

# STATE OF NEW YORK

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4822

2017-2018 Regular Sessions

## IN ASSEMBLY

February 3, 2017

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Introduced by M. of A. TITUS, STECK, WEPRIN, QUART, HEVESI, COOK -- read once and referred to the Committee on Insurance

AN ACT to amend the insurance law, in relation to establishing the interstate insurance product regulation compact to regulate certain insurance products; and providing for the repeal of such provisions upon expiration thereof

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Legislative findings and intent. An interstate compact is  
2 an agreement between states that permits states to cooperate on multi-  
3 state or national issues while retaining state control. There are over  
4 two hundred interstate compacts currently in existence and every state  
5 belongs to at least fourteen such compacts. The interstate insurance  
6 product regulation compact is designed to streamline state product regu-  
7 lation systems to allow insurers to more quickly market certain types of  
8 insurance products nationally and to reduce the number of variations of  
9 the same product that a company must produce to meet specific product  
10 standards. The compact would cover individual and group products for  
11 life insurance, annuities, disability income and long-term care insur-  
12 ance. The state of New York seeks to join with other states and estab-  
13 lish the interstate insurance product regulation compact and become a  
14 member of the interstate insurance product regulation commission.

15 § 2. The insurance law is amended by adding a new article 88 to read  
16 as follows:

### ARTICLE 88

#### INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

19 Section 8801. Short title.

20 8802. Purpose.

21 8803. Definitions.

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

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1 8804. Establishment of the commission and venue.

2 8805. Powers of the commission.

3 8806. Organization of the commission.

4 8807. Meetings and acts of the commission.

5 8808. Rules and operating procedures; rule making functions of  
6 the commission and opting out of uniform standards.

7 8809. Commission records and enforcement.

8 8810. Dispute resolution.

9 8811. Product filing and approval.

10 8812. Review of commission decisions regarding filings.

11 8813. Finance.

12 8814. Compacting states, effective date and amendment.

13 8815. Withdrawal, default and termination.

14 8816. Severability and construction.

15 8817. Binding effect of compact and other laws.

16 § 8801. Short title. This article shall be known and may be cited as  
17 the "interstate insurance product regulation compact".

18 § 8802. Purpose. The purposes of this compact are, through means of  
19 joint and cooperative action among the compacting states:

20 (a) to promote and protect the interest of consumers of individual and  
21 group annuity, life insurance, disability income and long-term care  
22 insurance products;

23 (b) to develop uniform standards for insurance products covered under  
24 the compact;

25 (c) to establish a central clearinghouse to receive and provide prompt  
26 review of insurance products covered under the compact and, in certain  
27 cases, advertisements related thereto, submitted by insurers authorized  
28 to do business in one or more compacting states;

29 (d) to give appropriate regulatory approval to those product filings  
30 and advertisements satisfying the applicable uniform standard;

31 (e) to improve coordination of regulatory resources and expertise  
32 between state insurance departments regarding the setting of uniform  
33 standards and review of insurance products covered under the compact;

34 (f) to create the interstate insurance product regulation commission;  
35 and

36 (g) to perform such other related functions as may be consistent with  
37 the state regulation of the business of insurance.

38 § 8803. Definitions. As used in this article:

39 (a) "Advertisement" means any material designed to create public  
40 interest in a product, or induce the public to purchase, increase, modi-  
41 fy, reinstate, borrow on, surrender, replace or retain a policy, as more  
42 specifically defined in the rules and operating procedures of the  
43 commission.

44 (b) "By-laws" mean those by-laws established by the commission for its  
45 governance or for directing or controlling the commission's actions or  
46 conduct.

47 (c) "Compacting state" means any state which has enacted this compact  
48 legislation and which has not withdrawn or been terminated pursuant to  
49 section eight thousand eight hundred fifteen of this article.

50 (d) "Commission" means the "Interstate insurance product regulation  
51 commission" established by the compact.

52 (e) "Commissioner" means the chief insurance regulatory official of a  
53 state including, but not limited to commissioner, superintendent, direc-  
54 tor or administrator.

1     (f) "Domiciliary state" means the state in which an insurer is incor-  
2 porated or organized or, in the case of an alien insurer, its state of  
3 entry.

4     (g) "Insurer" means any entity licensed by a state to issue contracts  
5 of insurance for any of the lines of insurance covered by this article.

6     (h) "Member" means the person, or his or her designee, chosen by a  
7 compacting state for service on the commission.

8     (i) "Non-compacting state" means any state which is not at the time a  
9 compacting state.

10    (j) "Operating procedures" mean procedures promulgated by the commis-  
11 sion implementing a rule, uniform standard or a provision of this  
12 compact.

13    (k) "Product" means the form of the contract, policy application,  
14 endorsements, certificate forms, evidence of coverage forms and related  
15 forms for an individual or group annuity, life insurance, disability  
16 income or long-term care insurance product, which an insurer is author-  
17 ized to issue.

18    (l) "Rule" means a statement of general or particular applicability  
19 and future effect promulgated by the commission, including a uniform  
20 standard developed pursuant to section eight thousand eight hundred  
21 eight of this article, designed to implement, interpret, or prescribe  
22 law or policy or describing the organization, procedure, or practice  
23 requirements of the commission, which shall have the force and effect of  
24 law in the compacting states.

25    (m) "State" means any state, district or territory of the United  
26 States of America.

27    (n) "Third-party filer" means an entity that submits a product filing  
28 to the commission on behalf of an insurer.

29    (o) "Uniform standard" means a standard adopted by the commission for  
30 a product line, pursuant to section eight thousand eight hundred eight  
31 of this article and shall include all of the product requirements in  
32 aggregate; provided, that each uniform standard shall be construed,  
33 whether express or implied, to prohibit the use of any inconsistent,  
34 misleading or ambiguous provisions in a product and the form of such  
35 product made available to the public shall not be unfair, inequitable or  
36 against public policy as determined by the commission.

37    § 8804. Establishment of the commission and venue. (a) The compacting  
38 states hereby create and establish a joint public agency known as the  
39 "Interstate insurance product regulation commission". Pursuant to  
40 section eight thousand eight hundred eight of this article, the commis-  
41 sion shall have the power to develop uniform standards for product  
42 lines, receive and provide prompt review of products filed therewith,  
43 and give approval to those product filings satisfying applicable uniform  
44 standards; provided, however, that it is not intended for the commission  
45 to be the exclusive entity for receipt and review of insurance product  
46 filings. Nothing in this section shall prohibit any insurer from filing  
47 its product in any state wherein such insurer is licensed to conduct the  
48 business of insurance and such filing shall be subject to the laws of  
49 the state where filed.

50    (b) The commission is a body corporate and politic, and an instrumen-  
51 tality of the compacting states.

52    (c) The commission is a not-for-profit entity, separate and distinct  
53 from the individual compacting states.

54    (d) The commission is solely responsible for its liabilities unless  
55 otherwise specifically provided in this compact, except that, in no  
56 event shall the obligations of the commission be the debt of the state

1 of New York nor shall any revenues or property of the state of New York  
2 be liable therefor.

3 (e) Venue in proper and judicial proceedings by or against the commis-  
4 sion shall be brought solely and exclusively in a court of competent  
5 jurisdiction where the principal office of the commission is located.

6 § 8805. Powers of the commission. (a) The commission shall have the  
7 following powers:

8 (1) to promulgate rules, pursuant to section eight thousand eight  
9 hundred eight of this article, which shall have the force and effect of  
10 law and shall be binding in the compacting states to the extent and in  
11 the manner provided in this article;

12 (2) to exercise its rule making authority and establish reasonable  
13 uniform standards for products covered under the compact, and advertise-  
14 ment related thereto, which shall have the force and effect of law and  
15 shall be binding in the compacting states, but only for such products  
16 filed with the commission; provided, however, that a compacting state  
17 shall have the right to opt out of such uniform standard pursuant to  
18 section eight thousand eight hundred eight of this article to the extent  
19 and in the manner provided in this article, and provided further that  
20 any uniform standard established by the commissioner for long-term care  
21 insurance products may provide the same or greater protections for  
22 consumers as, but shall not provide less than, those protections set  
23 forth in the National Association of Insurance Commissioners' (herein-  
24 after referred to as the "NAIC") Long-Term Care Insurance Model Act and  
25 Long-Term Care Insurance Model Regulation, respectively, adopted as of  
26 2001. The commission shall consider whether any subsequent amendments to  
27 the NAIC Long-Term Care Insurance Model Act or Long-Term Care Insurance  
28 Model Regulation adopted by the NAIC require amending of the uniform  
29 standards established by the commission for long-term insurance  
30 products;

31 (3) to receive and review in an expeditious manner products filed with  
32 the commission, including rate filings for disability income and long-  
33 term care insurance products, and give approval of those products and  
34 rate filings that satisfy the applicable uniform standard, where such  
35 approval shall have the force and effect of law and be binding on the  
36 compacting states to the extent and in the manner provided in the  
37 compact;

38 (4) to receive and review in an expeditious manner advertisement  
39 relating to long-term care insurance products for which uniform stand-  
40 ards have been adopted by the commission, and give approval of such  
41 advertisement that satisfies the applicable uniform standard. For any  
42 product covered under this article, other than long-term care insurance  
43 products, the commission shall have the authority to require an insurer  
44 to submit all or any part of its advertisement with respect to that  
45 product for review or approval prior to use if the commission determines  
46 that the nature of the product is such that an advertisement of the  
47 product could have the capacity or tendency to mislead the public. The  
48 actions of the commission as provided in this section shall have the  
49 force and effect of law and shall be binding in the compacting states to  
50 the extent and in the manner provided in the compact;

51 (5) to exercise its rule making authority and designate products and  
52 advertisement that may be subject to a self-certification process with-  
53 out the need for prior approval by the commission;

54 (6) to promulgate operating procedures, pursuant to section eight  
55 thousand eight hundred eight of this article, which shall be binding in

1 the compacting states to the extent and in the manner provided in the  
2 compact;

3 (7) to bring and prosecute legal proceedings or actions in its name as  
4 the commission; provided, that the standing of any state insurance  
5 department to sue or be sued under applicable law shall not be affected;

6 (8) to issue subpoenas requiring the attendance and testimony of  
7 witnesses and the production of evidence;

8 (9) to establish and maintain offices;

9 (10) to purchase and maintain insurance and bonds;

10 (11) to borrow, accept or contract for services of personnel, includ-  
11 ing, but not limited to, employees of a compacting state;

12 (12) to hire employees, professionals or specialists, and elect or  
13 appoint officers, and to fix their compensation, define their duties and  
14 give them appropriate authority to carry out the purposes of the  
15 compact, and determine their qualifications; and to establish the  
16 commission's personnel policies and programs relating to, among other  
17 things, conflicts of interest, rates of compensation and qualifications  
18 of personnel;

19 (13) to accept any and all appropriate donations and grants of money,  
20 equipment, supplies, materials and services, and to receive, utilize and  
21 dispose of the same; provided that at all times the commission shall  
22 strive to avoid any appearance of impropriety;

23 (14) to lease, purchase, accept appropriate gifts or donations of, or  
24 otherwise to own, hold, improve or use, any property, real, personal or  
25 mixed; provided that at all times the commission shall strive to avoid  
26 any appearance of impropriety;

27 (15) to sell, convey, mortgage, pledge, lease, exchange, abandon or  
28 otherwise dispose of any property, real, personal or mixed;

29 (16) to remit filing fees to compacting states as may be set forth in  
30 the by-laws, rules or operating procedures;

31 (17) to enforce compliance by compacting states with rules, uniform  
32 standards, operating procedures and by-laws;

33 (18) to provide for dispute resolution among compacting states;

34 (19) to advise compacting states on issues relating to insurers domi-  
35 ciled or doing business in non-compacting jurisdictions, consistent with  
36 the purposes of the compact;

37 (20) to provide advice and training to those personnel in state insur-  
38 ance departments responsible for product review, and to be a resource  
39 for state insurance departments;

40 (21) to establish a budget and make expenditures;

41 (22) to borrow money;

42 (23) to appoint committees, including advisory committees comprising  
43 members, state insurance regulators, state legislators or their repre-  
44 sentatives, insurance industry and consumer representatives, and such  
45 other interested persons as may be designated in the by-laws;

46 (24) to provide and receive information from, and to cooperate with  
47 law enforcement agencies;

48 (25) to adopt and use a corporate seal; and

49 (26) to perform such other functions as may be necessary or appropri-  
50 ate to achieve the purposes of this compact consistent with the state  
51 regulation of the business of insurance.

52 (b) All donations, grants of money, equipment, supplies, materials or  
53 services, purchases, gifts, donations, conveyances, mortgages, pledges,  
54 leases and exchanges, as authorized by subsection (a) of this section,  
55 received by or on behalf of the commission shall be limited to the



1 direct funding of the lawful and authorized operations of the commis-  
2 sion.

3 § 8806. Organization of the commission. (a) Each compacting state  
4 shall have and be limited to one member. The superintendent, or his or  
5 her designated representative, shall be New York's member of such  
6 commission. Each member shall be qualified to serve in such capacity  
7 pursuant to applicable law of the compacting state. Any member may be  
8 removed or suspended from office as provided by the law of the state  
9 from which he or she shall be appointed. Any vacancy occurring in the  
10 commission shall be filled in accordance with the laws of the compacting  
11 state wherein such vacancy exists. Nothing herein shall be construed to  
12 affect the manner in which a compacting state determines the election or  
13 appointment and qualification of its own commissioner.

14 (b) Each member shall be entitled to one vote and shall have an oppor-  
15 tunity to participate in the governance of the commission in accordance  
16 with the by-laws. Notwithstanding any provision of this article to the  
17 contrary, no action of the commission with respect to the promulgation  
18 of a uniform standard shall be effective unless two-thirds of the  
19 members vote in favor thereof.

20 (c) The commission shall, by a majority of the members, prescribe  
21 by-laws to govern its conduct as may be necessary or appropriate to  
22 carry out the purposes, and exercise the powers, of the compact, includ-  
23 ing, but not limited to:

24 (1) establishing the fiscal year of the commission;

25 (2) providing reasonable procedures for holding meetings of the  
26 management committee;

27 (3) providing reasonable standards and procedures for the establish-  
28 ment of other committees, and governing any general or specific deleg-  
29 ation of any authority or function of the commission;

30 (4) providing reasonable procedures for calling and conducting meet-  
31 ings of the commission that consist of a majority of commission members,  
32 ensuring reasonable advance notice of each such meeting, and providing  
33 for the right of citizens to attend each such meeting with enumerated  
34 exceptions designed to protect the public's interest, the privacy of  
35 individuals and insurers' proprietary information, including trade  
36 secrets. The commission may meet in camera only after a majority of the  
37 entire membership votes to close a meeting in toto or in part. As soon  
38 as practicable, the commission must make public a copy of the vote to  
39 close the meeting revealing the vote of each member with no proxy votes  
40 allowed, and votes taken during such meeting;

41 (5) establishing the titles, duties and authority and reasonable  
42 procedures for the election of the officers of the commission;

43 (6) providing reasonable standards and procedures for the establish-  
44 ment of the personnel policies and programs of the commission. Notwith-  
45 standing any civil service or other similar laws of any compacting  
46 state, the by-laws shall exclusively govern the personnel policies and  
47 programs of the commission;

48 (7) promulgating a code of ethics to address permissible and prohibit-  
49 ed activities of commission members and employees; and

50 (8) providing a mechanism for winding up the operations of the commis-  
51 sion and the equitable disposition of any surplus funds that may exist  
52 after the termination of the compact after the payment and/or reserving  
53 of all of its debts and obligations.

54 (d) The commission shall publish its by-laws in a convenient form and  
55 file a copy thereof and a copy of any amendment thereto, with the appro-  
56 priate agency or officer in each of the compacting states.

1 (e) A management committee comprising no more than fourteen members  
2 shall be established as follows:

3 (1) one member from each of the six compacting states with the largest  
4 premium volume for individual and group annuities, life, disability  
5 income and long-term care insurance products, determined from the  
6 records of the NAIC as of December thirty-first of the prior year;

7 (2) four members from those compacting states with at least two  
8 percent of the market based on the premium volume described in paragraph  
9 one of this subsection, other than six compacting states with the larg-  
10 est premium volume, selected on a rotating basis as provided in the  
11 by-laws; and

12 (3) four members from those compacting states with less than two  
13 percent of the market, based on the premium volume described in para-  
14 graph one of this subsection, with one selected from each of the four  
15 zone regions of the NAIC as provided in the by-laws.

16 (f) The management committee shall have such authority and duties as  
17 may be set forth in the by-laws, including but not limited to:

18 (1) managing the affairs of the commission in a manner consistent with  
19 the by-laws and purposes of the commission;

20 (2) establishing and overseeing an organizational structure within,  
21 and appropriate procedures for, the commission to provide for the  
22 creation of uniform standards and other rules, receipt and review of  
23 product filings, administrative and technical support functions, review  
24 of decisions regarding the disapproval of a product filing, and the  
25 review of elections made by a compacting state to opt out of a uniform  
26 standard; provided that a uniform standard shall not be submitted to the  
27 compacting states for adoption unless approved by two-thirds of the  
28 members of the management committee;

29 (3) overseeing the offices of the commission; and

30 (4) planning, implementing, and coordinating communications and activ-  
31 ities with other state, federal and local government organizations in  
32 order to advance the goals of the commission.

33 (g) The commission shall elect annually officers from the management  
34 committee, with each having such authority and duties, as may be speci-  
35 fied in the by-laws.

36 (h) The management committee may, subject to the approval of the  
37 commission, appoint or retain an executive director for such period,  
38 upon such terms and conditions and for such compensation as the commis-  
39 sion may deem appropriate. The executive director shall serve as secre-  
40 tary to the commission, but shall not be a member of the commission. The  
41 executive director shall hire and supervise such other staff as may be  
42 authorized by the commission.

43 (i) A legislative committee comprising state legislators or their  
44 designees shall be established to monitor the operations of, and make  
45 recommendations to, the commission; provided that the manner of  
46 selection and term of any legislative committee member shall be as set  
47 forth in the by-laws. Prior to the adoption by the commission of any  
48 uniform standard, revision to the by-laws, annual budget or other  
49 significant matter as may be provided in the by-laws, the management  
50 committee shall consult with and report to the legislative committee.

51 (j) The commission shall establish two advisory committees, one of  
52 which shall comprise consumer representatives independent of the insur-  
53 ance industry and the other comprising insurance industry represen-  
54 tatives.

55 (k) The commission may establish additional advisory committees as its  
56 by-laws may provide for the carrying out of its functions.

1     (l) The commission shall maintain its corporate books and records in  
2 accordance with the by-laws.

3     (m) The members, officers, executive director, employees and represen-  
4 tatives of the commission shall be immune from suit and liability,  
5 either personally or in their official capacity, for any action taken  
6 reasonably and in good faith which results in a claim for damage to or  
7 loss of property or personal injury or other civil liability caused by  
8 or arising out of any actual or alleged act, error or omission that  
9 occurred, or that such person had a reasonable basis for believing  
10 occurred within the scope of commission employment, duties or responsi-  
11 bilities; provided, that nothing in this section shall be construed to  
12 protect any such person from suit and/or liability for any damage, loss,  
13 injury or liability caused by the intentional or willful and wanton  
14 misconduct of that person.

15     (n) The commission shall defend any member, officer, executive direc-  
16 tor, employee or representative of the commission in any civil action  
17 seeking to impose liability arising out of any actual or alleged act,  
18 error or omission that occurred within the scope of commission employ-  
19 ment, duties or responsibilities, or that the defendant had a reasonable  
20 basis for believing occurred within the scope of commission employment,  
21 duties or responsibilities; provided, that nothing in this section shall  
22 be construed to prohibit that person from retaining his or her own coun-  
23 sel; and provided further, that the actual or alleged act, error or  
24 omission did not result from that person's intentional or willful and  
25 wanton misconduct.

26     (o) The commission shall indemnify and hold harmless any member, offi-  
27 cer, executive director, employee or representative of the commission  
28 for the amount of any settlement or judgment obtained against such  
29 persons arising out of any actual or alleged act, error or omission that  
30 occurred within the scope of commission employment, duties or responsi-  
31 bilities, or that such person had a reasonable basis for believing  
32 occurred within the scope of commission employment, duties or responsi-  
33 bilities, provided, that the actual or alleged act, error or omission  
34 did not result from the intentional or willful and wanton misconduct of  
35 any such person.

36     § 8807. Meetings and acts of the commission. (a) The commission shall  
37 meet and take such actions as are consistent with the provisions of this  
38 compact and the by-laws.

39     (b) Each member of the commission shall have the right and power to  
40 cast a vote to which that compacting state is entitled and to partici-  
41 ipate in the business and affairs of the commission. A member shall vote  
42 in person or by such other means as provided in the by-laws. The by-laws  
43 may provide for members' participation in meetings by telephone or other  
44 means of communication.

45     (c) The commission shall meet at least once during each calendar year.  
46 Additional meetings shall be held as set forth in the by-laws.

47     § 8808. Rules and operating procedures; rule making functions of the  
48 commission and opting out of uniform standards. (a) The commission shall  
49 promulgate reasonable rules, including uniform standards and operating  
50 procedures, in order to effectively and efficiently achieve the purposes  
51 of the compact. Notwithstanding the foregoing, in the event the commis-  
52 sion exercises its rule making authority in a manner that is beyond the  
53 scope of the purposes of this article, or the powers granted in this  
54 section, then such action by the commission shall be invalid and have no  
55 force and effect.



1 (b) Rules and operating procedures shall be made pursuant to a rule  
2 making process that conforms to the model state administrative procedure  
3 act of 1981 as amended, as may be appropriate to the operations of the  
4 commission. Before the commission adopts a uniform standard, the commis-  
5 sion shall give written notice to the relevant state legislative commit-  
6 tee in each compacting state responsible for insurance issues of its  
7 intention to adopt such uniform standard. The commission in adopting a  
8 uniform standard shall consider fully all submitted materials and issue  
9 a concise explanation of its decision.

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

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

33 (1) the intent of the legislature to participate in, and the benefits  
34 of, an interstate agreement to establish national uniform consumer  
35 protections for the products subject to this article; and

36 (2) the presumption that a uniform standard adopted by the commission  
37 provides reasonable protections to consumers of the relevant product.

38 Notwithstanding the foregoing, a compacting state may, at the time of  
39 its enactment of the compact, prospectively opt out of all uniform stan-  
40 dards involving the long-term care insurance products by expressly  
41 providing for such opt out in the enacted compact, and such opt out  
42 shall not be treated as a material variance in the offer or acceptance  
43 of any state to participate in the compact. Such an opt out shall be  
44 effective at the time of enactment of the compact by the compacting  
45 state and shall apply to all existing uniform standards involving long-  
46 term care insurance products and those subsequently promulgated.

47 (e) If a compacting state elects to opt out of a uniform standard, the  
48 uniform standard shall remain applicable in the compacting state elect-  
49 ing to opt out until such time the opt out legislation is enacted into  
50 law or the regulation opting out becomes effective.

51 (f) Once the opt out of a uniform standard by a compacting state  
52 becomes effective as provided under the laws of that state, the uniform  
53 standard shall have no further force and effect in that state unless and  
54 until the legislation or regulation implementing the opt out is repealed  
55 or otherwise becomes ineffective under the laws of the state. If a  
56 compacting state opts out of a uniform standard after the uniform stand-

ard has been made effective in that state, the opt out shall have the same prospective effect as provided under section eight thousand eight 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.

§ 8809. 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, including 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

1 remedy such noncompliance within the time specified in the notice of  
2 noncompliance, the compacting state shall be deemed to be in default as  
3 set forth in section eight thousand eight hundred fifteen of this arti-  
4 cle.

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

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

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

26 § 8810. Dispute resolution. The commission shall attempt, upon the  
27 request of a member, to resolve any disputes or other issues that are  
28 subject to this compact and which may arise between two or more compact-  
29 ing states, or between compacting states and non-compacting states, and  
30 the commission shall promulgate an operating procedure providing for  
31 resolution of such disputes.

32 § 8811. Product filing and approval. (a) Insurers and third-party  
33 filers seeking to have a product approved by the commission shall file  
34 such product with, and pay applicable filing fees to, the commission.  
35 Nothing in this article shall be construed to restrict or otherwise  
36 prevent an insurer from filing its product with the insurance department  
37 in any state wherein such insurer is licensed to conduct the business of  
38 insurance, and such filing shall be subject to the laws of the states  
39 where filed.

40 (b) The commission shall establish appropriate filing and review proc-  
41 esses and procedures pursuant to commission rules and operating proce-  
42 dures. Notwithstanding any provision in this section to the contrary,  
43 the commission shall promulgate rules to establish conditions and proce-  
44 dures under which the commission will provide public access to product  
45 filing information. In establishing such rules, the commission shall  
46 consider the interests of the public in having access to such informa-  
47 tion, as well as protection of personal medical and financial informa-  
48 tion and trade secrets, that may be contained in a product filing or  
49 supporting information.

50 (c) Any product approved by the commission may be sold or otherwise  
51 issued in those compacting states in which the insurer is legally  
52 authorized to do business.

53 § 8812. Review of commission decisions regarding filings. (a) Not  
54 later than thirty days after the commission has given notice of a disap-  
55 proved product or advertisement filed with the commission, the insurer  
56 or third party filer whose filing was disapproved may appeal the deter-

1 mination to a review panel appointed by the commission. The commission  
2 shall promulgate rules to establish procedures for appointing such  
3 review panel and provide for notice and hearing. An allegation that the  
4 commission, in disapproving a product or advertisement filed with the  
5 commission, acted arbitrarily, capriciously or in a manner that is an  
6 abuse of discretion or otherwise not in accordance with law, is subject  
7 to judicial review in accordance with subsection (e) of section eight  
8 thousand eight hundred four of this article.

9 (b) The commission shall have authority to monitor, review and recon-  
10 sider products and advertisement subsequent to their filing or approval  
11 upon a finding that the product does not meet the relevant uniform stan-  
12 dard. Where appropriate, the commission may withdraw or modify its  
13 approval after proper notice and hearing, subject to the appeal process  
14 set forth in subsection (a) of this section.

15 § 8813. Finance. (a) The commission shall pay or provide for the  
16 payment of the reasonable expenses of its establishment and organiza-  
17 tion. To fund the cost of its initial operations, the commission may  
18 accept contributions and other forms of funding from the NAIC, compact-  
19 ing states and other sources. Contributions and other forms of funding  
20 from other sources shall be of such a nature that the independence of  
21 the commission concerning the performance of its duties shall not be  
22 compromised.

23 (b) The commission shall collect a filing fee from each insurer and  
24 third party filer filing a product with the commission to cover the cost  
25 of the operations and activities of the commission and its staff in a  
26 total amount sufficient to cover the commission's annual budget.

27 (c) The commission's budget for a fiscal year shall not be approved  
28 until it has been subject to notice and comment as set forth in section  
29 eight thousand eight hundred eight of this article.

30 (d) The commission shall be exempt from all taxation in and by the  
31 compacting states.

32 (e) The commission shall not pledge the credit of any compacting  
33 state, except by and with the appropriate legal authority of that  
34 compacting state.

35 (f) The commission shall keep complete and accurate accounts of all  
36 its internal receipts, including grants and donations and disbursements  
37 of all funds under its control. The internal financial accounts of the  
38 commission shall be subject to the accounting procedures established  
39 under its by-laws. The financial accounts and reports including the  
40 system of internal controls and procedures of the commission shall be  
41 audited annually by an independent certified public accountant. Upon the  
42 determination of the commission, but no less frequently than every three  
43 years, the review of such independent auditor shall include a management  
44 and performance audit of the commission. The commission shall make an  
45 annual report to the governor and legislature of the compacting states,  
46 which shall include a report of such independent audit. The commission's  
47 internal accounts shall not be confidential and such materials may be  
48 shared with the commissioner of any compacting state upon request,  
49 provided, however, that any work papers related to any internal or inde-  
50 pendent audit and any information regarding the privacy of individuals  
51 and insurers' proprietary information, including trade secrets, shall  
52 remain confidential.

53 (g) No compacting state shall have any claim to or ownership of any  
54 property held by or vested in the commission or to any commission funds  
55 held pursuant to the provisions of this compact.

1     § 8814. Compacting states, effective date and amendment. (a) Any state  
2 is eligible to become a compacting state.

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

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

18     § 8815. Withdrawal, default and termination. (a)(1) Once effective,  
19 the compact shall continue in force and remain binding upon each and  
20 every compacting state; provided that a compacting state may withdraw  
21 from the compact ("withdrawing state") by enacting a statute specif-  
22 ically repealing the statute which enacted the compact into law.

23     (2) The effective date of withdrawal is the effective date of the  
24 repealing statute. However, the withdrawal shall not apply to any prod-  
25 uct filings approved or self-certified, or any advertisement of such  
26 products, on the date the repealing statute becomes effective, except by  
27 mutual agreement of the commission and the withdrawing state unless the  
28 approval is rescinded by the withdrawing state as provided in paragraph  
29 five of this subsection.

30     (3) The commissioner of the withdrawing state shall immediately notify  
31 the management committee in writing upon the introduction of legislation  
32 repealing this compact in the withdrawing state.

33     (4) The commission shall notify the other compacting states of the  
34 introduction of such legislation within ten days after its receipt of  
35 notice thereof.

36     (5) The withdrawing state is responsible for all obligations, duties  
37 and liabilities incurred through the effective date of withdrawal,  
38 including any obligations, the performance of which extend beyond the  
39 effective date of withdrawal, except to the extent those obligations may  
40 have been released or relinquished by mutual agreement of the commission  
41 and the withdrawing state. The commission's approval of products and  
42 advertisement prior to the effective date of withdrawal shall continue  
43 to be effective and be given full force and effect in the withdrawing  
44 state, unless formally rescinded by the withdrawing state in the same  
45 manner as provided by the laws of the withdrawing state for the prospec-  
46 tive disapproval of products or advertisement previously approved under  
47 state law.

48     (6) Reinstatement following withdrawal of any compacting state shall  
49 occur upon the effective date of the withdrawing state's legislation  
50 reenacting the compact.

51     (b) (1) If the commission determines that any compacting state has at  
52 any time defaulted ("defaulting state") in the performance of any of its  
53 obligations or responsibilities under this compact, the by-laws or duly  
54 promulgated rules or operating procedures, then, after notice and hear-  
55 ing as set forth in the by-laws, all rights, privileges and benefits  
56 conferred by the compact on the defaulting state shall be suspended from



1 the effective date of default as fixed by the commission. The grounds  
2 for default include, but are not limited to, failure of a compacting  
3 state to perform its obligations or responsibilities, and any other  
4 grounds designated in commission rules. The commission shall immediately  
5 notify the defaulting state in writing of the defaulting state's suspen-  
6 sion pending a cure of the default. The commission shall stipulate the  
7 conditions and the time period within which the defaulting state must  
8 cure its default. If the defaulting state fails to cure the default  
9 within the time period specified by the commission, the defaulting state  
10 shall be terminated from the compact and all rights, privileges and  
11 benefits conferred by the compact shall be terminated from the effective  
12 date of termination.

13 (2) Product approvals by the commission or product self-certifica-  
14 tions, or any advertisement in connection with such product, that are in  
15 force on the effective date of termination shall remain in force in the  
16 defaulting state in the same manner as if the defaulting state had with-  
17 drawn voluntarily under this section.

18 (3) Reinstatement following termination of any compacting state  
19 requires a reenactment of the compact by that state.

20 (c)(1) The compact dissolves effective upon the date of the withdrawal  
21 or default of the compacting state which reduces membership in the  
22 compact to one compacting state.

23 (2) Upon the dissolution of the compact, the compact becomes null and  
24 void and shall be of no further force or effect, and the business and  
25 affairs of the commission shall be wound up and any surplus funds shall  
26 be distributed in accordance with the by-laws.

27 § 8816. Severability and construction. (a) The provisions of the  
28 compact shall be severable; and if any phrase, clause, sentence or  
29 provision is deemed unenforceable, the remaining provisions of the  
30 compact shall be enforceable.

31 (b) The provisions of the compact shall be liberally construed to  
32 effectuate its purposes.

33 § 8817. Binding effect of compact and other laws. (a) Nothing in this  
34 section prevents the enforcement of any other law of a compacting state,  
35 except as provided in subsection (b) of this section.

36 (b) For any product approved or certified to the commission, the  
37 rules, uniform standards and any other requirements of the commission  
38 shall constitute the exclusive provisions applicable to the content,  
39 approval and certification of such products. For advertisement that is  
40 subject to the commission's authority, any rule, uniform standard or  
41 other requirement of the commission which governs the content of the  
42 advertisement shall constitute the exclusive provision that a commis-  
43 sioner may apply to the content of the advertisement. Notwithstanding  
44 the foregoing, no action taken by the commission shall abrogate or  
45 restrict:

46 (1) the access of any person to state courts;

47 (2) remedies available under state law related to breach of contract,  
48 tort or other laws not specifically directed to the content of the prod-  
49 uct;

50 (3) state law relating to the construction of insurance contracts; or

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

54 (c) All insurance products filed with individual states shall be  
55 subject to the laws of those states.

1 (d) All lawful actions of the commission, including all rules and  
2 operating procedures promulgated by the commission, are binding upon the  
3 compacting states.

4 (e) All agreements between the commission and the compacting states  
5 are binding in accordance with their terms.

6 (f) Upon the request of a party to a conflict over the meaning or  
7 interpretation of commission actions, and upon a majority vote of the  
8 compacting states, the commission may issue advisory opinions regarding  
9 the disputed meaning or interpretation.

10 (g) In the event any provision of this article exceeds the constitu-  
11 tional limits imposed on the legislature of any compacting state, the  
12 obligations, duties, powers or jurisdiction sought to be conferred by  
13 that provision upon the commission shall be ineffective as to such  
14 compacting state, and such obligations, duties, powers or jurisdiction  
15 shall remain in the compacting state and shall be exercised by the agen-  
16 cy thereof to which such obligations, duties, powers or jurisdiction are  
17 delegated by law in effect at the time the compact becomes effective.

18 § 3. This act shall take effect January 1, 2018 and shall expire and  
19 be deemed repealed December 31, 2020; provided, however, that any policy  
20 or contract issued during the period that the provisions of this act are  
21 in effect that has been approved in accordance with the provisions of  
22 this act shall continue in full force and effect.