

[First Reprint]

ASSEMBLY, No. 483

STATE OF NEW JERSEY

214th LEGISLATURE

PRE-FILED FOR INTRODUCTION IN THE 2010 SESSION

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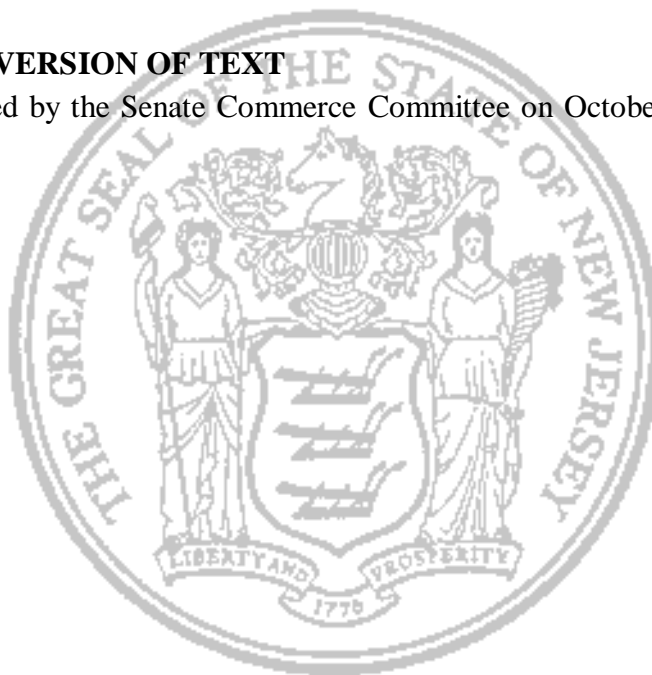
**Assemblymen Chivukula, Conners, Webber, Gusciora, Senators Gill,
T.Kean and Cardinale**

SYNOPSIS

Establishes the "Interstate Insurance Product Regulation Compact."

CURRENT VERSION OF TEXT

As reported by the Senate Commerce Committee on October 7, 2010, with amendments.



(Sponsorship Updated As Of: 10/19/2010)

1 AN ACT establishing the "Interstate Insurance Product Regulation
2 Compact," and supplementing subtitle 3 of Title 17B of the New
3 Jersey Statutes.
4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*
7
8 1. a. This act shall be known and may be cited as the
9 "Interstate Insurance Product Regulation Compact."
10 b. The Legislature finds and declares that the purposes of this
11 act, through means of joint and cooperative action among the
12 compacting states, are to:
13 (1) promote and protect the interests of consumers of individual
14 and group annuity, life insurance, disability income, and long-term
15 care insurance products;
16 (2) develop uniform standards for insurance products covered
17 under this act;
18 (3) establish a central clearinghouse to receive and provide
19 prompt review of insurance products covered under the compact
20 and, in certain cases, advertisements related thereto, submitted by
21 insurers authorized to do business in one or more compacting states;
22 (4) give appropriate regulatory approval to those product filings
23 and advertisements satisfying the applicable uniform standard;
24 (5) improve coordination of regulatory resources and expertise
25 between state insurance departments regarding the setting of
26 uniform standards and the review of insurance products covered
27 under the compact;
28 (6) create the Interstate Insurance Product Regulation
29 Commission; and
30 (7) perform these and any other related functions as may be
31 consistent with the State's regulation of the business of insurance.
32
33 2. For the purposes of this act:
34 "Advertisement" means any material designed to create public
35 interest in an insurance product, or induce the public to purchase,
36 increase, modify, reinstate, borrow on, surrender, replace or retain a
37 policy, as more specifically defined in the rules and operating
38 procedures of the Interstate Insurance Product Regulation
39 Commission established by section 3 of this act.
40 "Bylaws" mean those bylaws established by the Interstate
41 Insurance Product Regulation Commission for its governance, or
42 for directing or controlling the commission's actions or conduct.
43 "Commission" means the Interstate Insurance Product Regulation
44 Commission established by section 3 of this act.

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Senate SCM committee amendments adopted October 7, 2010.

1 "Commissioner" means the chief insurance regulatory official of
2 a state including, but not limited to the commissioner,
3 superintendent, director or administrator.

4 "Compact" means the "Interstate Insurance Product Regulation
5 Compact" established by this act.

6 "Compacting state" means any state which has enacted this or
7 similar compact legislation and which has not withdrawn or been
8 terminated pursuant to section 14 of this act.

9 "Domiciliary state" means the state in which an insurer is
10 incorporated or organized; or, in the case of an alien insurer, its
11 state of entry.

12 "Insurer" means any entity licensed by a state to issue contracts
13 of insurance for any of the lines of insurance covered by this act.

14 "Member" means the person chosen by a compacting state as its
15 representative to the commission, or his designee.

16 "Non-compacting state" means any state which is not a
17 compacting state.

18 "Operating procedures" means procedures promulgated by the
19 commission implementing a rule, uniform standard, or a provision
20 of this act.

21 "Product" means the form of a policy or contract, including any
22 application, endorsement, or related form which is attached to and
23 made a part of the policy or contract, and any evidence of coverage
24 or certificate, for an individual or group annuity, life insurance,
25 disability income, or long-term care insurance product that an
26 insurer is authorized to issue.

27 "Rule" means a statement of general or particular applicability
28 and future effect promulgated by the commission, including a
29 uniform standard developed pursuant to section 7 of this act,
30 designed to implement, interpret, or prescribe law or policy, or
31 describing the organization, procedure, or practice requirements of
32 the commission, which shall have the force and effect of law in the
33 compacting states.

34 "State" means any state, district, or territory of the United States
35 of America.

36 "Third party filer" means an entity that submits a product filing
37 to the commission on behalf of an insurer.

38 "Uniform standard" means a standard adopted by the commission
39 for a product line, pursuant to section 7 of this act, and shall include
40 all of the product requirements in aggregate; provided, that each
41 uniform standard shall be construed, whether express or implied, to
42 prohibit the use of any inconsistent, misleading, or ambiguous
43 provisions in a product, and the form of the product made available
44 to the public shall not be unfair, inequitable, or against public
45 policy as determined by the commission.

46

47 3. a. The compacting states hereby create and establish a joint
48 public agency known as the "Interstate Insurance Product

1 Regulation Commission." Pursuant to section 4 of this act, the
2 commission shall develop uniform standards for product lines,
3 receive and provide prompt review of products filed therewith, and
4 give approval to those product filings satisfying applicable uniform
5 standards; however, it is not intended for the commission to be the
6 exclusive entity for receipt and review of insurance product filings.
7 Nothing in this act shall prohibit an insurer from filing its product
8 in any state in which the insurer is licensed to conduct the business
9 of insurance, which filing shall be subject to the laws of the state
10 where filed.

11 b. The commission is a body corporate and politic, and an
12 instrumentality of the compacting states.

13 c. The commission is solely responsible for its liabilities except
14 as otherwise specifically provided in this act.

15 d. Venue is proper and judicial proceedings by or against the
16 commission shall be brought solely and exclusively in a court of
17 competent jurisdiction where the principal office of the commission
18 is located.

19

20 4. The commission shall have the following powers:

21 a. To promulgate rules, pursuant to section 7 of this act, which
22 shall have the force and effect of law and shall be binding in the
23 compacting states to the extent and in the manner provided in this
24 act;

25 b. To exercise its rule-making authority and establish
26 reasonable uniform standards for products covered under this act,
27 and advertisements related thereto, which shall have the force and
28 effect of law and shall be binding in the compacting states, but only
29 for those products filed with the commission, provided, that a
30 compacting state shall have the right to opt out of those uniform
31 standards pursuant to section 7 of this act, to the extent and in the
32 manner provided in this act, and, provided further, that any uniform
33 standard established by the commission 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'
37 (NAIC) Long-Term Care Insurance Model Act and Long-Term Care
38 Insurance Model Regulation, respectively, adopted as of 2001. The
39 commission shall consider whether any subsequent amendments to
40 the NAIC Long-Term Care Insurance Model Act or Long-Term
41 Care Insurance Model Regulation adopted by the NAIC require
42 amendment of the uniform standards established by the commission
43 for long-term care insurance products;

44 c. To receive and review in an expeditious manner, products
45 filed with the commission, and rate filings for disability income and
46 long-term care insurance products, and give approval of those
47 products and rate filings that satisfy the applicable uniform
48 standard, which approval shall have the force and effect of law and

- 1 be binding on the compacting states to the extent and in the manner
2 provided in this act;
- 3 d. To receive and review in an expeditious manner,
4 advertisements relating to long-term care insurance products for
5 which uniform standards have been adopted by the commission, and
6 give approval to all advertisements that satisfy the applicable
7 uniform standard. For any product covered under the compact,
8 other than long-term care insurance products, the commission shall
9 have the authority to require an insurer to submit all or any part of
10 its advertisement with respect to that product for review or approval
11 prior to use, if the commission determines that the nature of the
12 product is such that an advertisement of the product could have the
13 capacity or tendency to mislead the public. The actions of the
14 commission as provided in this section shall have the force and
15 effect of law, and shall be binding in the compacting states to the
16 extent and in the manner provided in this act;
- 17 e. To exercise its rule-making authority and designate products
18 and advertisements that may be subject to a self-certification
19 process without the need for prior approval by the commission;
- 20 f. To promulgate operating procedures, pursuant to section 7 of
21 this act, which shall be binding in the compacting states to the
22 extent and in the manner provided in this act;
- 23 g. To bring and prosecute legal proceedings or actions in its
24 name as the commission; however, the standing of any state
25 insurance department to sue or be sued under applicable law shall
26 not be affected;
- 27 h. To issue subpoenas requiring the attendance and testimony
28 of witnesses and the production of evidence;
- 29 i. To establish and maintain offices;
- 30 j. To purchase and maintain insurance and bonds;
- 31 k. To borrow, accept, or contract for services of personnel,
32 including, but not limited to, employees of a compacting state;
- 33 l. To hire employees, professionals, or specialists, and elect or
34 appoint officers, and to fix their compensation, define their duties,
35 and give them appropriate authority to carry out the purposes of this
36 act, and determine their qualifications; and to establish the
37 commission's personnel policies and programs relating to, among
38 other things, conflicts of interest, rates of compensation, and
39 qualifications of personnel;
- 40 m. To accept any appropriate donations and grants of money,
41 equipment, supplies, materials, and services, and to receive, utilize,
42 and dispose of the same; provided, at all times the commission shall
43 strive to avoid any appearance of impropriety;
- 44 n. To lease, purchase, accept appropriate gifts or donations of,
45 or otherwise own, hold, improve, or use, any property, real,
46 personal, or mixed; provided, at all times the commission shall
47 strive to avoid any appearance of impropriety;

- 1 o. To sell, convey, mortgage, pledge, lease, exchange, abandon,
2 or otherwise dispose of any property, real, personal or mixed;
- 3 p. To remit filing fees to compacting states as may be set forth
4 in the bylaws, rules, or operating procedures;
- 5 q. To enforce compliance by compacting states with rules,
6 uniform standards, operating procedures and bylaws;
- 7 r. To provide for dispute resolution among compacting states;
- 8 s. To advise compacting states on issues relating to insurers
9 domiciled or doing business in non-compacting jurisdictions,
10 consistent with the purposes of this act;
- 11 t. To provide advice and training to those personnel in state
12 insurance departments responsible for product review, and to be a
13 resource for state insurance departments;
- 14 u. To establish a budget and make expenditures;
- 15 v. To borrow money;
- 16 w. To appoint committees, including advisory committees
17 comprising members, state insurance regulators, state legislators or
18 their representatives, insurance industry and consumer
19 representatives, and any other interested persons as may be
20 designated in the bylaws;
- 21 x. To provide and receive information from, and to cooperate
22 with, law enforcement agencies;
- 23 y. To adopt and use a corporate seal; and
- 24 z. To perform any other functions as may be necessary or
25 appropriate to achieve the purposes of this act consistent with the
26 state regulation of the business of insurance.
- 27
- 28 5. a. (1) Each compacting state shall have and be limited to
29 one member of the commission. Each member shall be qualified to
30 serve in that capacity pursuant to the applicable law of the
31 compacting state. Any member may be removed or suspended from
32 office as provided by the law of the state from which he shall be
33 appointed. Any vacancy occurring in the commission shall be filled
34 in accordance with the laws of the compacting state wherein the
35 vacancy exists. Nothing herein shall be construed to affect the
36 manner in which a compacting state determines the election or
37 appointment and qualification of its own commissioner.
- 38 (2) Each member shall be entitled to one vote and shall have an
39 opportunity to participate in the governance of the commission in
40 accordance with the bylaws. Notwithstanding any provision herein
41 to the contrary, no action of the commission with respect to the
42 promulgation of a uniform standard shall be effective unless two-
43 thirds of the members vote in favor thereof.
- 44 (3) The commission shall, by a majority of the members,
45 prescribe bylaws to govern its conduct as may be necessary or
46 appropriate to carry out the purposes, and exercise the powers, of
47 this act, including, but not limited to:
48 (a) establishing the fiscal year of the commission;

- 1 (b) providing reasonable procedures for appointing and electing
2 members, as well as holding meetings, of the management
3 committee;
- 4 (c) providing reasonable standards and procedures for the
5 establishment and meetings of other committees, and governing any
6 general or specific delegation of any authority or function of the
7 commission;
- 8 (d) providing reasonable procedures for calling and conducting
9 meetings of the commission that consist of a majority of
10 commission members, ensuring reasonable advance notice of each
11 meeting, and providing for the right of citizens to attend each
12 meeting, with enumerated exceptions designed to protect the
13 public's interest, the privacy of individuals, and insurers'
14 proprietary information, including trade secrets. The commission
15 may meet in executive or closed session only after a majority of the
16 entire membership votes to close a meeting, in whole or in part. As
17 soon as practicable, the commission shall make public a copy of the
18 vote to close the meeting revealing the vote of each member with no
19 proxy votes allowed, and votes taken during the meeting;
- 20 (e) establishing the titles, duties and authority, and reasonable
21 procedures for the election, of the officers of the commission;
- 22 (f) providing reasonable standards and procedures for the
23 establishment of the personnel policies and programs of the
24 commission. Notwithstanding any civil service or other similar laws
25 of any compacting state, the bylaws shall exclusively govern the
26 personnel policies and programs of the commission;
- 27 (g) promulgating a code of ethics to address permissible and
28 prohibited activities of commission members and employees; and
- 29 (h) providing a mechanism for winding up the operations of the
30 commission and the equitable disposition of any surplus funds that
31 may exist after the termination of the compact established by this
32 act, after the payment and reserving of all of its debts and
33 obligations.
- 34 (4) The commission shall publish its bylaws in a convenient form
35 and file a copy thereof, and a copy of any amendment thereto, with
36 the appropriate agency or officer in each of the compacting states.
- 37 b. (1) A management committee comprising no more than 14
38 members shall be established as follows:
- 39 (a) One member from each of the six compacting states with the
40 largest premium volume for individual and group annuities, life,
41 disability income, and long-term care insurance products,
42 determined from the records of the NAIC for the prior year;
- 43 (b) Four members from those compacting states with at least two
44 percent of the market based on the premium volume as described in
45 subparagraph (a) of this paragraph, other than the six compacting
46 states with the largest premium volume, selected on a rotating basis
47 as provided in the bylaws; and
- 48 (c) Four members from those compacting states with less than

1 two percent of the market, based on the premium volume as
2 described in subparagraph (a) of this paragraph, with one selected
3 from each of the four zone regions of the NAIC as provided in the
4 bylaws.

5 (2) The management committee shall have that authority and
6 those duties as may be set forth in the bylaws, including but not
7 limited to:

8 (a) managing the affairs of the commission in a manner
9 consistent with the bylaws and purposes of the commission;

10 (b) establishing and overseeing an organizational structure
11 within, and appropriate procedures for, the commission to provide
12 for the creation of uniform standards and other rules, receipt and
13 review of product filings, administrative and technical support
14 functions, review of decisions regarding the disapproval of a
15 product filing, and the review of elections made by a compacting
16 state to opt out of a uniform standard; however, a uniform standard
17 shall not be submitted to the compacting states for adoption unless
18 approved by two-thirds of the members of the management
19 committee;

20 (c) overseeing the offices of the commission; and

21 (d) planning, implementing, and coordinating communications
22 and activities with other state, federal and local government
23 organizations in order to advance the goals of the commission.

24 (3) The commission shall elect annually officers from the
25 management committee, with each having the authority and duties
26 as may be specified in the bylaws.

27 (4) The management committee may, subject to the approval of
28 the commission, appoint or retain an executive director for a period,
29 upon those terms and conditions, and for that compensation, which
30 the commission deems appropriate. The executive director shall
31 serve as secretary to the commission, but shall not be a member of
32 the commission. The executive director shall hire and supervise
33 additional staff as authorized by the commission.

34 c. (1) A legislative committee comprised of state legislators or
35 their designees, provided in a manner of selection and for terms as
36 shall be set forth in the bylaws, shall be established to monitor the
37 operations of, and make recommendations to, the commission,
38 including the management committee; provided that the manner of
39 selection and term of any legislative committee member shall be as
40 set forth in the bylaws. Prior to the adoption by the commission of
41 any uniform standard, revision to the bylaws, annual budget, or
42 other significant matter as may be provided in the bylaws, the
43 management committee shall consult with and report to the
44 legislative committee.

45 (2) The commission shall establish two advisory committees,
46 one of which shall be comprised of consumer representatives
47 independent of the insurance industry, and the other comprised of
48 insurance industry representatives.

1 (3) The commission may establish additional advisory
2 committees as provided in the bylaws for carrying out its functions.

3 d. The commission shall maintain its corporate books and
4 records in accordance with the bylaws.

5 e. (1) The members, officers, executive director, employees,
6 and representatives of the commission shall be immune from suit
7 and liability, either personally or in their official capacity, for any
8 claim for damage to or loss of property or personal injury or other
9 civil liability caused by or arising out of any actual or alleged act,
10 error, or omission that occurred, or that the person against whom
11 the claim is made had a reasonable basis for believing occurred,
12 within the scope of commission employment, duties, or
13 responsibilities; however, nothing in this paragraph shall be
14 construed to protect any person from suit and liability for any
15 damage, loss, injury, or liability caused by the intentional or willful
16 and wanton misconduct of that person.

17 (2) The commission shall defend any member, officer, executive
18 director, employee, or representative of the commission in any civil
19 action seeking to impose liability arising out of any actual or
20 alleged act, error, or omission that occurred within the scope of
21 commission employment, duties or responsibilities, or that the
22 person against whom the claim is made had a reasonable basis for
23 believing occurred within the scope of commission employment,
24 duties, or responsibilities, so long as that actual or alleged act, error,
25 or omission did not result from that person's intentional or willful
26 and wanton misconduct; however, nothing herein shall be construed
27 to prohibit that person from retaining his own counsel.

28 (3) The commission shall indemnify and hold harmless any
29 member, officer, executive director, employee, or representative of
30 the commission for the amount of any settlement or judgment
31 obtained against that person arising out of any actual or alleged act,
32 error, or omission that occurred within the scope of commission
33 employment, duties, or responsibilities, or that the person had a
34 reasonable basis for believing occurred within the scope of
35 commission employment, duties, or responsibilities, so long as that
36 actual or alleged act, error, or omission did not result from the
37 intentional or willful and wanton misconduct of that person.

38

39 6. a. The commission shall meet and take those actions
40 consistent with the provisions of this act and the bylaws.

41 b. Each member of the commission shall have the right and
42 power to cast a vote to which that compacting state is entitled, and
43 to participate in the business and affairs of the commission. A
44 member shall vote in person or by other means as provided in the
45 bylaws. The bylaws may provide for members' participation in
46 meetings by telephone or other means of communication.

1 c. The commission shall meet at least once during each
2 calendar year. Additional meetings shall be held as set forth in the
3 bylaws.

4
5 7. a. The commission shall promulgate reasonable rules,
6 including uniform standards and operating procedures, in order to
7 effectively and efficiently achieve the purposes of this act.
8 Notwithstanding the foregoing, if the commission exercises its
9 rulemaking authority in a manner that is beyond the scope of the
10 purposes of this act, or the powers granted hereunder, that action by
11 the commission shall be invalid and have no force and effect.

12 b. Rules and operating procedures shall be made pursuant to a
13 rulemaking process that conforms to the Model State
14 Administrative Procedure Act of 1981 adopted by the National
15 Conference of Commissioners on Uniform State Laws, as amended,
16 as may be appropriate to the operations of the commission. Before
17 the commission adopts a uniform standard, the commission shall
18 give written notice to the relevant state legislative committee or
19 committees in each compacting state responsible for insurance
20 issues of its intention to adopt the uniform standard. The
21 commission, in adopting a uniform standard, shall consider fully all
22 submitted materials and issue a concise explanation of its decision.

23 c. A uniform standard shall become effective 90 days after its
24 promulgation by the commission, or a later date determined by the
25 commission; however, a compacting state may opt out of a uniform
26 standard as provided in subsection d. of this section. As used in this
27 section, “opt out” means any action by a compacting state to decline
28 to adopt or participate in a promulgated uniform standard. All other
29 rules and operating procedures, and amendments thereto, shall
30 become effective as of the date specified in each rule, operating
31 procedure, or amendment.

32 d. (1) A compacting state may opt out of a uniform standard,
33 either by legislation or regulation, duly promulgated by the
34 insurance department under the compacting state’s administrative
35 procedure act. If a compacting state elects to opt out of a uniform
36 standard by regulation, it shall give written notice to the
37 commission no later than 10 business days after the uniform
38 standard is promulgated, or at the time the state becomes a
39 compacting state and finds that the uniform standard does not
40 provide reasonable protections to the citizens of the state, given the
41 conditions in that state. The commissioner shall make specific
42 findings of fact and conclusions of law, based on a preponderance
43 of the evidence, detailing the conditions in the state which warrant a
44 departure from the uniform standard and determining that the
45 uniform standard would not reasonably protect the citizens of that
46 state. The commissioner shall consider and balance the following
47 factors, and find that the conditions in the state and needs of the
48 citizens of the state outweigh:

1 (a) the intent of the legislature to participate in, and the benefits
2 of, an interstate agreement to establish national uniform consumer
3 protections for the products subject to this act; and

4 (b) the presumption that a uniform standard adopted by the
5 commission provides reasonable protections to consumers of the
6 relevant product.

7 (2) Notwithstanding the provisions of paragraph (1) of this
8 subsection, a compacting state may, at the time of its enactment of
9 the compact, prospectively opt out of all uniform standards
10 involving long-term care insurance products by expressly providing
11 therefor in the act, and that opt out shall not be treated as a material
12 variance in the offer or acceptance of any state to participate in the
13 compact. Such an opt out shall be effective at the time of
14 enactment of the compact by the compacting state, and shall apply
15 to all existing uniform standards involving long-term care insurance
16 products and those subsequently promulgated.

17 (3) In accordance with the provisions of paragraph (2) of this
18 subsection, this State prospectively opts out of all uniform standards
19 involving long-term care insurance products promulgated by the
20 commission, as this State has previously enacted the "New Jersey
21 Long-Term Care Insurance Act," P.L.2003, c.207 (C.17B:27E-1 et
22 seq.), which facilitates flexibility and innovation in the development
23 of long-term care insurance coverage.

24 e. If a compacting state elects to opt out of a uniform standard,
25 the uniform standard shall remain applicable in the compacting state
26 electing to opt out until the opt out legislation is enacted into law or
27 the regulation opting out becomes effective.

28 Once the opt out of a uniform standard by a compacting state
29 becomes effective as provided under the laws of that state, the
30 uniform standard shall have no further force and effect in that state
31 unless the legislation or regulation implementing the opt out is
32 repealed or otherwise becomes ineffective under the laws of the
33 state. If a compacting state opts out of a uniform standard after the
34 uniform standard has been made effective in that state, the opt out
35 shall have the same prospective effect as provided pursuant to
36 section 14 of this act for withdrawal from the compact.

37 f. If a compacting state has formally initiated the process of
38 opting out of a uniform standard by regulation, and while the
39 regulatory opt out is pending, the compacting state may petition the
40 commission, at least 15 days before the effective date of the
41 uniform standard, to stay the effectiveness of the uniform standard
42 in that state. The commission may grant a stay if it determines that
43 the regulatory opt out is being pursued in a reasonable manner and
44 there is a likelihood of success. If a stay is granted or extended by
45 the commission, the stay or extension thereof may postpone the
46 effective date by up to 90 days, unless affirmatively extended by the
47 commission; however, a stay may not be permitted to remain in
48 effect for more than one year unless the compacting state can show

1 extraordinary circumstances which warrant a continuance of the
2 stay, including, but not limited to, the existence of a legal challenge
3 which prevents the compacting state from opting out. A stay may
4 be terminated by the commission upon notice that the rulemaking
5 process has been terminated.

6 g. Not later than 30 days after a rule or operating procedure is
7 promulgated, any person may file a petition for judicial review of
8 the rule or operating procedure; however, the filing of that petition
9 shall not stay or otherwise prevent the rule or operating procedure
10 from becoming effective unless the court finds that the petitioner
11 has a substantial likelihood of success. The court shall give
12 deference to the actions of the commission consistent with
13 applicable law and shall not find the rule or operating procedure to
14 be unlawful if the rule or operating procedure represents a
15 reasonable exercise of the commission's authority.

16
17 8. a. The commission shall promulgate rules establishing
18 conditions and procedures for public inspection and copying of its
19 information and official records, except for information and records
20 involving the privacy of individuals and insurers' trade secrets. The
21 commission may promulgate additional rules under which it may
22 make available to federal and state agencies, including law
23 enforcement agencies, records and information otherwise exempt
24 from disclosure, and may enter into agreements with those agencies
25 to receive or exchange information or records subject to
26 nondisclosure and confidentiality provisions.

27 b. Except as to privileged records, data and information, the
28 laws of any compacting state pertaining to confidentiality or
29 nondisclosure shall not relieve any compacting state commissioner
30 of the duty to disclose any relevant records, data or information to
31 the commission; however, disclosure to the commission shall not be
32 deemed to waive or otherwise affect any confidentiality
33 requirement, and further, except as otherwise expressly provided in
34 this act, the commission shall not be subject to the compacting
35 state's laws pertaining to confidentiality and nondisclosure with
36 respect to records, data, and information in its possession.
37 Confidential information of the commission shall remain
38 confidential after that information is provided to any commissioner.

39 c. The commission shall monitor compacting states for
40 compliance with duly adopted bylaws, rules, including uniform
41 standards, and operating procedures. The commission shall notify
42 any non-complying compacting state in writing of its
43 noncompliance with commission bylaws, rules, or operating
44 procedures. If a non-complying compacting state fails to remedy its
45 noncompliance within the time specified in the notice of
46 noncompliance, the compacting state shall be deemed to be in
47 default as provided in section 14 of this act.

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

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

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

23

24 9. The commission shall attempt, upon the request of a
25 member, to resolve any disputes or other issues that are subject to
26 the compact and which may arise between two or more compacting
27 states, or between compacting states and non-compacting states, and
28 the commission shall promulgate an operating procedure providing
29 for resolution of those disputes.

30

31 10. a. Insurers and third party filers seeking to have a product
32 approved by the commission shall file the product with, and pay
33 applicable filing fees to, the commission. Nothing in this act shall
34 be construed to restrict or otherwise prevent an insurer from filing
35 its product with the insurance department in any state wherein the
36 insurer is licensed to conduct the business of insurance, and that
37 filing shall be subject to the laws of the states where filed.

38 b. The commission shall establish appropriate filing and review
39 processes and procedures pursuant to commission rules and
40 operating procedures. Notwithstanding any provision in this act to
41 the contrary, the commission shall promulgate rules to establish
42 conditions and procedures under which the commission will provide
43 public access to product filing information. In establishing these
44 rules, the commission shall consider the interests of the public in
45 having access to that information, as well as protection of personal
46 medical and financial information and trade secrets, which may be
47 contained in a product filing or supporting information.

1 c. Any product approved by the commission may be sold or
2 otherwise issued in those compacting states for which the insurer is
3 legally authorized to do business.

4
5 11. a. Not later than 30 days after the commission has given
6 notice of a disapproved product or advertisement filed with the
7 commission, the insurer or third party filer whose filing was
8 disapproved may appeal the determination to a review panel
9 appointed by the commission. The commission shall promulgate
10 rules to establish procedures for appointing those review panels and
11 provide for notice and hearing. An allegation that the commission,
12 in disapproving a product or advertisement filed with the
13 commission, acted arbitrarily, capriciously, or in a manner that is an
14 abuse of discretion or otherwise not in accordance with the law, is
15 subject to judicial review in accordance with subsection d. of
16 section 3 of this act.

17 b. The commission shall have the authority to monitor, review,
18 and reconsider products and advertisements subsequent to their
19 filing or approval upon a finding that the product does not meet the
20 relevant uniform standard. Where appropriate, the commission may
21 withdraw or modify its approval after proper notice and hearing,
22 subject to the appeal process pursuant to subsection a. of this
23 section.

24
25 12. a. The commission shall pay or provide for the payment of
26 the reasonable expenses of its establishment and organization. To
27 fund the cost of its initial operations, the commission may accept
28 contributions and other forms of funding from the NAIC,
29 compacting states, and other sources. Contributions and other
30 forms of funding from other sources shall be of a nature that the
31 independence of the commission concerning the performance of its
32 duties shall not be compromised.

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

38 c. The commission's budget for a fiscal year shall not be
39 approved until it has been subject to notice and comment as set
40 forth in section 7 of this act.

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

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

46 f. The commission shall keep complete and accurate accounts
47 of all its internal receipts, including grants and donations, and
48 disbursements of all funds under its control. The internal financial

1 accounts of the commission shall be subject to the accounting
2 procedures established under its bylaws. The financial accounts
3 and reports, including the system of internal controls and
4 procedures of the commission, shall be audited annually by an
5 independent certified public accountant. Upon the determination of
6 the commission, but no less frequently than every three years, the
7 review of the independent auditor shall include a management and
8 performance audit of the commission. The commission shall make
9 an annual report to the governor and legislature of the compacting
10 states, which shall include a report of the independent audit. The
11 commission's internal accounts shall not be confidential and may be
12 shared with the commissioner of any compacting state upon request,
13 except that any work papers related to any internal or independent
14 audit and any information regarding the privacy of individuals and
15 insurers' proprietary information, including trade secrets, shall
16 remain confidential.

17 g. No compacting state shall have any claim to or ownership of
18 any property held by or vested in the commission, or to any
19 commission funds held pursuant to the provisions of this act.
20

21 13. a. Any state is eligible to become a compacting state.

22 b. The compact shall become effective and binding upon
23 legislative enactment of the compact into law by two compacting
24 states; however, the commission shall become effective for
25 purposes of adopting uniform standards for, reviewing, and giving
26 approval or disapproval of, products filed with the commission that
27 satisfy applicable uniform standards only after 26 states are
28 compacting states or, alternatively, by states representing greater
29 than 40% of the premium volume for life insurance, annuity,
30 disability income, and long-term care insurance products, based on
31 records of the NAIC for the prior year. Thereafter, the compact
32 shall become effective and binding as to any other compacting state
33 upon enactment of the compact into law by that state.

34 c. Amendments to the compact may be proposed by the
35 commission for enactment by the compacting states. No
36 amendment shall become effective and binding upon the
37 commission and the compacting states unless all compacting states
38 enact the amendment into law.
39

40 14. a. (1) Once effective, the compact shall continue in force
41 and remain binding upon each compacting state; however, a
42 compacting state may withdraw from the compact by repealing the
43 statute which enacted the compact into law.

44 (2) The effective date of withdrawal is the effective date of the
45 repealing statute. However, the withdrawal shall not apply to any
46 product filings approved or self-certified, or any advertisement of
47 those products, prior to or on the date the repealing statute becomes
48 effective, except by mutual agreement of the commission and the

1 withdrawing state unless the approval is rescinded by the
2 withdrawing state as provided in paragraph (5) of this subsection.

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

6 (4) The commission shall notify the other compacting states of
7 the introduction of such legislation within 10 days after its receipt
8 of notice thereof.

9 (5) The withdrawing state is responsible for all obligations,
10 duties, and liabilities incurred through the effective date of
11 withdrawal, including any obligations, the performance of which
12 extend beyond the effective date of withdrawal, except to the extent
13 those obligations may have been released or relinquished by mutual
14 agreement of the commission and the withdrawing state. The
15 commission's approval of products and advertisements prior to the
16 effective date of withdrawal shall continue to be effective and be
17 given full effect in the withdrawing state, unless formally rescinded
18 by the withdrawing state in the same manner as provided by the
19 laws of the withdrawing state for the prospective disapproval of
20 products or advertisements previously approved under state law.

21 (6) Reinstatement following withdrawal of any compacting state
22 shall occur upon the effective date of the withdrawing state
23 reenacting the compact.

24 b. (1) If the commission determines that any compacting state
25 has at any time defaulted in the performance of any of its
26 obligations or responsibilities under the compact, the bylaws, or
27 duly promulgated rules or operating procedures, then, after notice
28 and hearing as set forth in the bylaws, all rights, privileges, and
29 benefits conferred by the compact on the defaulting state shall be
30 suspended from the effective date of default as fixed by the
31 commission. The grounds for default include, but are not limited
32 to, failure of a compacting state to perform its obligations or
33 responsibilities, and any other grounds designated in commission
34 rules. The commission shall immediately notify the defaulting state
35 in writing of the defaulting state's suspension pending a cure of the
36 default. The commission shall stipulate the conditions and the time
37 period within which the defaulting state shall cure its default. If the
38 defaulting state fails to cure the default within the time period
39 specified by the commission, the defaulting state shall be
40 terminated from the compact and all rights, privileges, and benefits
41 conferred by the compact shall be terminated from the effective
42 date of termination.

43 (2) Product approvals by the commission or product self-
44 certifications, or any advertisement in connection with that product,
45 that are in force on the effective date of termination shall remain in
46 force in the defaulting state in the same manner as if the defaulting
47 state had withdrawn voluntarily pursuant to subsection a. of this
48 section.

1 (3) Reinstatement following termination of any compacting state
2 shall require a reenactment of the compact.

3 c. (1) The compact shall dissolve effective upon the date of the
4 withdrawal or default of the compacting state which reduces
5 membership in the compact to one compacting state.

6 (2) Upon the dissolution of the compact, the compact shall
7 become void and shall be of no further effect, and the business and
8 affairs of the commission shall be completed, and any surplus funds
9 shall be distributed in accordance with the bylaws.

10

11 15. a. The provisions of this act shall be severable; and if any
12 phrase, clause, sentence, or provision is deemed unenforceable, the
13 remaining provisions of this act shall be enforceable.

14 b. The provisions of this act shall be liberally construed to
15 effectuate its purposes.

16

17 16. a. (1) Nothing herein shall prevent the enforcement of any
18 other law of a compacting state, except as provided in subsection b.
19 of this section.

20 (2) For any product approved or certified by the commission,
21 the rules, uniform standards, and any other requirements of the
22 commission shall constitute the exclusive provisions applicable to
23 the content, approval, and certification of that product. For any
24 advertisement that is subject to the commission's authority, any
25 rule, uniform standard, or other requirement of the commission
26 which governs the content of the advertisement shall constitute the
27 exclusive provision that a commissioner may apply to the content of
28 the advertisement. Notwithstanding the foregoing, no action taken
29 by the commission shall abrogate or restrict:

30 (a) the access of any person to state courts;

31 (b) remedies available under state law related to breach of
32 contract, tort, or other laws not specifically directed to the content
33 of the product;

34 (c) state law relating to the construction of insurance contracts;
35 or

36 (d) the authority of the attorney general of the state, including,
37 but not limited to, maintaining any actions or proceedings, as
38 authorized by law.

39 (3) All insurance products filed with individual states shall be
40 subject to the laws of those states.

41 b. (1) All lawful actions of the commission, including all rules
42 and operating procedures promulgated by the commission, are
43 binding upon the compacting states.

44 (2) All agreements between the commission and the compacting
45 states are binding in accordance with their terms.

46 (3) Upon the request of a party to a conflict over the meaning or
47 interpretation of commission actions, and upon a majority vote of
48 the compacting states, the commission may issue advisory opinions

1 regarding the meaning or interpretation in dispute.
2 (4) In the event any provision of the compact exceeds the
3 constitutional limits imposed on the legislature of any compacting
4 state, the obligations, duties, powers, or jurisdiction sought to be
5 conferred by that provision upon the commission shall be
6 ineffective as to that compacting state, and those obligations, duties,
7 powers, or jurisdiction shall remain in the compacting state and
8 shall be exercised by the agency thereof to which those obligations,
9 duties, powers, or jurisdiction are delegated by law in effect at the
10 time the compact becomes effective.
11
12 17. The Commissioner of Banking and Insurance shall report to
13 the Legislature, as provided pursuant to section 2 of P.L.1991,
14 c.164 (C.52:14-19.1), within one year of the effective date of this
15 act or within one year of the operational date of the compact for the
16 long-term care insurance products, whichever is later, the
17 commissioner's 'non-binding' recommendation as to whether the
18 State should participate in the compact with respect to all uniform
19 standards involving long-term care insurance products under the
20 compact.
21
22 18. This act shall take effect upon enactment of the compact into
23 law by two compacting states.