

Introduced by Senator CalderonFebruary 24, 2012

An act to add Article 8 (commencing with Section 10198.95) to Chapter 1 of Part 2 of Division 2 of the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1449, as introduced, Calderon. Insurance: interstate compact.

Existing law provides for the Insurance Commissioner to approve various products and related forms and filings.

This bill would enact the Interstate Insurance Regulation Compact, and would provide that California shall join a joint public agency known as the "Interstate Insurance Product Regulation Commission." The commission would have the power to develop uniform standards for product lines, receive and provide prompt review of products filed therewith, and give approval to those product filings satisfying applicable uniform standards. The products covered by the commission would be life insurance, annuities, disability insurance, and long-term care insurance. The bill would also provide that the commission would not be the exclusive entity for receipt and review of insurance product filings. The bill would authorize the state to opt out as to a particular uniform standard. Nothing contained in the compact would prohibit any insurer from filing its product in any state wherein the insurer is licensed to conduct the business of insurance, and any of these filings would be subject to the laws of the state where filed. This bill would state the commission's purposes, and detail its operations, as specified, including developing uniform standards for insurance products covered under the compact. The commissioner would be designated to serve as California's representative to the commission.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Article 8 (commencing with Section 10198.95)
2 is added to Chapter 1 of Part 2 of Division 2 of the Insurance Code,
3 to read:

4 Article 8. Interstate Insurance Product Regulation Compact
5

6 10198.95. The Interstate Insurance Product Regulation Compact
7 as contained in this Section is hereby enacted into law and entered
8 into on behalf of this state with any and all other states legally
9 joining into it in a form substantially as follows:
10

11 Article I. Purposes
12

13 The purposes of this Compact are, through means of joint and
14 cooperative action among the Compacting States:
15

16 1. To promote and protect the interest of consumers of individual
17 and group annuity, life insurance, disability income and long-term
18 care insurance products;

19 2. To develop uniform standards for insurance products covered
20 under the Compact;

21 3. To establish a central clearinghouse to receive and provide
22 prompt review of insurance products covered under the Compact
23 and, in certain cases, advertisements related thereto, submitted by
24 insurers authorized to do business in one or more Compacting
25 States;

26 4. To give appropriate regulatory approval to those product
27 filings and advertisements satisfying the applicable uniform
28 standard;

29 5. To improve coordination of regulatory resources and expertise
30 between state insurance departments regarding the setting of
31 uniform standards and review of insurance products covered under
32 the Compact;

33 6. To create the Interstate Insurance Product Regulation
34 Commission; and

1 7. To perform these and such other related functions as may be
2 consistent with the state regulation of the business of insurance.

3
4
5 Article II. Definitions
6

7 For purposes of this Compact:

8 1. "Advertisement" means any material designed to create public
9 interest in a Product, or induce the public to purchase, increase,
10 modify, reinstate, borrow on, surrender, replace or retain a policy,
11 as more specifically defined in the Rules and Operating Procedures
12 of the Commission.

13 2. "Bylaws" mean those bylaws established by the Commission
14 for its governance, or for directing or controlling the Commission's
15 actions or conduct.

16 3. "Compacting State" means any State which has enacted this
17 Compact legislation and which has not withdrawn pursuant to
18 Article XIV, Section 1, or been terminated pursuant to Article
19 XIV, Section 2.

20 4. "Commission" means the "Interstate Insurance Product
21 Regulation Commission" established by this Compact.

22 5. "Commissioner" means the chief insurance regulatory official
23 of a State including, but not limited to commissioner,
24 superintendent, director or administrator.

25 6. "Domiciliary State" means the state in which an Insurer is
26 incorporated or organized; or, in the case of an alien Insurer, its
27 state of entry.

28 7. "Insurer" means any entity licensed by a State to issue
29 contracts of insurance for any of the lines of insurance covered by
30 this Act.

31 8. "Member" means the person chosen by a Compacting State
32 as its representative to the Commission, or his or her designee.

33 9. "Non-compacting State" means any State which is not at the
34 time a Compacting State.

35 10. "Operating Procedures" mean procedures promulgated by
36 the Commission implementing a Rule, Uniform Standard or a
37 provision of this Compact.

38 11. "Product" means the form of a policy or contract, including
39 any application, endorsement, or related form which is attached
40 to and made a part of the policy or contract, and any evidence of

1 coverage or certificate, for an individual or group annuity, life
2 insurance, disability income or long-term care insurance product
3 that an Insurer is authorized to issue.

4 12. “Rule” means a statement of general or particular
5 applicability and future effect promulgated by the Commission,
6 including a Uniform Standard developed pursuant to Article VII
7 of this Compact, designed to implement, interpret, or prescribe
8 law or policy or describing the organization, procedure, or practice
9 requirements of the Commission, which shall have the force and
10 effect of law in the Compacting States.

11 13. “State” means any state, district or territory of the United
12 States of America.

13 14. “Third-Party Filer” means an entity that submits a Product
14 filing to the Commission on behalf of an Insurer.

15 15. “Uniform Standard” means a standard adopted by the
16 Commission for a Product line, pursuant to Article VII of this
17 Compact, and shall include all of the Product requirements in
18 aggregate; provided, that each Uniform Standard shall be construed,
19 whether express or implied, to prohibit the use of any inconsistent,
20 misleading or ambiguous provisions in a Product and the form of
21 the Product made available to the public shall not be unfair,
22 inequitable or against public policy as determined by the
23 Commission.

24

25 Article III. Establishment of the Commission and Venue

26

27 1. The Compacting States hereby create and establish a joint
28 public agency known as the “Interstate Insurance Product
29 Regulation Commission.” Pursuant to Article IV, the Commission
30 will have the power to develop Uniform Standards for Product
31 lines, receive and provide prompt review of Products filed
32 therewith, and give approval to those Product filings satisfying
33 applicable Uniform Standards; provided, it is not intended for the
34 Commission to be the exclusive entity for receipt and review of
35 insurance product filings. Nothing herein shall prohibit any Insurer
36 from filing its product in any State wherein the Insurer is licensed
37 to conduct the business of insurance; and any such filing shall be
38 subject to the laws of the State where filed.

39 2. The Commission is a body corporate and politic, and an
40 instrumentality of the Compacting States.

1 3. The Commission is solely responsible for its liabilities except
2 as otherwise specifically provided in this Compact.

3 4. Venue is proper and judicial proceedings by or against the
4 Commission shall be brought solely and exclusively in a Court of
5 competent jurisdiction where the principal office of the
6 Commission is located.

7
8 Article IV. Powers of the Commission
9

10 The Commission shall have the following powers:

11 1. To promulgate Rules, pursuant to Article VII of this Compact,
12 which shall have the force and effect of law and shall be binding
13 in the Compacting States to the extent and in the manner provided
14 in this Compact;

15 2. To exercise its rule-making authority and establish reasonable
16 Uniform Standards for Products covered under the Compact, and
17 Advertisement related thereto, which shall have the force and effect
18 of law and shall be binding in the Compacting States, but only for
19 those Products filed with the Commission, provided, that a
20 Compacting State shall have the right to opt out of such Uniform
21 Standard pursuant to Article VII, to the extent and in the manner
22 provided in this Compact, and, provided further, that any Uniform
23 Standard established by the Commission for long-term care
24 insurance products may provide the same or greater protections
25 for consumers as, but shall not provide less than, those protections
26 set forth in the National Association of Insurance Commissioners’
27 Long-Term Care Insurance Model Act and Long-Term Care
28 Insurance Model Regulation, respectively, adopted as of 2001.
29 The Commission shall consider whether any subsequent
30 amendments to the NAIC Long-Term Care Insurance Model Act
31 or Long-Term Care Insurance Model Regulation adopted by the
32 NAIC require amending of the Uniform Standards established by
33 the Commission for long-term care insurance products;

34 3. To receive and review in an expeditious manner Products
35 filed with the Commission, and rate filings for disability income
36 and long-term care insurance Products, and give approval of those
37 Products and rate filings that satisfy the applicable Uniform
38 Standard, where such approval shall have the force and effect of
39 law and be binding on the Compacting States to the extent and in
40 the manner provided in the Compact;

1 4. To receive and review in an expeditious manner
2 Advertisement relating to long-term care insurance products for
3 which Uniform Standards have been adopted by the Commission,
4 and give approval to all Advertisement that satisfies the applicable
5 Uniform Standard. For any product covered under this Compact,
6 other than long-term care insurance products, the Commission
7 shall have the authority to require an insurer to submit all or any
8 part of its Advertisement with respect to that product for review
9 or approval prior to use, if the Commission determines that the
10 nature of the product is such that an Advertisement of the product
11 could have the capacity or tendency to mislead the public. The
12 actions of Commission as provided in this section shall have the
13 force and effect of law and shall be binding in the Compacting
14 States to the extent and in the manner provided in the Compact;

15 5. To exercise its rule-making authority and designate Products
16 and Advertisement that may be subject to a self-certification
17 process without the need for prior approval by the Commission.

18 6. To promulgate Operating Procedures, pursuant to Article VII
19 of this Compact, which shall be binding in the Compacting States
20 to the extent and in the manner provided in this Compact;

21 7. To bring and prosecute legal proceedings or actions in its
22 name as the Commission; provided, that the standing of any state
23 insurance department to sue or be sued under applicable law shall
24 not be affected;

25 8. To issue subpoenas requiring the attendance and testimony
26 of witnesses and the production of evidence;

27 9. To establish and maintain offices;

28 10. To purchase and maintain insurance and bonds;

29 11. To borrow, accept or contract for services of personnel,
30 including, but not limited to, employees of a Compacting State;

31 12. To hire employees, professionals or specialists, and elect or
32 appoint officers, and to fix their compensation, define their duties
33 and give them appropriate authority to carry out the purposes of
34 the Compact, and determine their qualifications; and to establish
35 the Commission's personnel policies and programs relating to,
36 among other things, conflicts of interest, rates of compensation
37 and qualifications of personnel;

38 13. To accept any and all appropriate donations and grants of
39 money, equipment, supplies, materials and services, and to receive,

1 utilize and dispose of the same; provided that at all times the
2 Commission shall strive to avoid any appearance of impropriety;

3 14. To lease, purchase, accept appropriate gifts or donations of,
4 or otherwise to own, hold, improve or use, any property, real,
5 personal or mixed; provided that at all times the Commission shall
6 strive to avoid any appearance of impropriety;

7 15. To sell, convey, mortgage, pledge, lease, exchange, abandon
8 or otherwise dispose of any property, real, personal or mixed;

9 16. To remit filing fees to Compacting States as may be set forth
10 in the Bylaws, Rules or Operating Procedures;

11 17. To enforce compliance by Compacting States with Rules,
12 Uniform Standards, Operating Procedures and Bylaws;

13 18. To provide for dispute resolution among Compacting States;

14 19. To advise Compacting States on issues relating to Insurers
15 domiciled or doing business in Non-compacting jurisdictions,
16 consistent with the purposes of this Compact;

17 20. To provide advice and training to those personnel in state
18 insurance departments responsible for product review, and to be
19 a resource for state insurance departments;

20 21. To establish a budget and make expenditures;

21 22. To borrow money;

22 23. To appoint committees, including advisory committees
23 comprising Members, state insurance regulators, state legislators
24 or their representatives, insurance industry and consumer
25 representatives, and such other interested persons as may be
26 designated in the Bylaws;

27 24. To provide and receive information from, and to cooperate
28 with law enforcement agencies;

29 25. To adopt and use a corporate seal; and

30 26. To perform such other functions as may be necessary or
31 appropriate to achieve the purposes of this Compact consistent
32 with the state regulation of the business of insurance.

33

34 Article V. Organization of the Commission

35

36 1. Membership, Voting and Bylaws

37 a. Each Compacting State shall have and be limited to one
38 Member. Each Member shall be qualified to serve in that capacity
39 pursuant to applicable law of the Compacting State. Any Member
40 may be removed or suspended from office as provided by the law

1 of the State from which he or she shall be appointed. Any vacancy
2 occurring in the Commission shall be filled in accordance with the
3 laws of the Compacting State wherein the vacancy exists. Nothing
4 herein shall be construed to affect the manner in which a
5 Compacting State determines the election or appointment and
6 qualification of its own Commissioner.

7 b. Each Member shall be entitled to one vote and shall have an
8 opportunity to participate in the governance of the Commission
9 in accordance with the Bylaws. Notwithstanding any provision
10 herein to the contrary, no action of the Commission with respect
11 to the promulgation of a Uniform Standard shall be effective unless
12 two-thirds (2/3) of the Members vote in favor thereof.

13 c. The Commission shall, by a majority of the Members,
14 prescribe Bylaws to govern its conduct as may be necessary or
15 appropriate to carry out the purposes, and exercise the powers, of
16 the Compact, including, but not limited to:

17 i. Establishing the fiscal year of the Commission;

18 ii. Providing reasonable procedures for appointing and electing
19 members, as well as holding meetings, of the Management
20 Committee;

21 iii. Providing reasonable standards and procedures: (i) for the
22 establishment and meetings of other committees, and (ii) governing
23 any general or specific delegation of any authority or function of
24 the Commission;

25 iv. Providing reasonable procedures for calling and conducting
26 meetings of the Commission that consists of a majority of
27 Commission members, ensuring reasonable advance notice of each
28 such meeting and providing for the right of citizens to attend each
29 such meeting with enumerated exceptions designed to protect the
30 public's interest, the privacy of individuals, and insurers'
31 proprietary information, including trade secrets. The Commission
32 may meet in camera only after a majority of the entire membership
33 votes to close a meeting en toto or in part. As soon as practicable,
34 the Commission must make public (i) a copy of the vote to close
35 the meeting revealing the vote of each Member with no proxy
36 votes allowed, and (ii) votes taken during such meeting;

37 v. Establishing the titles, duties and authority and reasonable
38 procedures for the election of the officers of the Commission;

39 vi. Providing reasonable standards and procedures for the
40 establishment of the personnel policies and programs of the

1 Commission. Notwithstanding any civil service or other similar
2 laws of any Compacting State, the Bylaws shall exclusively govern
3 the personnel policies and programs of the Commission;

4 vii. Promulgating a code of ethics to address permissible and
5 prohibited activities of commission members and employees; and

6 viii. Providing a mechanism for winding up the operations of
7 the Commission and the equitable disposition of any surplus funds
8 that may exist after the termination of the Compact after the
9 payment and/or reserving of all of its debts and obligations.

10 d. The Commission shall publish its bylaws in a convenient
11 form and file a copy thereof and a copy of any amendment thereto,
12 with the appropriate agency or officer in each of the Compacting
13 States.

14 2. Management Committee, Officers and Personnel

15 a. A Management Committee comprising no more than fourteen
16 (14) members shall be established as follows:

17 i. One (1) member from each of the six (6) Compacting States
18 with the largest premium volume for individual and group
19 annuities, life, disability income and long-term care insurance
20 products, determined from the records of the NAIC for the prior
21 year;

22 ii. Four (4) members from those Compacting States with at least
23 two percent (2%) of the market based on the premium volume
24 described above, other than the six (6) Compacting States with the
25 largest premium volume, selected on a rotating basis as provided
26 in the Bylaws; and

27 iii. Four (4) members from those Compacting States with less
28 than two percent (2%) of the market, based on the premium volume
29 described above, with one (1) selected from each of the four (4)
30 zone regions of the NAIC as provided in the Bylaws.

31 b. The Management Committee shall have such authority and
32 duties as may be set forth in the Bylaws, including but not limited
33 to:

34 i. Managing the affairs of the Commission in a manner
35 consistent with the Bylaws and purposes of the Commission;

36 ii. Establishing and overseeing an organizational structure
37 within, and appropriate procedures for, the Commission to provide
38 for the creation of Uniform Standards and other Rules, receipt and
39 review of product filings, administrative and technical support
40 functions, review of decisions regarding the disapproval of a

1 product filing, and the review of elections made by a Compacting
2 State to opt out of a Uniform Standard; provided that a Uniform
3 Standard shall not be submitted to the Compacting States for
4 adoption unless approved by two-thirds (2/3) of the members of
5 the Management Committee;

6 iii. Overseeing the offices of the Commission; and

7 iv. Planning, implementing, and coordinating communications
8 and activities with other state, federal and local government
9 organizations in order to advance the goals of the Commission.

10 c. The Commission shall elect annually officers from the
11 Management Committee, with each having such authority and
12 duties, as may be specified in the Bylaws.

13 d. The Management Committee may, subject to the approval
14 of the Commission, appoint or retain an executive director for such
15 period, upon such terms and conditions and for such compensation
16 as the Commission may deem appropriate. The executive director
17 shall serve as secretary to the Commission, but shall not be a
18 Member of the Commission. The executive director shall hire and
19 supervise such other staff as may be authorized by the Commission.

20 3. Legislative and Advisory Committees

21 a. A legislative committee comprising state legislators or their
22 designees shall be established to monitor the operations of, and
23 make recommendations to, the Commission, including the
24 Management Committee; provided that the manner of selection
25 and term of any legislative committee member shall be as set forth
26 in the Bylaws. Prior to the adoption by the Commission of any
27 Uniform Standard, revision to the Bylaws, annual budget or other
28 significant matter as may be provided in the Bylaws, the
29 Management Committee shall consult with and report to the
30 legislative committee.

31 b. The Commission shall establish two (2) advisory committees,
32 one of which shall comprise consumer representatives independent
33 of the insurance industry, and the other comprising insurance
34 industry representatives.

35 c. The Commission may establish additional advisory
36 committees as its Bylaws may provide for the carrying out of its
37 functions.

38 4. Corporate Records of the Commission

39 The Commission shall maintain its corporate books and records
40 in accordance with the Bylaws.

1 5. Qualified Immunity, Defense and Indemnification

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

14 b. The Commission shall defend any Member, officer, executive
15 director, employee or representative of the Commission in any
16 civil action seeking to impose liability arising out of any actual or
17 alleged act, error or omission that occurred within the scope of
18 Commission employment, duties or responsibilities, or that the
19 person against whom the claim is made had a reasonable basis for
20 believing occurred within the scope of Commission employment,
21 duties or responsibilities; provided, that nothing herein shall be
22 construed to prohibit that person from retaining his or her own
23 counsel; and provided further, that the actual or alleged act, error
24 or omission did not result from that person's intentional or willful
25 and wanton misconduct.

26 c. The Commission shall indemnify and hold harmless any
27 Member, officer, executive director, employee or representative
28 of the Commission for the amount of any settlement or judgment
29 obtained against that person arising out of any actual or alleged
30 act, error or omission that occurred within the scope of Commission
31 employment, duties or responsibilities, or that such person had a
32 reasonable basis for believing occurred within the scope of
33 Commission employment, duties or responsibilities, provided, that
34 the actual or alleged act, error or omission did not result from the
35 intentional or willful and wanton misconduct of that person.

36
37 Article VI. Meetings and Acts of the Commission

38
39 1. The Commission shall meet and take such actions as are
40 consistent with the provisions of this Compact and the Bylaws.

1 2. Each Member of the Commission shall have the right and
2 power to cast a vote to which that Compacting State is entitled and
3 to participate in the business and affairs of the Commission. A
4 Member shall vote in person or by such other means as provided
5 in the Bylaws. The Bylaws may provide for Members' participation
6 in meetings by telephone or other means of communication.

7 3. The Commission shall meet at least once during each calendar
8 year. Additional meetings shall be held as set forth in the Bylaws.

9

10 Article VII. Rules and Operating Procedures: Rulemaking
11 Functions of the Commission and Opting Out of Uniform Standards

12

13 1. Rulemaking Authority. The Commission shall promulgate
14 reasonable Rules, including Uniform Standards, and Operating
15 Procedures in order to effectively and efficiently achieve the
16 purposes of this Compact. Notwithstanding the foregoing, in the
17 event the Commission exercises its rulemaking authority in a
18 manner that is beyond the scope of the purposes of this Act, or the
19 powers granted hereunder, then such an action by the Commission
20 shall be invalid and have no force and effect.

21 2. Rulemaking Procedure. Rules and Operating Procedures shall
22 be made pursuant to a rulemaking process that conforms to the
23 Model State Administrative Procedure Act of 1981 as amended,
24 as may be appropriate to the operations of the Commission. Before
25 the Commission adopts a Uniform Standard, the Commission shall
26 give written notice to the relevant state legislative committee(s)
27 in each Compacting State responsible for insurance issues of its
28 intention to adopt the Uniform Standard. The Commission in
29 adopting a Uniform Standard shall consider fully all submitted
30 materials and issue a concise explanation of its decision.

31 3. Effective Date and Opt Out of a Uniform Standard. A
32 Uniform Standard shall become effective ninety (90) days after
33 its promulgation by the Commission or such later date as the
34 Commission may determine; provided, however, that a Compacting
35 State may opt out of a Uniform Standard as provided in this Article.
36 "Opt out" shall be defined as any action by a Compacting State to
37 decline to adopt or participate in a promulgated Uniform Standard.
38 All other Rules and Operating Procedures, and amendments thereto,
39 shall become effective as of the date specified in each Rule,
40 Operating Procedure or amendment.

1 4. Opt Out Procedure. A Compacting State may opt out of a
2 Uniform Standard, either by legislation or regulation duly
3 promulgated by the Insurance Department under the Compacting
4 State’s Administrative Procedure Act. If a Compacting State elects
5 to opt out of a Uniform Standard by regulation, it must (a) give
6 written notice to the Commission no later than ten (10) business
7 days after the Uniform Standard is promulgated, or at the time the
8 State becomes a Compacting State and (b) find that the Uniform
9 Standard does not provide reasonable protections to the citizens
10 of the State, given the conditions in the State. The Commissioner
11 shall make specific findings of fact and conclusions of law, based
12 on a preponderance of the evidence, detailing the conditions in the
13 State which warrant a departure from the Uniform Standard and
14 determining that the Uniform Standard would not reasonably
15 protect the citizens of the State. The Commissioner must consider
16 and balance the following factors and find that the conditions in
17 the State and needs of the citizens of the State outweigh: (i) the
18 intent of the legislature to participate in, and the benefits of, an
19 interstate agreement to establish national uniform consumer
20 protections for the Products subject to this Act; and (ii) the
21 presumption that a Uniform Standard adopted by the Commission
22 provides reasonable protections to consumers of the relevant
23 Product. Notwithstanding the foregoing, a Compacting State may,
24 at the time of its enactment of this Compact, prospectively opt out
25 of all Uniform Standards involving long-term care insurance
26 products by expressly providing for such opt out in the enacted
27 Compact, and such an opt out shall not be treated as a material
28 variance in the offer or acceptance of any State to participate in
29 this Compact. Such an opt out shall be effective at the time of
30 enactment of this Compact by the Compacting State and shall
31 apply to all existing Uniform Standards involving long-term care
32 insurance products and those subsequently promulgated.

33 5. Effect of Opt Out. If a Compacting State elects to opt out of
34 a Uniform Standard, the Uniform Standard shall remain applicable
35 in the Compacting State electing to opt out until such time the opt
36 out legislation is enacted into law or the regulation opting out
37 becomes effective.

38 Once the opt out of a Uniform Standard by a Compacting State
39 becomes effective as provided under the laws of that State, the
40 Uniform Standard shall have no further force and effect in that

1 State unless and until the legislation or regulation implementing
2 the opt out is repealed or otherwise becomes ineffective under the
3 laws of the State. If a Compacting State opts out of a Uniform
4 Standard after the Uniform Standard has been made effective in
5 that State, the opt out shall have the same prospective effect as
6 provided under Article XIV for withdrawals.

7 6. Stay of Uniform Standard. If a Compacting State has formally
8 initiated the process of opting out of a Uniform Standard by
9 regulation, and while the regulatory opt out is pending, the
10 Compacting State may petition the Commission, at least fifteen
11 (15) days before the effective date of the Uniform Standard, to
12 stay the effectiveness of the Uniform Standard in that State. The
13 Commission may grant a stay if it determines the regulatory opt
14 out is being pursued in a reasonable manner and there is a
15 likelihood of success. If a stay is granted or extended by the
16 Commission, the stay or extension thereof may postpone the
17 effective date by up to ninety (90) days, unless affirmatively
18 extended by the Commission; provided, a stay may not be
19 permitted to remain in effect for more than one (1) year unless the
20 Compacting State can show extraordinary circumstances which
21 warrant a continuance of the stay, including, but not limited to,
22 the existence of a legal challenge which prevents the Compacting
23 State from opting out. A stay may be terminated by the
24 Commission upon notice that the rulemaking process has been
25 terminated.

26 7. Not later than thirty (30) days after a Rule or Operating
27 Procedure is promulgated, any person may file a petition for
28 judicial review of the Rule or Operating Procedure; provided, that
29 the filing of such a petition shall not stay or otherwise prevent the
30 Rule or Operating Procedure from becoming effective unless the
31 court finds that the petitioner has a substantial likelihood of
32 success. The court shall give deference to the actions of the
33 Commission consistent with applicable law and shall not find the
34 Rule or Operating Procedure to be unlawful if the Rule or
35 Operating Procedure represents a reasonable exercise of the
36 Commission's authority.

1 Article VIII. Commission Records and Enforcement

2
3 1. The Commission shall promulgate Rules establishing
4 conditions and procedures for public inspection and copying of its
5 information and official records, except such information and
6 records involving the privacy of individuals and insurers' trade
7 secrets. The Commission may promulgate additional Rules under
8 which it may make available to federal and state agencies,
9 including law enforcement agencies, records and information
10 otherwise exempt from disclosure, and may enter into agreements
11 with such agencies to receive or exchange information or records
12 subject to nondisclosure and confidentiality provisions.

13 2. Except as to privileged records, data and information, the
14 laws of any Compacting State pertaining to confidentiality or
15 nondisclosure shall not relieve any Compacting State
16 Commissioner of the duty to disclose any relevant records, data
17 or information to the Commission; provided, that disclosure to the
18 Commission shall not be deemed to waive or otherwise affect any
19 confidentiality requirement; and further provided, that, except as
20 otherwise expressly provided in this Act, the Commission shall
21 not be subject to the Compacting State's laws pertaining to
22 confidentiality and nondisclosure with respect to records, data and
23 information in its possession. Confidential information of the
24 Commission shall remain confidential after such information is
25 provided to any Commissioner.

26 3. The Commission shall monitor Compacting States for
27 compliance with duly adopted Bylaws, Rules, including Uniform
28 Standards, and Operating Procedures. The Commission shall notify
29 any non-complying Compacting State in writing of its
30 noncompliance with Commission Bylaws, Rules or Operating
31 Procedures. If a non-complying Compacting State fails to remedy
32 its noncompliance within the time specified in the notice of
33 noncompliance, the Compacting State shall be deemed to be in
34 default as set forth in Article XIV.

35 4. The Commissioner of any State in which an Insurer is
36 authorized to do business, or is conducting the business of
37 insurance, shall continue to exercise his or her authority to oversee
38 the market regulation of the activities of the Insurer in accordance
39 with the provisions of the State's law. The Commissioner's

1 enforcement of compliance with the Compact is governed by the
2 following provisions:

3 a. With respect to the Commissioner's market regulation of a
4 Product or Advertisement that is approved or certified to the
5 Commission, the content of the Product or Advertisement shall
6 not constitute a violation of the provisions, standards or
7 requirements of the Compact except upon a final order of the
8 Commission, issued at the request of a Commissioner after prior
9 notice to the Insurer and an opportunity for hearing before the
10 Commission.

11 b. Before a Commissioner may bring an action for violation of
12 any provision, standard or requirement of the Compact relating to
13 the content of an Advertisement not approved or certified to the
14 Commission, the Commission, or an authorized Commission
15 officer or employee, must authorize the action. However,
16 authorization pursuant to this paragraph does not require notice to
17 the Insurer, opportunity for hearing or disclosure of requests for
18 authorization or records of the Commission's action on such
19 requests.

20

21

Article IX. Dispute Resolution

22

23 The Commission shall attempt, upon the request of a Member,
24 to resolve any disputes or other issues that are subject to this
25 Compact and which may arise between two or more Compacting
26 States, or between Compacting States and Non-compacting States,
27 and the Commission shall promulgate an Operating Procedure
28 providing for resolution of such disputes.

29

30

Article X. Product Filing and Approval

31

32 1. Insurers and Third-Party Filers seeking to have a Product
33 approved by the Commission shall file the Product with, and pay
34 applicable filing fees to, the Commission. Nothing in this Act shall
35 be construed to restrict or otherwise prevent an insurer from filing
36 its Product with the insurance department in any State wherein the
37 insurer is licensed to conduct the business of insurance, and such
38 filing shall be subject to the laws of the States where filed.

39 2. The Commission shall establish appropriate filing and review
40 processes and procedures pursuant to Commission Rules and

1 Operating Procedures. Notwithstanding any provision herein to
2 the contrary, the Commission shall promulgate Rules to establish
3 conditions and procedures under which the Commission will
4 provide public access to Product filing information. In establishing
5 such Rules, the Commission shall consider the interests of the
6 public in having access to such information, as well as protection
7 of personal medical and financial information and trade secrets,
8 that may be contained in a Product filing or supporting information.

9 3. Any Product approved by the Commission may be sold or
10 otherwise issued in those Compacting States for which the Insurer
11 is legally authorized to do business.

12
13 Article XI. Review of Commission Decisions Regarding Filings

14
15 1. Not later than thirty (30) days after the Commission has given
16 notice of a disapproved Product or Advertisement filed with the
17 Commission, the Insurer or Third Party Filer whose filing was
18 disapproved may appeal the determination to a review panel
19 appointed by the Commission. The Commission shall promulgate
20 Rules to establish procedures for appointing such review panels
21 and provide for notice and hearing. An allegation that the
22 Commission, in disapproving a Product or Advertisement filed
23 with the Commission, acted arbitrarily, capriciously, or in a manner
24 that is an abuse of discretion or otherwise not in accordance with
25 the law, is subject to judicial review in accordance with Article
26 III, Section 4.

27 2. The Commission shall have authority to monitor, review and
28 reconsider Products and Advertisement subsequent to their filing
29 or approval upon a finding that the product does not meet the
30 relevant Uniform Standard. Where appropriate, the Commission
31 may withdraw or modify its approval after proper notice and
32 hearing, subject to the appeal process in Section 1 above.

33
34 Article XII. Finance

35
36 1. The Commission shall pay or provide for the payment of the
37 reasonable expenses of its establishment and organization. To fund
38 the cost of its initial operations, the Commission may accept
39 contributions and other forms of funding from the National
40 Association of Insurance Commissioners, Compacting States and

1 other sources. Contributions and other forms of funding from other
2 sources shall be of such a nature that the independence of the
3 Commission concerning the performance of its duties shall not be
4 compromised.

5 2. The Commission shall collect a filing fee from each Insurer
6 and Third Party Filer filing a product with the Commission to
7 cover the cost of the operations and activities of the Commission
8 and its staff in a total amount sufficient to cover the Commission’s
9 annual budget.

10 3. The Commission’s budget for a fiscal year shall not be
11 approved until it has been subject to notice and comment as set
12 forth in Article VII of this Compact.

13 4. The Commission shall be exempt from all taxation in and by
14 the Compacting States.

15 5. The Commission shall not pledge the credit of any
16 Compacting State, except by and with the appropriate legal
17 authority of that Compacting State.

18 6. The Commission shall keep complete and accurate accounts
19 of all its internal receipts, including grants and donations, and
20 disbursements of all funds under its control. The internal financial
21 accounts of the Commission shall be subject to the accounting
22 procedures established under its Bylaws. The financial accounts
23 and reports including the system of internal controls and procedures
24 of the Commission shall be audited annually by an independent
25 certified public accountant. Upon the determination of the
26 Commission, but no less frequently than every three (3) years, the
27 review of the independent auditor shall include a management and
28 performance audit of the Commission. The Commission shall make
29 an Annual Report to the Governor and legislature of the
30 Compacting States, which shall include a report of the independent
31 audit. The Commission’s internal accounts shall not be confidential
32 and such materials may be shared with the Commissioner of any
33 Compacting State upon request provided, however, that any work
34 papers related to any internal or independent audit and any
35 information regarding the privacy of individuals and insurers’
36 proprietary information, including trade secrets, shall remain
37 confidential.

38 7. No Compacting State shall have any claim to or ownership
39 of any property held by or vested in the Commission or to any
40 Commission funds held pursuant to the provisions of this Compact.

1 Article XIII. Compacting States, Effective Date and
2 Amendment
3

4 1. Any State is eligible to become a Compacting State.

5 2. The Compact shall become effective and binding upon
6 legislative enactment of the Compact into law by two Compacting
7 States; provided, the Commission shall become effective for
8 purposes of adopting Uniform Standards for, reviewing, and giving
9 approval or disapproval of, Products filed with the Commission
10 that satisfy applicable Uniform Standards only after twenty-six
11 (26) States are Compacting States or, alternatively, by States
12 representing greater than forty percent (40%) of the premium
13 volume for life insurance, annuity, disability income and long-term
14 care insurance products, based on records of the NAIC for the
15 prior year. Thereafter, it shall become effective and binding as to
16 any other Compacting State upon enactment of the Compact into
17 law by that State.

18 3. Amendments to the Compact may be proposed by the
19 Commission for enactment by the Compacting States. No
20 amendment shall become effective and binding upon the
21 Commission and the Compacting States unless and until all
22 Compacting States enact the amendment into law.
23

24 Article XIV. Withdrawal, Default and Termination
25

26 1. Withdrawal

27 a. Once effective, the Compact shall continue in force and
28 remain binding upon each and every Compacting State; provided,
29 that a Compacting State may withdraw from the Compact
30 (“Withdrawing State”) by enacting a statute specifically repealing
31 the statute which enacted the Compact into law.

32 b. The effective date of withdrawal is the effective date of the
33 repealing statute. However, the withdrawal shall not apply to any
34 product filings approved or self-certified, or any Advertisement
35 of such products, on the date the repealing statute becomes
36 effective, except by mutual agreement of the Commission and the
37 Withdrawing State unless the approval is rescinded by the
38 Withdrawing State as provided in Paragraph e of this section.

39 c. The Commissioner of the Withdrawing State shall
40 immediately notify the Management Committee in writing upon

1 the introduction of legislation repealing this Compact in the
2 Withdrawing State.

3 d. The Commission shall notify the other Compacting States of
4 the introduction of such legislation within ten (10) days after its
5 receipt of notice thereof.

6 e. The Withdrawing State is responsible for all obligations,
7 duties and liabilities incurred through the effective date of
8 withdrawal, including any obligations, the performance of which
9 extend beyond the effective date of withdrawal, except to the extent
10 those obligations may have been released or relinquished by mutual
11 agreement of the Commission and the Withdrawing State. The
12 Commission's approval of Products and Advertisement prior to
13 the effective date of withdrawal shall continue to be effective and
14 be given full force and effect in the Withdrawing State, unless
15 formally rescinded by the Withdrawing State in the same manner
16 as provided by the laws of the Withdrawing State for the
17 prospective disapproval of products or advertisement previously
18 approved under state law.

19 f. Reinstatement following withdrawal of any Compacting State
20 shall occur upon the effective date of the Withdrawing State
21 reenacting the Compact.

22 2. Default

23 a. If the Commission determines that any Compacting State has
24 at any time defaulted ("Defaulting State") in the performance of
25 any of its obligations or responsibilities under this Compact, the
26 Bylaws or duly promulgated Rules or Operating Procedures, then,
27 after notice and hearing as set forth in the Bylaws, all rights,
28 privileges and benefits conferred by this Compact on the Defaulting
29 State shall be suspended from the effective date of default as fixed
30 by the Commission. The grounds for default include, but are not
31 limited to, failure of a Compacting State to perform its obligations
32 or responsibilities, and any other grounds designated in
33 Commission Rules. The Commission shall immediately notify the
34 Defaulting State in writing of the Defaulting State's suspension
35 pending a cure of the default. The Commission shall stipulate the
36 conditions and the time period within which the Defaulting State
37 must cure its default. If the Defaulting State fails to cure the default
38 within the time period specified by the Commission, the Defaulting
39 State shall be terminated from the Compact and all rights,

1 privileges and benefits conferred by this Compact shall be
2 terminated from the effective date of termination.

3 b. Product approvals by the Commission or product
4 self-certifications, or any Advertisement in connection with such
5 product, that are in force on the effective date of termination shall
6 remain in force in the Defaulting State in the same manner as if
7 the Defaulting State had withdrawn voluntarily pursuant to Section
8 1 of this article.

9 c. Reinstatement following termination of any Compacting State
10 requires a reenactment of the Compact.

11 3. Dissolution of Compact

12 a. The Compact dissolves effective upon the date of the
13 withdrawal or default of the Compacting State which reduces
14 membership in the Compact to one Compacting State.

15 b. Upon the dissolution of this Compact, the Compact becomes
16 null and void and shall be of no further force or effect, and the
17 business and affairs of the Commission shall be wound up and any
18 surplus funds shall be distributed in accordance with the Bylaws.

19

20 Article XV. Severability and Construction

21

22 1. The provisions of this Compact shall be severable; and if any
23 phrase, clause, sentence or provision is deemed unenforceable, the
24 remaining provisions of the Compact shall be enforceable.

25 2. The provisions of this Compact shall be liberally construed
26 to effectuate its purposes.

27

28 Article XVI. Binding Effect of Compact and Other Laws

29

30 1. Other Laws

31 a. Nothing herein prevents the enforcement of any other law of
32 a Compacting State, except as provided in Paragraph b of this
33 section.

34 b. For any Product approved or certified to the Commission,
35 the Rules, Uniform Standards and any other requirements of the
36 Commission shall constitute the exclusive provisions applicable
37 to the content, approval and certification of such Products. For
38 Advertisement that is subject to the Commission's authority, any
39 Rule, Uniform Standard or other requirement of the Commission
40 which governs the content of the Advertisement shall constitute

1 the exclusive provision that a Commissioner may apply to the
 2 content of the Advertisement. Notwithstanding the foregoing, no
 3 action taken by the Commission shall abrogate or restrict: (i) the
 4 access of any person to state courts; (ii) remedies available under
 5 state law related to breach of contract, tort, or other laws not
 6 specifically directed to the content of the Product; (iii) state law
 7 relating to the construction of insurance contracts; or (iv) the
 8 authority of the attorney general of the state, including but not
 9 limited to maintaining any actions or proceedings, as authorized
 10 by law.

11 c. All insurance products filed with individual States shall be
 12 subject to the laws of those States.

13 2. Binding Effect of this Compact

14 a. All lawful actions of the Commission, including all Rules
 15 and Operating Procedures promulgated by the Commission, are
 16 binding upon the Compacting States.

17 b. All agreements between the Commission and the Compacting
 18 States are binding in accordance with their terms.

19 c. Upon the request of a party to a conflict over the meaning or
 20 interpretation of Commission actions, and upon a majority vote
 21 of the Compacting States, the Commission may issue advisory
 22 opinions regarding the meaning or interpretation in dispute.

23 d. In the event any provision of this Compact exceeds the
 24 constitutional limits imposed on the legislature of any Compacting
 25 State, the obligations, duties, powers or jurisdiction sought to be
 26 conferred by that provision upon the Commission shall be
 27 ineffective as to that Compacting State, and those obligations,
 28 duties, powers or jurisdiction shall remain in the Compacting State
 29 and shall be exercised by the agency thereof to which those
 30 obligations, duties, powers or jurisdiction are delegated by law in
 31 effect at the time this Compact becomes effective.

32 SEC. 2. Pursuant to terms and conditions of this Act, the State
 33 of California seeks to join with other States and establish the
 34 Interstate Insurance Product Regulation Compact, and thus become
 35 a member of the Interstate Insurance Product Regulation
 36 Commission. The California Insurance Commissioner is hereby
 37 designated to serve as the representative of this State to the
 38 Commission.

O