S T A T E O F N E W Y O R K

7168

I N S E N A T E

April 5, 2016

Introduced by Sen. SEWARD -- read twice and ordered printed, and when printed to be committed to the Committee on Insurance

AN ACT to amend the insurance law, in relation to establishing the interstate insurance product regulation compact (Part A); to amend the insurance law, in relation to valuation of life insurance policies and contracts (Part B); to amend the insurance law, in relation to insurance company corporate structure (Part C); to amend the insurance law, in relation to the replacement of individual life insurance policies or annuity contracts (Part D); and to amend the insurance law, in relation to reports required by insurers (Part E)

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. This act shall be known and may be cited as the "insurance uniformity and accreditation act".

S 2. Legislative findings and intent. The regulatory framework for providing oversight of the insurance industry in the United States is largely unique in comparison to the other segments of the financial service industry in this nation and most insurers and the rest of the financial services industry in foreign jurisdictions. Insurers in the United States are governed under a sometimes complex regulatory structure overseen by the states. This state-run insurance regulatory system has essentially functioned well over recent history in ensuring that: (1) the insurance industry remains solvent; (2) consumers of insurance products are appropriately served with affordable, available insurance products; and (3) the oversight of the insurance industry, particularly the domestic industry in each state, is balanced enough to provide the industry with the ability to grow their businesses and their market in the state. The National Association of Insurance Commissioners (NAIC) has been in existence since 1871 and is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the fifty states, the District of Columbia and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate regulatory oversight. The NAIC also functions in close collaboration with

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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state legislators who represent and support the National Conference of Insurance Legislators (NCOIL). The state-run insurance marketplace has benefited from the work of the NAIC, which establishes uniform state laws, regulations and guidance. This framework provides the basis for an insurance regulatory environment that is largely consistent among the states, which supports the goals of a state-run regulatory system. It provides states with a uniform structure for overseeing the state-run insurance system, which benefits the entire insurance marketplace. In 2013, the Federal Insurance Office of the United States Treasury issued a mandated study entitled "How to Modernize and Improve the System of Insurance Regulation in the United States." That study recognized the efforts of the NAIC by concluding support for the implementation of several uniform state laws and regulations established by the NAIC, including a recommendation that all non-participating states should join the Interstate Insurance Product Regulation Compact (IIPRC). In 1989-90, the NAIC adopted certain financial regulation standards that form the basis for a formal accreditation program that relies on state certification by other regulators (i.e., peer review) and that requires risk-focused financial surveillance, including on-site examinations, as well as implementation of certain solvency-related model laws, rules and guidelines. The New York Department of Financial Services is one of the jurisdictions currently accredited by this NAIC program.

The legislature therefore finds that it is in the interest of this state to implement into New York law several provisions of NAIC Model Laws or Regulations, some of which are or may be necessary for New York to maintain their NAIC accreditation, and others of which serve to further the public policy interest for insurance regulation in the State of New York.

S 3. This act enacts into law major components of legislation which are necessary to implement the "insurance uniformity and accreditation act". Each component is wholly contained within a Part identified as Parts A through E. The effective date for each particular provision contained within such Part is set forth in the last section of such Part. Any provision in any section contained within a Part, including the effective date of the Part, which makes a reference to section "of this act", when used in connection with that particular component, shall be deemed to mean and refer to the corresponding section of the Part in which it is found. Section five of this act sets forth the general effective date of this act.

PART A

Section 1. Legislative findings and intent. An interstate compact is a contract between the states that allows them to cooperate on multi-state or national issues while still retaining state control. Interstate compacts are specifically mentioned in the U.S. Constitution and have been historically used to address border disputes and water rights. The use of interstate compacts has expanded significantly in recent decades to cover tax, motor vehicle licensing, environmental, emergency management and other issues. Over 200 interstate compacts currently exist, and on average every state belongs to at least 25 compacts. The Interstate Insurance Product Regulation Compact, which to date has been adopted by 44 member states, representing approximately two-thirds of the premium volume in the nation, created the Interstate Insurance Product Regulation Commission (IIPRC). The IIPRC provides the States with a vehicle to (1) develop uniform national product standards that will afford a

high level of protection to consumers of life insurance, annuities, disability income and long-term care insurance products; (2) establish a central point of filing for these insurance products; and (3) thoroughly review product filings and make regulatory decisions according to the uniform product standards. The IIPRC is an important modernization initiative that benefits state insurance regulators, consumers, and the insurance industry. The Compact enhances the efficiency and effectiveness of the way insurance products are filed, reviewed, and approved allowing insurance customers to have faster access to competitive insurance products in an ever-changing global marketplace. The Compact promotes uniformity through application of uniform product standards embedded with strong consumer protections. The state of New York seeks to join with other states as a member of the Interstate Insurance Product Regulation Compact and Commission.

S 2. The insurance law is amended by adding a new article 82 to read as follows:

ARTICLE 82
INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

SECTION 8201. SHORT TITLE.
8202. PURPOSE.
8203. DEFINITIONS.
8204. ESTABLISHMENT OF THE COMMISSION AND VENUE.
8205. POWERS OF THE COMMISSION.
8206. ORGANIZATION OF THE COMMISSION.
8207. MEETINGS AND ACTS OF THE COMMISSION.
8208. RULES AND OPERATING PROCEDURES; RULE MAKING FUNCTIONS OF THE COMMISSION AND OPTING OUT OF UNIFORM STANDARDS.
8209. COMMISSION RECORDS AND ENFORCEMENT.
8210. DISPUTE RESOLUTION.
8211. PRODUCT FILING AND APPROVAL.
8212. REVIEW OF COMMISSION DECISIONS REGARDING FILINGS.
8213. FINANCE.
8214. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT.
8215. WITHDRAWAL, DEFAULT AND TERMINATION.
8216. SEVERABILITY AND CONSTRUCTION.
8217. BINDING EFFECT OF COMPACT AND OTHER LAWS.

S 8201. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "INTERSTATE INSURANCE PRODUCT REGULATION COMPACT".

S 8202. PURPOSE. THE PURPOSES OF THIS COMPACT ARE, THROUGH MEANS OF JOINT AND COOPERATIVE ACTION AMONG THE COMPACTING STATES:

(A) TO PROMOTE AND PROTECT THE INTEREST OF CONSUMERS OF INDIVIDUAL AND GROUP ANNUITY, LIFE INSURANCE, DISABILITY INCOME AND LONG-TERM CARE INSURANCE PRODUCTS;

(B) TO DEVELOP UNIFORM STANDARDS FOR PRODUCTS COVERED UNDER THE COMPACT;

(C) TO ESTABLISH A CENTRAL CLEARINGHOUSE TO RECEIVE AND PROVIDE PROMPT REVIEW OF PRODUCTS COVERED UNDER THE COMPACT AND, IN CERTAIN CASES, ADVERTISEMENTS RELATED THERETO, SUBMITTED BY INSURERS AUTHORIZED TO DO BUSINESS IN ONE OR MORE COMPACTING STATES;

(D) TO GIVE APPROPRIATE REGULATORY APPROVAL TO THOSE PRODUCT FILINGS AND ADVERTISEMENTS SATISFYING THE APPLICABLE UNIFORM STANDARD;

(E) TO IMPROVE COORDINATION OF REGULATORY RESOURCES AND EXPERTISE BETWEEN STATE INSURANCE DEPARTMENTS REGARDING THE SETTING OF UNIFORM STANDARDS AND REVIEW OF INSURANCE PRODUCTS COVERED UNDER THE COMPACT;

(F) TO CREATE THE INTERSTATE INSURANCE PRODUCT REGULATION COMMISSION; AND

(G) TO PERFORM SUCH OTHER RELATED FUNCTIONS AS MAY BE CONSISTENT WITH THE STATE REGULATION OF THE BUSINESS OF INSURANCE.

S 8203. DEFINITIONS. AS USED IN THIS ARTICLE:

(A) "ADVERTISEMENT" MEANS ANY MATERIAL DESIGNED TO CREATE PUBLIC INTEREST IN A PRODUCT, OR INDUCE THE PUBLIC TO PURCHASE, INCREASE, MODIFY, REINSTATE, BORROW ON, SURRENDER, REPLACE OR RETAIN A POLICY, AS MORE SPECIFICALLY DEFINED IN THE RULES AND OPERATING PROCEDURES OF THE COMMISSION.

(B) "BY-LAWS" MEAN THOSE BY-LAWS ESTABLISHED BY THE COMMISSION FOR ITS GOVERNANCE OR FOR DIRECTING OR CONTROLLING THE COMMISSION'S ACTIONS OR CONDUCT.

(C) "COMPACTING STATE" MEANS ANY STATE WHICH HAS ENACTED THIS COMPACT LEGISLATION AND WHICH HAS NOT WITHDRAWN OR BEEN TERMINATED PURSUANT TO SECTION EIGHT THOUSAND TWO HUNDRED FIFTEEN OF THIS ARTICLE.

(D) "COMMISSION" MEANS THE "INTERSTATE INSURANCE PRODUCT REGULATION COMMISSION" ESTABLISHED BY THE COMPACT.

(E) "COMMISSIONER" MEANS THE CHIEF INSURANCE REGULATORY OFFICIAL OF A STATE INCLUDING, BUT NOT LIMITED TO COMMISSIONER, SUPERINTENDENT, DIRECTOR OR ADMINISTRATOR.

(F) "DOMICILIARY STATE" MEANS THE STATE IN WHICH AN INSURER IS INCORPORATED OR ORGANIZED OR, IN THE CASE OF AN ALIEN INSURER, ITS STATE OF ENTRY.

(G) "INSURER" MEANS ANY ENTITY LICENSED BY A STATE TO ISSUE CONTRACTS OF INSURANCE FOR ANY OF THE LINES OF INSURANCE COVERED BY THIS ARTICLE.

(H) "MEMBER" MEANS THE PERSON, OR HIS OR HER DESIGNEE, CHOSEN BY A COMPACTING STATE FOR SERVICE ON THE COMMISSION.

(I) "NON-COMPACTING STATE" MEANS ANY STATE WHICH IS NOT AT THE TIME A COMPACTING STATE.

(J) "OPERATING PROCEDURES" MEAN PROCEDURES PROMULGATED BY THE COMMISSION IMPLEMENTING A RULE, UNIFORM STANDARD OR A PROVISION OF THIS COMPACT.

(K) "PRODUCT" MEANS THE FORM OF THE CONTRACT, POLICY APPLICATION, ENDORSEMENTS, CERTIFICATE FORMS, EVIDENCE OF COVERAGE FORMS AND RELATED FORMS FOR AN INDIVIDUAL OR GROUP ANNUITY, LIFE INSURANCE, DISABILITY INCOME OR LONG-TERM CARE INSURANCE PRODUCT, WHICH AN INSURER IS AUTHORIZED TO ISSUE.

(L) "RULE" MEANS A STATEMENT OF GENERAL OR PARTICULAR APPLICABILITY AND FUTURE EFFECT PROMULGATED BY THE COMMISSION, INCLUDING A UNIFORM STANDARD DEVELOPED PURSUANT TO SECTION EIGHT THOUSAND TWO HUNDRED EIGHT OF THIS ARTICLE, DESIGNED TO IMPLEMENT, INTERPRET, OR PRESCRIBE LAW OR POLICY OR DESCRIBING THE ORGANIZATION, PROCEDURE, OR PRACTICE REQUIREMENTS OF THE COMMISSION, WHICH SHALL HAVE THE FORCE AND EFFECT OF LAW IN THE COMPACTING STATES.

(M) "STATE" MEANS ANY STATE, DISTRICT OR TERRITORY OF THE UNITED STATES OF AMERICA.

(N) "THIRD-PARTY FILER" MEANS AN ENTITY THAT SUBMITS A PRODUCT FILING TO THE COMMISSION ON BEHALF OF AN INSURER.

(O) "UNIFORM STANDARD" MEANS A STANDARD ADOPTED BY THE COMMISSION FOR A PRODUCT LINE, PURSUANT TO SECTION EIGHT THOUSAND TWO HUNDRED EIGHT OF THIS ARTICLE AND SHALL INCLUDE ALL OF THE PRODUCT REQUIREMENTS IN AGGREGATE; PROVIDED, THAT EACH UNIFORM STANDARD SHALL BE CONSTRUED, WHETHER EXPRESS OR IMPLIED, TO PROHIBIT THE USE OF ANY INCONSISTENT, MISLEADING OR AMBIGUOUS PROVISIONS IN A PRODUCT AND THE FORM OF SUCH PRODUCT MADE

AVAILABLE TO THE PUBLIC SHALL NOT BE UNFAIR, INEQUITABLE OR AGAINST PUBLIC POLICY AS DETERMINED BY THE COMMISSION.

S 8204. ESTABLISHMENT OF THE COMMISSION AND VENUE. (A) THE COMPACTING STATES HEREBY ESTABLISH A JOINT PUBLIC AGENCY KNOWN AS THE "INTERSTATE INSURANCE PRODUCT REGULATION COMMISSION". PURSUANT TO SECTION EIGHT THOUSAND TWO HUNDRED EIGHT OF THIS ARTICLE, THE COMMISSION SHALL HAVE THE POWER TO DEVELOP UNIFORM STANDARDS FOR PRODUCT LINES, RECEIVE AND PROVIDE PROMPT REVIEW OF PRODUCTS FILED THEREWITH, AND GIVE APPROVAL TO THOSE PRODUCT FILINGS SATISFYING APPLICABLE UNIFORM STANDARDS; PROVIDED, HOWEVER, THAT IT IS NOT INTENDED FOR THE COMMISSION TO BE THE EXCLUSIVE ENTITY FOR RECEIPT AND REVIEW OF INSURANCE PRODUCT FILINGS. NOTHING IN THIS SECTION SHALL PROHIBIT ANY INSURER FROM FILING ITS PRODUCT IN ANY STATE WHEREIN SUCH INSURER IS LICENSED TO CONDUCT THE BUSINESS OF INSURANCE AND SUCH FILING SHALL BE SUBJECT TO THE LAWS OF THE STATE WHERE FILED.

(B) THE COMMISSION IS A BODY CORPORATE AND POLITIC, AND AN INSTRUMENTALITY OF THE COMPACTING STATES.

(C) THE COMMISSION IS A NOT-FOR-PROFIT ENTITY, SEPARATE AND DISTINCT FROM THE INDIVIDUAL COMPACTING STATES.

(D) THE COMMISSION IS SOLELY RESPONSIBLE FOR ITS LIABILITIES UNLESS OTHERWISE SPECIFICALLY PROVIDED IN THIS COMPACT, EXCEPT THAT, IN NO EVENT SHALL THE OBLIGATIONS OF THE COMMISSION BE THE DEBT OF THE STATE OF NEW YORK NOR SHALL ANY REVENUES OR PROPERTY OF THE STATE OF NEW YORK BE LIABLE THEREFOR.

(E) VENUE IN PROPER AND JUDICIAL PROCEEDINGS BY OR AGAINST THE COMMISSION SHALL BE BROUGHT SOLELY AND EXCLUSIVELY IN A COURT OF COMPETENT JURISDICTION WHERE THE PRINCIPAL OFFICE OF THE COMMISSION IS LOCATED.

S 8205. POWERS OF THE COMMISSION. (A) THE COMMISSION SHALL HAVE THE FOLLOWING POWERS:

(1) TO PROMULGATE RULES, PURSUANT TO SECTION EIGHT THOUSAND TWO HUNDRED EIGHT OF THIS ARTICLE, WHICH SHALL HAVE THE FORCE AND EFFECT OF LAW AND SHALL BE BINDING IN THE COMPACTING STATES TO THE EXTENT AND IN THE MANNER PROVIDED IN THIS ARTICLE;

(2) TO EXERCISE ITS RULE MAKING AUTHORITY AND ESTABLISH REASONABLE UNIFORM STANDARDS FOR PRODUCTS COVERED UNDER THE COMPACT, AND ADVERTISEMENT RELATED THERETO, WHICH SHALL HAVE THE FORCE AND EFFECT OF LAW AND SHALL BE BINDING IN THE COMPACTING STATES, BUT ONLY FOR SUCH PRODUCTS FILED WITH THE COMMISSION; PROVIDED, HOWEVER, THAT A COMPACTING STATE SHALL HAVE THE RIGHT TO OPT OUT OF SUCH UNIFORM STANDARD PURSUANT TO SECTION EIGHT THOUSAND TWO HUNDRED EIGHT OF THIS ARTICLE TO THE EXTENT AND IN THE MANNER PROVIDED IN THIS ARTICLE, AND PROVIDED FURTHER THAT ANY UNIFORM STANDARD ESTABLISHED BY THE COMMISSIONER FOR LONG-TERM CARE INSURANCE PRODUCTS MAY PROVIDE THE SAME OR GREATER PROTECTIONS FOR CONSUMERS AS, BUT SHALL NOT PROVIDE LESS THAN, THOSE PROTECTIONS SET FORTH IN THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS' (HEREINAFTER REFERRED TO AS THE "NAIC") LONG-TERM CARE INSURANCE MODEL ACT AND LONG-TERM CARE INSURANCE MODEL REGULATION, RESPECTIVELY, ADOPTED AS OF 2001. THE COMMISSION SHALL CONSIDER WHETHER ANY SUBSEQUENT AMENDMENTS TO THE NAIC LONG-TERM CARE INSURANCE MODEL ACT OR LONG-TERM CARE INSURANCE MODEL REGULATION ADOPTED BY THE NAIC REQUIRE AMENDING OF THE UNIFORM STANDARDS ESTABLISHED BY THE COMMISSION FOR LONG-TERM INSURANCE PRODUCTS;

(3) TO RECEIVE AND REVIEW IN AN EXPEDITIOUS MANNER PRODUCTS FILED WITH THE COMMISSION, INCLUDING RATE FILINGS FOR DISABILITY INCOME AND LONG-TERM CARE INSURANCE PRODUCTS, AND GIVE APPROVAL OF THOSE PRODUCTS AND RATE FILINGS THAT SATISFY THE APPLICABLE UNIFORM STANDARD, WHERE

SUCH APPROVAL SHALL HAVE THE FORCE AND EFFECT OF LAW AND BE BINDING ON THE COMPACTING STATES TO THE EXTENT AND IN THE MANNER PROVIDED IN THE COMPACT;

(4) TO RECEIVE AND REVIEW IN AN EXPEDITIOUS MANNER ADVERTISEMENT RELATING TO LONG-TERM CARE INSURANCE PRODUCTS FOR WHICH UNIFORM STANDARDS HAVE BEEN ADOPTED BY THE COMMISSION, AND GIVE APPROVAL OF SUCH ADVERTISEMENT THAT SATISFIES THE APPLICABLE UNIFORM STANDARD. FOR ANY PRODUCT COVERED UNDER THIS ARTICLE, OTHER THAN LONG-TERM CARE INSURANCE PRODUCTS, THE COMMISSION SHALL HAVE THE AUTHORITY TO REQUIRE AN INSURER TO SUBMIT ALL OR ANY PART OF ITS ADVERTISEMENT WITH RESPECT TO THAT PRODUCT FOR REVIEW OR APPROVAL PRIOR TO USE IF THE COMMISSION DETERMINES THAT THE NATURE OF THE PRODUCT IS SUCH THAT AN ADVERTISEMENT OF THE PRODUCT COULD HAVE THE CAPACITY OR TENDENCY TO MISLEAD THE PUBLIC. THE ACTIONS OF THE COMMISSION AS PROVIDED IN THIS SECTION SHALL HAVE THE FORCE AND EFFECT OF LAW AND SHALL BE BINDING IN THE COMPACTING STATES TO THE EXTENT AND IN THE MANNER PROVIDED IN THE COMPACT;

(5) TO EXERCISE RULE MAKING AUTHORITY AND DESIGNATE PRODUCTS AND ADVERTISEMENT THAT MAY BE SUBJECT TO A SELF-CERTIFICATION PROCESS WITHOUT THE NEED FOR PRIOR APPROVAL BY THE COMMISSION;

(6) TO PROMULGATE OPERATING PROCEDURES, PURSUANT TO SECTION EIGHT THOUSAND TWO HUNDRED EIGHT OF THIS ARTICLE, WHICH SHALL BE BINDING IN THE COMPACTING STATES TO THE EXTENT AND IN THE MANNER PROVIDED IN THE COMPACT;

(7) TO BRING AND PROSECUTE LEGAL PROCEEDINGS OR ACTIONS IN ITS NAME AS THE COMMISSION; PROVIDED, THAT THE STANDING OF ANY STATE INSURANCE DEPARTMENT TO SUE OR BE SUED UNDER APPLICABLE LAW SHALL NOT BE AFFECTED;

(8) TO ISSUE SUBPOENAS REQUIRING THE ATTENDANCE AND TESTIMONY OF WITNESSES AND THE PRODUCTION OF EVIDENCE;

(9) TO ESTABLISH AND MAINTAIN OFFICES;

(10) TO PURCHASE AND MAINTAIN INSURANCE AND BONDS;

(11) TO BORROW, ACCEPT OR CONTRACT FOR SERVICES OF PERSONNEL, INCLUDING, BUT NOT LIMITED TO, EMPLOYEES OF A COMPACTING STATE;

(12) TO HIRE EMPLOYEES AND ELECT OR APPOINT OFFICERS, AND TO FIX THEIR COMPENSATION, DEFINE THEIR DUTIES AND GIVE THEM APPROPRIATE AUTHORITY TO CARRY OUT THE PURPOSES OF THE COMPACT, AND DETERMINE THEIR QUALIFICATIONS; AND TO ESTABLISH THE COMMISSION'S PERSONNEL POLICIES AND PROGRAMS RELATING TO, AMONG OTHER THINGS, CONFLICTS OF INTEREST, RATES OF COMPENSATION AND QUALIFICATIONS OF PERSONNEL;

(13) TO ACCEPT ANY AND ALL APPROPRIATE DONATIONS AND GRANTS OF MONEY, EQUIPMENT, SUPPLIES, MATERIALS AND SERVICES, AND TO RECEIVE, UTILIZE AND DISPOSE OF THE SAME; PROVIDED THAT AT ALL TIMES THE COMMISSION SHALL STRIVE TO AVOID ANY APPEARANCE OF IMPROPRIETY;

(14) TO LEASE, PURCHASE, ACCEPT APPROPRIATE GIFTS OR DONATIONS OF, OR OTHERWISE TO OWN, HOLD, IMPROVE OR USE, ANY PROPERTY, REAL, PERSONAL OR MIXED; PROVIDED THAT AT ALL TIMES THE COMMISSION SHALL STRIVE TO AVOID ANY APPEARANCE OF IMPROPRIETY;

(15) TO SELL, CONVEY, MORTGAGE, PLEDGE, LEASE, EXCHANGE, ABANDON OR OTHERWISE DISPOSE OF ANY PROPERTY, REAL, PERSONAL OR MIXED;

(16) TO REMIT FILING FEES TO COMPACTING STATES AS MAY BE SET FORTH IN THE BY-LAWS, RULES OR OPERATING PROCEDURES;

(17) TO ENFORCE COMPLIANCE BY COMPACTING STATES WITH RULES, UNIFORM STANDARDS, OPERATING PROCEDURES AND BY-LAWS;

(18) TO PROVIDE FOR DISPUTE RESOLUTION AMONG COMPACTING STATES;

(19) TO ADVISE COMPACTING STATES ON ISSUES RELATING TO INSURERS DOMICILED OR DOING BUSINESS IN NON-COMPACTING JURISDICTIONS, CONSISTENT WITH THE PURPOSES OF THE COMPACT;

(20) TO PROVIDE ADVICE AND TRAINING TO THOSE PERSONNEL IN STATE INSURANCE DEPARTMENTS RESPONSIBLE FOR PRODUCT REVIEW, AND TO BE A RESOURCE FOR STATE INSURANCE DEPARTMENTS;

(21) TO ESTABLISH A BUDGET AND MAKE EXPENDITURES;

(22) TO BORROW MONEY;

(23) TO APPOINT COMMITTEES, INCLUDING ADVISORY COMMITTEES COMPRISING MEMBERS, STATE INSURANCE REGULATORS, STATE LEGISLATORS OR THEIR REPRESENTATIVES, INSURANCE INDUSTRY AND CONSUMER REPRESENTATIVES, AND SUCH OTHER INTERESTED PERSONS AS MAY BE DESIGNATED IN THE BY-LAWS;

(24) TO PROVIDE AND RECEIVE INFORMATION FROM, AND TO COOPERATE WITH LAW ENFORCEMENT AGENCIES;

(25) TO ADOPT AND USE A CORPORATE SEAL; AND

(26) TO PERFORM SUCH OTHER FUNCTIONS AS MAY BE NECESSARY OR APPROPRIATE TO ACHIEVE THE PURPOSES OF THIS COMPACT CONSISTENT WITH THE STATE REGULATION OF THE BUSINESS OF INSURANCE.

(B) ALL DONATIONS, GRANTS OF MONEY, EQUIPMENT, SUPPLIES, MATERIALS OR SERVICES, PURCHASES, GIFTS, DONATIONS, CONVEYANCES, MORTGAGES, PLEDGES, LEASES AND EXCHANGES, AS AUTHORIZED BY SUBSECTION (A) OF THIS SECTION, RECEIVED BY OR ON BEHALF OF THE COMMISSION SHALL BE LIMITED TO THE DIRECT FUNDING OF THE LAWFUL AND AUTHORIZED OPERATIONS OF THE COMMISSION.

S 8206. ORGANIZATION OF THE COMMISSION. (A) EACH COMPACTING STATE SHALL HAVE AND BE LIMITED TO ONE MEMBER. THE SUPERINTENDENT, OR HIS OR HER DESIGNATED REPRESENTATIVE, SHALL BE NEW YORK'S MEMBER OF SUCH COMMISSION. EACH MEMBER SHALL BE QUALIFIED TO SERVE IN SUCH CAPACITY PURSUANT TO APPLICABLE LAW OF THE COMPACTING STATE. ANY MEMBER MAY BE REMOVED OR SUSPENDED FROM OFFICE AS PROVIDED BY THE LAW OF THE STATE FROM WHICH HE OR SHE SHALL BE APPOINTED. ANY VACANCY OCCURRING IN THE COMMISSION SHALL BE FILLED IN ACCORDANCE WITH THE LAWS OF THE COMPACTING STATE WHEREIN SUCH VACANCY EXISTS. NOTHING HEREIN SHALL BE CONSTRUED TO AFFECT THE MANNER IN WHICH A COMPACTING STATE DETERMINES THE ELECTION OR APPOINTMENT AND QUALIFICATION OF ITS OWN SUPERINTENDENT.

(B) EACH MEMBER SHALL BE ENTITLED TO ONE VOTE AND SHALL HAVE AN OPPORTUNITY TO PARTICIPATE IN THE GOVERNANCE OF THE COMMISSION IN ACCORDANCE WITH THE BY-LAWS. NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE TO THE CONTRARY, NO ACTION OF THE COMMISSION WITH RESPECT TO THE PROMULGATION OF A UNIFORM STANDARD SHALL BE EFFECTIVE UNLESS TWO-THIRDS OF THE MEMBERS VOTE IN FAVOR THEREOF.

(C) THE COMMISSION SHALL, BY A MAJORITY OF THE MEMBERS, PRESCRIBE BY-LAWS TO GOVERN ITS CONDUCT AS MAY BE NECESSARY OR APPROPRIATE TO CARRY OUT THE PURPOSES, AND EXERCISE THE POWERS, OF THE COMPACT, INCLUDING, BUT NOT LIMITED TO:

(1) ESTABLISHING THE FISCAL YEAR OF THE COMMISSION;

(2) PROVIDING REASONABLE PROCEDURES FOR HOLDING MEETINGS OF THE MANAGEMENT COMMITTEE;

(3) PROVIDING REASONABLE STANDARDS AND PROCEDURES FOR THE ESTABLISHMENT OF OTHER COMMITTEES, AND GOVERNING ANY GENERAL OR SPECIFIC DELEGATION OF ANY AUTHORITY OR FUNCTION OF THE COMMISSION;

(4) PROVIDING REASONABLE PROCEDURES FOR CALLING AND CONDUCTING MEETINGS OF THE COMMISSION THAT CONSIST OF A MAJORITY OF COMMISSION MEMBERS, ENSURING REASONABLE ADVANCE NOTICE OF EACH SUCH MEETING, AND PROVIDING FOR THE RIGHT OF CITIZENS TO ATTEND EACH SUCH MEETING WITH ENUMERATED EXCEPTIONS DESIGNED TO PROTECT THE PUBLIC'S INTEREST, THE PRIVACY OF INDIVIDUALS AND INSURERS' PROPRIETARY INFORMATION, INCLUDING TRADE SECRETS. THE COMMISSION MAY MEET IN CAMERA ONLY AFTER A MAJORITY OF THE ENTIRE MEMBERSHIP VOTES TO CLOSE A MEETING IN TOTO OR IN PART. AS SOON

AS PRACTICABLE, THE COMMISSION MUST MAKE PUBLIC A COPY OF THE VOTE TO CLOSE THE MEETING REVEALING THE VOTE OF EACH MEMBER WITH NO PROXY VOTES ALLOWED, AND VOTES TAKEN DURING SUCH MEETING;

(5) ESTABLISHING THE TITLES, DUTIES AND AUTHORITY AND REASONABLE PROCEDURES FOR THE ELECTION OF THE OFFICERS OF THE COMMISSION;

(6) PROVIDING REASONABLE STANDARDS AND PROCEDURES FOR THE ESTABLISHMENT OF THE PERSONNEL POLICIES AND PROGRAMS OF THE COMMISSION. NOTWITHSTANDING ANY CIVIL SERVICE OR OTHER SIMILAR LAWS OF ANY COMPACTING STATE, THE BY-LAWS SHALL EXCLUSIVELY GOVERN THE PERSONNEL POLICIES AND PROGRAMS OF THE COMMISSION;

(7) PROMULGATING A CODE OF ETHICS TO ADDRESS PERMISSIBLE AND PROHIBITED ACTIVITIES OF COMMISSION MEMBERS AND EMPLOYEES; AND

(8) PROVIDING A MECHANISM FOR WINDING UP THE OPERATIONS OF THE COMMISSION AND THE EQUITABLE DISPOSITION OF ANY SURPLUS FUNDS THAT MAY EXIST AFTER THE TERMINATION OF THE COMPACT AFTER THE PAYMENT AND/OR RESERVING OF ALL OF ITS DEBTS AND OBLIGATIONS.

(D) THE COMMISSION SHALL PUBLISH ITS BY-LAWS IN A CONVENIENT FORM AND FILE A COPY THEREOF AND A COPY OF ANY AMENDMENT THERETO, WITH THE APPROPRIATE AGENCY OR OFFICER IN EACH OF THE COMPACTING STATES.

(E) A MANAGEMENT COMMITTEE COMPRISING NO MORE THAN FOURTEEN MEMBERS SHALL BE ESTABLISHED AS FOLLOWS:

(1) ONE MEMBER FROM EACH OF THE SIX COMPACTING STATES WITH THE LARGEST PREMIUM VOLUME FOR INDIVIDUAL AND GROUP ANNUITIES, LIFE, DISABILITY INCOME AND LONG-TERM CARE INSURANCE PRODUCTS, DETERMINED FROM THE RECORDS OF THE NAIC AS OF DECEMBER THIRTY-FIRST OF THE PRIOR YEAR;

(2) FOUR MEMBERS FROM THOSE COMPACTING STATES WITH AT LEAST TWO PERCENT OF THE MARKET BASED ON THE PREMIUM VOLUME DESCRIBED IN PARAGRAPH ONE OF THIS SUBSECTION, OTHER THAN SIX COMPACTING STATES WITH THE LARGEST PREMIUM VOLUME, SELECTED ON A ROTATING BASIS AS PROVIDED IN THE BY-LAWS; AND

(3) FOUR MEMBERS FROM THOSE COMPACTING STATES WITH LESS THAN TWO PERCENT OF THE MARKET, BASED ON THE PREMIUM VOLUME DESCRIBED IN PARAGRAPH ONE OF THIS SUBSECTION, WITH ONE SELECTED FROM EACH OF THE FOUR ZONE REGIONS OF THE NAIC AS PROVIDED IN THE BY-LAWS.

(F) THE MANAGEMENT COMMITTEE SHALL HAVE SUCH AUTHORITY AND DUTIES AS MAY BE SET FORTH IN THE BY-LAWS, INCLUDING BUT NOT LIMITED TO:

(1) MANAGING THE AFFAIRS OF THE COMMISSION IN A MANNER CONSISTENT WITH THE BY-LAWS AND PURPOSES OF THE COMMISSION;

(2) ESTABLISHING AND OVERSEEING AN ORGANIZATIONAL STRUCTURE WITHIN, AND APPROPRIATE PROCEDURES FOR, THE COMMISSION TO PROVIDE FOR THE CREATION OF UNIFORM STANDARDS AND OTHER RULES, RECEIPT AND REVIEW OF PRODUCT FILINGS, ADMINISTRATIVE AND TECHNICAL SUPPORT FUNCTIONS, REVIEW OF DECISIONS REGARDING THE DISAPPROVAL OF A PRODUCT FILING, AND THE REVIEW OF ELECTIONS MADE BY A COMPACTING STATE TO OPT OUT OF A UNIFORM STANDARD; PROVIDED THAT A UNIFORM STANDARD SHALL NOT BE SUBMITTED TO THE COMPACTING STATES FOR ADOPTION UNLESS APPROVED BY TWO-THIRDS OF THE MEMBERS OF THE MANAGEMENT COMMITTEE;

(3) OVERSEEING THE OFFICES OF THE COMMISSION; AND

(4) PLANNING, IMPLEMENTING, AND COORDINATING COMMUNICATIONS AND ACTIVITIES WITH OTHER STATE, FEDERAL AND LOCAL GOVERNMENT ORGANIZATIONS IN ORDER TO ADVANCE THE GOALS OF THE COMMISSION.

(G) THE COMMISSION SHALL ELECT ANNUALLY OFFICERS FROM THE MANAGEMENT COMMITTEE, WITH EACH HAVING SUCH AUTHORITY AND DUTIES, AS MAY BE SPECIFIED IN THE BY-LAWS.

(H) THE MANAGEMENT COMMITTEE MAY, SUBJECT TO THE APPROVAL OF THE COMMISSION, APPOINT OR RETAIN AN EXECUTIVE DIRECTOR FOR SUCH PERIOD,

UPON SUCH TERMS AND CONDITIONS AND FOR SUCH COMPENSATION AS THE COMMISSION MAY DEEM APPROPRIATE. THE EXECUTIVE DIRECTOR SHALL SERVE AS SECRETARY TO THE COMMISSION, BUT SHALL NOT BE A MEMBER OF THE COMMISSION. THE EXECUTIVE DIRECTOR SHALL HIRE AND SUPERVISE SUCH OTHER STAFF AS MAY BE AUTHORIZED BY THE COMMISSION.

(I) A LEGISLATIVE COMMITTEE COMPRISING STATE LEGISLATORS OR THEIR DESIGNEES SHALL BE ESTABLISHED TO MONITOR THE OPERATIONS OF, AND MAKE RECOMMENDATIONS TO, THE COMMISSION; PROVIDED THAT THE MANNER OF SELECTION AND TERM OF ANY LEGISLATIVE COMMITTEE MEMBER SHALL BE AS SET FORTH IN THE BY-LAWS. PRIOR TO THE ADOPTION BY THE COMMISSION OF ANY UNIFORM STANDARD, REVISION TO THE BY-LAWS, ANNUAL BUDGET OR OTHER SIGNIFICANT MATTER AS MAY BE PROVIDED IN THE BY-LAWS, THE MANAGEMENT COMMITTEE SHALL CONSULT WITH AND REPORT TO THE LEGISLATIVE COMMITTEE.

(J) THE COMMISSION SHALL ESTABLISH TWO ADVISORY COMMITTEES, ONE OF WHICH SHALL COMPRISE CONSUMER REPRESENTATIVES INDEPENDENT OF THE INSURANCE INDUSTRY AND THE OTHER COMPRISING INSURANCE INDUSTRY REPRESENTATIVES.

(K) THE COMMISSION MAY ESTABLISH ADDITIONAL ADVISORY COMMITTEES AS ITS BY-LAWS MAY PROVIDE FOR THE CARRYING OUT OF ITS FUNCTIONS.

(L) THE COMMISSION SHALL MAINTAIN ITS CORPORATE BOOKS AND RECORDS IN ACCORDANCE WITH THE BY-LAWS.

(M) THE MEMBERS, OFFICERS, EXECUTIVE DIRECTOR, EMPLOYEES AND REPRESENTATIVES OF THE COMMISSION SHALL BE IMMUNE FROM SUIT AND LIABILITY, EITHER PERSONALLY OR IN THEIR OFFICIAL CAPACITY, FOR ANY ACTION TAKEN REASONABLY AND IN GOOD FAITH WHICH RESULTS IN A CLAIM FOR DAMAGE TO OR LOSS OF PROPERTY OR PERSONAL INJURY OR OTHER CIVIL LIABILITY CAUSED BY OR ARISING OUT OF ANY ACTUAL OR ALLEGED ACT, ERROR OR OMISSION THAT OCCURRED, OR THAT SUCH PERSON HAD A REASONABLE BASIS FOR BELIEVING OCCURRED WITHIN THE SCOPE OF COMMISSION EMPLOYMENT, DUTIES OR RESPONSIBILITIES; PROVIDED, THAT NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROTECT ANY SUCH PERSON FROM SUIT AND/OR LIABILITY FOR ANY DAMAGE, LOSS, INJURY OR LIABILITY CAUSED BY THE INTENTIONAL OR WILLFUL AND WANTON MISCONDUCT OF THAT PERSON.

(N) THE COMMISSION SHALL DEFEND ANY MEMBER, OFFICER, EXECUTIVE DIRECTOR, EMPLOYEE OR REPRESENTATIVE OF THE COMMISSION IN ANY CIVIL ACTION SEEKING TO IMPOSE LIABILITY ARISING OUT OF ANY ACTUAL OR ALLEGED ACT, ERROR OR OMISSION THAT OCCURRED WITHIN THE SCOPE OF COMMISSION EMPLOYMENT, DUTIES OR RESPONSIBILITIES, OR THAT THE DEFENDANT HAD A REASONABLE BASIS FOR BELIEVING OCCURRED WITHIN THE SCOPE OF COMMISSION EMPLOYMENT, DUTIES OR RESPONSIBILITIES; PROVIDED, THAT NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT THAT PERSON FROM RETAINING HIS OR HER OWN COUNSEL; AND PROVIDED FURTHER, THAT THE ACTUAL OR ALLEGED ACT, ERROR OR OMISSION DID NOT RESULT FROM THAT PERSON'S INTENTIONAL OR WILLFUL AND WANTON MISCONDUCT.

(O) THE COMMISSION SHALL INDEMNIFY AND HOLD HARMLESS ANY MEMBER, OFFICER, EXECUTIVE DIRECTOR, EMPLOYEE OR REPRESENTATIVE OF THE COMMISSION FOR THE AMOUNT OF ANY SETTLEMENT OR JUDGMENT OBTAINED AGAINST SUCH PERSONS ARISING OUT OF ANY ACTUAL OR ALLEGED ACT, ERROR OR OMISSION THAT OCCURRED WITHIN THE SCOPE OF COMMISSION EMPLOYMENT, DUTIES OR RESPONSIBILITIES, OR THAT SUCH PERSON HAD A REASONABLE BASIS FOR BELIEVING OCCURRED WITHIN THE SCOPE OF COMMISSION EMPLOYMENT, DUTIES OR RESPONSIBILITIES, PROVIDED, THAT THE ACTUAL OR ALLEGED ACT, ERROR OR OMISSION DID NOT RESULT FROM THE INTENTIONAL OR WILLFUL AND WANTON MISCONDUCT OF ANY SUCH PERSON.

S 8207. MEETINGS AND ACTS OF THE COMMISSION. (A) THE COMMISSION SHALL MEET AND TAKE SUCH ACTIONS AS ARE CONSISTENT WITH THE PROVISIONS OF THIS COMPACT AND THE BY-LAWS.

(B) EACH MEMBER OF THE COMMISSION SHALL HAVE THE RIGHT AND POWER TO CAST A VOTE TO WHICH THAT COMPACTING STATE IS ENTITLED AND TO PARTICIPATE IN THE BUSINESS AND AFFAIRS OF THE COMMISSION. A MEMBER SHALL VOTE IN PERSON OR BY SUCH OTHER MEANS AS PROVIDED IN THE BY-LAWS. THE BY-LAWS MAY PROVIDE FOR MEMBERS' PARTICIPATION IN MEETINGS BY TELEPHONE OR OTHER MEANS OF COMMUNICATION.

(C) THE COMMISSION SHALL MEET AT LEAST ONCE DURING EACH CALENDAR YEAR. ADDITIONAL MEETINGS SHALL BE HELD AS SET FORTH IN THE BY-LAWS.

S 8208. RULES AND OPERATING PROCEDURES; RULE MAKING FUNCTIONS OF THE COMMISSION AND OPTING OUT OF UNIFORM STANDARDS. (A) THE COMMISSION SHALL PROMULGATE REASONABLE RULES, INCLUDING UNIFORM STANDARDS AND OPERATING PROCEDURES, IN ORDER TO EFFECTIVELY AND EFFICIENTLY ACHIEVE THE PURPOSES OF THE COMPACT. NOTWITHSTANDING THE FOREGOING, IN THE EVENT THE COMMISSION EXERCISES ITS RULE MAKING AUTHORITY IN A MANNER THAT IS BEYOND THE SCOPE OF THE PURPOSES OF THIS ARTICLE, OR THE POWERS GRANTED IN THIS SECTION, THEN SUCH ACTION BY THE COMMISSION SHALL BE INVALID AND HAVE NO FORCE AND EFFECT.

(B) RULES AND OPERATING PROCEDURES SHALL BE MADE PURSUANT TO A RULE MAKING PROCESS THAT CONFORMS TO THE STATE ADMINISTRATIVE PROCEDURE ACT OF 1981 AS AMENDED, AS MAY BE APPROPRIATE TO THE OPERATIONS OF THE COMMISSION. BEFORE THE COMMISSION ADOPTS A UNIFORM STANDARD, THE COMMISSION SHALL GIVE WRITTEN NOTICE TO THE RELEVANT STATE LEGISLATIVE COMMITTEE IN EACH COMPACTING STATE RESPONSIBLE FOR INSURANCE ISSUES OF ITS INTENTION TO ADOPT SUCH UNIFORM STANDARD. THE COMMISSION IN ADOPTING A UNIFORM STANDARD SHALL CONSIDER FULLY ALL SUBMITTED MATERIALS AND ISSUE A CONCISE EXPLANATION OF ITS DECISION.

(C) A UNIFORM STANDARD SHALL BECOME EFFECTIVE NINETY DAYS AFTER ITS PROMULGATION BY THE COMMISSION OR SUCH LATER DATE AS THE COMMISSION MAY DETERMINE; PROVIDED, HOWEVER, THAT A COMPACTING STATE MAY OPT OUT OF A UNIFORM STANDARD AS PROVIDED IN THIS ARTICLE. "OPT OUT" SHALL BE DEFINED AS ANY ACTION BY A COMPACTING STATE TO DECLINE TO ADOPT OR PARTICIPATE IN A PROMULGATED UNIFORM STANDARD. ALL OTHER RULES AND OPERATING PROCEDURES, AND AMENDMENTS THERETO, SHALL BECOME EFFECTIVE AS OF THE DATE SPECIFIED IN EACH RULE, OPERATING PROCEDURE OR AMENDMENT.

(D) A COMPACTING STATE MAY OPT OUT OF A UNIFORM STANDARD, EITHER BY LEGISLATION OR REGULATION DULY PROMULGATED BY THE SUPERINTENDENT UNDER THE STATE ADMINISTRATIVE PROCEDURE ACT. IF A COMPACTING STATE ELECTS TO OPT OUT OF A UNIFORM STANDARD BY REGULATION, IT MUST GIVE WRITTEN NOTICE TO THE COMMISSION NO LATER THAN TEN BUSINESS DAYS AFTER THE UNIFORM STANDARD IS PROMULGATED OR AT THE TIME THE STATE BECOMES A COMPACTING STATE, AND FIND THAT THE UNIFORM STANDARD DOES NOT PROVIDE REASONABLE PROTECTIONS TO THE CITIZENS OF THE STATE GIVEN THE CONDITIONS IN THE STATE. THE SUPERINTENDENT SHALL MAKE SPECIFIC FINDINGS OF FACT AND CONCLUSIONS OF LAW, BASED ON A PREPONDERANCE OF THE EVIDENCE, DETAILING THE CONDITIONS IN THE STATE WHICH WARRANT A DEPARTURE FROM THE UNIFORM STANDARD AND DETERMINING THAT THE UNIFORM STANDARD WOULD NOT REASONABLY PROTECT THE CITIZENS OF THE STATE. THE SUPERINTENDENT MUST CONSIDER AND BALANCE THE FOLLOWING FACTORS AND FIND THAT THE CONDITIONS IN THE STATE AND NEEDS OF THE CITIZENS OF THE STATE OUTWEIGH:

(1) THE INTENT OF THE LEGISLATURE TO PARTICIPATE IN, AND THE BENEFITS OF, AN INTERSTATE AGREEMENT TO ESTABLISH NATIONAL UNIFORM CONSUMER PROTECTIONS FOR THE PRODUCTS SUBJECT TO THIS ARTICLE; AND

(2) THE PRESUMPTION THAT A UNIFORM STANDARD ADOPTED BY THE COMMISSION PROVIDES REASONABLE PROTECTIONS TO CONSUMERS OF THE RELEVANT PRODUCT.

NOTWITHSTANDING THE FOREGOING, A COMPACTING STATE MAY, AT THE TIME OF ITS ENACTMENT OF THE COMPACT, PROSPECTIVELY OPT OUT OF ALL UNIFORM STANDARDS INVOLVING THE LONG-TERM CARE INSURANCE PRODUCTS BY EXPRESSLY PROVIDING FOR SUCH OPT OUT IN THE ENACTED COMPACT, AND SUCH OPT OUT SHALL NOT BE TREATED AS A MATERIAL VARIANCE IN THE OFFER OR ACCEPTANCE OF ANY STATE TO PARTICIPATE IN THE COMPACT. SUCH AN OPT OUT SHALL BE EFFECTIVE AT THE TIME OF ENACTMENT OF THE COMPACT BY THE COMPACTING STATE AND SHALL APPLY TO ALL EXISTING UNIFORM STANDARDS INVOLVING LONG-TERM CARE INSURANCE PRODUCTS AND THOSE SUBSEQUENTLY PROMULGATED.

(E) IF A COMPACTING STATE ELECTS TO OPT OUT OF A UNIFORM STANDARD, THE UNIFORM STANDARD SHALL REMAIN APPLICABLE IN THE COMPACTING STATE ELECTING TO OPT OUT UNTIL SUCH TIME THE OPT OUT LEGISLATION IS ENACTED INTO LAW OR THE REGULATION IS PROMULGATED.

(F) ONCE THE OPT OUT OF A UNIFORM STANDARD BY A COMPACTING STATE BECOMES EFFECTIVE AS PROVIDED UNDER THE LAWS OF THAT STATE, THE UNIFORM STANDARD SHALL HAVE NO FURTHER FORCE AND EFFECT IN THAT STATE UNLESS AND UNTIL THE LEGISLATION OR REGULATION IMPLEMENTING THE OPT OUT IS REPEALED OR OTHERWISE BECOMES INEFFECTIVE UNDER THE LAWS OF THE STATE. IF A COMPACTING STATE OPTS OUT OF A UNIFORM STANDARD AFTER THE UNIFORM STANDARD HAS BEEN MADE EFFECTIVE IN THAT STATE, THE OPT OUT SHALL HAVE THE SAME PROSPECTIVE EFFECT AS PROVIDED UNDER SECTION EIGHT THOUSAND TWO HUNDRED FIFTEEN OF THIS ARTICLE FOR WITHDRAWALS.

(G) IF A COMPACTING STATE HAS FORMALLY INITIATED THE PROCESS OF OPTING OUT OF A UNIFORM STANDARD BY REGULATION, AND WHILE THE REGULATORY OPT OUT IS PENDING, THE COMPACTING STATE MAY PETITION THE COMMISSION, AT LEAST FIFTEEN DAYS BEFORE THE EFFECTIVE DATE OF THE UNIFORM STANDARD, TO STAY THE EFFECTIVENESS OF THE UNIFORM STANDARD IN THAT STATE. THE COMMISSION MAY GRANT A STAY IF IT DETERMINES THE REGULATORY OPT OUT IS BEING PURSUED IN A REASONABLE MANNER AND THERE IS A LIKELIHOOD OF SUCCESS. IF A STAY IS GRANTED OR EXTENDED BY THE COMMISSION, THE STAY OR EXTENSION THEREOF MAY POSTPONE THE EFFECTIVE DATE BY UP TO NINETY DAYS, UNLESS AFFIRMATIVELY EXTENDED BY THE COMMISSION; PROVIDED HOWEVER, A STAY MAY NOT BE PERMITTED TO REMAIN IN EFFECT FOR MORE THAN ONE YEAR UNLESS THE COMPACTING STATE CAN SHOW EXTRAORDINARY CIRCUMSTANCES WHICH WARRANT A CONTINUANCE OF THE STAY INCLUDING, BUT NOT LIMITED TO, THE EXISTENCE OF A LEGAL CHALLENGE WHICH PREVENTS THE COMPACTING STATE FROM OPTING OUT. A STAY MAY BE TERMINATED BY THE COMMISSION UPON NOTICE THAT THE RULE MAKING PROCESS HAS BEEN TERMINATED.

(H) NOT LATER THAN THIRTY DAYS AFTER A RULE OR OPERATING PROCEDURE IS PROMULGATED, ANY PERSON MAY FILE A PETITION FOR JUDICIAL REVIEW OF THE RULE OR OPERATING PROCEDURE; PROVIDED, HOWEVER, THAT THE FILING OF SUCH A PETITION SHALL NOT STAY OR OTHERWISE PREVENT THE RULE OR OPERATING PROCEDURE FROM BECOMING EFFECTIVE UNLESS THE COURT FINDS THAT THE PETITIONER HAS A SUBSTANTIAL LIKELIHOOD OF SUCCESS. THE COURT SHALL GIVE DEFERENCE TO THE ACTIONS OF THE COMMISSION CONSISTENT WITH APPLICABLE LAW AND SHALL NOT FIND THE RULE OR OPERATING PROCEDURE TO BE UNLAWFUL IF THE RULE OR OPERATING PROCEDURE REPRESENTS A REASONABLE EXERCISE OF THE COMMISSION'S AUTHORITY.

S 8209. COMMISSION RECORDS AND ENFORCEMENT. (A) THE COMMISSION SHALL PROMULGATE RULES ESTABLISHING CONDITIONS AND PROCEDURES FOR PUBLIC INSPECTION AND COPYING OF ITS INFORMATION AND OFFICIAL RECORDS, EXCEPT SUCH INFORMATION AND RECORDS INVOLVING THE PRIVACY OF INDIVIDUALS AND INSURERS' TRADE SECRETS. THE COMMISSION MAY PROMULGATE ADDITIONAL RULES UNDER WHICH IT MAY MAKE AVAILABLE TO FEDERAL AND STATE AGENCIES, INCLUD-

ING LAW ENFORCEMENT AGENCIES, RECORDS AND INFORMATION OTHERWISE EXEMPT FROM DISCLOSURE, AND MAY ENTER INTO AGREEMENTS WITH SUCH AGENCIES TO RECEIVE OR EXCHANGE INFORMATION OR RECORDS SUBJECT TO NONDISCLOSURE AND CONFIDENTIALITY PROVISIONS.

(B) EXCEPT AS TO PRIVILEGED RECORDS, DATA AND INFORMATION, THE LAWS OF ANY COMPACTING STATE PERTAINING TO CONFIDENTIALITY OR NONDISCLOSURE SHALL NOT RELIEVE ANY COMPACTING STATE COMMISSIONER OF THE DUTY TO DISCLOSE ANY RELEVANT RECORDS, DATA OR INFORMATION TO THE COMMISSION; PROVIDED HOWEVER, THAT DISCLOSURE TO THE COMMISSION SHALL NOT BE DEEMED TO WAIVE OR OTHERWISE AFFECT ANY CONFIDENTIALITY REQUIREMENT; AND PROVIDED FURTHER THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS ARTICLE, THE COMMISSION SHALL NOT BE SUBJECT TO THE LAWS OF ANY COMPACTING STATE PERTAINING TO CONFIDENTIALITY AND NONDISCLOSURE WITH RESPECT TO RECORDS, DATA AND INFORMATION IN ITS POSSESSION. CONFIDENTIAL INFORMATION OF THE COMMISSION SHALL REMAIN CONFIDENTIAL AFTER SUCH INFORMATION IS PROVIDED TO ANY COMMISSIONER.

(C) THE COMMISSION SHALL MONITOR COMPACTING STATES FOR COMPLIANCE WITH DULY ADOPTED BY-LAWS, RULES, INCLUDING UNIFORM STANDARDS, AND OPERATING PROCEDURES. THE COMMISSION SHALL NOTIFY SUCH NONCOMPLYING COMPACTING STATE IN WRITING OF ITS NONCOMPLIANCE WITH COMMISSION BY-LAWS, RULES OR OPERATING PROCEDURES. IF THE NONCOMPLYING COMPACTING STATE FAILS TO REMEDY SUCH NONCOMPLIANCE WITHIN THE TIME SPECIFIED IN THE NOTICE OF NONCOMPLIANCE, THE COMPACTING STATE SHALL BE DEEMED TO BE IN DEFAULT AS SET FORTH IN SECTION EIGHT THOUSAND TWO HUNDRED FIFTEEN OF THIS ARTICLE.

(D) THE COMMISSIONER OF ANY STATE IN WHICH AN INSURER IS AUTHORIZED TO DO BUSINESS, OR IS CONDUCTING THE BUSINESS OF INSURANCE, SHALL CONTINUE TO EXERCISE HIS OR HER AUTHORITY TO OVERSEE THE MARKET REGULATION OF THE ACTIVITIES OF THE INSURER IN ACCORDANCE WITH THE PROVISIONS OF THE STATE'S LAW. THE COMMISSIONER'S ENFORCEMENT OF COMPLIANCE WITH THE COMPACT IS GOVERNED BY THE FOLLOWING PROVISIONS:

(1) WITH RESPECT TO THE COMMISSIONER'S MARKET REGULATION OF A PRODUCT OR ADVERTISEMENT THAT IS APPROVED OR CERTIFIED BY THE COMMISSION, THE CONTENT OF THE PRODUCT OR ADVERTISEMENT SHALL NOT CONSTITUTE A VIOLATION OF THE PROVISIONS, STANDARDS OR REQUIREMENTS OF THE COMPACT EXCEPT UPON A FINAL ORDER OF THE COMMISSION, ISSUED AT THE REQUEST OF A COMMISSIONER AFTER PRIOR NOTICE TO THE INSURER AND AN OPPORTUNITY FOR HEARING BEFORE THE COMMISSION.

(2) BEFORE A COMMISSIONER MAY BRING AN ACTION FOR VIOLATION OF ANY PROVISION, STANDARD OR REQUIREMENT OF THE COMPACT RELATING TO THE CONTENT OF AN ADVERTISEMENT NOT APPROVED OR CERTIFIED BY THE COMMISSION, THE COMMISSION OR AN AUTHORIZED COMMISSION OFFICER OR EMPLOYEE, MUST AUTHORIZE THE ACTION. HOWEVER, AUTHORIZATION PURSUANT TO THIS PARAGRAPH DOES NOT REQUIRE NOTICE TO THE INSURER, OPPORTUNITY FOR HEARING OR DISCLOSURE OF REQUESTS FOR AUTHORIZATION OR RECORDS OF THE COMMISSION'S ACTION ON SUCH REQUESTS.

S 8210. DISPUTE RESOLUTION. THE COMMISSION SHALL ATTEMPT, UPON THE REQUEST OF A MEMBER, TO RESOLVE ANY DISPUTES OR OTHER ISSUES THAT ARE SUBJECT TO THIS COMPACT AND WHICH MAY ARISE BETWEEN TWO OR MORE COMPACTING STATES, OR BETWEEN COMPACTING STATES AND NON-COMPACTING STATES, AND THE COMMISSION SHALL PROMULGATE AN OPERATING PROCEDURE PROVIDING FOR RESOLUTION OF SUCH DISPUTES.

S 8211. PRODUCT FILING AND APPROVAL. (A) INSURERS AND THIRD-PARTY FILERS SEEKING TO HAVE A PRODUCT APPROVED BY THE COMMISSION SHALL FILE SUCH PRODUCT WITH, AND PAY APPLICABLE FILING FEES TO, THE COMMISSION. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED TO RESTRICT OR OTHERWISE PREVENT AN INSURER FROM FILING ITS PRODUCT WITH THE INSURANCE DEPARTMENT

IN ANY STATE WHEREIN SUCH INSURER IS LICENSED TO CONDUCT THE BUSINESS OF INSURANCE, AND SUCH FILING SHALL BE SUBJECT TO THE LAWS OF THE STATES WHERE FILED.

(B) THE COMMISSION SHALL ESTABLISH APPROPRIATE FILING AND REVIEW PROCESSES AND PROCEDURES PURSUANT TO COMMISSION RULES AND OPERATING PROCEDURES. NOTWITHSTANDING ANY PROVISION IN THIS SECTION TO THE CONTRARY, THE COMMISSION SHALL PROMULGATE RULES TO ESTABLISH CONDITIONS AND PROCEDURES UNDER WHICH THE COMMISSION WILL PROVIDE PUBLIC ACCESS TO PRODUCT FILING INFORMATION. IN ESTABLISHING SUCH RULES, THE COMMISSION SHALL CONSIDER THE INTERESTS OF THE PUBLIC IN HAVING ACCESS TO SUCH INFORMATION, AS WELL AS PROTECTION OF PERSONAL MEDICAL AND FINANCIAL INFORMATION AND TRADE SECRETS, THAT MAY BE CONTAINED IN A PRODUCT FILING OR SUPPORTING INFORMATION.

(C) ANY PRODUCT APPROVED BY THE COMMISSION MAY BE SOLD OR OTHERWISE ISSUED IN THOSE COMPACTING STATES IN WHICH THE INSURER IS LEGALLY AUTHORIZED TO DO BUSINESS.

S 8212. REVIEW OF COMMISSION DECISIONS REGARDING FILINGS. (A) NOT LATER THAN THIRTY 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 PANEL 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 LAW, IS SUBJECT TO JUDICIAL REVIEW IN ACCORDANCE WITH SUBSECTION (E) OF SECTION EIGHT THOUSAND TWO HUNDRED FOUR OF THIS ARTICLE.

(B) 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 APPEAL PROCESS SET FORTH IN SUBSECTION (A) OF THIS SECTION.

S 8213. FINANCE. (A) THE COMMISSION SHALL PAY OR PROVIDE FOR THE PAYMENT OF THE REASONABLE EXPENSES OF ITS ESTABLISHMENT AND ORGANIZATION. TO FUND THE COST OF ITS INITIAL OPERATIONS, THE COMMISSION MAY ACCEPT CONTRIBUTIONS AND OTHER FORMS OF FUNDING FROM THE NAIC, COMPACTING STATES AND OTHER SOURCES. CONTRIBUTIONS AND OTHER FORMS OF FUNDING FROM OTHER SOURCES SHALL BE OF SUCH A NATURE THAT THE INDEPENDENCE OF THE COMMISSION CONCERNING THE PERFORMANCE OF ITS DUTIES SHALL NOT BE COMPROMISED.

(B) THE COMMISSION SHALL COLLECT A FILING FEE FROM EACH INSURER AND THIRD PARTY FILER FILING A PRODUCT WITH THE COMMISSION TO COVER THE COST OF THE OPERATIONS AND ACTIVITIES OF THE COMMISSION AND ITS STAFF IN A TOTAL AMOUNT SUFFICIENT TO COVER THE COMMISSION'S ANNUAL BUDGET.

(C) THE COMMISSION'S BUDGET FOR A FISCAL YEAR SHALL NOT BE APPROVED UNTIL IT HAS BEEN SUBJECT TO NOTICE AND COMMENT AS SET FORTH IN SECTION EIGHT THOUSAND TWO HUNDRED EIGHT OF THIS ARTICLE.

(D) THE COMMISSION SHALL BE EXEMPT FROM ALL TAXATION IN AND BY THE COMPACTING STATES.

(E) THE COMMISSION SHALL NOT PLEDGE THE CREDIT OF ANY COMPACTING STATE, EXCEPT BY AND WITH THE APPROPRIATE LEGAL AUTHORITY OF THAT COMPACTING STATE.

(F) THE COMMISSION SHALL KEEP COMPLETE AND ACCURATE ACCOUNTS OF ALL ITS INTERNAL RECEIPTS, INCLUDING GRANTS AND DONATIONS AND DISBURSEMENTS

OF ALL FUNDS UNDER ITS CONTROL. THE INTERNAL FINANCIAL ACCOUNTS OF THE COMMISSION SHALL BE SUBJECT TO THE ACCOUNTING PROCEDURES ESTABLISHED UNDER ITS BY-LAWS. THE FINANCIAL ACCOUNTS AND REPORTS INCLUDING THE SYSTEM OF INTERNAL CONTROLS AND PROCEDURES OF THE COMMISSION SHALL BE AUDITED ANNUALLY BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT. UPON THE DETERMINATION OF THE COMMISSION, BUT NO LESS FREQUENTLY THAN EVERY THREE YEARS, THE REVIEW OF SUCH INDEPENDENT AUDITOR SHALL INCLUDE A MANAGEMENT AND PERFORMANCE AUDIT OF THE COMMISSION. THE COMMISSION SHALL MAKE AN ANNUAL REPORT TO THE GOVERNOR AND LEGISLATURE OF THE COMPACTING STATES, WHICH SHALL INCLUDE A REPORT OF SUCH INDEPENDENT AUDIT. THE COMMISSION'S INTERNAL ACCOUNTS SHALL NOT BE CONFIDENTIAL AND SUCH MATERIALS MAY BE SHARED WITH THE COMMISSIONER OF ANY COMPACTING STATE UPON REQUEST, PROVIDED, HOWEVER, THAT ANY WORK PAPERS RELATED TO ANY INTERNAL OR INDEPENDENT AUDIT AND ANY INFORMATION REGARDING THE PRIVACY OF INDIVIDUALS AND INSURERS' PROPRIETARY INFORMATION, INCLUDING TRADE SECRETS, SHALL REMAIN CONFIDENTIAL.

(G) NO COMPACTING STATE SHALL HAVE ANY CLAIM TO OR OWNERSHIP OF ANY PROPERTY HELD BY OR VESTED IN THE COMMISSION OR TO ANY COMMISSION FUNDS HELD PURSUANT TO THE PROVISIONS OF THIS COMPACT.

S 8214. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT. (A) ANY STATE IS ELIGIBLE TO BECOME A COMPACTING STATE.

(B) THE COMPACT SHALL BECOME EFFECTIVE AND BINDING UPON LEGISLATIVE ENACTMENT OF THE COMPACT INTO LAW BY TWO COMPACTING STATES; PROVIDED HOWEVER, THAT THE COMMISSION SHALL BECOME EFFECTIVE FOR PURPOSES OF ADOPTING UNIFORM STANDARDS FOR REVIEWING, AND GIVING APPROVAL OR DISAPPROVAL OF, PRODUCTS FILED WITH THE COMMISSION THAT SATISFY APPLICABLE UNIFORM STANDARDS ONLY AFTER TWENTY-SIX STATES ARE COMPACTING STATES OR, ALTERNATIVELY, BY STATES REPRESENTING GREATER THAN FORTY PERCENT OF THE PREMIUM VOLUME FOR LIFE INSURANCE, ANNUITY, DISABILITY INCOME AND LONG-TERM CARE INSURANCE PRODUCTS, BASED ON RECORDS OF THE NAIC FOR THE PRIOR YEAR. THEREAFTER, IT SHALL BECOME EFFECTIVE AND BINDING AS TO ANY OTHER COMPACTING STATE UPON ENACTMENT OF THE COMPACT INTO LAW BY THAT STATE.

(C) AMENDMENTS TO THE COMPACT MAY BE PROPOSED BY THE COMMISSION FOR ENACTMENT BY THE COMPACTING STATES. NO AMENDMENT SHALL BECOME EFFECTIVE AND BINDING UPON THE COMMISSION AND THE COMPACTING STATES UNLESS AND UNTIL ALL COMPACTING STATES ENACT THE AMENDMENT INTO LAW.

S 8215. WITHDRAWAL, DEFAULT AND TERMINATION. (A)(1) 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 WHICH ENACTED THE COMPACT INTO LAW.

(2) 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 SUCH 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 FIVE OF THIS SUBSECTION.

(3) 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.

(4) THE COMMISSION SHALL NOTIFY THE OTHER COMPACTING STATES OF THE INTRODUCTION OF SUCH LEGISLATION WITHIN TEN DAYS AFTER ITS RECEIPT OF NOTICE THEREOF.

(5) 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 EFFECTIVE DATE OF WITHDRAWAL SHALL CONTINUE TO BE EFFECTIVE AND BE GIVEN FULL FORCE AND EFFECT IN THE WITHDRAWING STATE, UNLESS FORMALLY RESCINDED BY THE WITHDRAWING STATE IN THE SAME MANNER AS PROVIDED BY THE LAWS OF THE WITHDRAWING STATE FOR THE PROSPECTIVE DISAPPROVAL OF PRODUCTS OR ADVERTISEMENT PREVIOUSLY APPROVED UNDER STATE LAW.

(6) REINSTATEMENT FOLLOWING WITHDRAWAL OF ANY COMPACTING STATE SHALL OCCUR UPON THE EFFECTIVE DATE OF THE WITHDRAWING STATE'S LEGISLATION REENACTING THE COMPACT.

(B) (1) IF THE COMMISSION DETERMINES THAT ANY COMPACTING STATE HAS AT ANY TIME DEFAULTED ("DEFAULTING STATE") IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS OR RESPONSIBILITIES UNDER THIS COMPACT, THE BY-LAWS OR DULY PROMULGATED RULES OR OPERATING PROCEDURES, THEN, AFTER NOTICE AND HEARING AS SET FORTH IN THE BY-LAWS, ALL RIGHTS, PRIVILEGES AND BENEFITS CONFERRED BY THE COMPACT ON THE DEFAULTING STATE SHALL BE SUSPENDED FROM THE EFFECTIVE DATE OF DEFAULT AS FIXED BY THE COMMISSION. THE GROUNDS FOR DEFAULT INCLUDE, BUT ARE NOT LIMITED TO, FAILURE OF A COMPACTING STATE TO PERFORM ITS OBLIGATIONS OR RESPONSIBILITIES, AND ANY OTHER GROUNDS DESIGNATED IN COMMISSION RULES. THE COMMISSION SHALL IMMEDIATELY NOTIFY THE DEFAULTING STATE IN WRITING OF THE DEFAULTING STATE'S SUSPENSION PENDING A CURE OF THE DEFAULT. THE COMMISSION SHALL STIPULATE THE CONDITIONS AND THE TIME PERIOD WITHIN WHICH THE DEFAULTING STATE MUST CURE ITS DEFAULT. IF THE DEFAULTING STATE FAILS TO CURE THE DEFAULT WITHIN THE TIME PERIOD SPECIFIED BY THE COMMISSION, THE DEFAULTING STATE SHALL BE TERMINATED FROM THE COMPACT AND ALL RIGHTS, PRIVILEGES AND BENEFITS CONFERRED BY THE COMPACT SHALL BE TERMINATED FROM THE EFFECTIVE DATE OF TERMINATION.

(2) PRODUCT APPROVALS BY THE COMMISSION OR PRODUCT SELF-CERTIFICATIONS, OR ANY ADVERTISEMENT IN CONNECTION WITH SUCH PRODUCT, THAT ARE IN FORCE ON THE EFFECTIVE DATE OF TERMINATION SHALL REMAIN IN FORCE IN THE DEFAULTING STATE IN THE SAME MANNER AS IF THE DEFAULTING STATE HAD WITHDRAWN VOLUNTARILY UNDER THIS SECTION.

(3) REINSTATEMENT FOLLOWING TERMINATION OF ANY COMPACTING STATE REQUIRES A REENACTMENT OF THE COMPACT BY THAT STATE.

(C)(1) THE COMPACT DISSOLVES EFFECTIVE UPON THE DATE OF THE WITHDRAWAL OR DEFAULT OF THE COMPACTING STATE WHICH REDUCES MEMBERSHIP IN THE COMPACT TO ONE COMPACTING STATE.

(2) UPON THE DISSOLUTION OF THE COMPACT, THE COMPACT BECOMES NULL AND VOID AND SHALL BE OF NO FURTHER FORCE OR EFFECT, AND THE BUSINESS AND AFFAIRS OF THE COMMISSION SHALL BE WOUND UP AND ANY SURPLUS FUNDS SHALL BE DISTRIBUTED IN ACCORDANCE WITH THE BY-LAWS.

S 8216. SEVERABILITY AND CONSTRUCTION. (A) THE PROVISIONS OF THE COMPACT SHALL BE SEVERABLE; AND IF ANY PHRASE, CLAUSE, SENTENCE OR PROVISION IS DEEMED UNENFORCEABLE, THE REMAINING PROVISIONS OF THE COMPACT SHALL BE ENFORCEABLE.

(B) THE PROVISIONS OF THE COMPACT SHALL BE LIBERALLY CONSTRUED TO EFFECTUATE ITS PURPOSES.

S 8217. BINDING EFFECT OF COMPACT AND OTHER LAWS. (A) NOTHING IN THIS SECTION PREVENTS THE ENFORCEMENT OF ANY OTHER LAW OF A COMPACTING STATE, EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION.

(B) FOR ANY PRODUCT APPROVED OR CERTIFIED TO THE COMMISSION, THE RULES, UNIFORM STANDARDS AND ANY OTHER REQUIREMENTS OF THE COMMISSION

SHALL CONSTITUTE THE EXCLUSIVE PROVISIONS APPLICABLE TO THE CONTENT, APPROVAL AND CERTIFICATION OF SUCH PRODUCTS. FOR ADVERTISEMENT THAT IS SUBJECT TO THE COMMISSION'S AUTHORITY, ANY RULE, UNIFORM STANDARD OR OTHER REQUIREMENT OF THE COMMISSION WHICH GOVERNS THE CONTENT OF THE ADVERTISEMENT SHALL CONSTITUTE THE EXCLUSIVE PROVISION THAT A COMMISSIONER MAY APPLY TO THE CONTENT OF THE ADVERTISEMENT. NOTWITHSTANDING THE FOREGOING, NO ACTION TAKEN BY THE COMMISSION SHALL ABROGATE OR RESTRICT:

(1) THE ACCESS OF ANY PERSON TO STATE COURTS;

(2) REMEDIES AVAILABLE UNDER STATE LAW RELATED TO BREACH OF CONTRACT, TORT OR OTHER LAWS NOT SPECIFICALLY DIRECTED TO THE CONTENT OF THE PRODUCT;

(3) STATE LAW RELATING TO THE CONSTRUCTION OF INSURANCE CONTRACTS; OR

(4) THE AUTHORITY OF THE ATTORNEY GENERAL OF THE STATE INCLUDING, BUT NOT LIMITED TO, MAINTAINING ANY ACTIONS OR PROCEEDINGS AS AUTHORIZED BY LAW.

(C) ALL INSURANCE PRODUCTS FILED WITH INDIVIDUAL STATES SHALL BE SUBJECT TO THE LAWS OF THOSE STATES.

(D) ALL LAWFUL ACTIONS OF THE COMMISSION, INCLUDING ALL RULES AND OPERATING PROCEDURES PROMULGATED BY THE COMMISSION, ARE BINDING UPON THE COMPACTING STATES.

(E) ALL AGREEMENTS BETWEEN THE COMMISSION AND THE COMPACTING STATES ARE BINDING IN ACCORDANCE WITH THEIR TERMS.

(F) UPON THE REQUEST OF A PARTY TO A CONFLICT OVER THE MEANING OR INTERPRETATION OF COMMISSION ACTIONS, AND UPON A MAJORITY VOTE OF THE COMPACTING STATES, THE COMMISSION MAY ISSUE ADVISORY OPINIONS REGARDING THE DISPUTED MEANING OR INTERPRETATION.

(G) IN THE EVENT ANY PROVISION OF THIS ARTICLE EXCEEDS THE CONSTITUTIONAL LIMITS IMPOSED ON THE LEGISLATURE OF ANY COMPACTING STATE, THE OBLIGATIONS, DUTIES, POWERS OR JURISDICTION SOUGHT TO BE CONFERRED BY THAT PROVISION UPON THE COMMISSION SHALL BE INEFFECTIVE AS TO SUCH COMPACTING STATE, AND SUCH OBLIGATIONS, DUTIES, POWERS OR JURISDICTION SHALL REMAIN IN THE COMPACTING STATE AND SHALL BE EXERCISED BY THE AGENCY THEREOF TO WHICH SUCH OBLIGATIONS, DUTIES, POWERS OR JURISDICTION ARE DELEGATED BY LAW IN EFFECT AT THE TIME THE COMPACT BECOMES EFFECTIVE.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.

PART B

Section 1. Subsection (a) of section 4217 of the insurance law, paragraphs 1 and 4 as amended by chapter 22 of the laws of 1994, is amended to read as follows:

(a) (1) FOR THE PURPOSES OF THIS SECTION THE FOLLOWING DEFINITIONS SHALL APPLY ON OR AFTER THE OPERATIVE DATE OF THE VALUATION MANUAL:

(A) THE TERM "ACCIDENT AND HEALTH INSURANCE" MEANS CONTRACTS THAT INCORPORATE MORBIDITY RISK AND PROVIDE PROTECTION AGAINST ECONOMIC LOSS RESULTING FROM ACCIDENT, SICKNESS, OR MEDICAL CONDITIONS AND AS MAY BE SPECIFIED IN THE VALUATION MANUAL.

(B) THE TERM "APPOINTED ACTUARY" MEANS A QUALIFIED ACTUARY WHO IS APPOINTED IN ACCORDANCE WITH THE VALUATION MANUAL TO PREPARE THE ACTUARIAL OPINION REQUIRED IN PARAGRAPH TWO OF SUBSECTION (E) OF THIS SECTION.

(C) THE TERM "COMPANY" MEANS AN ENTITY, WHICH (I) HAS WRITTEN, ISSUED, OR REINSURED LIFE INSURANCE CONTRACTS, ACCIDENT AND HEALTH INSURANCE CONTRACTS, OR DEPOSIT-TYPE CONTRACTS IN THIS STATE AND HAS AT LEAST ONE SUCH POLICY IN FORCE OR ON CLAIM OR (II) HAS WRITTEN, ISSUED, OR REIN-

SURED LIFE INSURANCE CONTRACTS, ACCIDENT AND HEALTH INSURANCE CONTRACTS, OR DEPOSIT-TYPE CONTRACTS IN ANY STATE AND IS REQUIRED TO HOLD A CERTIFICATE OF AUTHORITY TO WRITE LIFE INSURANCE, ACCIDENT AND HEALTH INSURANCE, OR DEPOSIT-TYPE CONTRACTS IN THIS STATE.

(D) THE TERM "DEPOSIT-TYPE CONTRACT" MEANS CONTRACTS THAT DO NOT INCORPORATE MORTALITY OR MORBIDITY RISKS AND AS MAY BE SPECIFIED IN THE VALUATION MANUAL.

(E) THE TERM "LIFE INSURANCE" MEANS CONTRACTS THAT INCORPORATE MORTALITY RISK, INCLUDING ANNUITY AND PURE ENDOWMENT CONTRACTS, AND AS MAY BE SPECIFIED IN THE VALUATION MANUAL.

(F) THE TERM "NAIC" MEANS THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.

(G) THE TERM "POLICYHOLDER BEHAVIOR" MEANS ANY ACTION A POLICYHOLDER, CONTRACT HOLDER OR ANY OTHER PERSON WITH THE RIGHT TO ELECT OPTIONS, SUCH AS A CERTIFICATE HOLDER, MAY TAKE UNDER A POLICY OR CONTRACT SUBJECT TO THIS ACT INCLUDING, BUT NOT LIMITED TO, LAPSE, WITHDRAWAL, TRANSFER, DEPOSIT, PREMIUM PAYMENT, LOAN, ANNUITIZATION, OR BENEFIT ELECTIONS PRESCRIBED BY THE POLICY OR CONTRACT BUT EXCLUDING EVENTS OF MORTALITY OR MORBIDITY THAT RESULT IN BENEFITS PRESCRIBED IN THEIR ESSENTIAL ASPECTS BY THE TERMS OF THE POLICY OR CONTRACT.

(H) THE TERM "PRINCIPLE-BASED VALUATION" MEANS A RESERVE VALUATION THAT USES ONE OR MORE METHODS OR ONE OR MORE ASSUMPTIONS DETERMINED BY THE INSURER AND IS REQUIRED TO COMPLY WITH SUBSECTION (H) OF THIS SECTION AS SPECIFIED IN THE VALUATION MANUAL.

(I) THE TERM "QUALIFIED ACTUARY" MEANS AN INDIVIDUAL WHO IS QUALIFIED TO SIGN THE APPLICABLE STATEMENT OF ACTUARIAL OPINION IN ACCORDANCE WITH THE AMERICAN ACADEMY OF ACTUARIES QUALIFICATION STANDARDS FOR ACTUARIES SIGNING SUCH STATEMENTS AND WHO MEETS THE REQUIREMENTS SPECIFIED IN THE VALUATION MANUAL.

(J) THE TERM "TAIL RISK" MEANS A RISK THAT OCCURS EITHER WHERE THE FREQUENCY OF LOW PROBABILITY EVENTS IS HIGHER THAN EXPECTED UNDER A NORMAL PROBABILITY DISTRIBUTION OR WHERE THERE ARE OBSERVED EVENTS OF VERY SIGNIFICANT SIZE OR MAGNITUDE.

(K) THE TERM "VALUATION MANUAL" MEANS THE MANUAL OF VALUATION INSTRUCTIONS ADOPTED BY THE NAIC AS SPECIFIED IN THIS SECTION OR AS SUBSEQUENTLY AMENDED.

(2)(A) FOR POLICIES AND CONTRACTS ISSUED PRIOR TO THE OPERATIVE DATE OF THE VALUATION MANUAL:

(I) The superintendent shall annually value, or cause to be valued, the reserve liabilities (hereinafter called reserves) for all outstanding insurance policies and contracts of every life insurance company doing business in this state ISSUED ON OR AFTER THE EFFECTIVE DATE OF SECTION FOUR THOUSAND TWO HUNDRED TWENTY-ONE OF THIS ARTICLE AND PRIOR TO THE OPERATIVE DATE OF THE VALUATION MANUAL, except that, in the case of an alien company, such valuation shall be limited to its United States business[, and may certify the amount of any such reserves, specifying the mortality table or tables, rate or rates of interest and methods (net level premium method or other) used in the calculation of such reserves]. In calculating such reserves, the superintendent may use group methods and approximate averages for fractions of a year or otherwise.

[(2)] (II) In lieu of the valuation of the reserves herein required of any foreign or alien company, the superintendent may accept any valuation made, or caused to be made, by the insurance supervisory official of any state or other jurisdiction when such valuation complies with the minimum standard [herein] provided [and if the official of such state or

jurisdiction accepts as sufficient and valid for all legal purposes the certificate of valuation of the superintendent when such certificate states the valuation to have been made in a specified manner according to which the aggregate reserves would be at least as large as if they had been computed in the manner prescribed by the law of that state or jurisdiction] IN THIS SECTION.

(III) THE PROVISIONS SET FORTH IN SUBSECTIONS (C), (D) AND (F) OF THIS SECTION AND SECTION FOUR THOUSAND TWO HUNDRED EIGHTEEN OF THIS ARTICLE SHALL APPLY TO ALL POLICIES AND CONTRACTS, AS APPROPRIATE, SUBJECT TO THIS SECTION, ISSUED ON OR AFTER THE EFFECTIVE DATE OF SECTION FOUR THOUSAND TWO HUNDRED TWENTY-ONE OF THIS ARTICLE AND PRIOR TO THE OPERATIVE DATE OF THE VALUATION MANUAL, AND THE PROVISIONS SET FORTH IN SUBSECTIONS (G) AND (H) OF THIS SECTION SHALL NOT APPLY TO ANY SUCH POLICIES AND CONTRACTS.

(IV) THE MINIMUM STANDARD FOR THE VALUATION OF POLICIES AND CONTRACTS ISSUED PRIOR TO THE EFFECTIVE DATE OF SECTION FOUR THOUSAND TWO HUNDRED TWENTY-ONE OF THIS ARTICLE SHALL BE THAT PROVIDED IN SUBSECTION (B) OF THIS SECTION.

(B) FOR POLICIES AND CONTRACTS ISSUED ON OR AFTER THE OPERATIVE DATE OF THE VALUATION MANUAL:

(I) THE SUPERINTENDENT SHALL ANNUALLY VALUE OR CAUSE TO BE VALUED THE RESERVE LIABILITIES (HEREINAFTER CALLED RESERVES) FOR ALL ITS OUTSTANDING LIFE INSURANCE CONTRACTS, ANNUITY AND PURE ENDOWMENT CONTRACTS, ACCIDENT AND HEALTH CONTRACTS, AND DEPOSIT-TYPE CONTRACTS OF EVERY COMPANY ISSUED ON OR AFTER THE OPERATIVE DATE OF THE VALUATION MANUAL. IN LIEU OF THE VALUATION OF THE RESERVES REQUIRED OF A FOREIGN OR ALIEN COMPANY, THE SUPERINTENDENT MAY ACCEPT A VALUATION MADE, OR CAUSED TO BE MADE, BY THE INSURANCE SUPERVISORY OFFICIAL OF ANY STATE OR OTHER JURISDICTION WHEN THE VALUATION COMPLIES WITH THE MINIMUM STANDARD PROVIDED IN THIS SECTION.

(II) THE PROVISIONS SET FORTH IN SUBSECTIONS (G) AND (H) OF THIS SECTION SHALL APPLY TO ALL POLICIES AND CONTRACTS ISSUED ON OR AFTER THE OPERATIVE DATE OF THE VALUATION MANUAL.

(3) (A) The superintendent may, in his discretion, vary the standards of mortality applicable to policies of insurance on substandard lives and other extra-hazardous lives issued by any life insurance company doing business in this state.

(B) He may also, in his discretion, vary the standards of interest and mortality applicable to contracts issued by an alien insurer in countries other than the United States, if such alien insurer maintains the trusteed surplus prescribed by section one thousand three hundred twelve of this chapter.

(4) (A) Any life insurance company doing business in this state which has adopted as a basis for the valuation of its insurance policies and contracts standards producing greater reserves in the aggregate than the minimum standards herein prescribed may continue to use such higher standards as a basis of valuation.

(B) After January first, nineteen hundred forty, any life insurance company doing business in this state may, subject to the provisions of paragraph eight of subsection (c) of this section, adopt as the basis for the valuation of its insurance policies and contracts standards producing greater reserves in the aggregate than the minimum standards herein prescribed; and any such company which shall have at any time adopted such higher standards of valuation may, with the approval of the superintendent, adopt lower standards of valuation, but in no case lower than the minimum standards herein prescribed, provided, however, that,

for the purposes of this paragraph, the holding of additional reserves determined by [a] THE qualified OR APPOINTED actuary to be necessary to render the opinion required by subsection (e) of this section shall not be deemed to be the adoption of a higher standard of valuation.

(C) The superintendent may approve any such change if he finds that the proposed standards are for the best interests of the holders of the policies and contracts and annuitants of such company.

(D) Nothing contained herein shall be deemed to affect the contractual rights or obligations of the holder of any such policy or contract.

S 2. The opening paragraph and subparagraph (A) of paragraph 2 of subsection (c) of section 4217 of the insurance law, the opening paragraph as amended by chapter 365 of the laws of 1986, are amended to read as follows:

Except as [otherwise] provided in paragraphs three, four and ten of this subsection, the minimum standard for the valuation of all such policies and contracts shall be the commissioners reserve valuation method defined in paragraph six of this subsection and in section four thousand two hundred eighteen of this article, three percent interest for all life insurance policies issued prior to January first, nineteen hundred sixty-six and for all individual annuity and pure endowment contracts issued prior to January first, nineteen hundred sixty, or three and one-half percent interest for all life insurance policies issued on or after January first, nineteen hundred sixty-six and prior to June thirteenth, nineteen hundred seventy-four and for all individual annuity and pure endowment contracts issued on or after January first, nineteen hundred sixty, and prior to the operative date of paragraph three of this subsection, or four percent interest for all life insurance policies issued on or after June thirteenth, nineteen hundred seventy-four and prior to January first, nineteen hundred seventy-nine, or four and one-half percent interest for all life insurance policies, issued on or after January first, nineteen hundred seventy-nine, or five percent interest for all annuities purchased or to be purchased under group annuity contracts, and the following tables:

(A) For [all] ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of subsection (h) of section four thousand two hundred twenty-one of this article, the Commissioners 1958 Standard Ordinary Mortality Table for such policies issued on or after such operative date and prior to the operative date of subsection (k) of such section; provided that for any category of such policies issued on female risks all modified net premiums and present values may be calculated according to an age not more than six years younger than the actual age of the insured, and for such policies issued on or after the operative date of such subsection, and, at the option of the company, for such policies not providing for nonforfeiture benefits which are issued on or after nineteen hundred eighty-one and prior to the operative date of such subsection, (i) the Commissioners 1980 Standard Ordinary Mortality Table, or (ii) at the election of the company for any one or more specified plans of life insurance, the Commissioners 1980 Standard Ordinary Mortality Table with Ten-Year Select Mortality Factors, or (iii) any ordinary mortality table, adopted after nineteen hundred eighty by the National Association of Insurance Commissioners, that is approved by the superintendent for use in determining the minimum standard of valuation for such policies, or (iv) any other ordinary mortality table, or any modification of any of the foregoing tables,

approved by the superintendent for any specified class or classes of risks.

S 3. The opening paragraph and subparagraphs (C) and (D) of paragraph 3 of subsection (c) of section 4217 of the insurance law are amended to read as follows:

Except as provided in paragraph four hereof, the minimum standard [for the] OF valuation [of all] FOR individual annuity and pure endowment contracts issued on or after the operative date of this paragraph, as defined herein, and for [all] annuities and pure endowments purchased or to be purchased on or after the operative date under group annuity and pure endowment contracts, shall be the commissioners reserve valuation method defined in paragraph six hereof and the following tables and interest rates:

(C) For [all] annuities and pure endowments purchased or to be purchased prior to January first, nineteen hundred seventy-seven under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts,--the 1971 Group Annuity Mortality Table, or any modification of this table approved by the superintendent, and six percent interest, or such higher rate or rates of interest for any of such annuities and pure endowments as may be approved from time to time by the superintendent.

(D) For [all] annuities and pure endowments purchased or to be purchased on or after January first, nineteen hundred seventy-seven under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts--the 1971 Group Annuity Mortality Table, or any group annuity mortality table, adopted after nineteen hundred eighty by the National Association of Insurance Commissioners, that is approved by the superintendent for use in determining the minimum standard of valuation for such annuities and pure endowments, or any other group annuity mortality table, or any modification of any of the foregoing tables, approved by the superintendent, and seven and one-half percent interest, or such higher rate or rates of interest for any such annuities and pure endowments as may be approved from time to time by the superintendent.

S 4. Subparagraph (A) of paragraph 4 of subsection (c) of section 4217 of the insurance law is amended to read as follows:

(A) The interest rates used in determining the minimum standard for the valuation of:

(i) [all] life insurance policies issued in a particular calendar year, on or after January first, nineteen hundred eighty-two,

(ii) [all] individual annuity and pure endowment contracts issued in a particular calendar year on or after January first, nineteen hundred eighty-two, and, at the option of the company, [all] annuities purchased in a particular calendar year on or after such date under individual deferred annuity contracts issued prior thereto,

(iii) [all] annuities and pure endowments purchased in a particular calendar year on or after January first, nineteen hundred eighty-two under group annuity and pure endowment contracts, and

(iv) the net increase, if any, in a particular calendar year after January first, nineteen hundred eighty-two, in amounts held under guaranteed interest contracts,

shall be the calendar year statutory valuation interest rates as defined in this subsection, or such higher rate or rates of interest for any of such policies, contracts or annuities as may be approved from time to time by the superintendent.

S 5. The opening paragraph of subparagraph (A) of paragraph 6 of subsection (c) of section 4217 of the insurance law is amended to read as follows:

Except as otherwise provided in section four thousand two hundred eighteen of this article, reserves according to the commissioners reserve valuation method for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modified net premiums for any such policy shall be such uniform percentage of the respective contract premiums for [such] THE benefits SUCH that the present value, at the date of issue of the policy, of all [such] modified net premiums shall be equal to the sum of the then present value of [such] THE benefits provided for by the policy and the excess of item (i) over item (ii), as follows:

S 6. Subsections (d) and (e) of section 4217 of the insurance law, as added by chapter 22 of the laws of 1994, are amended to read as follows:

(d) [The] FOR INDIVIDUAL AND GROUP ACCIDENT AND HEALTH INSURANCE POLICIES ISSUED PRIOR TO THE OPERATIVE DATE OF THE VALUATION MANUAL, THE company shall maintain reserves [for all individual and group accident and health insurance policies] which [reserves] shall reflect a sound value placed on its liabilities under such policies and shall be not less than the reserves required by regulations which the superintendent shall promulgate. FOR ACCIDENT AND HEALTH INSURANCE POLICIES ISSUED ON OR AFTER THE OPERATIVE DATE OF THE VALUATION MANUAL, THE STANDARD PRESCRIBED IN THE VALUATION MANUAL IS THE MINIMUM STANDARD OF VALUATION REQUIRED UNDER SUBPARAGRAPH (B) OF PARAGRAPH TWO OF SUBSECTION (A) OF THIS SECTION.

(e) Actuarial opinion of reserves.

(1) ACTUARIAL OPINION PRIOR TO THE OPERATIVE DATE OF THE VALUATION MANUAL.

(A) General. Every life insurance company doing business in this state shall annually submit the opinion of a qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the superintendent by regulation are computed appropriately, are based on assumptions which satisfy contractual provisions, are consistent with prior reported amounts and comply with applicable laws of this state. The superintendent by regulation shall define the specifics of this opinion and add any other items deemed to be necessary to its scope.

[(2) (A)] (B) (I) Actuarial analysis of reserves and assets supporting such reserves. Every life insurance company, except as exempted by or pursuant to regulation, shall also annually include in the opinion required by SUBPARAGRAPH (A) OF paragraph one of this subsection, an opinion of the same qualified actuary as to whether the reserves and related actuarial items held in support of the policies and contracts specified by the superintendent by regulation, when considered in light of the assets held by the company with respect to the reserves and related actuarial items, including but not limited to the investment earnings on the assets and the considerations anticipated to be received and retained under the policies and contracts, make adequate provision for the company's obligations under the policies and contracts, including but not limited to the benefits under and expenses associated with the policies and contracts.

[(B)] (II) The superintendent may provide by regulation for a transition period for establishing any additional reserves which the qualified actuary may deem necessary in order to render the opinion required by this paragraph.

[(3)] (C) Requirement for actuarial memorandum. [(A)] (I) Except as exempted by or pursuant to regulation, a memorandum, in form and substance acceptable to the superintendent as specified by regulation, shall be prepared to support each actuarial opinion submitted pursuant to ITEM (I) OF subparagraph [(A)] (B) of THIS paragraph [two of this subsection]. Each company required to prepare such memorandum shall submit such memorandum to the superintendent as part of its submission of the opinion of the qualified actuary pursuant to such ITEM (I) OF subparagraph [(A)] (B), except as otherwise provided in ITEM (II) OF THIS subparagraph [(B) of this paragraph] and except that if a foreign or alien company has submitted a memorandum in support of an opinion of a qualified actuary for the prior year to the commissioner of a state accredited by the National Association of Insurance Commissioners and if that memorandum was in form and substance acceptable to the commissioner and was in support of an opinion of a qualified actuary that was required by laws or regulations of that state to meet standards adopted from time to time by the Actuarial Standards Board and such additional standards as the superintendent has prescribed, the foreign or alien company need submit the memorandum required by this subparagraph only at the request of the superintendent or as the superintendent may by regulation require.

[(B)] (II) In lieu of preparing a memorandum as required by ITEM (I) OF THIS subparagraph [(A) of this paragraph], a company may increase its reserves in the manner provided by the superintendent by regulation. If a company that has not so increased its reserves fails to file a supporting memorandum as required by ITEM (I) OF THIS subparagraph [(A) of this paragraph] or fails to provide a supporting memorandum at the request of the superintendent within a period specified by regulation or the superintendent determines that the supporting memorandum provided by the company fails to meet the standards prescribed by the regulations [or is otherwise unacceptable to the superintendent], the superintendent may engage a qualified actuary at the expense of the company to review the opinion and the basis for the opinion and prepare such supporting memorandum as is required by the superintendent.

[(4)] (D) Requirement for all opinions. Every opinion shall be governed by the following provisions:

[(A)] (I) The opinion shall be submitted with the annual statement reflecting the valuation of such reserve liabilities for each year ending on or after December thirty-first, nineteen hundred ninety-four.

[(B)] (II) The opinion shall apply to all business in force including individual and group health insurance plans, in form and substance acceptable to the superintendent as specified by regulation.

[(C)] (III) The opinion shall be based on standards adopted from time to time by the Actuarial Standards Board and on such additional standards as the superintendent may by regulation prescribe.

[(D)] (IV) In the case of an opinion required to be submitted by a foreign or alien company, the superintendent may accept the opinion submitted by that company to the commissioner of a state accredited by the National Association of Insurance Commissioners if the superintendent determines that the opinion reasonably meets the requirements applicable to a company domiciled in this state.

[(E)] (V) For the purposes of this subsection, "qualified actuary" means a member in good standing of the American Academy of Actuaries who meets the requirements prescribed by the superintendent by regulation.

[(F)] (VI) Except in cases of fraud, willful misconduct or gross negligence, the qualified actuary shall not be liable for damages to any person (other than the insurance company or the superintendent) for any act, error, omission, decision or conduct with respect to the actuary's opinion and memorandum. The provisions of this subparagraph shall not operate to remove, condition or limit any rights, remedies or actions at law or equity which the insurance company or the superintendent may have or take against or with respect to the qualified actuary.

[(G)] (VII) Disciplinary action by the superintendent against the company or the qualified actuary shall be defined in regulations by the superintendent.

[(H)] (VIII) Non-public information (meaning information not otherwise available from public documents or records) contained in any memorandum in support of the opinion, or in any other material provided by the company to the superintendent in connection therewith, shall at the written request of the company be kept confidential by the superintendent and shall not be made public, other than for the purpose of enabling any person to defend against an action seeking damages from such person by reason of any action required by this section or by regulations promulgated hereunder; provided, however, that such non-public information may otherwise be released by the superintendent [(i)] (I) with the written consent of the company or [(ii)] (II) for the purpose of professional disciplinary proceedings conducted by the superintendent or by any professional body, provided that steps deemed appropriate by the superintendent are taken to preserve the confidentiality of such non-public information. Notwithstanding the foregoing, the superintendent shall release the non-public information to persons making demand therefor in a criminal proceeding pursuant to lawful subpoena, warrant or court order or in response to a subpoena from a grand jury served upon the superintendent. Any such request by the company for confidentiality shall designate with reasonable specificity the portion of such memorandum or other material with respect to which confidentiality is requested pursuant to this subparagraph. Once such memorandum or other material, or any portion thereof containing matters with respect to which confidentiality has been requested, is cited by the company in its marketing or is cited before any governmental agency (other than a state insurance department) or is released by the company to the news media, all portions of such memorandum or other material shall be no longer confidential.

(2) ACTUARIAL OPINION OF RESERVES AFTER THE OPERATIVE DATE OF THE VALUATION MANUAL.

(A) GENERAL. EVERY COMPANY WITH OUTSTANDING LIFE INSURANCE CONTRACTS, ACCIDENT AND HEALTH INSURANCE CONTRACTS OR DEPOSIT-TYPE CONTRACTS IN THIS STATE AND SUBJECT TO REGULATION BY THE SUPERINTENDENT SHALL ANNUALLY SUBMIT THE OPINION OF THE APPOINTED ACTUARY AS TO WHETHER THE RESERVES AND RELATED ACTUARIAL ITEMS HELD IN SUPPORT OF THE POLICIES AND CONTRACTS ARE COMPUTED APPROPRIATELY, ARE BASED ON ASSUMPTIONS THAT SATISFY CONTRACTUAL PROVISIONS, ARE CONSISTENT WITH PRIOR REPORTED AMOUNTS AND COMPLY WITH APPLICABLE LAWS OF THIS STATE. THE VALUATION MANUAL WILL PRESCRIBE THE SPECIFICS OF THIS OPINION INCLUDING ANY ITEMS DEEMED TO BE NECESSARY TO ITS SCOPE.

(B) ACTUARIAL ANALYSIS OF RESERVES AND ASSETS SUPPORTING RESERVES. EVERY COMPANY WITH OUTSTANDING LIFE INSURANCE CONTRACTS, ACCIDENT AND

HEALTH INSURANCE CONTRACTS OR DEPOSIT-TYPE CONTRACTS IN THIS STATE AND SUBJECT TO REGULATION BY THE SUPERINTENDENT, EXCEPT AS EXEMPTED IN THE VALUATION MANUAL, SHALL ALSO ANNUALLY INCLUDE IN THE OPINION REQUIRED BY SUBPARAGRAPH (A) OF THIS PARAGRAPH, AN OPINION OF THE SAME APPOINTED ACTUARY AS TO WHETHER THE RESERVES AND RELATED ACTUARIAL ITEMS HELD IN SUPPORT OF THE POLICIES AND CONTRACTS SPECIFIED IN THE VALUATION MANUAL, WHEN CONSIDERED IN LIGHT OF THE ASSETS HELD BY THE COMPANY WITH RESPECT TO THE RESERVES AND RELATED ACTUARIAL ITEMS, INCLUDING BUT NOT LIMITED TO THE INVESTMENT EARNINGS ON THE ASSETS AND THE CONSIDERATIONS ANTICIPATED TO BE RECEIVED AND RETAINED UNDER THE POLICIES AND CONTRACTS, MAKE ADEQUATE PROVISION FOR THE COMPANY'S OBLIGATIONS UNDER THE POLICIES AND CONTRACTS, INCLUDING BUT NOT LIMITED TO THE BENEFITS UNDER AND EXPENSES ASSOCIATED WITH THE POLICIES AND CONTRACTS.

(C) REQUIREMENTS FOR OPINION SUBJECT TO SUBPARAGRAPH (B) OF THIS PARAGRAPH. EACH OPINION REQUIRED BY SUBPARAGRAPH (B) OF THIS PARAGRAPH SHALL BE GOVERNED BY THE FOLLOWING PROVISIONS:

(I) A MEMORANDUM, IN FORM AND SUBSTANCE AS SPECIFIED IN THE VALUATION MANUAL, SHALL BE PREPARED TO SUPPORT EACH ACTUARIAL OPINION.

(II) IF THE INSURANCE COMPANY FAILS TO PROVIDE A SUPPORTING MEMORANDUM AT THE REQUEST OF THE SUPERINTENDENT WITHIN A PERIOD SPECIFIED IN THE VALUATION MANUAL OR THE SUPERINTENDENT DETERMINES THAT THE SUPPORTING MEMORANDUM PROVIDED BY THE INSURANCE COMPANY FAILS TO MEET THE STANDARDS PRESCRIBED BY THE VALUATION MANUAL, THE SUPERINTENDENT MAY ENGAGE A QUALIFIED ACTUARY AT THE EXPENSE OF THE COMPANY TO REVIEW THE OPINION AND THE BASIS FOR THE OPINION AND PREPARE THE SUPPORTING MEMORANDUM REQUIRED BY THE SUPERINTENDENT.

(D) REQUIREMENTS FOR ALL OPINIONS SUBJECT TO THIS PARAGRAPH. EVERY OPINION SHALL BE GOVERNED BY THE FOLLOWING PROVISIONS:

(I) THE OPINION SHALL BE IN FORM AND SUBSTANCE AS SPECIFIED IN THE VALUATION MANUAL.

(II) THE OPINION SHALL BE SUBMITTED WITH THE ANNUAL STATEMENT REFLECTING THE VALUATION OF SUCH RESERVE LIABILITIES FOR EACH YEAR ENDING ON OR AFTER THE OPERATIVE DATE OF THE VALUATION MANUAL.

(III) THE OPINION SHALL APPLY TO ALL POLICIES AND CONTRACTS SUBJECT TO SUBPARAGRAPH (B) OF THIS PARAGRAPH, PLUS OTHER ACTUARIAL LIABILITIES AS MAY BE SPECIFIED IN THE VALUATION MANUAL.

(IV) THE OPINION SHALL BE BASED ON STANDARDS ADOPTED FROM TIME TO TIME BY THE ACTUARIAL STANDARDS BOARD OR ITS SUCCESSOR, AND ON SUCH ADDITIONAL STANDARDS AS MAY BE PRESCRIBED IN THE VALUATION MANUAL.

(V) IN THE CASE OF AN OPINION REQUIRED TO BE SUBMITTED BY A FOREIGN OR ALIEN COMPANY, THE SUPERINTENDENT MAY ACCEPT THE OPINION FILED BY THAT COMPANY WITH THE INSURANCE SUPERVISORY OFFICIAL OF ANOTHER STATE IF THE SUPERINTENDENT DETERMINES THAT THE OPINION REASONABLY MEETS THE REQUIREMENTS APPLICABLE TO A COMPANY DOMICILED IN THIS STATE.

(VI) EXCEPT IN CASES OF FRAUD OR WILLFUL MISCONDUCT, THE APPOINTED ACTUARY SHALL NOT BE LIABLE FOR DAMAGES TO ANY PERSON (OTHER THAN THE INSURANCE COMPANY AND THE SUPERINTENDENT) FOR ANY ACT, ERROR, OMISSION, DECISION OR CONDUCT WITH RESPECT TO THE APPOINTED ACTUARY'S OPINION.

(VII) DISCIPLINARY ACTION BY THE SUPERINTENDENT AGAINST THE COMPANY OR THE APPOINTED ACTUARY SHALL BE DEFINED IN REGULATIONS BY THE SUPERINTENDENT.

S 7. Paragraph 5 of subsection (f) of section 4217 of the insurance law, as added by chapter 22 of the laws of 1994, is amended to read as follows:

(5) For purposes of this subsection, the aggregate minimum standard required by this section for the valuation of any insurance policies or

contracts shall be deemed to include such additional reserves as the qualified actuary deems necessary, taking into account any transition rules provided by regulation pursuant to ITEM (II) OF subparagraph (B) of paragraph [two] ONE of subsection (e) of this section, in order to render the opinion required by subsection (e) of this section and such additional reserves as may be necessary to comply with regulations promulgated by the superintendent pursuant to this section.

S 8. Section 4217 of the insurance law is amended by adding five new subsections (g), (h), (i), (j) and (k) to read as follows:

(G) VALUATION MANUAL FOR POLICIES ISSUED ON OR AFTER THE OPERATIVE DATE OF THE VALUATION MANUAL.

(1) FOR POLICIES ISSUED ON OR AFTER THE OPERATIVE DATE OF THE VALUATION MANUAL, THE STANDARD PRESCRIBED IN THE VALUATION MANUAL IS THE MINIMUM STANDARD OF VALUATION REQUIRED UNDER SUBPARAGRAPH (B) OF PARAGRAPH TWO OF SUBSECTION (A) OF THIS SECTION, EXCEPT AS PROVIDED UNDER PARAGRAPH FIVE OF THIS SUBSECTION.

(2) THE OPERATIVE DATE OF THE VALUATION MANUAL IS JANUARY FIRST OF THE FIRST CALENDAR YEAR FOLLOWING THE FIRST JULY FIRST AS OF WHICH ALL OF THE FOLLOWING HAVE OCCURRED:

(A) THE VALUATION MANUAL HAS BEEN ADOPTED BY THE NAIC BY AN AFFIRMATIVE VOTE OF AT LEAST FORTY-TWO MEMBERS, OR THREE-FOURTHS OF THE MEMBERS VOTING, WHICHEVER IS GREATER.

(B) THE STANDARD VALUATION LAW, AS AMENDED BY THE NAIC IN TWO THOUSAND NINE, OR LEGISLATION INCLUDING SUBSTANTIALLY SIMILAR TERMS AND PROVISIONS, HAS BEEN ENACTED BY STATES REPRESENTING GREATER THAN SEVENTY-FIVE PERCENT OF THE DIRECT PREMIUMS WRITTEN AS REPORTED IN THE FOLLOWING ANNUAL STATEMENTS SUBMITTED FOR TWO THOUSAND EIGHT: LIFE, ACCIDENT AND HEALTH ANNUAL STATEMENTS; HEALTH ANNUAL STATEMENTS; OR FRATERNAL ANNUAL STATEMENTS.

(C) THE STANDARD VALUATION LAW, AS AMENDED BY THE NAIC IN TWO THOUSAND NINE, OR LEGISLATION INCLUDING SUBSTANTIALLY SIMILAR TERMS AND PROVISIONS, HAS BEEN ENACTED BY AT LEAST FORTY-TWO OF THE FOLLOWING FIFTY-FIVE JURISDICTIONS: THE FIFTY STATES OF THE UNITED STATES, AMERICAN SAMOA, THE AMERICAN VIRGIN ISLANDS, THE DISTRICT OF COLUMBIA, GUAM, AND PUERTO RICO.

(3) UNLESS A CHANGE IN THE VALUATION MANUAL SPECIFIES A LATER EFFECTIVE DATE, CHANGES TO THE VALUATION MANUAL SHALL BE EFFECTIVE ON JANUARY FIRST FOLLOWING THE DATE WHEN THE CHANGE TO THE VALUATION MANUAL HAS BEEN ADOPTED BY THE NAIC BY AN AFFIRMATIVE VOTE REPRESENTING:

(A) AT LEAST THREE-FOURTHS OF THE MEMBERS OF THE NAIC VOTING, BUT NOT LESS THAN A MAJORITY OF THE TOTAL MEMBERSHIP, AND

(B) MEMBERS OF THE NAIC REPRESENTING JURISDICTIONS TOTALING GREATER THAN SEVENTY-FIVE PERCENT OF THE DIRECT PREMIUMS WRITTEN AS REPORTED IN THE FOLLOWING ANNUAL STATEMENTS MOST RECENTLY AVAILABLE PRIOR TO THE VOTE IN SUBPARAGRAPH (A) OF THIS PARAGRAPH: LIFE, ACCIDENT AND HEALTH ANNUAL STATEMENTS, HEALTH ANNUAL STATEMENTS, OR FRATERNAL ANNUAL STATEMENTS.

(4) THE VALUATION MANUAL MUST SPECIFY ALL OF THE FOLLOWING:

(A) MINIMUM VALUATION STANDARDS FOR AND DEFINITIONS OF THE POLICIES OR CONTRACTS SUBJECT TO SUBPARAGRAPH (B) OF PARAGRAPH TWO OF SUBSECTION (A) OF THIS SECTION. SUCH MINIMUM VALUATION STANDARDS SHALL BE:

(I) THE COMMISSIONERS RESERVE VALUATION METHOD FOR LIFE INSURANCE CONTRACTS, OTHER THAN ANNUITY CONTRACTS, SUBJECT TO SUBPARAGRAPH (B) OF PARAGRAPH TWO OF SUBSECTION (A) OF THIS SECTION;

(II) THE COMMISSIONERS ANNUITY RESERVE VALUATION METHOD FOR ANNUITY CONTRACTS SUBJECT TO SUBPARAGRAPH (B) OF PARAGRAPH TWO OF SUBSECTION (A) OF THIS SECTION; AND

(III) MINIMUM RESERVES FOR ALL OTHER POLICIES OR CONTRACTS SUBJECT TO SUBPARAGRAPH (B) OF PARAGRAPH TWO OF SUBSECTION (A) OF THIS SECTION.

(B) WHICH POLICIES OR CONTRACTS OR TYPES OF POLICIES OR CONTRACTS ARE SUBJECT TO THE REQUIREMENTS OF A PRINCIPLE-BASED VALUATION IN PARAGRAPH ONE OF SUBSECTION (H) OF THIS SECTION AND THE MINIMUM VALUATION STANDARDS CONSISTENT WITH THOSE REQUIREMENTS;

(C) FOR POLICIES AND CONTRACTS SUBJECT TO A PRINCIPLE-BASED VALUATION UNDER SUBSECTION (H) OF THIS SECTION:

(I) REQUIREMENTS FOR THE FORMAT OF REPORTS TO THE SUPERINTENDENT UNDER SUBPARAGRAPH (C) OF PARAGRAPH TWO OF SUBSECTION (H) OF THIS SECTION AND WHICH SHALL INCLUDE INFORMATION NECESSARY TO DETERMINE IF THE VALUATION IS APPROPRIATE AND IN COMPLIANCE WITH THIS SECTION;

(II) ASSUMPTIONS SHALL BE PRESCRIBED FOR RISKS OVER WHICH THE COMPANY DOES NOT HAVE SIGNIFICANT CONTROL OR INFLUENCE.

(III) PROCEDURES FOR CORPORATE GOVERNANCE AND OVERSIGHT OF THE ACTUARIAL FUNCTION, AND A PROCESS FOR APPROPRIATE WAIVER OR MODIFICATION OF SUCH PROCEDURES.

(D) FOR POLICIES NOT SUBJECT TO A PRINCIPLE-BASED VALUATION UNDER SUBSECTION (H) OF THIS SECTION THE MINIMUM VALUATION STANDARD SHALL EITHER:

(I) BE CONSISTENT WITH THE MINIMUM STANDARD OF VALUATION PRIOR TO THE OPERATIVE DATE OF THE VALUATION MANUAL; OR

(II) DEVELOP RESERVES THAT QUANTIFY THE BENEFITS AND GUARANTEES, AND THE FUNDING, ASSOCIATED WITH THE CONTRACTS AND THEIR RISKS AT A LEVEL OF CONSERVATISM THAT REFLECTS CONDITIONS THAT INCLUDE UNFAVORABLE EVENTS THAT HAVE A REASONABLE PROBABILITY OF OCCURRING.

(E) OTHER REQUIREMENTS, INCLUDING, BUT NOT LIMITED TO, THOSE RELATING TO RESERVE METHODS, MODELS FOR MEASURING RISK, GENERATION OF ECONOMIC SCENARIOS, ASSUMPTIONS, MARGINS, USE OF COMPANY EXPERIENCE, RISK MEASUREMENT, DISCLOSURE, CERTIFICATIONS, REPORTS, ACTUARIAL OPINIONS AND MEMORANDUMS, TRANSITION RULES AND INTERNAL CONTROLS; AND

(F) THE DATA AND FORM OF THE DATA REQUIRED UNDER SUBSECTION (I) OF THIS SECTION, WITH WHOM THE DATA MUST BE SUBMITTED, AND MAY SPECIFY OTHER REQUIREMENTS INCLUDING DATA ANALYSES AND REPORTING OF ANALYSES.

(5) IN THE ABSENCE OF A SPECIFIC VALUATION, THE COMPANY SHALL, WITH RESPECT TO SUCH REQUIREMENTS, COMPLY WITH MINIMUM VALUATION STANDARDS PRESCRIBED BY THE SUPERINTENDENT BY REGULATION.

(6) THE SUPERINTENDENT MAY ENGAGE A QUALIFIED ACTUARY, AT THE EXPENSE OF THE COMPANY, TO PERFORM AN ACTUARIAL EXAMINATION OF THE COMPANY AND OPINE ON THE APPROPRIATENESS OF ANY RESERVE ASSUMPTION OR METHOD USED BY THE COMPANY, OR TO REVIEW AND OPINE ON A COMPANY'S COMPLIANCE WITH ANY REQUIREMENT SET FORTH IN THIS SECTION. THE SUPERINTENDENT MAY RELY UPON THE OPINION, REGARDING PROVISIONS CONTAINED WITHIN THIS SECTION, OF A QUALIFIED ACTUARY ENGAGED BY THE COMMISSIONER OF ANOTHER STATE, DISTRICT OR TERRITORY OF THE UNITED STATES. AS USED IN THIS PARAGRAPH, THE TERM "ENGAGE" INCLUDES EMPLOYMENT AND CONTRACTING.

(H) REQUIREMENTS OF A PRINCIPLE-BASED VALUATION.

(1) A COMPANY MUST ESTABLISH RESERVES USING A PRINCIPLE-BASED VALUATION THAT MEETS THE FOLLOWING CONDITIONS FOR POLICIES OR CONTRACTS AS SPECIFIED IN THE VALUATION MANUAL:

(A) QUANTIFY THE BENEFITS AND GUARANTEES, AND THE FUNDING, ASSOCIATED WITH THE CONTRACTS AND THEIR RISKS AT A LEVEL OF CONSERVATISM THAT REFLECTS CONDITIONS THAT INCLUDE UNFAVORABLE EVENTS THAT HAVE A REASON-

ABLE PROBABILITY OF OCCURRING DURING THE LIFETIME OF THE CONTRACTS. FOR POLICIES OR CONTRACTS WITH SIGNIFICANT TAIL RISK, REFLECT CONDITIONS APPROPRIATELY ADVERSE TO QUANTIFY THE TAIL RISK.

(B) INCORPORATE ASSUMPTIONS, RISK ANALYSIS METHODS AND FINANCIAL MODELS AND MANAGEMENT TECHNIQUES THAT ARE CONSISTENT WITH, BUT NOT NECESSARILY IDENTICAL TO, THOSE UTILIZED WITHIN THE COMPANY'S OVERALL RISK ASSESSMENT PROCESS, WHILE RECOGNIZING POTENTIAL DIFFERENCES IN FINANCIAL REPORTING STRUCTURES AND ANY PRESCRIBED ASSUMPTIONS OR METHODS.

(C) INCORPORATE ASSUMPTIONS THAT ARE DERIVED IN ONE OF THE FOLLOWING MANNERS:

(I) THE ASSUMPTION IS PRESCRIBED IN THE VALUATION MANUAL.

(II) FOR ASSUMPTIONS THAT ARE NOT PRESCRIBED, THE ASSUMPTIONS SHALL:

(I) BE ESTABLISHED UTILIZING THE COMPANY'S AVAILABLE EXPERIENCE, TO THE EXTENT IT IS RELEVANT AND STATISTICALLY CREDIBLE; OR

(II) TO THE EXTENT THAT COMPANY EXPERIENCE IS NOT AVAILABLE, RELEVANT, OR STATISTICALLY CREDIBLE, BE ESTABLISHED UTILIZING OTHER RELEVANT, STATISTICALLY CREDIBLE EXPERIENCE.

(D) PROVIDE MARGINS FOR UNCERTAINTY INCLUDING ADVERSE DEVIATION AND ESTIMATION ERROR, SUCH THAT THE GREATER THE UNCERTAINTY THE LARGER THE MARGIN AND RESULTING RESERVE.

(2) A COMPANY USING A PRINCIPLE-BASED VALUATION FOR ONE OR MORE POLICIES OR CONTRACTS SUBJECT TO THIS SECTION AS SPECIFIED IN THE VALUATION MANUAL SHALL:

(A) ESTABLISH PROCEDURES FOR CORPORATE GOVERNANCE AND OVERSIGHT OF THE ACTUARIAL VALUATION FUNCTION CONSISTENT WITH THOSE DESCRIBED IN THE VALUATION MANUAL.

(B) PROVIDE TO THE SUPERINTENDENT AND THE BOARD OF DIRECTORS AN ANNUAL CERTIFICATION OF THE EFFECTIVENESS OF THE INTERNAL CONTROLS WITH RESPECT TO THE PRINCIPLE-BASED VALUATION. SUCH CONTROLS SHALL BE DESIGNED TO ASSURE THAT ALL MATERIAL RISKS INHERENT IN THE LIABILITIES AND ASSOCIATED ASSETS SUBJECT TO SUCH VALUATION ARE INCLUDED IN THE VALUATION, AND THAT VALUATIONS ARE MADE IN ACCORDANCE WITH THE VALUATION MANUAL. THE CERTIFICATION SHALL BE BASED ON THE CONTROLS IN PLACE AS OF THE END OF THE PRECEDING CALENDAR YEAR.

(C) DEVELOP, AND FILE WITH THE SUPERINTENDENT UPON REQUEST, A PRINCIPLE-BASED VALUATION REPORT THAT COMPLIES WITH STANDARDS PRESCRIBED IN THE VALUATION MANUAL.

(3) A PRINCIPLE-BASED VALUATION MAY INCLUDE A PRESCRIBED FORMULAIC RESERVE COMPONENT.

(I) EXPERIENCE REPORTING FOR POLICIES IN FORCE ON OR AFTER THE OPERATIVE DATE OF THE VALUATION MANUAL.

A COMPANY SHALL SUBMIT MORTALITY, MORBIDITY, POLICYHOLDER BEHAVIOR, OR EXPENSE EXPERIENCE AND OTHER DATA AS PRESCRIBED IN THE VALUATION MANUAL.

(J) CONFIDENTIALITY.

(1) FOR PURPOSES OF THIS SUBSECTION, "CONFIDENTIAL INFORMATION" SHALL MEAN:

(A) A MEMORANDUM IN SUPPORT OF AN OPINION SUBMITTED UNDER SUBSECTION (E) OF THIS SECTION AND ANY OTHER DOCUMENTS, MATERIALS AND OTHER INFORMATION, INCLUDING, BUT NOT LIMITED TO, ALL WORKING PAPERS, AND COPIES THEREOF, CREATED, PRODUCED OR OBTAINED BY OR DISCLOSED TO THE SUPERINTENDENT OR ANY OTHER PERSON IN CONNECTION WITH SUCH MEMORANDUM;

(B) ALL DOCUMENTS, MATERIALS AND OTHER INFORMATION, INCLUDING, BUT NOT LIMITED TO, ALL WORKING PAPERS, AND COPIES THEREOF, CREATED, PRODUCED OR OBTAINED BY OR DISCLOSED TO THE SUPERINTENDENT OR ANY OTHER PERSON IN THE COURSE OF AN EXAMINATION MADE UNDER PARAGRAPH SIX OF SUBSECTION (G)

OF THIS SECTION; PROVIDED, HOWEVER, THAT IF AN EXAMINATION REPORT OR OTHER MATERIAL PREPARED IN CONNECTION WITH AN EXAMINATION MADE UNDER SECTION THREE HUNDRED NINE OF THIS CHAPTER IS NOT HELD AS PRIVATE AND CONFIDENTIAL INFORMATION UNDER SECTION THREE HUNDRED NINE OF THIS CHAPTER, AN EXAMINATION REPORT OR OTHER MATERIAL PREPARED IN CONNECTION WITH AN EXAMINATION MADE UNDER PARAGRAPH SIX OF SUBSECTION (G) OF THIS SECTION SHALL NOT BE "CONFIDENTIAL INFORMATION" TO THE SAME EXTENT AS IF SUCH EXAMINATION REPORT OR OTHER MATERIAL HAD BEEN PREPARED UNDER SECTION THREE HUNDRED NINE OF THIS CHAPTER;

(C) ANY REPORTS, DOCUMENTS, MATERIALS AND OTHER INFORMATION DEVELOPED BY A COMPANY IN SUPPORT OF, OR IN CONNECTION WITH, AN ANNUAL CERTIFICATION BY THE COMPANY UNDER SUBPARAGRAPH (B) OF PARAGRAPH TWO OF SUBSECTION (H) OF THIS SECTION EVALUATING THE EFFECTIVENESS OF THE COMPANY'S INTERNAL CONTROLS WITH RESPECT TO A PRINCIPLE-BASED VALUATION AND ANY OTHER DOCUMENTS, MATERIALS AND OTHER INFORMATION, INCLUDING, BUT NOT LIMITED TO, ALL WORKING PAPERS, AND COPIES THEREOF, CREATED, PRODUCED OR OBTAINED BY OR DISCLOSED TO THE SUPERINTENDENT OR ANY OTHER PERSON IN CONNECTION WITH SUCH REPORTS, DOCUMENTS, MATERIALS AND OTHER INFORMATION;

(D) ANY PRINCIPLE-BASED VALUATION REPORT DEVELOPED UNDER SUBPARAGRAPH (C) OF PARAGRAPH TWO OF SUBSECTION (H) OF THIS SECTION AND ANY OTHER DOCUMENTS, MATERIALS AND OTHER INFORMATION, INCLUDING, BUT NOT LIMITED TO, ALL WORKING PAPERS, AND COPIES THEREOF, CREATED, PRODUCED OR OBTAINED BY OR DISCLOSED TO THE SUPERINTENDENT OR ANY OTHER PERSON IN CONNECTION WITH SUCH REPORT; AND

(E) ANY DOCUMENTS, MATERIALS, DATA AND OTHER INFORMATION SUBMITTED BY A COMPANY UNDER SUBSECTION (I) OF THIS SECTION (COLLECTIVELY, "EXPERIENCE DATA") AND ANY OTHER DOCUMENTS, MATERIALS, DATA AND OTHER INFORMATION, INCLUDING, BUT NOT LIMITED TO, ALL WORKING PAPERS, AND COPIES THEREOF, CREATED OR PRODUCED IN CONNECTION WITH SUCH EXPERIENCE DATA, IN EACH CASE THAT INCLUDE ANY POTENTIALLY COMPANY-IDENTIFYING OR PERSONALLY IDENTIFIABLE INFORMATION, THAT IS PROVIDED TO OR OBTAINED BY THE SUPERINTENDENT (TOGETHER WITH ANY "EXPERIENCE DATA", THE "EXPERIENCE MATERIALS") AND ANY OTHER DOCUMENTS, MATERIALS, DATA AND OTHER INFORMATION, INCLUDING, BUT NOT LIMITED TO, ALL WORKING PAPERS, AND COPIES THEREOF, CREATED, PRODUCED OR OBTAINED BY OR DISCLOSED TO THE SUPERINTENDENT OR ANY OTHER PERSON IN CONNECTION WITH SUCH EXPERIENCE MATERIALS.

(2) PRIVILEGE FOR, AND CONFIDENTIALITY OF, CONFIDENTIAL INFORMATION.

(A) EXCEPT AS PROVIDED IN THIS SUBSECTION, A COMPANY'S CONFIDENTIAL INFORMATION IS CONFIDENTIAL BY LAW AND PRIVILEGED, AND SHALL NOT BE SUBJECT TO ARTICLE SIX OF THE PUBLIC OFFICERS LAW, SHALL NOT BE SUBJECT TO SUBPOENA AND SHALL NOT BE SUBJECT TO DISCOVERY OR ADMISSIBLE IN EVIDENCE IN ANY PRIVATE CIVIL ACTION; PROVIDED, HOWEVER, THAT THE SUPERINTENDENT IS AUTHORIZED TO USE THE CONFIDENTIAL INFORMATION IN THE FURTHERANCE OF ANY REGULATORY OR LEGAL ACTION BROUGHT AGAINST THE COMPANY AS A PART OF THE SUPERINTENDENT'S OFFICIAL DUTIES.

(B) NEITHER THE SUPERINTENDENT NOR ANY PERSON WHO RECEIVED CONFIDENTIAL INFORMATION WHILE ACTING UNDER THE AUTHORITY OF THE SUPERINTENDENT SHALL BE PERMITTED OR REQUIRED TO TESTIFY IN ANY PRIVATE CIVIL ACTION CONCERNING ANY CONFIDENTIAL INFORMATION.

(C) IN ORDER TO ASSIST IN THE PERFORMANCE OF THE SUPERINTENDENT'S DUTIES, THE SUPERINTENDENT MAY SHARE CONFIDENTIAL INFORMATION (I) WITH OTHER STATE, FEDERAL AND INTERNATIONAL REGULATORY AGENCIES AND WITH THE NAIC AND ITS AFFILIATES AND SUBSIDIARIES AND (II) IN THE CASE OF CONFIDENTIAL INFORMATION SPECIFIED IN SUBPARAGRAPHS (A) AND (D) OF PARAGRAPH ONE OF THIS SUBSECTION ONLY, WITH THE ACTUARIAL BOARD FOR COUNSELING AND

DISCIPLINE OR ITS SUCCESSOR UPON REQUEST STATING THAT THE CONFIDENTIAL INFORMATION IS REQUIRED FOR THE PURPOSE OF PROFESSIONAL DISCIPLINARY PROCEEDINGS AND WITH STATE, FEDERAL AND INTERNATIONAL LAW ENFORCEMENT OFFICIALS; IN THE CASE OF ITEMS (I) AND (II) OF THIS SUBPARAGRAPH, PROVIDED THAT SUCH RECIPIENT AGREES, AND HAS THE LEGAL AUTHORITY TO AGREE, TO MAINTAIN THE CONFIDENTIALITY AND PRIVILEGED STATUS OF SUCH DOCUMENTS, MATERIALS, DATA AND OTHER INFORMATION IN THE SAME MANNER AND TO THE SAME EXTENT AS REQUIRED FOR THE SUPERINTENDENT.

(D) THE SUPERINTENDENT MAY RECEIVE DOCUMENTS, MATERIALS, DATA AND OTHER INFORMATION, INCLUDING OTHERWISE CONFIDENTIAL AND PRIVILEGED DOCUMENTS, MATERIALS, DATA OR INFORMATION, FROM THE NAIC AND ITS AFFILIATES AND SUBSIDIARIES, FROM REGULATORY OR LAW ENFORCEMENT OFFICIALS OF OTHER FOREIGN OR DOMESTIC JURISDICTIONS AND FROM THE ACTUARIAL BOARD FOR COUNSELING AND DISCIPLINE OR ITS SUCCESSOR AND SHALL MAINTAIN AS CONFIDENTIAL OR PRIVILEGED ANY DOCUMENT, MATERIAL, DATA OR OTHER INFORMATION RECEIVED WITH NOTICE OR THE UNDERSTANDING THAT IT IS CONFIDENTIAL OR PRIVILEGED UNDER THE LAWS OF THE JURISDICTION THAT IS THE SOURCE OF THE DOCUMENT, MATERIAL OR OTHER INFORMATION.

(E) THE SUPERINTENDENT MAY ENTER INTO AGREEMENTS GOVERNING SHARING AND USE OF INFORMATION CONSISTENT WITH THIS PARAGRAPH.

(F) NO WAIVER OF ANY APPLICABLE PRIVILEGE OR CLAIM OF CONFIDENTIALITY IN THE CONFIDENTIAL INFORMATION SHALL OCCUR AS A RESULT OF DISCLOSURE TO THE SUPERINTENDENT UNDER THIS SECTION OR AS A RESULT OF SHARING AS AUTHORIZED IN SUBPARAGRAPH (C) OF THIS PARAGRAPH.

(G) A PRIVILEGE ESTABLISHED UNDER THE LAW OF ANY STATE OR JURISDICTION THAT IS SUBSTANTIALLY SIMILAR TO THE PRIVILEGE ESTABLISHED UNDER THIS PARAGRAPH SHALL BE AVAILABLE AND ENFORCED IN ANY PROCEEDING IN, AND IN ANY COURT OF, THIS STATE.

(H) IN THIS SUBSECTION, THE TERMS "REGULATORY AGENCY," "LAW ENFORCEMENT AGENCY" AND THE "NAIC" INCLUDE, BUT ARE NOT LIMITED TO, THEIR EMPLOYEES, AGENTS, CONSULTANTS AND CONTRACTORS.

(3) NOTWITHSTANDING PARAGRAPH TWO OF THIS SUBSECTION, ANY CONFIDENTIAL INFORMATION SPECIFIED IN SUBPARAGRAPHS (A) AND (D) OF PARAGRAPH ONE OF THIS SUBSECTION:

(A) MAY BE SUBJECT TO SUBPOENA FOR THE PURPOSE OF DEFENDING AN ACTION SEEKING DAMAGES FROM THE QUALIFIED OR APPOINTED ACTUARY SUBMITTING THE RELATED MEMORANDUM IN SUPPORT OF AN OPINION SUBMITTED UNDER SUBSECTION (E) OF THIS SECTION OR FROM THE APPOINTED ACTUARY SUBMITTING THE PRINCIPLE-BASED VALUATION REPORT DEVELOPED UNDER SUBPARAGRAPH (C) OF PARAGRAPH TWO OF SUBSECTION (H) OF THIS SECTION BY REASON OF AN ACTION REQUIRED BY THIS SECTION OR BY REGULATIONS PROMULGATED HEREUNDER;

(B) MAY OTHERWISE BE RELEASED BY THE SUPERINTENDENT WITH THE WRITTEN CONSENT OF THE COMPANY; AND

(C) ONCE ANY PORTION OF A MEMORANDUM IN SUPPORT OF AN OPINION SUBMITTED UNDER SUBSECTION (E) OF THIS SECTION OR A PRINCIPLE-BASED VALUATION REPORT DEVELOPED UNDER SUBPARAGRAPH (C) OF PARAGRAPH TWO OF SUBSECTION (H) OF THIS SECTION IS CITED BY THE COMPANY IN ITS MARKETING OR IS PUBLICLY VOLUNTEERED TO OR BEFORE A GOVERNMENTAL AGENCY OTHER THAN A STATE INSURANCE DEPARTMENT OR IS RELEASED BY THE COMPANY TO THE NEWS MEDIA, ALL PORTIONS OF SUCH MEMORANDUM OR REPORT SHALL NO LONGER BE CONFIDENTIAL.

(K) SINGLE STATE EXEMPTION.

(1) THE SUPERINTENDENT MAY EXEMPT SPECIFIC PRODUCT FORMS OR PRODUCT LINES OF A DOMESTIC COMPANY THAT IS LICENSED AND DOING BUSINESS ONLY IN NEW YORK FROM THE REQUIREMENTS OF SUBSECTION (G) OF THIS SECTION PROVIDED:

(A) THE SUPERINTENDENT HAS ISSUED AN EXEMPTION IN WRITING TO THE COMPANY AND HAS NOT SUBSEQUENTLY REVOKED THE EXEMPTION IN WRITING; AND

(B) THE COMPANY COMPUTES RESERVES USING ASSUMPTIONS AND METHODS USED PRIOR TO THE OPERATIVE DATE OF THE VALUATION MANUAL IN ADDITION TO ANY REQUIREMENTS ESTABLISHED BY THE SUPERINTENDENT AND PROMULGATED BY REGULATION.

(2) FOR ANY COMPANY GRANTED AN EXEMPTION UNDER THIS SUBSECTION, SUBSECTIONS (C), (D), (E) AND (F) OF THIS SECTION AND SECTION FOUR THOUSAND TWO HUNDRED EIGHTEEN OF THIS ARTICLE SHALL BE APPLICABLE. WITH RESPECT TO ANY COMPANY APPLYING FOR THIS EXEMPTION, ANY REFERENCE TO SUBSECTION (G) FOUND IN SUBSECTIONS (C), (D), (E) AND (F) OF THIS SECTION AND SECTION FOUR THOUSAND TWO HUNDRED EIGHTEEN OF THIS ARTICLE SHALL NOT BE APPLICABLE.

S 9. Paragraph 1 of subsection (a) of section 4218 of the insurance law is amended to read as follows:

(1) When the actual premium or consideration charged for life insurance under any life insurance policy, issued by any [life insurance] company doing business in this state, is less than the modified net premium calculated on the basis of the commissioners reserve valuation method as defined in paragraph six of subsection (c) of section four thousand two hundred seventeen of this article and using the rate of interest and mortality tables contained in the minimum valuation standards in paragraphs two and four of such subsection, or in the case of future renewals under a renewable term insurance policy issued prior to the operative date of subsection (k) of section four thousand two hundred twenty-one of this article, the Modern CSO Mortality Table published in the Transactions of the Society of Actuaries, Vol. XXVII (1975), the minimum reserve required for such policy shall be the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy, or the reserve calculated by the commissioners reserve valuation method as defined in paragraph six of subsection (c) of section four thousand two hundred seventeen of this article and using the mortality table and rate of interest prescribed in this section for calculating the commissioners reserve valuation method modified net premium and replacing such modified net premium by the actual premium charged for the policy in each contract year for which such modified net premium exceeds the actual premium.

S 10. Paragraph 1, item (vi) of subparagraph (B) of paragraph 9 and paragraph 10 of subsection (k) of section 4221 of the insurance law, paragraph 10 as amended by chapter 302 of the laws of 1987, are amended to read as follows:

(1) This subsection shall apply to all policies issued on or after the operative date as defined in this subsection. THE TERM "OPERATIVE DATE OF THE VALUATION MANUAL", AS USED IN THIS SUBSECTION, MEANS JANUARY FIRST OF THE FIRST CALENDAR YEAR THAT THE VALUATION MANUAL AS DEFINED IN SECTION FOUR THOUSAND TWO HUNDRED SEVENTEEN OF THIS ARTICLE IS EFFECTIVE.

(vi) [Any] (I) FOR POLICIES ISSUED PRIOR TO THE OPERATIVE DATE OF THE VALUATION MANUAL, ANY COMMISSIONERS STANDARD ordinary mortality tables, adopted after nineteen hundred eighty by the National Association of Insurance Commissioners (or any modifications thereof for any specified class or classes of risks), that are approved by the superintendent for use in determining the minimum nonforfeiture standard may be substituted for the Commissioners 1980 Standard Ordinary Mortality Table with or

without Ten-Year Select Mortality Factors or for the Commissioners 1980 Extended Term Insurance Table.

(II) FOR POLICIES ISSUED ON OR AFTER THE OPERATIVE DATE OF THE VALUATION MANUAL, THE VALUATION MANUAL SHALL PROVIDE THE COMMISSIONERS STANDARD MORTALITY TABLE FOR USE IN DETERMINING THE MINIMUM NONFORFEITURE STANDARD THAT MAY BE SUBSTITUTED FOR THE COMMISSIONERS 1980 STANDARD ORDINARY MORTALITY TABLE (OR ANY MODIFICATIONS THEREOF FOR ANY SPECIFIED CLASS OR CLASSES OF RISKS) WITH OR WITHOUT TEN-YEAR SELECT MORTALITY FACTORS OR FOR THE COMMISSIONERS 1980 EXTENDED TERM INSURANCE TABLE. IF THE SUPERINTENDENT APPROVES BY REGULATION ANY COMMISSIONERS STANDARD ORDINARY MORTALITY TABLE ADOPTED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS (OR ANY MODIFICATIONS THEREOF FOR ANY SPECIFIED CLASS OR CLASSES OF RISKS) FOR USE IN DETERMINING THE MINIMUM NONFORFEITURE STANDARD FOR POLICIES ISSUED ON OR AFTER THE OPERATIVE DATE OF THE VALUATION MANUAL THEN THAT MINIMUM NONFORFEITURE STANDARD SUPERSEDES THE MINIMUM NONFORFEITURE STANDARD PROVIDED BY THE VALUATION MANUAL.

(10) The NONFORFEITURE INTEREST RATE IS DEFINED BELOW:

(A) FOR POLICIES ISSUED PRIOR TO THE OPERATIVE DATE OF THE VALUATION MANUAL, THE nonforfeiture interest rate per annum for any policy issued in a particular calendar year shall be equal to one hundred and twenty-five percent of the calendar year statutory valuation interest rate for such policy as defined in section four thousand two hundred seventeen of this article rounded to the nearer one quarter of one percent, PROVIDED, HOWEVER, THAT THE NONFORFEITURE INTEREST RATE SHALL NOT BE LESS THAN FOUR PERCENT. THE NONFORFEITURE INTEREST RATE SHALL BE computed, with respect to a single premium life insurance policy of the kind referred to in item (vi) of subparagraph (B) of paragraph four of subsection (c) of such section, on a year of issue basis by using a reference interest rate defined for such policy in subparagraph (F) of such paragraph for the year immediately preceding the year of issue on the assumption that the company has submitted an opinion and memorandum, in form and substance satisfactory to the superintendent, of a qualified actuary with respect to such single premium life insurance policies in accordance with item (vi) of subparagraph (B) of such paragraph.

(B) FOR POLICIES ISSUED ON AND AFTER THE OPERATIVE DATE OF THE VALUATION MANUAL THE NONFORFEITURE INTEREST RATE PER ANNUM FOR ANY POLICY ISSUED IN A PARTICULAR CALENDAR YEAR SHALL BE PROVIDED BY THE VALUATION MANUAL.

S 11. Item (iv) of subparagraph (A) of paragraph 3 of subsection (n-1) of section 4221 of the insurance law, as added by chapter 365 of the laws of 1986, is amended to read as follows:

(iv) A policy meeting the requirements of this subparagraph if issued before the operative date of subsection (k) of this section may not impose mortality charges in excess of those based on the commissioners 1958 standard ordinary mortality table in the case of a standard medically underwritten insured or the commissioners 1958 extended term insurance table in the case of any other standard insured, and if issued on or after such operative date may not impose mortality charges in excess of those based on the commissioners 1980 standard ordinary mortality table in the case of a standard medically underwritten insured or the commissioners 1980 extended term insurance table in the case of any other standard insured. At the option of the company, maximum charges based on the commissioners 1980 standard ordinary mortality table may be computed using ten-year select mortality factors. Maximum charges may also be based on any other table (or modification thereof for the specified class of risk) PROVIDED BY THE VALUATION MANUAL OR approved by the

superintendent pursuant to item (vi) of subparagraph (B) of paragraph nine of subsection (k) of this section. For insurance issued on a substandard basis, such charges may be based on appropriate modifications of such tables.

S 12. This act shall take effect immediately.

PART C

Section 1. Section 7120 of the insurance law, as amended by chapter 48 of the laws of 2009, is amended to read as follows:

S 7120. Redomestication of [foreign] insurance companies. (a) Definitions. In this section:

(1) "Redomestication" means the transfer to this state of the corporate domicile of an authorized foreign company OR THE TRANSFER FROM THIS STATE OF THE CORPORATE DOMICILE OF A DOMESTIC COMPANY, as provided for in this section.

(2) "Transferring company" means any authorized [foreign] company seeking redomestication.

(b) A transferring company TRANSFERRING TO THIS STATE shall:

(1) file with the superintendent a certificate in such form as prescribed by the superintendent signed by the insurance supervisory official of the state where such transferring company is domiciled approving the proposed redomestication and confirming that upon redomestication the transferring company shall no longer be subject as a domestic company to the requirements of its current state of domicile;

(2) comply with the applicable requirements of this chapter regarding the organization and licensing of a domestic company of the same type;

(3) demonstrate to the satisfaction of the superintendent that upon redomestication, the transferring company will be in compliance with the requirements of this chapter and any regulations promulgated thereunder applicable to a domestic company of the same type;

(4) submit to the superintendent all documents and filings necessary to comply with paragraphs two and three of this subsection; and

(5) submit new policy forms to the superintendent for use after redomestication, if so ordered by the superintendent, or use existing policy forms with appropriate endorsements if allowed by, and under such conditions as approved by, the superintendent.

(c) A TRANSFERRING COMPANY TRANSFERRING FROM THIS STATE:

(1) UPON THE APPROVAL OF THE SUPERINTENDENT, TRANSFER ITS DOMICILE TO ANY OTHER STATE IN WHICH IT IS ADMITTED TO TRANSACT THE BUSINESS OF INSURANCE, AND UPON SUCH A TRANSFER IT SHALL CEASE TO BE A DOMESTIC COMPANY, AND SHALL BE AUTHORIZED IN THIS STATE, IF QUALIFIED, AS A FOREIGN INSURER. THE SUPERINTENDENT SHALL APPROVE THE TRANSFER UNLESS HE OR SHE DETERMINES THE TRANSFER IS NOT IN THE INTEREST OF THE POLICYHOLDERS OF THIS STATE; AND

(2) MAY CONTINUE ISSUING POLICY FORMS APPROVED BEFORE REDOMESTICATION PURSUANT TO SECTION THREE THOUSAND TWO HUNDRED ONE OF THIS CHAPTER WITH SUCH ENDORSEMENT, IF ANY, AS THE SUPERINTENDENT DETERMINES IS NEEDED TO REFLECT THE REDOMESTICATION.

(D) After the transferring company has complied with the provisions of this section, the superintendent may, in accordance with section one thousand one hundred two of this chapter issue a new license to the transferring company to reflect the change in its state of corporate domicile. The duration of its license shall be governed by section one thousand one hundred three of this chapter. Upon issuance of such new license the redomestication shall become effective and the transferring

company shall be a domestic company OR A FOREIGN COMPANY, AS APPROPRIATE.

[(d)] (E) Simultaneous with the redomestication taking effect:

(1) all materials and documents that were submitted to the superintendent by the transferring company pursuant to the requirements of this section shall be filed in the office of the superintendent SUBJECT TO SUBSECTION (H) OF THIS SECTION; and

(2) FOR A TRANSFERRING COMPANY TRANSFERRING TO THIS STATE, the superintendent shall, in accordance with section one thousand two hundred one or other applicable provisions of this chapter issue to the company a certified copy of its new declaration and charter and a certificate of incorporation. The new charter of the company may provide for the continuation of the corporate existence of the transferring company and in such case the original date of incorporation of the transferring company shall be the date of incorporation of the new domestic company.

[(e)] (F) All outstanding insurance policies and contracts shall remain in full force and effect with no change and need not be endorsed as to the new name of the company, if any, or its new location unless ordered by the superintendent.

[(f)] (G) All agents' appointments and licenses, rates, and other items that the superintendent allows, existing at the time of redomestication, shall continue in full force and effect in accordance with applicable provisions of this chapter.

(H) THE SUPERINTENDENT SHALL KEEP THE CONTENTS OF ANY REPORT OR INFORMATION THE SUPERINTENDENT REQUIRES PURSUANT TO THIS SECTION, AND THAT IS NOT OTHERWISE REQUIRED TO BE SET FORTH IN A PUBLICLY AVAILABLE REPORT OR FILING, CONFIDENTIAL IN ACCORDANCE WITH THE PROVISIONS OF SUBSECTION (C) OF SECTION ONE THOUSAND FIVE HUNDRED FOUR OF THIS CHAPTER.

S 2. This act shall take effect immediately.

PART D

Section 1. The section heading and subsections (a), (b) and (c) of section 2123 of the insurance law, subsection (a) as amended by section 37-a of part D of chapter 56 of the laws of 2013, subsections (b) and (c) as amended by chapter 540 of the laws of 1996, are amended to read as follows:

Misrepresentations[,] AND misleading statements [and incomplete comparisons].

(a) (1) No agent or representative of any insurer or health maintenance organization authorized to transact life, accident or health insurance or health maintenance organization business in this state, insurance broker, person who has received a grant from and has been certified by the health benefit exchange established pursuant to section 1311 of the Affordable Care Act, 42 U.S.C. S 18031, to act as a navigator, including any person employed by a certified navigator, or other person, firm, association or corporation, shall issue or circulate or cause or permit to be issued or circulated, any illustration, circular, statement or memorandum misrepresenting the terms, benefits or advantages of any policy or contract of life, accident or health insurance, any annuity contract or any health maintenance organization contract, delivered or issued for delivery or to be delivered or issued for delivery, in this state, or shall make any misleading estimate as to the dividends or share of surplus or additional amounts to be received in the future on such policy or contract, or shall make any false or misleading statement as to the dividends or share of surplus or addi-

tional amounts previously paid by any such insurer or health maintenance organization on similar policies or contracts, or shall make any misleading representation, or any misrepresentation, as to the financial condition of any such insurer or health maintenance organization, or as to the legal reserve system upon which such insurer or health maintenance organization operates.

(2) No such person, firm, association or corporation shall make to any person or persons any incomplete [comparison] OR MISLEADING REPRESENTATION of any such policies or contracts of any insurer, insurers, or health maintenance organization, for the purpose of inducing, or tending to induce, such person or persons to lapse, forfeit or surrender any insurance policy or health maintenance organization contract.

(3) Any replacement of individual life insurance policies or individual annuity contracts of an insurer by an agent, representative of the same or different insurer or broker shall conform to standards promulgated by regulation by the superintendent. Such regulation shall BE CONSISTENT, TO THE GREATEST EXTENT PRACTICABLE AND IN THE PUBLIC INTEREST, WITH THE REPLACEMENTS REGULATION ADOPTED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, AS AMENDED FROM TIME TO TIME, AND SHALL ALSO:

(A) specify what constitutes the replacement of a life insurance policy or annuity contract and the proper disclosure and notification procedures to replace a policy or contract;

(B) require notification of the proposed replacement to the insurer whose policies or contracts are intended to be replaced; AND

(C) [require the timely exchange of illustrative and cost information required by section three thousand two hundred nine of this chapter and necessary for completion of a comparison of the proposed and replaced coverage; and

(D)] provide for a sixty-day period following issuance of the replacement policies or contracts during which the policy or contract owner may return the policies or contracts and reinstate the replaced policies or contracts.

(b) [Any comparison of the policies or contracts of any such insurer, insurers or health maintenance organization shall be deemed to be an incomplete comparison if it does not conform to all the requirements for comparisons established by regulation.

(c)] In the determination, judicial or otherwise, of the incompleteness or misleading character of any such [comparison] REPRESENTATION, it shall not be presumed that the insured knew or knows of any of the provisions, terms or benefits contained in any insurance policy or health maintenance organization contract.

S 2. The section heading and subsections (a), (b) and (c) of section 4226 of the insurance law, paragraph 6 of subsection (a) as added by chapter 616 of the laws of 1997, are amended to read as follows:

Misrepresentations[,] AND misleading statements [and incomplete comparisons] by insurers. (a) No insurer authorized to do in this state the business of life, or accident and health insurance, or to make annuity contracts shall:

(1) issue or circulate, or cause or permit to be issued or circulated on its behalf, any illustration, circular, statement or memorandum misrepresenting the terms, benefits or advantages of any of its policies or contracts;

(2) make any estimate of the dividends or share of surplus or additional amounts to be received on such policies or contracts;

(3) make any false or misleading statement of the dividends or share of surplus or additional amounts paid by any such insurer on similar policies or contracts;

(4) make any misleading representation, or any misrepresentation of the financial condition of any such insurer or of the legal reserve system upon which it operates; [or]

(5) make or deliver to any person or persons any incomplete [comparison of] OR MISLEADING REPRESENTATION REGARDING any such policies or contracts for the purpose of inducing, or tending to induce, such person or persons to lapse, forfeit or surrender any insurance policy or contract[.]; OR

(6) replace the individual life insurance policies or individual annuity contracts of an insurer by the same or different insurer without conforming to the standards promulgated by regulation by the superintendent. Such regulation shall BE CONSISTENT, TO THE GREATEST EXTENT PRACTICABLE AND IN THE PUBLIC INTEREST, WITH THE REPLACEMENTS REGULATION ADOPTED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS, AS AMENDED FROM TIME TO TIME, AND SHALL ALSO:

(A) specify what constitutes the replacement of a life insurance policy or annuity contract and the proper disclosure and notification procedures to replace a policy or contract;

(B) require notification of the proposed replacement to the insurer whose policies or contracts are intended to be replaced; AND

(C) [require the timely exchange of illustrative and cost information required by section three thousand two hundred nine of this chapter and necessary for completion of a comparison of the proposed and replaced coverage; and

(D)] provide for a sixty-day period following issuance of the replacement policies or contracts during which the policy or contract owner may return the policies or contracts and reinstate the replaced policies or contracts.

(b) [Any comparison of the policies or contracts of any such insurer or insurers shall be deemed to be an incomplete comparison if it does not conform to all the requirements for comparisons established by the superintendent by regulation.

(c)] In any determination, judicial or otherwise, of the incompleteness or misleading character of any such [comparison or of] representation, it shall not be presumed that the insured knew or knows of any of the provisions or benefits contained in any insurance policy or contract.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.

PART E

Section 1. Subsection (a) of section 110 of the insurance law, as amended by chapter 238 of the laws of 2013, is amended to read as follows:

(a) In order to assist in the performance of the superintendent's duties under this chapter, the superintendent:

(1) may share documents, materials or other information, including confidential and privileged documents, materials or information with other state, federal, and international regulatory agencies, with the National Association of Insurance Commissioners, its affiliates or subsidiaries, and with state, federal, and international law enforcement authorities, including members of any supervisory college described in

section three hundred two of this chapter, provided that the recipient has the authority and agrees to maintain the confidentiality and privileged status of the document, material or other information; provided, however, that this paragraph shall not be construed as limiting access to records pursuant to article six of the public officers law;

(2) may receive documents, materials or information, including otherwise confidential and privileged documents, materials or information, from the National Association of Insurance Commissioners, its affiliates or subsidiaries and from regulatory and law enforcement officials of other foreign or domestic jurisdictions, including members of any supervisory college described in section three hundred two of this chapter, and shall maintain as confidential or privileged any document, material or information received with notice or the understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or information; and

(3) [may] (A) SHALL enter into WRITTEN agreements governing sharing and use of documents, materials or information consistent with this subsection[.]; AND

(B) RELATING TO THE REPORTS REQUIRED PURSUANT TO SECTIONS ONE THOUSAND FIVE HUNDRED THREE, ONE THOUSAND SIX HUNDRED FOUR AND ONE THOUSAND SEVEN HUNDRED SEVENTEEN OF THIS CHAPTER AND IN FURTHERANCE OF THIS SUBSECTION: (I) SPECIFY PROCEDURES AND PROTOCOLS REGARDING THE CONFIDENTIALITY AND SECURITY OF INFORMATION SHARED WITH THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS OR A THIRD-PARTY CONSULTANT DESIGNATED BY THAT ORGANIZATION, THE SUPERINTENDENT OR ANOTHER STATE, FEDERAL OR INTERNATIONAL REGULATOR AGENCY, INCLUDING PROCEDURES OR PROTOCOLS FOR SHARING BY THE ASSOCIATION OR SUCH THIRD-PARTY CONSULTANT WITH OTHER STATE REGULATORS FROM STATES IN WHICH THE INSURANCE GROUP HAS DOMICILED INSURERS, AND ENTER INTO A WRITTEN AGREEMENT WHICH SHALL PROVIDE THAT THE RECIPIENT MAINTAIN THE CONFIDENTIALITY AND PRIVILEGED STATUS OF THE ORSA-RELATED DOCUMENTS, MATERIALS OR OTHER INFORMATION AND HAS VERIFIED IN WRITING THE LEGAL AUTHORITY TO MAINTAIN CONFIDENTIALITY; (II) SPECIFY THAT OWNERSHIP OF INFORMATION SHARED WITH THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS OR SUCH THIRD-PARTY CONSULTANT REMAINS WITH THE SUPERINTENDENT AND THE ASSOCIATION'S OR SUCH THIRD-PARTY CONSULTANT'S USE OF THE INFORMATION IS SUBJECT TO THE DIRECTION OF THE SUPERINTENDENT; (III) PROHIBIT THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS OR SUCH THIRD-PARTY CONSULTANT FROM STORING THE INFORMATION SHARED PURSUANT TO THIS SUBSECTION IN A PERMANENT DATABASE AFTER THE UNDERLYING ANALYSIS IS COMPLETED; (IV) REQUIRE PROMPT NOTICE TO BE GIVEN TO AN INSURER WHOSE CONFIDENTIAL INFORMATION IN THE POSSESSION OF THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS OR SUCH THIRD-PARTY CONSULTANT IS SUBJECT TO A REQUEST OR SUBPOENA TO THE ASSOCIATION OR SUCH THIRD-PARTY CONSULTANT FOR DISCLOSURE OR PRODUCTION; AND (V) REQUIRE THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS OR SUCH THIRD-PARTY CONSULTANT TO CONSENT TO INTERVENTION BY AN INSURER IN ANY JUDICIAL OR ADMINISTRATIVE ACTION IN WHICH SUCH ASSOCIATION OR SUCH THIRD-PARTY CONSULTANT MAY BE REQUIRED TO DISCLOSE CONFIDENTIAL INFORMATION ABOUT THE INSURER SHARED WITH THE ASSOCIATION OR SUCH THIRD-PARTY CONSULTANT.

S 2. Subsection (a) of section 1501 of the insurance law is amended by adding three new paragraphs 8, 9, and 10 to read as follows:

(8) "OWN RISK AND SOLVENCY ASSESSMENT" OR "ORSA" SHALL MEAN A CONFIDENTIAL INTERNAL ASSESSMENT, APPROPRIATE TO THE NATURE, SCALE AND COMPLEXITY OF AN INSURER OR INSURANCE GROUP, CONDUCTED BY THAT INSURER OR INSURANCE GROUP OF THE MATERIAL AND RELEVANT RISKS ASSOCIATED WITH

THE INSURER OR INSURANCE GROUP'S CURRENT BUSINESS PLAN, AND THE SUFFICIENCY OF CAPITAL RESOURCES TO SUPPORT THOSE RISKS.

(9) "ORSA GUIDANCE MANUAL" SHALL MEAN THE CURRENT VERSION OF THE OWN RISK AND SOLVENCY ASSESSMENT GUIDANCE MANUAL DEVELOPED AND ADOPTED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS (NAIC) AND AS AMENDED FROM TIME TO TIME. A CHANGE IN THE ORSA GUIDANCE MANUAL SHALL BE EFFECTIVE ON THE FIRST OF JANUARY FOLLOWING THE CALENDAR YEAR IN WHICH THE CHANGES HAVE BEEN ADOPTED BY THE NAIC.

(10) "ORSA SUMMARY REPORT" SHALL MEAN A CONFIDENTIAL HIGH-LEVEL SUMMARY OF AN INSURER OR INSURANCE GROUP'S ORSA.

S 3. Section 1503 of the insurance law is amended by adding two new subsections (c) and (d) to read as follows:

(C)(1) AN INSURER, OR THE INSURANCE GROUP OF WHICH THE INSURER IS A MEMBER, SHALL REGULARLY CONDUCT AN ORSA CONSISTENT WITH A PROCESS COMPARABLE TO THE ORSA GUIDANCE MANUAL. THE ORSA SHALL BE CONDUCTED NO LESS THAN ANNUALLY BUT ALSO AT ANY TIME WHEN THERE ARE SIGNIFICANT CHANGES TO THE RISK PROFILE OF THE INSURER OR THE INSURANCE GROUP OF WHICH THE INSURER IS A MEMBER.

(2) UPON THE REQUEST OF THE SUPERINTENDENT, AND NO MORE THAN ONCE EACH YEAR, AN AUTHORIZED DOMESTIC INSURER SHALL SUBMIT TO THE SUPERINTENDENT AN ORSA SUMMARY REPORT OR ANY COMBINATION OF REPORTS THAT TOGETHER CONTAIN THE INFORMATION DESCRIBED IN THE ORSA GUIDANCE MANUAL, APPLICABLE TO THE INSURER AND/OR THE INSURANCE GROUP OF WHICH IT IS A MEMBER. NOTWITHSTANDING ANY REQUEST FROM THE SUPERINTENDENT, IF THE INSURER IS A MEMBER OF AN INSURANCE GROUP, THE INSURER SHALL SUBMIT THE REPORT(S) REQUIRED BY THIS SUBSECTION IF THE SUPERINTENDENT IS THE LEAD STATE COMMISSIONER OF THE INSURANCE GROUP, AS DETERMINED BY THE PROCEDURES WITHIN THE FINANCIAL ANALYSIS HANDBOOK ADOPTED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.

(3) THE REPORT(S) SHALL INCLUDE A SIGNATURE OF THE INSURER OR INSURANCE GROUP'S CHIEF RISK OFFICER OR OTHER EXECUTIVE HAVING RESPONSIBILITY FOR THE OVERSIGHT OF THE INSURER'S ENTERPRISE RISK MANAGEMENT PROCESS ATTESTING TO THE BEST OF HIS/HER BELIEF AND KNOWLEDGE THAT THE INSURER APPLIES THE ENTERPRISE RISK MANAGEMENT PROCESS DESCRIBED IN THE ORSA SUMMARY REPORT AND THAT A COPY OF THE REPORT HAS BEEN PROVIDED TO THE INSURER'S BOARD OF DIRECTORS OR THE APPROPRIATE COMMITTEE THEREOF.

(4) AN INSURER MAY COMPLY WITH PARAGRAPH ONE OF THIS SUBSECTION BY PROVIDING THE MOST RECENT AND SUBSTANTIALLY SIMILAR REPORT(S) PROVIDED BY THE INSURER OR ANOTHER MEMBER OF AN INSURANCE GROUP OF WHICH THE INSURER IS A MEMBER TO THE COMMISSIONER OF ANOTHER STATE OR TO A SUPERVISOR OR REGULATOR OF A FOREIGN JURISDICTION, IF THAT REPORT PROVIDES INFORMATION THAT IS COMPARABLE TO THE INFORMATION DESCRIBED IN THE ORSA GUIDANCE MANUAL. ANY SUCH REPORT IN A LANGUAGE OTHER THAN ENGLISH MUST BE ACCOMPANIED BY A TRANSLATION OF THAT REPORT INTO THE ENGLISH LANGUAGE.

(D) THE SUPERINTENDENT MAY PROMULGATE ANY REGULATION NECESSARY TO ACCOMPLISH THE REQUIREMENTS OF SUBSECTIONS (B) AND (C) OF THIS SECTION, INCLUDING ANY EXEMPTIONS DETERMINED AS APPROPRIATE BY THE SUPERINTENDENT.

S 4. Subsection (c) of section 1504 of the insurance law, as amended by chapter 238 of the laws of 2013, is amended to read as follows:

(c) [The] (1) EXCEPT AS PROVIDED IN PARAGRAPH TWO OF THIS SUBSECTION, THE superintendent shall keep the contents of each report made pursuant to this article and any information obtained in connection therewith confidential and shall not make the same public without the prior written consent of the controlled insurer to which it pertains unless the

superintendent after notice and an opportunity to be heard, shall determine that the interests of policyholders, shareholders or the public will be served by the publication thereof. In any action or proceeding by the superintendent against the person examined or any other person within the same holding company system a report of such examination published by the superintendent shall be admissible as evidence of the facts stated therein.

(2)(A) DOCUMENTS, MATERIALS OR OTHER INFORMATION RELATING TO AN ENTERPRISE RISK MANAGEMENT REPORT OR ORSA SUMMARY REPORT REQUIRED PURSUANT TO THIS ARTICLE AND IN THE POSSESSION OR CONTROL OF THE SUPERINTENDENT THAT ARE OBTAINED BY, CREATED BY OR DISCLOSED TO THE SUPERINTENDENT OR ANY OTHER PERSON UNDER THIS ARTICLE, IS RECOGNIZED BY THIS STATE AS BEING PROPRIETARY AND TO CONTAIN TRADE SECRETS. ALL SUCH DOCUMENTS, MATERIALS OR OTHER INFORMATION SHALL BE CONFIDENTIAL BY LAW AND PRIVILEGED, SHALL NOT BE SUBJECT TO SECTION EIGHTY-SEVEN OF THE PUBLIC OFFICERS LAW, SHALL NOT BE SUBJECT TO SUBPOENA, AND SHALL NOT BE SUBJECT TO DISCOVERY OR ADMISSIBLE IN EVIDENCE IN ANY PRIVATE CIVIL ACTION. HOWEVER, THE SUPERINTENDENT IS AUTHORIZED TO USE THE DOCUMENTS, MATERIALS OR OTHER INFORMATION IN THE FURTHERANCE OF ANY REGULATORY OR LEGAL ACTION BROUGHT AS A PART OF THE SUPERINTENDENT'S OFFICIAL DUTIES. THE SUPERINTENDENT SHALL NOT OTHERWISE MAKE THE DOCUMENTS, MATERIALS OR OTHER INFORMATION PUBLIC WITHOUT THE PRIOR WRITTEN CONSENT OF THE INSURER.

(B) NEITHER THE SUPERINTENDENT, NOR ANY PERSON WHO RECEIVED DOCUMENTS, MATERIALS OR OTHER ORSA-RELATED INFORMATION, THROUGH EXAMINATION OR OTHERWISE, WHILE ACTING UNDER THE AUTHORITY OF THE SUPERINTENDENT OR WITH WHOM SUCH DOCUMENTS, MATERIALS OR OTHER INFORMATION ARE SHARED PURSUANT TO THIS ARTICLE SHALL BE PERMITTED OR REQUIRED TO TESTIFY IN ANY PRIVATE CIVIL ACTION CONCERNING ANY CONFIDENTIAL DOCUMENTS, MATERIALS, OR INFORMATION SUBJECT TO SUBPARAGRAPH (A) OF THIS PARAGRAPH.

S 5. Subsection (b) of section 1604 of the insurance law, as added by chapter 238 of the laws of 2013, is amended to read as follows:

(b)(1) An authorized domestic insurer, other than a domestic insurer required to register as a controlled insurer pursuant to section one thousand five hundred three of this chapter, shall adopt a formal enterprise risk management function and shall file an enterprise risk report with the superintendent by April thirtieth of each year. The report shall, to the best of the insurer's knowledge and belief, identify the material risks within any subsidiary that could pose enterprise risk to the insurer.

(2) (A) AN AUTHORIZED DOMESTIC INSURER, OTHER THAN A DOMESTIC INSURER REQUIRED TO REGISTER AS A CONTROLLED INSURER PURSUANT TO SECTION ONE THOUSAND FIVE HUNDRED THREE OF THIS CHAPTER, SHALL REGULARLY CONDUCT AN ORSA CONSISTENT WITH A PROCESS COMPARABLE TO THE ORSA GUIDANCE MANUAL. THE ORSA SHALL BE CONDUCTED NO LESS THAN ANNUALLY BUT ALSO AT ANY TIME WHEN THERE ARE SIGNIFICANT CHANGES TO THE RISK PROFILE OF THE INSURER OR THE INSURANCE GROUP OF WHICH THE INSURER IS A MEMBER.

(B) UPON THE REQUEST OF THE SUPERINTENDENT, AND NO MORE THAN ONCE EACH YEAR, AN AUTHORIZED DOMESTIC INSURER, OTHER THAN A DOMESTIC INSURER REQUIRED TO REGISTER AS A CONTROLLED INSURER PURSUANT TO SECTION ONE THOUSAND FIVE HUNDRED THREE OF THIS CHAPTER, SHALL SUBMIT TO THE SUPERINTENDENT AN ORSA SUMMARY REPORT OR ANY COMBINATION OF REPORTS THAT TOGETHER CONTAIN THE INFORMATION DESCRIBED IN THE ORSA GUIDANCE MANUAL, APPLICABLE TO THE INSURER AND/OR THE INSURANCE GROUP OF WHICH IT IS A MEMBER. NOTWITHSTANDING ANY REQUEST FROM THE SUPERINTENDENT, IF THE INSURER IS A MEMBER OF AN INSURANCE GROUP, THE INSURER SHALL SUBMIT THE REPORT(S) REQUIRED BY THIS SUBSECTION IF THE SUPERINTENDENT IS THE LEAD

STATE COMMISSIONER OF THE INSURANCE GROUP, AS DETERMINED BY THE PROCEDURES WITHIN THE FINANCIAL ANALYSIS HANDBOOK ADOPTED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.

(C) THE REPORT(S) SHALL INCLUDE A SIGNATURE OF THE INSURER OR INSURANCE GROUP'S CHIEF RISK OFFICER OR OTHER EXECUTIVE HAVING RESPONSIBILITY FOR THE OVERSIGHT OF THE INSURER'S ENTERPRISE RISK MANAGEMENT PROCESS ATTESTING TO THE BEST OF HIS/HER BELIEF AND KNOWLEDGE THAT THE INSURER APPLIES THE ENTERPRISE RISK MANAGEMENT PROCESS DESCRIBED IN THE ORSA SUMMARY REPORT AND THAT A COPY OF THE REPORT HAS BEEN PROVIDED TO THE INSURER'S BOARD OF DIRECTORS OR THE APPROPRIATE COMMITTEE THEREOF.

(D) AN INSURER MAY COMPLY WITH SUBPARAGRAPH (B) OF THIS PARAGRAPH BY PROVIDING THE MOST RECENT AND SUBSTANTIALLY SIMILAR REPORT(S) PROVIDED BY THE INSURER OR ANOTHER MEMBER OF AN INSURANCE GROUP OF WHICH THE INSURER IS A MEMBER TO THE COMMISSIONER OF ANOTHER STATE OR TO A SUPERVISOR OR REGULATOR OF A FOREIGN JURISDICTION, IF THAT REPORT PROVIDES INFORMATION THAT IS COMPARABLE TO THE INFORMATION DESCRIBED IN THE ORSA GUIDANCE MANUAL. ANY SUCH REPORT IN A LANGUAGE OTHER THAN ENGLISH MUST BE ACCOMPANIED BY A TRANSLATION OF THAT REPORT INTO THE ENGLISH LANGUAGE.

(3)(A) DOCUMENTS, MATERIALS OR OTHER INFORMATION RELATING TO AN ENTERPRISE RISK MANAGEMENT REPORT OR ORSA SUMMARY REPORT REQUIRED PURSUANT TO THIS ARTICLE AND IN THE POSSESSION OR CONTROL OF THE SUPERINTENDENT THAT ARE OBTAINED BY, CREATED BY OR DISCLOSED TO THE SUPERINTENDENT OR ANY OTHER PERSON UNDER THIS ARTICLE, IS RECOGNIZED BY THIS STATE AS BEING PROPRIETARY AND TO CONTAIN TRADE SECRETS. ALL SUCH DOCUMENTS, MATERIALS OR OTHER INFORMATION SHALL BE CONFIDENTIAL BY LAW AND PRIVILEGED, SHALL NOT BE SUBJECT TO SECTION EIGHTY-SEVEN OF THE PUBLIC OFFICERS LAW, SHALL NOT BE SUBJECT TO SUBPOENA, AND SHALL NOT BE SUBJECT TO DISCOVERY OR ADMISSIBLE IN EVIDENCE IN ANY PRIVATE CIVIL ACTION. HOWEVER, THE SUPERINTENDENT IS AUTHORIZED TO USE THE DOCUMENTS, MATERIALS OR OTHER INFORMATION IN THE FURTHERANCE OF ANY REGULATORY OR LEGAL ACTION BROUGHT AS A PART OF THE SUPERINTENDENT'S OFFICIAL DUTIES. THE SUPERINTENDENT SHALL NOT OTHERWISE MAKE THE DOCUMENTS, MATERIALS OR OTHER INFORMATION PUBLIC WITHOUT THE PRIOR WRITTEN CONSENT OF THE INSURER.

(B) NEITHER THE SUPERINTENDENT, NOR ANY PERSON WHO RECEIVED DOCUMENTS, MATERIALS OR OTHER ORSA-RELATED INFORMATION, THROUGH EXAMINATION OR OTHERWISE, WHILE ACTING UNDER THE AUTHORITY OF THE SUPERINTENDENT OR WITH WHOM SUCH DOCUMENTS, MATERIALS OR OTHER INFORMATION ARE SHARED PURSUANT TO THIS ARTICLE SHALL BE PERMITTED OR REQUIRED TO TESTIFY IN ANY PRIVATE CIVIL ACTION CONCERNING ANY CONFIDENTIAL DOCUMENTS, MATERIALS, OR INFORMATION SUBJECT TO SUBPARAGRAPH (A) OF THIS PARAGRAPH.

(4) THE SUPERINTENDENT MAY PROMULGATE ANY REGULATION NECESSARY TO ACCOMPLISH THE REQUIREMENTS OF THIS SUBSECTION, INCLUDING ANY EXEMPTIONS DETERMINED AS APPROPRIATE BY THE SUPERINTENDENT.

(5)(A) For the purposes of this article, "enterprise risk" means any activity, circumstance, event, or series of events involving one or more subsidiaries of an insurer that, if not remedied promptly, is likely to have a material adverse effect upon the financial condition or liquidity of the insurer, including anything that would cause the insurer's risk-based capital to fall into company action level as set forth in section one thousand three hundred twenty-four of this chapter, or that would cause further transaction of business to be hazardous to the insurer's policyholders or creditors or the public.

(B) FOR THE PURPOSES OF THIS ARTICLE, THE TERMS "OWN RISK AND SOLVENCY ASSESSMENT" OR "ORSA," "ORSA GUIDANCE MANUAL" AND "ORSA SUMMARY REPORT"

SHALL HAVE THE SAME MEANING AS PROVIDED IN SECTION FIFTEEN HUNDRED ONE OF THIS CHAPTER.

S 6. Section 1702 of the insurance law is amended by adding a new subsection (g) to read as follows:

(G) "OWN RISK AND SOLVENCY ASSESSMENT" OR "ORSA," "ORSA GUIDANCE MANUAL" AND "ORSA SUMMARY REPORT" SHALL HAVE THE SAME MEANING AS PROVIDED IN SECTION ONE THOUSAND FIVE HUNDRED ONE OF THIS CHAPTER.

S 7. Section 1709 of the insurance law, as amended by chapter 381 of the laws of 1986, is amended to read as follows:

S 1709. Confidentiality of information reports. [The] (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, THE contents of each information report filed hereunder and information pertaining thereto shall be kept confidential, shall not be subject to subpoena and shall not be made public unless, after notice and opportunity to be heard, the superintendent determines that the interests of policyholders, subscribers, stockholders or the public will be served by the publication thereof. The provisions of this section shall not be applicable to any information report filed hereunder and any information pertaining thereto, if the parent corporation is a corporation subject to article forty-three of this chapter.

(B)(1) DOCUMENTS, MATERIALS OR OTHER INFORMATION RELATING TO AN ENTERPRISE RISK MANAGEMENT REPORT OR ORSA SUMMARY REPORT REQUIRED PURSUANT TO THIS ARTICLE AND IN THE POSSESSION OR CONTROL OF THE SUPERINTENDENT THAT ARE OBTAINED BY, CREATED BY OR DISCLOSED TO THE SUPERINTENDENT OR ANY OTHER PERSON UNDER THIS ARTICLE, IS RECOGNIZED BY THIS STATE AS BEING PROPRIETARY AND TO CONTAIN TRADE SECRETS. ALL SUCH DOCUMENTS, MATERIALS OR OTHER INFORMATION SHALL BE CONFIDENTIAL BY LAW AND PRIVILEGED, SHALL NOT BE SUBJECT TO SECTION EIGHTY-SEVEN OF THE PUBLIC OFFICERS LAW, SHALL NOT BE SUBJECT TO SUBPOENA, AND SHALL NOT BE SUBJECT TO DISCOVERY OR ADMISSIBLE IN EVIDENCE IN ANY PRIVATE CIVIL ACTION. HOWEVER, THE SUPERINTENDENT IS AUTHORIZED TO USE THE DOCUMENTS, MATERIALS OR OTHER INFORMATION IN THE FURTHERANCE OF ANY REGULATORY OR LEGAL ACTION BROUGHT AS A PART OF THE SUPERINTENDENT'S OFFICIAL DUTIES. THE SUPERINTENDENT SHALL NOT OTHERWISE MAKE THE DOCUMENTS, MATERIALS OR OTHER INFORMATION PUBLIC WITHOUT THE PRIOR WRITTEN CONSENT OF THE INSURER.

(2) NEITHER THE SUPERINTENDENT, NOR ANY PERSON WHO RECEIVED DOCUMENTS, MATERIALS OR OTHER ORSA-RELATED INFORMATION, THROUGH EXAMINATION OR OTHERWISE, WHILE ACTING UNDER THE AUTHORITY OF THE SUPERINTENDENT OR WITH WHOM SUCH DOCUMENTS, MATERIALS OR OTHER INFORMATION ARE SHARED PURSUANT TO THIS ARTICLE SHALL BE PERMITTED OR REQUIRED TO TESTIFY IN ANY PRIVATE CIVIL ACTION CONCERNING ANY CONFIDENTIAL DOCUMENTS, MATERIALS, OR INFORMATION SUBJECT TO PARAGRAPH ONE OF THIS SECTION.

S 8. Section 1717 of the insurance law is amended by adding two new subsections (c) and (d) to read as follows:

(C)(1) AN AUTHORIZED DOMESTIC INSURER, OTHER THAN A DOMESTIC INSURER REQUIRED TO REGISTER AS A CONTROLLED INSURER PURSUANT TO SECTION ONE THOUSAND FIVE HUNDRED THREE OF THIS CHAPTER, SHALL REGULARLY CONDUCT AN ORSA CONSISTENT WITH A PROCESS COMPARABLE TO THE ORSA GUIDANCE MANUAL. THE ORSA SHALL BE CONDUCTED NO LESS THAN ANNUALLY BUT ALSO AT ANY TIME WHEN THERE ARE SIGNIFICANT CHANGES TO THE RISK PROFILE OF THE INSURER OR THE INSURANCE GROUP OF WHICH THE INSURER IS A MEMBER.

(2) UPON THE REQUEST OF THE SUPERINTENDENT, AND NO MORE THAN ONCE EACH YEAR, AN AUTHORIZED DOMESTIC INSURER, OTHER THAN A DOMESTIC INSURER REQUIRED TO REGISTER AS A CONTROLLED INSURER PURSUANT TO SECTION ONE THOUSAND FIVE HUNDRED THREE OF THIS CHAPTER, SHALL SUBMIT TO THE SUPERINTENDENT AN ORSA SUMMARY REPORT OR ANY COMBINATION OF REPORTS THAT

TOGETHER CONTAIN THE INFORMATION DESCRIBED IN THE ORSA GUIDANCE MANUAL, APPLICABLE TO THE INSURER AND/OR THE INSURANCE GROUP OF WHICH IT IS A MEMBER. NOTWITHSTANDING ANY REQUEST FROM THE SUPERINTENDENT, IF THE INSURER IS A MEMBER OF AN INSURANCE GROUP, THE INSURER SHALL SUBMIT THE REPORT(S) REQUIRED BY THIS SUBSECTION IF THE SUPERINTENDENT IS THE LEAD STATE COMMISSIONER OF THE INSURANCE GROUP, AS DETERMINED BY THE PROCEDURES WITHIN THE FINANCIAL ANALYSIS HANDBOOK ADOPTED BY THE NATIONAL ASSOCIATION OF INSURANCE COMMISSIONERS.

(3) THE REPORT(S) SHALL INCLUDE A SIGNATURE OF THE INSURER OR INSURANCE GROUP'S CHIEF RISK OFFICER OR OTHER EXECUTIVE HAVING RESPONSIBILITY FOR THE OVERSIGHT OF THE INSURER'S ENTERPRISE RISK MANAGEMENT PROCESS ATTESTING TO THE BEST OF HIS/HER BELIEF AND KNOWLEDGE THAT THE INSURER APPLIES THE ENTERPRISE RISK MANAGEMENT PROCESS DESCRIBED IN THE ORSA SUMMARY REPORT AND THAT A COPY OF THE REPORT HAS BEEN PROVIDED TO THE INSURER'S BOARD OF DIRECTORS OR THE APPROPRIATE COMMITTEE THEREOF.

(4) AN INSURER MAY COMPLY WITH PARAGRAPH TWO OF THIS SUBSECTION BY PROVIDING THE MOST RECENT AND SUBSTANTIALLY SIMILAR REPORT(S) PROVIDED BY THE INSURER OR ANOTHER MEMBER OF AN INSURANCE GROUP OF WHICH THE INSURER IS A MEMBER TO THE COMMISSIONER OF ANOTHER STATE OR TO A SUPERVISOR OR REGULATOR OF A FOREIGN JURISDICTION, IF THAT REPORT PROVIDES INFORMATION THAT IS COMPARABLE TO THE INFORMATION DESCRIBED IN THE ORSA GUIDANCE MANUAL. ANY SUCH REPORT IN A LANGUAGE OTHER THAN ENGLISH MUST BE ACCOMPANIED BY A TRANSLATION OF THAT REPORT INTO THE ENGLISH LANGUAGE.

(D) THE SUPERINTENDENT MAY PROMULGATE ANY REGULATION NECESSARY TO ACCOMPLISH THE REQUIREMENTS OF SUBSECTIONS (B) AND (C) OF THIS SECTION, INCLUDING ANY EXEMPTIONS DETERMINED AS APPROPRIATE BY THE SUPERINTENDENT.

S 9. This act shall take effect immediately.

S 4. Severability clause. If any clause, sentence, paragraph, subdivision, section or part of this act shall be adjudged by a court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section or part thereof directly involved in the controversy in which such judgment shall have been rendered. It is hereby declared to be the intent of the legislature that this act would have been enacted even if such invalid provisions had not been included herein.

S 5. This act shall take effect immediately provided, however, that the applicable effective date of Parts A through E of this act shall be as specifically set forth in the last section of such Parts.