

# STATE OF NEW YORK

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3507

2019-2020 Regular Sessions

## IN SENATE

February 8, 2019

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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:

1 Section 1. Legislative findings and intent. An interstate compact is  
2 a contract between the states that allows them to cooperate on multi-  
3 state or national issues while still retaining state control. Interstate  
4 compacts are specifically mentioned in the U.S. Constitution and have  
5 been historically used to address border disputes and water rights. The  
6 use of interstate compacts has expanded significantly in recent decades  
7 to cover tax, motor vehicle licensing, environmental, emergency manage-  
8 ment and other issues. Over 200 interstate compacts currently exist, and  
9 on average every state belongs to at least 25 compacts. The Interstate  
10 Insurance Product Regulation Compact, which to date has been adopted by  
11 44 member states, representing approximately two-thirds of the premium  
12 volume in the nation, created the Interstate Insurance Product Regu-  
13 lation Commission (IIPRC). The IIPRC provides the States with a vehicle  
14 to (1) develop uniform national product standards that will afford a  
15 high level of protection to consumers of life insurance, annuities,  
16 disability income and long-term care insurance products; (2) establish a  
17 central point of filing for these insurance products; and (3) thoroughly  
18 review product filings and make regulatory decisions according to the  
19 uniform product standards. The IIPRC is an important modernization  
20 initiative that benefits state insurance regulators, consumers, and the  
21 insurance industry. The Compact enhances the efficiency and effective-  
22 ness of the way insurance products are filed, reviewed, and approved  
23 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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1   ance products in an ever-changing global marketplace. The Compact  
2   promotes uniformity through application of uniform product standards  
3   embedded with strong consumer protections. The state of New York seeks  
4   to join with other states as a member of the Interstate Insurance Prod-  
5   uct Regulation Compact and Commission.

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

## 8                                   ARTICLE 82

### 9                   INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

#### 10   Section 8201. Short title.

#### 11           8202. Purpose.

#### 12           8203. Definitions.

#### 13           8204. Establishment of the commission and venue.

#### 14           8205. Powers of the commission.

#### 15           8206. Organization of the commission.

#### 16           8207. Meetings and acts of the commission.

#### 17           8208. Rules and operating procedures; rule making functions of 18           the commission and opting out of uniform standards.

#### 19           8209. Commission records and enforcement.

#### 20           8210. Dispute resolution.

#### 21           8211. Product filing and approval.

#### 22           8212. Review of commission decisions regarding filings.

#### 23           8213. Finance.

#### 24           8214. Compacting states, effective date and amendment.

#### 25           8215. Withdrawal, default and termination.

#### 26           8216. Severability and construction.

#### 27           8217. Binding effect of compact and other laws.

#### 28           8218. Exempt products.

29   § 8201. Short title. This article shall be known and may be cited as  
30   the "interstate insurance product regulation compact".

31   § 8202. Purpose. The purposes of this compact are, through means of  
32   joint and cooperative action among the compacting states:

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

36   (b) to develop uniform standards for products covered under the  
37   compact;

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

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

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

47   (f) to create the interstate insurance product regulation commission;  
48   and

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

51   § 8203. Definitions. As used in this article:

52   (a) "Advertisement" means any material designed to create public  
53   interest in a product, or induce the public to purchase, increase, modi-  
54   fy, reinstate, borrow on, surrender, replace or retain a policy, as more

1 specifically defined in the rules and operating procedures of the  
2 commission.

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

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

9 (d) "Commission" means the "interstate insurance product regulation  
10 commission" established by the compact.

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

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

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

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

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

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

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

31 (l) "Rule" means a statement of general or particular applicability  
32 and future effect promulgated by the commission, including a uniform  
33 standard developed pursuant to section eight thousand two hundred eight  
34 of this article, designed to implement, interpret, or prescribe law or  
35 policy or describing the organization, procedure, or practice require-  
36 ments of the commission, which shall have the force and effect of law in  
37 the compacting states.

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

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

42 (o) "Uniform standard" means a standard adopted by the commission for  
43 a product line, pursuant to section eight thousand two hundred eight of  
44 this article and shall include all of the product requirements in aggre-  
45 gate; provided, that each uniform standard shall be construed, whether  
46 express or implied, to prohibit the use of any inconsistent, misleading  
47 or ambiguous provisions in a product and the form of such product made  
48 available to the public shall not be unfair, inequitable or against  
49 public policy as determined by the commission.

50 § 8204. Establishment of the commission and venue. (a) The compacting  
51 states hereby establish a joint public agency known as the "interstate  
52 insurance product regulation commission". Pursuant to section eight  
53 thousand two hundred eight of this article, the commission shall have  
54 the power to develop uniform standards for product lines, receive and  
55 provide prompt review of products filed therewith, and give approval to  
56 those product filings satisfying applicable uniform standards; provided,

1 however, that it is not intended for the commission to be the exclusive  
2 entity for receipt and review of insurance product filings. Nothing in  
3 this section shall prohibit any insurer from filing its product in any  
4 state wherein such insurer is licensed to conduct the business of insur-  
5 ance and such filing shall be subject to the laws of the state where  
6 filed.

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

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

11 (d) The commission is solely responsible for its liabilities unless  
12 otherwise specifically provided in this compact, except that, in no  
13 event shall the obligations of the commission be the debt of the state  
14 of New York nor shall any revenues or property of the state of New York  
15 be liable therefor.

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

19 § 8205. Powers of the commission. (a) The commission shall have the  
20 following powers:

21 (1) to promulgate rules, pursuant to section eight thousand two  
22 hundred eight of this article, which shall have the force and effect of  
23 law and shall be binding in the compacting states to the extent and in  
24 the manner provided in this article;

25 (2) to exercise its rule making authority and establish reasonable  
26 uniform standards for products covered under the compact, and advertise-  
27 ment related thereto, which shall have the force and effect of law and  
28 shall be binding in the compacting states, but only for such products  
29 filed with the commission; provided, however, that a compacting state  
30 shall have the right to opt out of such uniform standard pursuant to  
31 section eight thousand two hundred eight of this article to the extent  
32 and in the manner provided in this article, and provided further that  
33 any uniform standard established by the commissioner for long-term care  
34 insurance products may provide the same or greater protections for  
35 consumers as, but shall not provide less than, those protections set  
36 forth in the National Association of Insurance Commissioners' (herein-  
37 after referred to as the "NAIC") Long-Term Care Insurance Model Act and  
38 Long-Term Care Insurance Model Regulation, respectively, adopted as of  
39 2001. The commission shall consider whether any subsequent amendments to  
40 the NAIC Long-Term Care Insurance Model Act or Long-Term Care Insurance  
41 Model Regulation adopted by the NAIC require amending of the uniform  
42 standards established by the commission for long-term insurance  
43 products;

44 (3) to receive and review in an expeditious manner products filed with  
45 the commission, including rate filings for disability income and long-  
46 term care insurance products, and give approval of those products and  
47 rate filings that satisfy the applicable uniform standard, where such  
48 approval shall have the force and effect of law and be binding on the  
49 compacting states to the extent and in the manner provided in the  
50 compact;

51 (4) to receive and review in an expeditious manner advertisement  
52 relating to long-term care insurance products for which uniform stand-  
53 ards have been adopted by the commission, and give approval of such  
54 advertisement that satisfies the applicable uniform standard. For any  
55 product covered under this article, other than long-term care insurance  
56 products, the commission shall have the authority to require an insurer

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

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

11 (6) to promulgate operating procedures, pursuant to section eight  
12 thousand two hundred eight of this article, which shall be binding in  
13 the compacting states to the extent and in the manner provided in the  
14 compact;

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

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

20 (9) to establish and maintain offices;

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

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

24 (12) to hire employees and elect or appoint officers, and to fix their  
25 compensation, define their duties and give them appropriate authority to  
26 carry out the purposes of the compact, and determine their qualifica-  
27 tions; and to establish the commission's personnel policies and programs  
28 relating to, among other things, conflicts of interest, rates of compen-  
29 sation and qualifications of personnel;

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

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

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

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

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

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

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

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

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

52 (22) to borrow money;

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



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

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

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

7 (b) All donations, grants of money, equipment, supplies, materials or  
8 services, purchases, gifts, donations, conveyances, mortgages, pledges,  
9 leases and exchanges, as authorized by subsection (a) of this section,  
10 received by or on behalf of the commission shall be limited to the  
11 direct funding of the lawful and authorized operations of the commis-  
12 sion.

13 § 8206. Organization of the commission. (a) Each compacting state  
14 shall have and be limited to one member. The superintendent, or his or  
15 her designated representative, shall be New York's member of such  
16 commission. Each member shall be qualified to serve in such capacity  
17 pursuant to applicable law of the compacting state. Any member may be  
18 removed or suspended from office as provided by the law of the state  
19 from which he or she shall be appointed. Any vacancy occurring in the  
20 commission shall be filled in accordance with the laws of the compacting  
21 state wherein such vacancy exists. Nothing herein shall be construed to  
22 affect the manner in which a compacting state determines the election or  
23 appointment and qualification of its own superintendent.

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

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

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

35 (2) providing reasonable procedures for holding meetings of the  
36 management committee;

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

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

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

53 (6) providing reasonable standards and procedures for the establish-  
54 ment of the personnel policies and programs of the commission. Notwith-  
55 standing any civil service or other similar laws of any compacting

1 state, the by-laws shall exclusively govern the personnel policies and  
2 programs of the commission;

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

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

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

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

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

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

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

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

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

31 (2) establishing and overseeing an organizational structure within,  
32 and appropriate procedures for, the commission to provide for the  
33 creation of uniform standards and other rules, receipt and review of  
34 product filings, administrative and technical support functions, review  
35 of decisions regarding the disapproval of a product filing, and the  
36 review of elections made by a compacting state to opt out of a uniform  
37 standard; provided that a uniform standard shall not be submitted to the  
38 compacting states for adoption unless approved by two-thirds of the  
39 members of the management committee;

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

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

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

47 (h) The management committee may, subject to the approval of the  
48 commission, appoint or retain an executive director for such period,  
49 upon such terms and conditions and for such compensation as the commis-  
50 sion may deem appropriate. The executive director shall serve as secre-  
51 tary to the commission, but shall not be a member of the commission. The  
52 executive director shall hire and supervise such other staff as may be  
53 authorized by the commission.

54 (i) A legislative committee comprising state legislators or their  
55 designees shall be established to monitor the operations of, and make  
56 recommendations to, the commission; provided that the manner of

1 selection and term of any legislative committee member shall be as set  
2 forth in the by-laws. Prior to the adoption by the commission of any  
3 uniform standard, revision to the by-laws, annual budget or other  
4 significant matter as may be provided in the by-laws, the management  
5 committee shall consult with and report to the legislative committee.

6 (j) The commission shall establish two advisory committees, one of  
7 which shall comprise consumer representatives independent of the insur-  
8 ance industry and the other comprising insurance industry represen-  
9 tatives.

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

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

14 (m) The members, officers, executive director, employees and represen-  
15 tatives of the commission shall be immune from suit and liability,  
16 either personally or in their official capacity, for any action taken  
17 reasonably and in good faith which results in a claim for damage to or  
18 loss of property or personal injury or other civil liability caused by  
19 or arising out of any actual or alleged act, error or omission that  
20 occurred, or that such person had a reasonable basis for believing  
21 occurred within the scope of commission employment, duties or responsi-  
22 bilities; provided, that nothing in this section shall be construed to  
23 protect any such person from suit and/or liability for any damage, loss,  
24 injury or liability caused by the intentional or willful and wanton  
25 misconduct of that person.

26 (n) The commission shall defend any member, officer, executive direc-  
27 tor, employee or representative of the commission in any civil action  
28 seeking to impose liability arising out of any actual or alleged act,  
29 error or omission that occurred within the scope of commission employ-  
30 ment, duties or responsibilities, or that the defendant had a reasonable  
31 basis for believing occurred within the scope of commission employment,  
32 duties or responsibilities; provided, that nothing in this section shall  
33 be construed to prohibit that person from retaining his or her own coun-  
34 sel; and provided further, that the actual or alleged act, error or  
35 omission did not result from that person's intentional or willful and  
36 wanton misconduct.

37 (o) The commission shall indemnify and hold harmless any member, offi-  
38 cer, executive director, employee or representative of the commission  
39 for the amount of any settlement or judgment obtained against such  
40 persons arising out of any actual or alleged act, error or omission that  
41 occurred within the scope of commission employment, duties or responsi-  
42 bilities, or that such person had a reasonable basis for believing  
43 occurred within the scope of commission employment, duties or responsi-  
44 bilities, provided, that the actual or alleged act, error or omission  
45 did not result from the intentional or willful and wanton misconduct of  
46 any such person.

47 § 8207. Meetings and acts of the commission. (a) The commission shall  
48 meet and take such actions as are consistent with the provisions of this  
49 compact and the by-laws.

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



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

3 § 8208. Rules and operating procedures; rule making functions of the  
4 commission and opting out of uniform standards. (a) The commission shall  
5 promulgate reasonable rules, including uniform standards and operating  
6 procedures, in order to effectively and efficiently achieve the purposes  
7 of the compact. Notwithstanding the foregoing, in the event the commis-  
8 sion exercises its rule making authority in a manner that is beyond the  
9 scope of the purposes of this article, or the powers granted in this  
10 section, then such action by the commission shall be invalid and have no  
11 force and effect.

12 (b) Rules and operating procedures shall be made pursuant to a rule  
13 making process that conforms to the state administrative procedure act  
14 of 1981 as amended, as may be appropriate to the operations of the  
15 commission. Before the commission adopts a uniform standard, the commis-  
16 sion shall give written notice to the relevant state legislative commit-  
17 tee in each compacting state responsible for insurance issues of its  
18 intention to adopt such uniform standard. The commission in adopting a  
19 uniform standard shall consider fully all submitted materials and issue  
20 a concise explanation of its decision.

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

29 (d) A compacting state may opt out of a uniform standard, either by  
30 legislation or regulation duly promulgated by the superintendent under  
31 the state administrative procedure act. If a compacting state elects to  
32 opt out of a uniform standard by regulation, it must give written notice  
33 to the commission no later than ten business days after the uniform  
34 standard is promulgated or at the time the state becomes a compacting  
35 state, and find that the uniform standard does not provide reasonable  
36 protections to the citizens of the state given the conditions in the  
37 state. The superintendent shall make specific findings of fact and  
38 conclusions of law, based on a preponderance of the evidence, detailing  
39 the conditions in the state which warrant a departure from the uniform  
40 standard and determining that the uniform standard would not reasonably  
41 protect the citizens of the state. The superintendent must consider and  
42 balance the following factors and find that the conditions in the state  
43 and needs of the citizens of the state outweigh:

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

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

49 Notwithstanding the foregoing, a compacting state may, at the time of  
50 its enactment of the compact, prospectively opt out of all uniform stan-  
51 dards involving the long-term care insurance products by expressly  
52 providing for such opt out in the enacted compact, and such opt out  
53 shall not be treated as a material variance in the offer or acceptance  
54 of any state to participate in the compact. Such an opt out shall be  
55 effective at the time of enactment of the compact by the compacting

1 state and shall apply to all existing uniform standards involving long-  
2 term care insurance products and those subsequently promulgated.

3 (e) If a compacting state elects to opt out of a uniform standard, the  
4 uniform standard shall remain applicable in the compacting state elect-  
5 ing to opt out until such time the opt out legislation is enacted into  
6 law or the regulation is promulgated.

7 (f) Once the opt out of a uniform standard by a compacting state  
8 becomes effective as provided under the laws of that state, the uniform  
9 standard shall have no further force and effect in that state unless and  
10 until the legislation or regulation implementing the opt out is repealed  
11 or otherwise becomes ineffective under the laws of the state. If a  
12 compacting state opts out of a uniform standard after the uniform stand-  
13 ard has been made effective in that state, the opt out shall have the  
14 same prospective effect as provided under section eight thousand two  
15 hundred fifteen of this article for withdrawals.

16 (g) If a compacting state has formally initiated the process of opting  
17 out of a uniform standard by regulation, and while the regulatory opt  
18 out is pending, the compacting state may petition the commission, at  
19 least fifteen days before the effective date of the uniform standard, to  
20 stay the effectiveness of the uniform standard in that state. The  
21 commission may grant a stay if it determines the regulatory opt out is  
22 being pursued in a reasonable manner and there is a likelihood of  
23 success. If a stay is granted or extended by the commission, the stay or  
24 extension thereof may postpone the effective date by up to ninety days,  
25 unless affirmatively extended by the commission; provided however, a  
26 stay may not be permitted to remain in effect for more than one year  
27 unless the compacting state can show extraordinary circumstances which  
28 warrant a continuance of the stay including, but not limited to, the  
29 existence of a legal challenge which prevents the compacting state from  
30 opting out. A stay may be terminated by the commission upon notice that  
31 the rule making process has been terminated.

32 (h) Not later than thirty days after a rule or operating procedure is  
33 promulgated, any person may file a petition for judicial review of the  
34 rule or operating procedure; provided, however, that the filing of such  
35 a petition shall not stay or otherwise prevent the rule or operating  
36 procedure from becoming effective unless the court finds that the peti-  
37 tioner has a substantial likelihood of success. The court shall give  
38 deference to the actions of the commission consistent with applicable  
39 law and shall not find the rule or operating procedure to be unlawful if  
40 the rule or operating procedure represents a reasonable exercise of the  
41 commission's authority.

42 § 8209. Commission records and enforcement. (a) The commission shall  
43 promulgate rules establishing conditions and procedures for public  
44 inspection and copying of its information and official records, except  
45 such information and records involving the privacy of individuals and  
46 insurers' trade secrets. The commission may promulgate additional rules  
47 under which it may make available to federal and state agencies, includ-  
48 ing law enforcement agencies, records and information otherwise exempt  
49 from disclosure, and may enter into agreements with such agencies to  
50 receive or exchange information or records subject to nondisclosure and  
51 confidentiality provisions.

52 (b) Except as to privileged records, data and information, the laws of  
53 any compacting state pertaining to confidentiality or nondisclosure  
54 shall not relieve any compacting state commissioner of the duty to  
55 disclose any relevant records, data or information to the commission;  
56 provided however, that disclosure to the commission shall not be deemed

1 to waive or otherwise affect any confidentiality requirement; and  
2 provided further that, except as otherwise expressly provided in this  
3 article, the commission shall not be subject to the laws of any compact-  
4 ing state pertaining to confidentiality and nondisclosure with respect  
5 to records, data and information in its possession. Confidential infor-  
6 mation of the commission shall remain confidential after such informa-  
7 tion is provided to any commissioner.

8 (c) The commission shall monitor compacting states for compliance with  
9 duly adopted by-laws, rules, including uniform standards, and operating  
10 procedures. The commission shall notify such noncomplying compacting  
11 state in writing of its noncompliance with commission by-laws, rules or  
12 operating procedures. If the noncomplying compacting state fails to  
13 remedy such noncompliance within the time specified in the notice of  
14 noncompliance, the compacting state shall be deemed to be in default as  
15 set forth in section eight thousand two hundred fifteen of this article.

16 (d) The commissioner of any state in which an insurer is authorized to  
17 do business, or is conducting the business of insurance, shall continue  
18 to exercise his or her authority to oversee the market regulation of the  
19 activities of the insurer in accordance with the provisions of the  
20 state's law. The commissioner's enforcement of compliance with the  
21 compact is governed by the following provisions:

22 (1) with respect to the commissioner's market regulation of a product  
23 or advertisement that is approved or certified by the commission, the  
24 content of the product or advertisement shall not constitute a violation  
25 of the provisions, standards or requirements of the compact except upon  
26 a final order of the commission, issued at the request of a commissioner  
27 after prior notice to the insurer and an opportunity for hearing before  
28 the commission.

29 (2) before a commissioner may bring an action for violation of any  
30 provision, standard or requirement of the compact relating to the  
31 content of an advertisement not approved or certified by the commission,  
32 the commission or an authorized commission officer or employee, must  
33 authorize the action. However, authorization pursuant to this paragraph  
34 does not require notice to the insurer, opportunity for hearing or  
35 disclosure of requests for authorization or records of the commission's  
36 action on such requests.

37 § 8210. Dispute resolution. The commission shall attempt, upon the  
38 request of a member, to resolve any disputes or other issues that are  
39 subject to this compact and which may arise between two or more compact-  
40 ing states, or between compacting states and non-compacting states, and  
41 the commission shall promulgate an operating procedure providing for  
42 resolution of such disputes.

43 § 8211. Product filing and approval. (a) Insurers and third-party  
44 filers seeking to have a product approved by the commission shall file  
45 such product with, and pay applicable filing fees to, the commission.  
46 Nothing in this article shall be construed to restrict or otherwise  
47 prevent an insurer from filing its product with the insurance department  
48 in any state wherein such insurer is licensed to conduct the business of  
49 insurance, and such filing shall be subject to the laws of the states  
50 where filed.

51 (b) The commission shall establish appropriate filing and review proc-  
52 esses and procedures pursuant to commission rules and operating proce-  
53 dures. Notwithstanding any provision in this section to the contrary,  
54 the commission shall promulgate rules to establish conditions and proce-  
55 dures under which the commission will provide public access to product  
56 filing information. In establishing such rules, the commission shall

1 consider the interests of the public in having access to such informa-  
2 tion, as well as protection of personal medical and financial informa-  
3 tion and trade secrets, that may be contained in a product filing or  
4 supporting information.

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

8 § 8212. Review of commission decisions regarding filings. (a) Not  
9 later than thirty days after the commission has given notice of a disap-  
10 proved product or advertisement filed with the commission, the insurer  
11 or third party filer whose filing was disapproved may appeal the deter-  
12 mination to a review panel appointed by the commission. The commission  
13 shall promulgate rules to establish procedures for appointing such  
14 review panel and provide for notice and hearing. An allegation that the  
15 commission, in disapproving a product or advertisement filed with the  
16 commission, acted arbitrarily, capriciously or in a manner that is an  
17 abuse of discretion or otherwise not in accordance with law, is subject  
18 to judicial review in accordance with subsection (e) of section eight  
19 thousand two hundred four of this article.

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

26 § 8213. Finance. (a) The commission shall pay or provide for the  
27 payment of the reasonable expenses of its establishment and organiza-  
28 tion. To fund the cost of its initial operations, the commission may  
29 accept contributions and other forms of funding from the NAIC, compact-  
30 ing states and other sources. Contributions and other forms of funding  
31 from other sources shall be of such a nature that the independence of  
32 the commission concerning the performance of its duties shall not be  
33 compromised.

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

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

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

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

46 (f) The commission shall keep complete and accurate accounts of all  
47 its internal receipts, including grants and donations and disbursements  
48 of all funds under its control. The internal financial accounts of the  
49 commission shall be subject to the accounting procedures established  
50 under its by-laws. The financial accounts and reports including the  
51 system of internal controls and procedures of the commission shall be  
52 audited annually by an independent certified public accountant. Upon the  
53 determination of the commission, but no less frequently than every three  
54 years, the review of such independent auditor shall include a management  
55 and performance audit of the commission. The commission shall make an  
56 annual report to the governor and legislature of the compacting states,



1 which shall include a report of such independent audit. The commission's  
2 internal accounts shall not be confidential and such materials may be  
3 shared with the commissioner of any compacting state upon request,  
4 provided, however, that any work papers related to any internal or inde-  
5 pendent audit and any information regarding the privacy of individuals  
6 and insurers' proprietary information, including trade secrets, shall  
7 remain confidential.

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

11 § 8214. Compacting states, effective date and amendment. (a) Any state  
12 is eligible to become a compacting state.

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

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

28 § 8215. Withdrawal, default and termination. (a)(1) Once effective,  
29 the compact shall continue in force and remain binding upon each and  
30 every compacting state; provided that a compacting state may withdraw  
31 from the compact ("withdrawing state") by enacting a statute specif-  
32 ically repealing the statute which enacted the compact into law.

33 (2) The effective date of withdrawal is the effective date of the  
34 repealing statute. However, the withdrawal shall not apply to any prod-  
35 uct filings approved or self-certified, or any advertisement of such  
36 products, on the date the repealing statute becomes effective, except by  
37 mutual agreement of the commission and the withdrawing state unless the  
38 approval is rescinded by the withdrawing state as provided in paragraph  
39 five of this subsection.

40 (3) The commissioner of the withdrawing state shall immediately notify  
41 the management committee in writing upon the introduction of legislation  
42 repealing this compact in the withdrawing state.

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

46 (5) The withdrawing state is responsible for all obligations, duties  
47 and liabilities incurred through the effective date of withdrawal,  
48 including any obligations, the performance of which extend beyond the  
49 effective date of withdrawal, except to the extent those obligations may  
50 have been released or relinquished by mutual agreement of the commission  
51 and the withdrawing state. The commission's approval of products and  
52 advertisement prior to the effective date of withdrawal shall continue  
53 to be effective and be given full force and effect in the withdrawing  
54 state, unless formally rescinded by the withdrawing state in the same  
55 manner as provided by the laws of the withdrawing state for the prospec-



1 tive disapproval of products or advertisement previously approved under  
2 state law.

3 (6) Reinstatement following withdrawal of any compacting state shall  
4 occur upon the effective date of the withdrawing state's legislation  
5 reenacting the compact.

6 (b) (1) If the commission determines that any compacting state has at  
7 any time defaulted ("defaulting state") in the performance of any of its  
8 obligations or responsibilities under this compact, the by-laws or duly  
9 promulgated rules or operating procedures, then, after notice and hear-  
10 ing as set forth in the by-laws, all rights, privileges and benefits  
11 conferred by the compact on the defaulting state shall be suspended from  
12 the effective date of default as fixed by the commission. The grounds  
13 for default include, but are not limited to, failure of a compacting  
14 state to perform its obligations or responsibilities, and any other  
15 grounds designated in commission rules. The commission shall immediately  
16 notify the defaulting state in writing of the defaulting state's suspen-  
17 sion pending a cure of the default. The commission shall stipulate the  
18 conditions and the time period within which the defaulting state must  
19 cure its default. If the defaulting state fails to cure the default  
20 within the time period specified by the commission, the defaulting state  
21 shall be terminated from the compact and all rights, privileges and  
22 benefits conferred by the compact shall be terminated from the effective  
23 date of termination.

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

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

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

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

38 § 8216. Severability and construction. (a) The provisions of the  
39 compact shall be severable; and if any phrase, clause, sentence or  
40 provision is deemed unenforceable, the remaining provisions of the  
41 compact shall be enforceable.

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

44 § 8217. Binding effect of compact and other laws. (a) Nothing in this  
45 section prevents the enforcement of any other law of a compacting state,  
46 except as provided in subsection (b) of this section.

47 (b) For any product approved or certified to the commission, the  
48 rules, uniform standards and any other requirements of the commission  
49 shall constitute the exclusive provisions applicable to the content,  
50 approval and certification of such products. For advertisement that is  
51 subject to the commission's authority, any rule, uniform standard or  
52 other requirement of the commission which governs the content of the  
53 advertisement shall constitute the exclusive provision that a commis-  
54 sioner may apply to the content of the advertisement. Notwithstanding  
55 the foregoing, no action taken by the commission shall abrogate or  
56 restrict:

1 (1) the access of any person to state courts;  
2 (2) remedies available under state law related to breach of contract,  
3 tort or other laws not specifically directed to the content of the prod-  
4 uct;

5 (3) state law relating to the construction of insurance contracts; or  
6 (4) the authority of the attorney general of the state including, but  
7 not limited to, maintaining any actions or proceedings as authorized by  
8 law.

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

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

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

16 (f) Upon the request of a party to a conflict over the meaning or  
17 interpretation of commission actions, and upon a majority vote of the  
18 compacting states, the commission may issue advisory opinions regarding  
19 the disputed meaning or interpretation.

20 (g) In the event any provision of this article exceeds the constitu-  
21 tional limits imposed on the legislature of any compacting state, the  
22 obligations, duties, powers or jurisdiction sought to be conferred by  
23 that provision upon the commission shall be ineffective as to such  
24 compacting state, and such obligations, duties, powers or jurisdiction  
25 shall remain in the compacting state and shall be exercised by the agen-  
26 cy thereof to which such obligations, duties, powers or jurisdiction are  
27 delegated by law in effect at the time the compact becomes effective.

28 § 8218. Exempt products. In accordance with the provisions of section  
29 eighty-two hundred four of the interstate insurance product regulation  
30 compact, the state of New York opts out of all existing and prospective  
31 uniform standards involving long-term care insurance products and all  
32 existing uniform standards, including any amendments thereto, involving  
33 annuity products or disability income insurance products in order to  
34 preserve the state's statutory requirements governing these insurance  
35 products. The department of financial services is authorized and shall  
36 by authority herein promulgate regulations to opt out of future uniform  
37 standards involving annuity products or disability income insurance  
38 products.

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