STATE OF NEW YORK

3507

2019-2020 Regular Sessions

IN SENATE

February 8, 2019

Introduced by Sens. BRESLIN, SEWARD, AKSHAR, FUNKE, HELMING, KENNEDY, RITCHIE, ROBACH -- 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 to regulate certain insurance products

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

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 insur-

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

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ance 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.

§ 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.
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8203. Definitions.
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8217. Binding effect of compact and other laws.
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§ 8201. Short title. This article shall be known and may be cited as the "interstate insurance product regulation compact".

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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, 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 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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 prospec-

tive 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.

§ 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.

§ 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.

§ 8218. Exempt products. In accordance with the provisions of section eighty-two hundred four of the interstate insurance product regulation compact, the state of New York opts out of all existing and prospective uniform standards involving long-term care insurance products and all existing uniform standards, including any amendments thereto, involving annuity products or disability income insurance products in order to preserve the state's statutory requirements governing these insurance products. The department of financial services is authorized and shall by authority herein promulgate regulations to opt out of future uniform standards involving annuity products or disability income insurance products.

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