business in Non-compacting jurisdictions, consistent**
186 **with the purposes of this Compact;**
- 187 **20. To provide advice and training to those personnel in state**
188 **insurance departments responsible for product review, and to be a**
189 **resource for state insurance departments;**
- 190 **21. To establish a budget and make expenditures;**
- 191 **22. To borrow money;**
- 192 **23. To appoint committees, including advisory committees**
193 **comprising Members, state insurance regulators, state legislators or**
194 **their representatives, insurance industry and consumer**

195 representatives, and such other interested persons as may be
196 designated in the Bylaws;

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

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

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

203 ARTICLE V. ORGANIZATION OF THE COMMISSION

204 1. Membership, Voting and Bylaws

205 a. Each Compacting State shall have and be limited to one
206 Member. Each Member shall be qualified to serve in that capacity
207 pursuant to applicable law of the Compacting State. Any Member may
208 be removed or suspended from office as provided by the law of the
209 State from which he or she shall be appointed. Any vacancy occurring
210 in the Commission shall be filled in accordance with the laws of the
211 Compacting State wherein the vacancy exists. Nothing herein shall be
212 construed to affect the manner in which a Compacting State determines
213 the election or appointment and qualification of its own Commissioner.

214 b. Each Member shall be entitled to one vote and shall have an
215 opportunity to participate in the governance of the Commission in
216 accordance with the Bylaws. Notwithstanding any provision herein to
217 the contrary, no action of the Commission with respect to the
218 promulgation of a Uniform Standard shall be effective unless two-thirds
219 (2/3) of the Members vote in favor thereof.

220 c. The Commission shall, by a majority of the Members, prescribe
221 Bylaws to govern its conduct as may be necessary or appropriate to
222 carry out the purposes, and exercise the powers, of the Compact,
223 including, but not limited to:

224 i. Establishing the fiscal year of the Commission;

225 ii. Providing reasonable procedures for appointing and electing
226 members, as well as holding meetings, of the Management Committee;

227 iii. Providing reasonable standards and procedures: (i) for the
228 establishment and meetings of other committees, and (ii) governing any
229 general or specific delegation of any authority or function of the
230 Commission;

231 iv. Providing reasonable procedures for calling and conducting

232 meetings of the Commission that consists of a majority of Commission
233 members, ensuring reasonable advance notice of each such meeting and
234 providing for the right of citizens to attend each such meeting with
235 enumerated exceptions designed to protect the public's interest, the
236 privacy of individuals, and insurers' proprietary information, including
237 trade secrets. The Commission may meet in camera only after a
238 majority of the entire membership votes to close a meeting *en toto* or
239 in part. As soon as practicable, the Commission must make public (i)
240 a copy of the vote to close the meeting revealing the vote of each
241 Member with no proxy votes allowed, and (ii) votes taken during such
242 meeting;

243 v. Establishing the titles, duties and authority and reasonable
244 procedures for the election of the officers of the Commission;

245 vi. Providing reasonable standards and procedures for the
246 establishment of the personnel policies and programs of the
247 Commission. Notwithstanding any civil service or other similar laws
248 of any Compacting State, the Bylaws shall exclusively govern the
249 personnel policies and programs of the Commission;

250 vii. Promulgating a code of ethics to address permissible and
251 prohibited activities of commission members and employees; and

252 viii. Providing a mechanism for winding up the operations of the
253 Commission and the equitable disposition of any surplus funds that
254 may exist after the termination of the Compact after the payment
255 and/or reserving of all of its debts and obligations.

256 d. The Commission shall publish its bylaws in a convenient form
257 and file a copy thereof and a copy of any amendment thereto, with the
258 appropriate agency or officer in each of the Compacting States.

259 2. Management Committee, Officers and Personnel

260 a. A Management Committee comprising no more than fourteen
261 (14) members shall be established as follows:

262 i. One (1) member from each of the six (6) Compacting States
263 with the largest premium volume for individual and group annuities,
264 life, disability income and long-term care insurance products,
265 determined from the records of the NAIC for the prior year;

266 ii. Four (4) members from those Compacting States with at least
267 two percent (2%) of the market based on the premium volume described
268 above, other than the six (6) Compacting States with the largest

269 premium volume, selected on a rotating basis as provided in the
270 Bylaws; and

271 iii. Four (4) members from those Compacting States with less
272 than two percent (2%) of the market, based on the premium volume
273 described above, with one (1) selected from each of the four (4) zone
274 regions of the NAIC as provided in the Bylaws.

275 b. The Management Committee shall have such authority and
276 duties as may be set forth in the Bylaws, including but not limited to:

277 i. Managing the affairs of the Commission in a manner consistent
278 with the Bylaws and purposes of the Commission;

279 ii. Establishing and overseeing an organizational structure
280 within, and appropriate procedures for, the Commission to provide for
281 the creation of Uniform Standards and other Rules, receipt and review
282 of product filings, administrative and technical support functions,
283 review of decisions regarding the disapproval of a product filing, and
284 the review of elections made by a Compacting State to opt out of a
285 Uniform Standard; provided that a Uniform Standard shall not be
286 submitted to the Compacting States for adoption unless approved by
287 two-thirds (2/3) of the members of the Management Committee;

288 iii. Overseeing the offices of the Commission; and

289 iv. Planning, implementing, and coordinating communications
290 and activities with other state, federal and local government
291 organizations in order to advance the goals of the Commission.

292 c. The Commission shall elect annually officers from the
293 Management Committee, with each having such authority and duties,
294 as may be specified in the Bylaws.

295 d. The Management Committee may, subject to the approval of
296 the Commission, appoint or retain an executive director for such
297 period, upon such terms and conditions and for such compensation as
298 the Commission may deem appropriate. The executive director shall
299 serve as secretary to the Commission, but shall not be a Member of the
300 Commission. The executive director shall hire and supervise such
301 other staff as may be authorized by the Commission.

302 3. Legislative and Advisory Committees

303 a. A legislative committee comprising state legislators or their
304 designees shall be established to monitor the operations of, and make
305 recommendations to, the Commission, including the Management

306 Committee; provided that the manner of selection and term of any
307 legislative committee member shall be as set forth in the Bylaws. Prior
308 to the adoption by the Commission of any Uniform Standard, revision
309 to the Bylaws, annual budget or other significant matter as may be
310 provided in the Bylaws, the Management Committee shall consult with
311 and report to the legislative committee.

312 b. The Commission shall establish two (2) advisory committees,
313 one of which shall comprise consumer representatives independent of
314 the insurance industry, and the other comprising insurance industry
315 representatives.

316 c. The Commission may establish additional advisory committees
317 as its Bylaws may provide for the carrying out of its functions.

318 4. Corporate Records of the Commission

319 The Commission shall maintain its corporate books and records
320 in accordance with the Bylaws.

321 5. Qualified Immunity, Defense and Indemnification

322 a. The Members, officers, executive director, employees and
323 representatives of the Commission shall be immune from suit and
324 liability, either personally or in their official capacity, for any claim for
325 damage to or loss of property or personal injury or other civil liability
326 caused by or arising out of any actual or alleged act, error or omission
327 that occurred, or that the person against whom the claim is made had
328 a reasonable basis for believing occurred within the scope of
329 Commission employment, duties or responsibilities; provided, that
330 nothing in this paragraph shall be construed to protect any such person
331 from suit and/or liability for any damage, loss, injury or liability caused
332 by the intentional or willful and wanton misconduct of that person.

333 b. The Commission shall defend any Member, officer, executive
334 director, employee or representative of the Commission in any civil
335 action seeking to impose liability arising out of any actual or alleged
336 act, error or omission that occurred within the scope of Commission
337 employment, duties or responsibilities, or that the person against whom
338 the claim is made had a reasonable basis for believing occurred within
339 the scope of Commission employment, duties or responsibilities;
340 provided, that nothing herein shall be construed to prohibit that person
341 from retaining his or her own counsel; and provided further, that the
342 actual or alleged act, error or omission did not result from that

343 person's intentional or willful and wanton misconduct.

344 c. The Commission shall indemnify and hold harmless any
345 Member, officer, executive director, employee or representative of the
346 Commission for the amount of any settlement or judgment obtained
347 against that person arising out of any actual or alleged act, error or
348 omission that occurred within the scope of Commission employment,
349 duties or responsibilities, or that such person had a reasonable basis
350 for believing occurred within the scope of Commission employment,
351 duties or responsibilities, provided, that the actual or alleged act, error
352 or omission did not result from the intentional or willful and wanton
353 misconduct of that person.

354 **ARTICLE VI. MEETINGS AND ACTS OF THE COMMISSION**

355 1. The Commission shall meet and take such actions as are
356 consistent with the provisions of this Compact and the Bylaws.

357 2. Each Member of the Commission shall have the right and
358 power to cast a vote to which that Compacting State is entitled and to
359 participate in the business and affairs of the Commission. A Member
360 shall vote in person or by such other means as provided in the
361 Bylaws. The Bylaws may provide for Members' participation in
362 meetings by telephone or other means of communication.

363 3. The Commission shall meet at least once during each calendar
364 year. Additional meetings shall be held as set forth in the Bylaws.

365 **ARTICLE VII. RULES AND OPERATING PROCEDURES:**

366 **RULEMAKING FUNCTIONS OF THE COMMISSION AND OPTING**
367 **OUT OF UNIFORM STANDARDS**

368 1. Rulemaking Authority. The Commission shall promulgate
369 reasonable Rules, including Uniform Standards, and Operating
370 Procedures in order to effectively and efficiently achieve the purposes
371 of this Compact. Notwithstanding the foregoing, in the event the
372 Commission exercises its rulemaking authority in a manner that is
373 beyond the scope of the purposes of this Act, or the powers granted
374 hereunder, then such an action by the Commission shall be invalid and
375 have no force and effect.

376 2. Rulemaking Procedure. Rules and Operating Procedures shall
377 be made pursuant to a rulemaking process that conforms to the Model
378 State Administrative Procedure Act of 1981 as amended, as may be
379 appropriate to the operations of the Commission. Before the

380 Commission adopts a Uniform Standard, the Commission shall give
381 written notice to the relevant state legislative committee(s) in each
382 Compacting State responsible for insurance issues of its intention to
383 adopt the Uniform Standard. The Commission in adopting a Uniform
384 Standard shall consider fully all submitted materials and issue a
385 concise explanation of its decision.

386 3. Effective Date and Opt Out of a Uniform Standard. A Uniform
387 Standard shall become effective ninety (90) days after its promulgation
388 by the Commission or such later date as the Commission may
389 determine; provided, however, that a Compacting State may opt out of
390 a Uniform Standard as provided in this Article. "Opt out" shall be
391 defined as any action by a Compacting State to decline to adopt or
392 participate in a promulgated Uniform Standard. All other Rules and
393 Operating Procedures, and amendments thereto, shall become effective
394 as of the date specified in each Rule, Operating Procedure or
395 amendment.

396 4. Opt Out Procedure. A Compacting State may opt out of a
397 Uniform Standard, either by legislation or regulation duly promulgated
398 by the Insurance Department under the Compacting State's
399 Administrative Procedure Act. If a Compacting State elects to opt out
400 of a Uniform Standard by regulation, it must (a) give written notice to
401 the Commission no later than ten (10) business days after the Uniform
402 Standard is promulgated, or at the time the State becomes a
403 Compacting State and (b) find that the Uniform Standard does not
404 provide reasonable protections to the citizens of the State, given the
405 conditions in the State. The Commissioner shall make specific findings
406 of fact and conclusions of law, based on a preponderance of the
407 evidence, detailing the conditions in the State which warrant a
408 departure from the Uniform Standard and determining that the
409 Uniform Standard would not reasonably protect the citizens of the
410 State. The Commissioner must consider and balance the following
411 factors and find that the conditions in the State and needs of the
412 citizens of the State outweigh: (i) the intent of the legislature to
413 participate in, and the benefits of, an interstate agreement to establish
414 national uniform consumer protections for the Products subject to this
415 Act; and (ii) the presumption that a Uniform Standard adopted by the
416 Commission provides reasonable protections to consumers of the

417 relevant Product. Notwithstanding the foregoing, a Compacting State
418 may, at the time of its enactment of this Compact, prospectively opt out
419 of all Uniform Standards involving long-term care insurance products
420 by expressly providing for such opt out in the enacted Compact, and
421 such an opt out shall not be treated as a material variance in the offer
422 or acceptance of any State to participate in this Compact. Such an opt
423 out shall be effective at the time of enactment of this Compact by the
424 Compacting State and shall apply to all existing Uniform Standards
425 involving long-term care insurance products and those subsequently
426 promulgated.

427 5. Effect of Opt Out. If a Compacting State elects to opt out of a
428 Uniform Standard, the Uniform Standard shall remain applicable in the
429 Compacting State electing to opt out until such time the opt out
430 legislation is enacted into law or the regulation opting out becomes
431 effective. Once the opt out of a Uniform Standard by a Compacting
432 State becomes effective as provided under the laws of that State, the
433 Uniform Standard shall have no further force and effect in that State
434 unless and until the legislation or regulation implementing the opt out
435 is repealed or otherwise becomes ineffective under the laws of the
436 State. If a Compacting State opts out of a Uniform Standard after the
437 Uniform Standard has been made effective in that State, the opt out
438 shall have the same prospective effect as provided under Article XIV
439 for withdrawals.

440 6. Stay of Uniform Standard. If a Compacting State has formally
441 initiated the process of opting out of a Uniform Standard by regulation,
442 and while the regulatory opt out is pending, the Compacting State may
443 petition the Commission, at least fifteen (15) days before the effective
444 date of the Uniform Standard, to stay the effectiveness of the Uniform
445 Standard in that State. The Commission may grant a stay if it
446 determines the regulatory opt out is being pursued in a reasonable
447 manner and there is a likelihood of success. If a stay is granted or
448 extended by the Commission, the stay or extension thereof may
449 postpone the effective date by up to ninety (90) days, unless
450 affirmatively extended by the Commission; provided, a stay may not be
451 permitted to remain in effect for more than one (1) year unless the
452 Compacting State can show extraordinary circumstances which
453 warrant a continuance of the stay, including, but not limited to, the

454 existence of a legal challenge which prevents the Compacting State
455 from opting out. A stay may be terminated by the Commission upon
456 notice that the rulemaking process has been terminated.

457 7. Not later than thirty (30) days after a Rule or Operating
458 Procedure is promulgated, any person may file a petition for judicial
459 review of the Rule or Operating Procedure; provided, that the filing of
460 such a petition shall not stay or otherwise prevent the Rule or
461 Operating Procedure from becoming effective unless the court finds
462 that the petitioner has a substantial likelihood of success. The court
463 shall give deference to the actions of the Commission consistent with
464 applicable law and shall not find the Rule or Operating Procedure to
465 be unlawful if the Rule or Operating Procedure represents a reasonable
466 exercise of the Commission's authority.

467 **ARTICLE VIII. COMMISSION RECORDS AND ENFORCEMENT**

468 1. The Commission shall promulgate Rules establishing
469 conditions and procedures for public inspection and copying of its
470 information and official records, except such information and records
471 involving the privacy of individuals and insurers' trade secrets. The
472 Commission may promulgate additional Rules under which it may make
473 available to federal and state agencies, including law enforcement
474 agencies, records and information otherwise exempt from disclosure,
475 and may enter into agreements with such agencies to receive or
476 exchange information or records subject to nondisclosure and
477 confidentiality provisions.

478 2. Except as to privileged records, data and information, the laws
479 of any Compacting State pertaining to confidentiality or nondisclosure
480 shall not relieve any Compacting State Commissioner of the duty to
481 disclose any relevant records, data or information to the Commission;
482 provided, that disclosure to the Commission shall not be deemed to
483 waive or otherwise affect any confidentiality requirement; and further
484 provided, that, except as otherwise expressly provided in this Act, the
485 Commission shall not be subject to the Compacting State's laws
486 pertaining to confidentiality and nondisclosure with respect to records,
487 data and information in its possession. Confidential information of the
488 Commission shall remain confidential after such information is
489 provided to any Commissioner.

490 3. The Commission shall monitor Compacting States for

491 compliance with duly adopted Bylaws, Rules, including Uniform
492 Standards, and Operating Procedures. The Commission shall notify any
493 non-complying Compacting State in writing of its noncompliance with
494 Commission Bylaws, Rules or Operating Procedures. If a non-
495 complying Compacting State fails to remedy its noncompliance within
496 the time specified in the notice of noncompliance, the Compacting State
497 shall be deemed to be in default as set forth in Article XIV.

498 4. The Commissioner of any State in which an Insurer is
499 authorized to do business, or is conducting the business of insurance,
500 shall continue to exercise his or her authority to oversee the market
501 regulation of the activities of the Insurer in accordance with the
502 provisions of the State's law. The Commissioner's enforcement of
503 compliance with the Compact is governed by the following provisions:

504 a. With respect to the Commissioner's market regulation of a
505 Product or Advertisement that is approved or certified to the
506 Commission, the content of the Product or Advertisement shall not
507 constitute a violation of the provisions, standards or requirements of
508 the Compact except upon a final order of the Commission, issued at the
509 request of a Commissioner after prior notice to the Insurer and an
510 opportunity for hearing before the Commission.

511 b. Before a Commissioner may bring an action for violation of
512 any provision, standard or requirement of the Compact relating to the
513 content of an Advertisement not approved or certified to the
514 Commission, the Commission, or an authorized Commission officer or
515 employee, must authorize the action. However, authorization pursuant
516 to this paragraph does not require notice to the Insurer, opportunity
517 for hearing or disclosure of requests for authorization or records of the
518 Commission's action on such requests.

519 ARTICLE IX. DISPUTE RESOLUTION

520 The Commission shall attempt, upon the request of a Member, to
521 resolve any disputes or other issues that are subject to this Compact
522 and which may arise between two or more Compacting States, or
523 between Compacting States and Non-compacting States, and the
524 Commission shall promulgate an Operating Procedure providing for
525 resolution of such disputes.

526 ARTICLE X. PRODUCT FILING AND APPROVAL

527 1. Insurers and Third-Party Filers seeking to have a Product

528 approved by the Commission shall file the Product with, and pay
529 applicable filing fees to, the Commission. Nothing in this Act shall be
530 construed to restrict or otherwise prevent an insurer from filing its
531 Product with the insurance department in any State wherein the
532 insurer is licensed to conduct the business of insurance, and such filing
533 shall be subject to the laws of the States where filed.

534 2. The Commission shall establish appropriate filing and review
535 processes and procedures pursuant to Commission Rules and Operating
536 Procedures. Notwithstanding any provision herein to the contrary, the
537 Commission shall promulgate Rules to establish conditions and
538 procedures under which the Commission will provide public access to
539 Product filing information. In establishing such Rules, the Commission
540 shall consider the interests of the public in having access to such
541 information, as well as protection of personal medical and financial
542 information and trade secrets, that may be contained in a Product
543 filing or supporting information.

544 **3. Any Product approved by the Commission may be sold or**
545 **otherwise issued in those Compacting States for which the Insurer is**
546 **legally authorized to do business.**

**ARTICLE XI. REVIEW OF COMMISSION DECISIONS REGARDING
FILINGS**

1. Not later than thirty (30) days after the Commission has given notice of a disapproved Product or Advertisement filed with the Commission, the Insurer or Third Party Filer whose filing was disapproved may appeal the determination to a review panel appointed by the Commission. The Commission shall promulgate Rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the Commission, in disapproving a Product or Advertisement filed with the Commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with Article III, Section 4.

2. The Commission shall have authority to monitor, review and reconsider Products and Advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant Uniform Standard. Where appropriate, the Commission may withdraw or modify its approval after proper notice and hearing, subject to the

565 appeal process in Section 1 above.

566 **ARTICLE XII. FINANCE**

567 1. The Commission shall pay or provide for the payment of the
568 reasonable expenses of its establishment and organization. To fund the
569 cost of its initial operations, the Commission may accept contributions
570 and other forms of funding from the National Association of Insurance
571 Commissioners, Compacting States and other sources. Contributions
572 and other forms of funding from other sources shall be of such a nature
573 that the independence of the Commission concerning the performance
574 of its duties shall not be compromised.

575 2. The Commission shall collect a filing fee from each Insurer
576 and Third Party Filer filing a product with the Commission to cover the
577 cost of the operations and activities of the Commission and its staff in
578 a total amount sufficient to cover the Commission's annual budget.

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

582 4. The Commission shall be exempt from all taxation in and by
583 the Compacting States.

584 5. The Commission shall not pledge the credit of any Compacting
585 State, except by and with the appropriate legal authority of that
586 Compacting State.

587 6. The Commission shall keep complete and accurate accounts of
588 all its internal receipts, including grants and donations, and
589 disbursements of all funds under its control. The internal financial
590 accounts of the Commission shall be subject to the accounting
591 procedures established under its Bylaws. The financial accounts and
592 reports including the system of internal controls and procedures of the
593 Commission shall be audited annually by an independent certified
594 public accountant. Upon the determination of the Commission, but no
595 less frequently than every three (3) years, the review of the
596 independent auditor shall include a management and performance
597 audit of the Commission. The Commission shall make an Annual Report
598 to the Governor and legislature of the Compacting States, which shall
599 include a report of the independent audit. The Commission's internal
600 accounts shall not be confidential and such materials may be shared
601 with the Commissioner of any Compacting State upon request provided,

602 however, that any work papers related to any internal or independent
603 audit and any information regarding the privacy of individuals and
604 insurers' proprietary information, including trade secrets, shall remain
605 confidential.

606 7. No Compacting State shall have any claim to or ownership of
607 any property held by or vested in the Commission or to any
608 Commission funds held pursuant to the provisions of this Compact.

609 ARTICLE XIII. COMPACTING STATES, EFFECTIVE DATE AND
610 AMENDMENT

611 1. Any State is eligible to become a Compacting State.

612 2. The Compact shall become effective and binding upon
613 legislative enactment of the Compact into law by two Compacting
614 States; provided, the Commission shall become effective for purposes
615 of adopting Uniform Standards for, reviewing, and giving approval or
616 disapproval of, Products filed with the Commission that satisfy
617 applicable Uniform Standards only after twenty-six (26) States are
618 Compacting States or, alternatively, by States representing greater
619 than forty percent (40%) of the premium volume for life insurance,
620 annuity, disability income and long-term care insurance products,
621 based on records of the NAIC for the prior year. Thereafter, it shall
622 become effective and binding as to any other Compacting State upon
623 enactment of the Compact into law by that State.

624 3. Amendments to the Compact may be proposed by the
625 Commission for enactment by the Compacting States. No amendment
626 shall become effective and binding upon the Commission and the
627 Compacting States unless and until all Compacting States enact the
628 amendment into law.

629 ARTICLE XIV. WITHDRAWAL, DEFAULT AND TERMINATION

630 1. Withdrawal

631 a. Once effective, the Compact shall continue in force and remain
632 binding upon each and every Compacting State; provided, that a
633 Compacting State may withdraw from the Compact ("Withdrawing
634 State") by enacting a statute specifically repealing the statute which
635 enacted the Compact into law.

636 b. The effective date of withdrawal is the effective date of the
637 repealing statute. However, the withdrawal shall not apply to any
638 product filings approved or self-certified, or any Advertisement of such

639 products, on the date the repealing statute becomes effective, except by
640 mutual agreement of the Commission and the Withdrawing State unless
641 the approval is rescinded by the Withdrawing State as provided in
642 Paragraph e of this section.

643 c. The Commissioner of the Withdrawing State shall immediately
644 notify the Management Committee in writing upon the introduction of
645 legislation repealing this Compact in the Withdrawing State.

646 d. The Commission shall notify the other Compacting States of
647 the introduction of such legislation within ten (10) days after its receipt
648 of notice thereof.

649 e. The Withdrawing State is responsible for all obligations,
650 duties and liabilities incurred through the effective date of withdrawal,
651 including any obligations, the performance of which extend beyond the
652 effective date of withdrawal, except to the extent those obligations may
653 have been released or relinquished by mutual agreement of the
654 Commission and the Withdrawing State. The Commission's approval of
655 Products and Advertisement prior to the effective date of withdrawal
656 shall continue to be effective and be given full force and effect in the
657 Withdrawing State, unless formally rescinded by the Withdrawing State
658 in the same manner as provided by the laws of the Withdrawing State
659 for the prospective disapproval of products or advertisement
660 previously approved under state law.

661 f. Reinstatement following withdrawal of any Compacting State
662 shall occur upon the effective date of the Withdrawing State reenacting
663 the Compact.

664 2. Default

665 a. If the Commission determines that any Compacting State has
666 at any time defaulted ("Defaulting State") in the performance of any of
667 its obligations or responsibilities under this Compact, the Bylaws or
668 duly promulgated Rules or Operating Procedures, then, after notice and
669 hearing as set forth in the Bylaws, all rights, privileges and benefits
670 conferred by this Compact on the Defaulting State shall be suspended
671 from the effective date of default as fixed by the Commission. The
672 grounds for default include, but are not limited to, failure of a
673 Compacting State to perform its obligations or responsibilities, and any
674 other grounds designated in Commission Rules. The Commission shall
675 immediately notify the Defaulting State in writing of the Defaulting

676 State's suspension pending a cure of the default. The Commission shall
677 stipulate the conditions and the time period within which the
678 Defaulting State must cure its default. If the Defaulting State fails to
679 cure the default within the time period specified by the Commission,
680 the Defaulting State shall be terminated from the Compact and all
681 rights, privileges and benefits conferred by this Compact shall be
682 terminated from the effective date of termination.

683 b. Product approvals by the Commission or product self-
684 certifications, or any Advertisement in connection with such product,
685 that are in force on the effective date of termination shall remain in
686 force in the Defaulting State in the same manner as if the Defaulting
687 State had withdrawn voluntarily pursuant to Section 1 of this article.

688 c. Reinstatement following termination of any Compacting State
689 requires a reenactment of the Compact.

690 3. Dissolution of Compact

691 a. The Compact dissolves effective upon the date of the
692 withdrawal or default of the Compacting State which reduces
693 membership in the Compact to one Compacting State.

694 b. Upon the dissolution of this Compact, the Compact becomes
695 null and void and shall be of no further force or effect, and the business
696 and affairs of the Commission shall be wound up and any surplus funds
697 shall be distributed in accordance with the Bylaws.

698 ARTICLE XV. SEVERABILITY AND CONSTRUCTION

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

702 2. The provisions of this Compact shall be liberally construed to
703 effectuate its purposes.

704 ARTICLE XVI. BINDING EFFECT OF COMPACT AND OTHER LAWS

705 1. Other Laws

706 a. Nothing herein prevents the enforcement of any other law of
707 a Compacting State, except as provided in Paragraph b of this section.

708 b. For any Product approved or certified to the Commission, the
709 Rules, Uniform Standards and any other requirements of the
710 Commission shall constitute the exclusive provisions applicable to the
711 content, approval and certification of such Products. For
712 Advertisement that is subject to the Commission's authority, any Rule,

713 Uniform Standard or other requirement of the Commission which
714 governs the content of the Advertisement shall constitute the exclusive
715 provision that a Commissioner may apply to the content of the
716 Advertisement. Notwithstanding the foregoing, no action taken by the
717 Commission shall abrogate or restrict: (i) the access of any person to
718 state courts; (ii) remedies available under state law related to breach
719 of contract, tort, or other laws not specifically directed to the content
720 of the Product; (iii) state law relating to the construction of insurance
721 contracts; or (iv) the authority of the attorney general of the state,
722 including but not limited to maintaining any actions or proceedings, as
723 authorized by law.

724 c. All insurance products filed with individual States shall be
725 subject to the laws of those States.

726 2. Binding Effect of this Compact

727 a. All lawful actions of the Commission, including all Rules and
728 Operating Procedures promulgated by the Commission, are binding
729 upon the Compacting States.

730 b. All agreements between the Commission and the Compacting
731 States are binding in accordance with their terms.

732 c. Upon the request of a party to a conflict over the meaning or
733 interpretation of Commission actions, and upon a majority vote of the
734 Compacting States, the Commission may issue advisory opinions
735 regarding the meaning or interpretation in dispute.

736 d. In the event any provision of this Compact exceeds the
737 constitutional limits imposed on the legislature of any Compacting
738 State, the obligations, duties, powers or jurisdiction sought to be
739 conferred by that provision upon the Commission shall be ineffective
740 as to that Compacting State, and those obligations, duties, powers or
741 jurisdiction shall remain in the Compacting State and shall be
742 exercised by the agency thereof to which those obligations, duties,
743 powers or jurisdiction are delegated by law in effect at the time this
744 Compact becomes effective.

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