

## INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

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### Article I. Purposes

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

1. To promote and protect the interest of consumers of individual and group annuity, life insurance, disability income and long-term care insurance products;
2. To develop uniform standards for insurance products covered under the Compact;
3. To establish a central clearinghouse to receive and provide prompt review of insurance products covered under the Compact and, in certain cases, advertisements related thereto, submitted by insurers authorized to do business in one or more Compacting States;
4. To give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard;
5. To improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the Compact;
6. To create the Interstate Insurance Product Regulation Commission; and
7. To perform these and such other related functions as may be consistent with the state regulation of the business of insurance.

### Article II. Definitions

For purposes of this Compact:

1. “Advertisement” means any material designed to create public interest in a Product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy, as more specifically defined in the Rules and Operating Procedures of the Commission.
2. “Bylaws” mean those bylaws established by the Commission for its governance, or for directing or controlling the Commission’s actions or conduct.

3. “Compacting State” means any State which has enacted this Compact legislation and which has not withdrawn pursuant to Article XIV, Section 1, or been terminated pursuant to Article XIV, Section 2.
4. “Commission” means the “Interstate Insurance Product Regulation Commission” established by this Compact.
5. “Commissioner” means the chief insurance regulatory official of a State including, but not limited to commissioner, superintendent, director or administrator.
6. “Domiciliary State” means the state in which an Insurer is incorporated or organized; or, in the case of an alien Insurer, its state of entry.
7. “Insurer” means any entity licensed by a State to issue contracts of insurance for any of the lines of insurance covered by this Act.
8. “Member” means the person chosen by a Compacting State as its representative to the Commission, or his or her designee.
9. “Non-compacting State” means any State which is not at the time a Compacting State.
10. “Operating Procedures” mean procedures promulgated by the Commission implementing a Rule, Uniform Standard or a provision of this Compact.
11. “Product” means the form of a policy or contract, including any application, endorsement, or related form which is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income or long-term care insurance product that an Insurer is authorized to issue.
12. “Rule” means a statement of general or particular applicability and future effect promulgated by the Commission, including a Uniform Standard developed pursuant to Article VII of this Compact, designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the Commission, which shall have the force and effect of law in the Compacting States.
13. “State” means any state, district or territory of the United States of America.
14. “Third-Party Filer” means an entity that submits a Product filing to the Commission on behalf of an Insurer.
15. “Uniform Standard” means a standard adopted by the Commission for a Product line, pursuant to Article VII of this Compact, and shall include all of the Product requirements in aggregate; *provided*, that each Uniform Standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading or ambiguous provisions in a Product and the form of the Product made available to the public shall not be unfair, inequitable or against public policy as determined by the Commission.

**Drafting Note:** Although consideration was given to including in the model legislation definitions for “life insurance,” “annuity,” “disability income insurance” and “long-term care insurance,” it was determined that such definitions would be more appropriately addressed through the Commission’s rule-making process. Not all of the states currently have definitions for “life insurance” or “annuity.” Additionally, the evolutionary nature of these products in the marketplace raises issues as to whether statutory definitions would be sufficiently broad enough to address future contingencies, and it would be difficult for compacting states to amend the compact if modifications are required. It is recognized that product standards will only apply to specific products, and the interstate commission would be able to define those products at the time it develops the standards through its rulemaking process.

Examples of product definitions that could be developed through the rulemaking process include the following: “Life Insurance” is insurance primarily for the purpose of coverage on human lives, including incidental benefits, as may be determined by the Compact Commission. “Annuity” is a contract the primary purpose of which is to obligate an insurer to make periodic payments, including incidental benefits, as may be determined by the Compact Commission. “Disability Income Insurance” is insurance primarily for the purpose of coverage that provides payments when an insured is disabled or unable to work because of illness, disease, or injury, including incidental benefits, as may be determined by the Compact Commission. “Long-Term Care Insurance” is insurance primarily for the purpose of providing coverage when the insured is unable to perform specified activities of daily living or related functions, or have a cognitive impairment, including incidental benefits, as may be determined by the Compact Commission.

**Article III. Establishment of the Commission and Venue**

1. The Compacting States hereby create and establish a joint public agency known as the “Interstate Insurance Product Regulation Commission.” Pursuant to Article IV, the Commission will have the power to develop Uniform Standards for Product lines, receive and provide prompt review of Products filed therewith, and give approval to those Product filings satisfying applicable Uniform Standards; *provided*, it is not intended for the Commission to be the exclusive entity for receipt and review of insurance product filings. Nothing herein shall prohibit any Insurer from filing its product in any State wherein the Insurer is licensed to conduct the business of insurance; and any such filing shall be subject to the laws of the State where filed.
2. The Commission is a body corporate and politic, and an instrumentality of the Compacting States.
3. The Commission is solely responsible for its liabilities except as otherwise specifically provided in this Compact.
4. Venue is proper and judicial proceedings by or against the Commission shall be brought solely and exclusively in a Court of competent jurisdiction where the principal office of the Commission is located.

**Article IV. Powers of the Commission**

The Commission shall have the following powers:

1. To promulgate Rules, pursuant to Article VII of this Compact, which shall have the force and effect of law and shall be binding in the Compacting States to the extent and in the manner provided in this Compact;
2. To exercise its rule-making authority and establish reasonable Uniform Standards for Products covered under the Compact, and Advertisement related thereto, which shall have the force and effect of law and shall be binding in the Compacting States, but only for those Products filed with the Commission, *provided*, that a Compacting State shall have the right to opt out of such Uniform Standard pursuant to Article VII, to the extent and in the manner provided in this Compact, and, *provided further*, that any Uniform Standard established by the Commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the National Association of Insurance Commissioners’ Long-Term Care Insurance Model Act and Long-Term Care Insurance Model Regulation, respectively, adopted as of 2001. The Commission shall consider whether any subsequent amendments to the NAIC Long-Term Care Insurance Model Act or Long-Term Care Insurance Model Regulation adopted by the NAIC require amending of the Uniform Standards established by the Commission for long-term care insurance products;
3. To receive and review in an expeditious manner Products filed with the Commission, and rate filings for disability income and long-term care insurance Products, and give approval of those Products and rate filings that satisfy the applicable Uniform Standard, where such approval shall have the force and effect of law and be binding on the Compacting States to the extent and in the manner provided in the Compact;
4. To receive and review in an expeditious manner Advertisement relating to long-term care insurance products for which Uniform Standards have been adopted by the Commission, and give approval to all Advertisement that satisfies the applicable Uniform Standard. For any product covered under this Compact, other than long-term care insurance products, the Commission shall have the authority to require an insurer to submit all or any part of its Advertisement with respect to that product for review or approval prior to use, if the Commission determines that the nature of the product is such that an Advertisement of the product could have the capacity or tendency to mislead the public. The actions of the Commission as provided in this section shall have the force and effect of law and shall be binding in the Compacting States to the extent and in the manner provided in the Compact;

**Drafting Note:** With respect to Advertisement, it is recommended that the Commission develop and adopt Uniform Standards for Advertisement regarding Products covered under the Compact. With the exception of long-term care insurance products, the Commission would generally not receive and approve any Advertisement.

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

6. To promulgate Operating Procedures, pursuant to Article VII of this Compact, which shall be binding in the Compacting States to the extent and in the manner provided in this Compact;
7. To bring and prosecute legal proceedings or actions in its name as the Commission; *provided*, that the standing of any state insurance department to sue or be sued under applicable law shall not be affected;
8. To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence;
9. To establish and maintain offices;
10. To purchase and maintain insurance and bonds;
11. To borrow, accept or contract for services of personnel, including, but not limited to, employees of a Compacting State;
12. To hire employees, professionals or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the Compact, and determine their qualifications; and to establish the Commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation and qualifications of personnel;
13. To accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; *provided* that at all times the Commission shall strive to avoid any appearance of impropriety;
14. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; *provided* that at all times the Commission shall strive to avoid any appearance of impropriety;
15. To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed;
16. To remit filing fees to Compacting States as may be set forth in the Bylaws, Rules or Operating Procedures;
17. To enforce compliance by Compacting States with Rules, Uniform Standards, Operating Procedures and Bylaws;

**Drafting Note:** It is recognized that the Commission must have authority to enforce compliance by Compacting States with the Bylaws, Rules or Operating Procedures of the Commission.

18. To provide for dispute resolution among Compacting States;
19. To advise Compacting States on issues relating to Insurers domiciled or doing business in Non-compacting jurisdictions, consistent with the purposes of this Compact;
20. To provide advice and training to those personnel in state insurance departments responsible for product review, and to be a resource for state insurance departments;
21. To establish a budget and make expenditures;
22. To borrow money;
23. To appoint committees, including advisory committees comprising Members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in the Bylaws;
24. To provide and receive information from, and to cooperate with law enforcement agencies;
25. To adopt and use a corporate seal; and

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

**Article V. Organization of the Commission**

1. Membership, Voting and Bylaws

- a. Each Compacting State shall have and be limited to one Member. Each Member shall be qualified to serve in that capacity pursuant to applicable law of the Compacting State. Any Member may be removed or suspended from office as provided by the law of the State from which he or she shall be appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the Compacting State wherein the vacancy exists. Nothing herein shall be construed to affect the manner in which a Compacting State determines the election or appointment and qualification of its own Commissioner.

**Drafting Note:** The Compact allows each Compacting State to select the person who will represent the State in making policy and administrative decisions of the Compact. Ordinarily, it is presumed the member will be the insurance commissioner who is otherwise responsible for such decisions within the State and is supported by the professional staff of the insurance department. The Compact allows for exceptions if the State electing to join the Compact feels a different selection is merited.

- b. Each Member shall be entitled to one vote and shall have an opportunity to participate in the governance of the Commission in accordance with the Bylaws. Notwithstanding any provision herein to the contrary, no action of the Commission with respect to the promulgation of a Uniform Standard shall be effective unless two-thirds (2/3) of the Members vote in favor thereof.
- c. The Commission shall, by a majority of the Members, prescribe Bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes, and exercise the powers, of the Compact, including, but not limited to:
- i. Establishing the fiscal year of the Commission;
  - ii. Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the Management Committee;
  - iii. Providing reasonable standards and procedures: (i) for the establishment and meetings of other committees, and (ii) governing any general or specific delegation of any authority or function of the Commission;
  - iv. Providing reasonable procedures for calling and conducting meetings of the Commission that consists of a majority of Commission members, ensuring reasonable advance notice of each such meeting and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including trade secrets. The Commission may meet in camera only after a majority of the entire membership votes to close a meeting *en toto* or in part. As soon as practicable, the Commission must make public (i) a copy of the vote to close the meeting revealing the vote of each Member with no proxy votes allowed, and (ii) votes taken during such meeting;
  - v. Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the Commission;
  - vi. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar laws of any Compacting State, the Bylaws shall exclusively govern the personnel policies and programs of the Commission;
  - vii. Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees; and

- viii. Providing a mechanism for winding up the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment and/or reserving of all of its debts and obligations.
  - d. The Commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the Compacting States.
2. Management Committee, Officers and Personnel
- a. A Management Committee comprising no more than fourteen (14) members shall be established as follows:
    - i. One (1) member from each of the six (6) Compacting States with the largest premium volume for individual and group annuities, life, disability income and long-term care insurance products, determined from the records of the NAIC for the prior year;
    - ii. Four (4) members from those Compacting States with at least two percent (2%) of the market based on the premium volume described above, other than the six (6) Compacting States with the largest premium volume, selected on a rotating basis as provided in the Bylaws; and
    - iii. Four (4) members from those Compacting States with less than two percent (2%) of the market, based on the premium volume described above, with one (1) selected from each of the four (4) zone regions of the NAIC as provided in the Bylaws.

**Drafting Note:** In developing the composition of the Management Committee, consideration was given to the role of Compacting States in governance and operational issues. It is desirable to achieve a proper balance on the Management Committee between the Compacting States based on premium volume and geographical diversity. Accordingly, factors such as a Compacting State's premium volume for annuity, individual and group life insurance, disability income, and long-term care insurance products, as well as geographical representation using the zone regions of the NAIC were utilized. There are certain advantages to having Compacting States with large premium markets play a significant role on the Management Committee. It is also recognized that Compacting States with smaller premium volume may raise issues with respect to the overall balancing of interests of members on the Management Committee.

**Additional Note:** The concept of serving on a "rotating basis" involves giving each Compacting State in the group the opportunity to serve the same number of terms on the Management Committee before any other Compacting State in the group serves an additional term. For example, those members representing Compacting States in the group shall each serve one term on the Management Committee before any such State serves a second term.

- b. The Management Committee shall have such authority and duties as may be set forth in the Bylaws, including but not limited to:
  - i. Managing the affairs of the Commission in a manner consistent with the Bylaws and purposes of the Commission;
  - ii. Establishing and overseeing an organizational structure within, and appropriate procedures for, the Commission to provide for the creation of Uniform Standards and other Rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a Compacting State to opt out of a Uniform Standard; *provided* that a Uniform Standard shall not be submitted to the Compacting States for adoption unless approved by two-thirds (2/3) of the members of the Management Committee;
  - iii. Overseeing the offices of the Commission; and
  - iv. Planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the Commission.
- c. The Commission shall elect annually officers from the Management Committee, with each having such authority and duties, as may be specified in the Bylaws.

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

3. Legislative and Advisory Committees

- a. A legislative committee comprising state legislators or their designees shall be established to monitor the operations of, and make recommendations to, the Commission, including the Management Committee; *provided* that the manner of selection and term of any legislative committee member shall be as set forth in the Bylaws. Prior to the adoption by the Commission of any Uniform Standard, revision to the Bylaws, annual budget or other significant matter as may be provided in the Bylaws, the Management Committee shall consult with and report to the legislative committee.
- b. The Commission shall establish two (2) advisory committees, one of which shall comprise consumer representatives independent of the insurance industry, and the other comprising insurance industry representatives.
- c. The Commission may establish additional advisory committees as its Bylaws may provide for the carrying out of its functions.

**Drafting Note:** It is anticipated that the number and manner of selecting members of these committees will be addressed in the Bylaws. Additionally, consideration will be given to the creation of other advisory committees depending on the needs of the Commission

4. Corporate Records of the Commission

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

5. Qualified Immunity, Defense and Indemnification

- a. The Members, officers, executive director, employees and representatives of the Commission shall be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; *provided*, that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of that person.
- b. The Commission shall defend any Member, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; *provided*, that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and *provided further*, that the actual or alleged act, error or omission did not result from that person's intentional or willful and wanton misconduct.
- c. The Commission shall indemnify and hold harmless any Member, officer, executive director, employee or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities, *provided*, that the actual or alleged act, error or omission did not result from the intentional or willful and wanton misconduct of that person.

**Article VI. Meetings and Acts of the Commission**

1. The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the Bylaws.
2. Each Member of the Commission shall have the right and power to cast a vote to which that Compacting State is entitled and to participate in the business and affairs of the Commission. A Member shall vote in person or by such other means as provided in the Bylaws. The Bylaws may provide for Members' participation in meetings by telephone or other means of communication.
3. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the Bylaws.

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

1. **Rulemaking Authority.** The Commission shall promulgate reasonable Rules, including Uniform Standards, and Operating Procedures in order to effectively and efficiently achieve the purposes of this Compact. Notwithstanding the foregoing, in the event the Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this Act, or the powers granted hereunder, then such an action by the Commission shall be invalid and have no force and effect.
2. **Rulemaking Procedure.** Rules and Operating Procedures shall be made pursuant to a rulemaking process that conforms to the Model State Administrative Procedure Act of 1981 as amended, as may be appropriate to the operations of the Commission. Before the Commission adopts a Uniform Standard, the Commission shall give written notice to the relevant state legislative committee(s) in each Compacting State responsible for insurance issues of its intention to adopt the Uniform Standard. The Commission in adopting a Uniform Standard shall consider fully all submitted materials and issue a concise explanation of its decision.
3. **Effective Date and Opt Out of a Uniform Standard.** A Uniform Standard shall become effective ninety (90) days after its promulgation by the Commission or such later date as the Commission may determine; *provided, however*, that a Compacting State may opt out of a Uniform Standard as provided in this Article. "Opt out" shall be defined as any action by a Compacting State to decline to adopt or participate in a promulgated Uniform Standard. All other Rules and Operating Procedures, and amendments thereto, shall become effective as of the date specified in each Rule, Operating Procedure or amendment.
4. **Opt Out Procedure.** A Compacting State may opt out of a Uniform Standard, either by legislation or regulation duly promulgated by the Insurance Department under the Compacting State's Administrative Procedure Act. If a Compacting State elects to opt out of a Uniform Standard by regulation, it must (a) give written notice to the Commission no later than ten (10) business days after the Uniform Standard is promulgated, or at the time the State becomes a Compacting State and (b) find that the Uniform Standard does not provide reasonable protections to the citizens of the State, given the conditions in the State. The Commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the State which warrant a departure from the Uniform Standard and determining that the Uniform Standard would not reasonably protect the citizens of the State. The Commissioner must consider and balance the following factors and find that the conditions in the State and needs of the citizens of the State outweigh: (i) the intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the Products subject to this Act; and (ii) the presumption that a Uniform Standard adopted by the Commission provides reasonable protections to consumers of the relevant Product.

Notwithstanding the foregoing, a Compacting State may, at the time of its enactment of this Compact, prospectively opt out of all Uniform Standards involving long-term care insurance products by expressly providing for such opt out in the enacted Compact, and such an opt out shall not be treated as a material variance in the offer or acceptance of any State to participate in this Compact. Such an opt out shall be effective at the time of enactment of this Compact by the Compacting State and shall apply to all existing Uniform Standards involving long-term care insurance products and those subsequently promulgated.



**Drafting Note:** States joining the Compact are encouraged to refrain from using this so-called “front end” opt out for long-term care insurance products. It is recognized that there are many important factors which support the development of Uniform Standards for long-term care insurance products, including: the mobile nature of the population in this country and the need for greater uniformity among the States regarding product standards for long-term care insurance products; the assertion that long-term care insurance products serve as a retirement security product that competes with other products offered by financial institutions; and long-term care insurance products are used in connection with life insurance and annuity products and therefore should also be eligible for consideration of appropriate Uniform Standards.

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

Once the opt out of a Uniform Standard by a Compacting State becomes effective as provided under the laws of that State, the Uniform Standard shall have no further force and effect in that State unless and until the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the laws of the State. If a Compacting State opts out of a Uniform Standard after the Uniform Standard has been made effective in that State, the opt out shall have the same prospective effect as provided under Article XIV for withdrawals.

6. *Stay of Uniform Standard.* If a Compacting State has formally initiated the process of opting out of a Uniform Standard by regulation, and while the regulatory opt out is pending, the Compacting State may petition the Commission, at least fifteen (15) days before the effective date of the Uniform Standard, to stay the effectiveness of the Uniform Standard in that State. The Commission may grant a stay if it determines the regulatory opt out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the Commission, the stay or extension thereof may postpone the effective date by up to ninety (90) days, unless affirmatively extended by the Commission; *provided*, a stay may not be permitted to remain in effect for more than one (1) year unless the Compacting State can show extraordinary circumstances which warrant a continuance of the stay, including, but not limited to, the existence of a legal challenge which prevents the Compacting State from opting out. A stay may be terminated by the Commission upon notice that the rulemaking process has been terminated.
7. Not later than thirty (30) days after a Rule or Operating Procedure is promulgated, any person may file a petition for judicial review of the Rule or Operating Procedure; *provided*, that the filing of such a petition shall not stay or otherwise prevent the Rule or Operating Procedure from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Commission consistent with applicable law and shall not find the Rule or Operating Procedure to be unlawful if the Rule or Operating Procedure represents a reasonable exercise of the Commission’s authority.

## **Article VIII. Commission Records and Enforcement**

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

**Drafting Note:** The Commission will generally develop rules establishing conditions and procedures for making information available to the public. However, the reference in this section to the confidential treatment of insurer information is limited to trade secrets. Article X provides for the development of rules by the Commission to address the manner in which the public will be given access to product filing information, which is recognized as proprietary information of insurers.

2. Except as to privileged records, data and information, the laws of any Compacting State pertaining to confidentiality or nondisclosure shall not relieve any Compacting State Commissioner of the duty to disclose any relevant records, data or information to the Commission; *provided*, that disclosure to the Commission shall not be deemed to waive or otherwise affect any confidentiality requirement; *and further provided*, that, except as otherwise expressly provided in this Act, the Commission shall not be subject to the Compacting State’s laws pertaining to confidentiality and nondisclosure with respect to records, data and information in its possession. Confidential information of the Commission shall remain confidential after such information is provided to any Commissioner.

3. The Commission shall monitor Compacting States for compliance with duly adopted Bylaws, Rules, including Uniform Standards, and Operating Procedures. The Commission shall notify any non-complying Compacting State in writing of its noncompliance with Commission Bylaws, Rules or Operating Procedures. If a non-complying Compacting State fails to remedy its noncompliance within the time specified in the notice of noncompliance, the Compacting State shall be deemed to be in default as set forth in Article XIV.
4. The Commissioner of any State in which an Insurer is authorized to do business, or is conducting the business of insurance, shall continue to exercise his or her authority to oversee the market regulation of the activities of the Insurer in accordance with the provisions of the State's law. The Commissioner's enforcement of compliance with the Compact is governed by the following provisions:
  - a. With respect to the Commissioner's market regulation of a Product or Advertisement that is approved or certified to the Commission, the content of the Product or Advertisement shall not constitute a violation of the provisions, standards or requirements of the Compact except upon a final order of the Commission, issued at the request of a Commissioner after prior notice to the Insurer and an opportunity for hearing before the Commission.
  - b. Before a Commissioner may bring an action for violation of any provision, standard or requirement of the Compact relating to the content of an Advertisement not approved or certified to the Commission, the Commission, or an authorized Commission officer or employee, must authorize the action. However, authorization pursuant to this paragraph does not require notice to the Insurer, opportunity for hearing or disclosure of requests for authorization or records of the Commission's action on such requests.

**Drafting Note:** It is not intended for the Compact to preempt a Compacting State's regulatory authority to enforce State law pertaining to the manner in which the Products approved by the Commission are marketed, sold and administered in a Compacting State.

#### **Article IX. Dispute Resolution**

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

#### **Article X. Product Filing and Approval**

1. Insurers and Third-Party Filers seeking to have a Product approved by the Commission shall file the Product with, and pay applicable filing fees to, the Commission. Nothing in this Act shall be construed to restrict or otherwise prevent an insurer from filing its Product with the insurance department in any State wherein the insurer is licensed to conduct the business of insurance, and such filing shall be subject to the laws of the States where filed.
2. The Commission shall establish appropriate filing and review processes and procedures pursuant to Commission Rules and Operating Procedures. Notwithstanding any provision herein to the contrary, the Commission shall promulgate Rules to establish conditions and procedures under which the Commission will provide public access to Product filing information. In establishing such Rules, the Commission shall consider the interests of the public in having access to such information, as well as protection of personal medical and financial information and trade secrets, that may be contained in a Product filing or supporting information.
3. Any Product approved by the Commission may be sold or otherwise issued in those Compacting States for which the Insurer is legally authorized to do business.

**Article XI. Review of Commission Decisions Regarding Filings**

1. Not later than thirty (30) days after the Commission has given notice of a disapproved Product or Advertisement filed with the Commission, the Insurer or Third Party Filer whose filing was disapproved may appeal the determination to a review panel appointed by the Commission. The Commission shall promulgate Rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the Commission, in disapproving a Product or Advertisement filed with the Commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with Article III, Section 4.
2. The Commission shall have authority to monitor, review and reconsider Products and Advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant Uniform Standard. Where appropriate, the Commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in Section 1 above.

**Article XII. Finance**

1. The Commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the Commission may accept contributions and other forms of funding from the National Association of Insurance Commissioners, Compacting States and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the Commission concerning the performance of its duties shall not be compromised.
2. The Commission shall collect a filing fee from each Insurer and Third Party Filer filing a product with the Commission to cover the cost of the operations and activities of the Commission and its staff in a total amount sufficient to cover the Commission's annual budget.
3. The Commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in Article VII of this Compact.
4. The Commission shall be exempt from all taxation in and by the Compacting States.
5. The Commission shall not pledge the credit of any Compacting State, except by and with the appropriate legal authority of that Compacting State.
6. The Commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the Commission shall be subject to the accounting procedures established under its Bylaws. The financial accounts and reports including the system of internal controls and procedures of the Commission shall be audited annually by an independent certified public accountant. Upon the determination of the Commission, but no less frequently than every three (3) years, the review of the independent auditor shall include a management and performance audit of the Commission. The Commission shall make an Annual Report to the Governor and legislature of the Compacting States, which shall include a report of the independent audit. The Commission's internal accounts shall not be confidential and such materials may be shared with the Commissioner of any Compacting State upon request *provided, however*, that any work papers related to any internal or independent audit and any information regarding the privacy of individuals and insurers' proprietary information, including trade secrets, shall remain confidential.
7. No Compacting State shall have any claim to or ownership of any property held by or vested in the Commission or to any Commission funds held pursuant to the provisions of this Compact.

**Article XIII. Compacting States, Effective Date and Amendment**

1. Any State is eligible to become a Compacting State.
2. The Compact shall become effective and binding upon legislative enactment of the Compact into law by two Compacting States; *provided*, the Commission shall become effective for purposes of adopting Uniform Standards for, reviewing, and giving approval or disapproval of, Products filed with the Commission that satisfy applicable Uniform Standards only after twenty-six (26) States are Compacting States or, alternatively, by States representing greater than forty percent (40%) of the premium volume for life insurance, annuity, disability income and long-term care insurance products, based on records of the NAIC for the prior year. Thereafter, it shall become effective and binding as to any other Compacting State upon enactment of the Compact into law by that State.
3. Amendments to the Compact may be proposed by the Commission for enactment by the Compacting States. No amendment shall become effective and binding upon the Commission and the Compacting States unless and until all Compacting States enact the amendment into law.

**Article XIV. Withdrawal, Default and Termination**

1. Withdrawal
  - a. Once effective, the Compact shall continue in force and remain binding upon each and every Compacting State; *provided*, that a Compacting State may withdraw from the Compact (“Withdrawing State”) by enacting a statute specifically repealing the statute which enacted the Compact into law.
  - b. The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any product filings approved or self-certified, or any Advertisement of such products, on the date the repealing statute becomes effective, except by mutual agreement of the Commission and the Withdrawing State unless the approval is rescinded by the Withdrawing State as provided in Paragraph e of this section.
  - c. The Commissioner of the Withdrawing State shall immediately notify the Management Committee in writing upon the introduction of legislation repealing this Compact in the Withdrawing State.
  - d. The Commission shall notify the other Compacting States of the introduction of such legislation within ten (10) days after its receipt of notice thereof.
  - e. The Withdrawing State is responsible for all obligations, duties and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the Commission and the Withdrawing State. The Commission’s approval of Products and Advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the Withdrawing State, unless formally rescinded by the Withdrawing State in the same manner as provided by the laws of the Withdrawing State for the prospective disapproval of products or advertisement previously approved under state law.
  - f. Reinstatement following withdrawal of any Compacting State shall occur upon the effective date of the Withdrawing State reenacting the Compact.

2. Default

- a. If the Commission determines that any Compacting State has at any time defaulted (“Defaulting State”) in the performance of any of its obligations or responsibilities under this Compact, the Bylaws or duly promulgated Rules or Operating Procedures, then, after notice and hearing as set forth in the Bylaws, all rights, privileges and benefits conferred by this Compact on the Defaulting State shall be suspended from the effective date of default as fixed by the Commission. The grounds for default include, but are not limited to, failure of a Compacting State to perform its obligations or responsibilities, and any other grounds designated in Commission Rules. The Commission shall immediately notify the Defaulting State in writing of the Defaulting State’s suspension pending a cure of the default. The Commission shall stipulate the conditions and the time period within which the Defaulting State must cure its default. If the Defaulting State fails to cure the default within the time period specified by the Commission, the Defaulting State shall be terminated from the Compact and all rights, privileges and benefits conferred by this Compact shall be terminated from the effective date of termination.
- b. Product approvals by the Commission or product self-certifications, or any Advertisement in connection with such product, that are in force on the effective date of termination shall remain in force in the Defaulting State in the same manner as if the Defaulting State had withdrawn voluntarily pursuant to Section 1 of this article.
- c. Reinstatement following termination of any Compacting State requires a reenactment of the Compact.

3. Dissolution of Compact

- a. The Compact dissolves effective upon the date of the withdrawal or default of the Compacting State which reduces membership in the Compact to one Compacting State.
- b. Upon the dissolution of this Compact, the Compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Commission shall be wound up and any surplus funds shall be distributed in accordance with the Bylaws.

**Article XV. Severability and Construction**

1. The provisions of this Compact shall be severable; and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the Compact shall be enforceable.
2. The provisions of this Compact shall be liberally construed to effectuate its purposes.

**Article XVI. Binding Effect of Compact and Other Laws**

1. Other Laws

- a. Nothing herein prevents the enforcement of any other law of a Compacting State, except as provided in Paragraph b of this section.
- b. For any Product approved or certified to the Commission, the Rules, Uniform Standards and any other requirements of the Commission shall constitute the exclusive provisions applicable to the content, approval and certification of such Products. For Advertisement that is subject to the Commission’s authority, any Rule, Uniform Standard or other requirement of the Commission which governs the content of the Advertisement shall constitute the exclusive provision that a Commissioner may apply to the content of the Advertisement. Notwithstanding the foregoing, no action taken by the Commission shall abrogate or restrict: (i) the access of any person to state courts; (ii) remedies available under state law related to breach of contract, tort, or other laws not specifically directed to the content of the Product; (iii) state law relating to the construction of insurance contracts; or (iv) the authority of the attorney general of the state, including but not limited to maintaining any actions or proceedings, as authorized by law.

**Drafting Note:** In those states where a state official other than the attorney general enforces general consumer protection laws, the title of the official should be inserted into the model act in place of the attorney general. It is not intended for the Compact to empower the Commission with authority beyond what has been traditionally given to state insurance regulators. For example, the Compact is not intended to affect the application, if any, of a state's general consumer fraud statutes, deceptive or unfair trade practices act or claims handling laws or the enforcement of such laws by the state attorney general or other appropriate official. Additionally, nothing in the interstate compact legislation is designed to alter the current rules of construction in a state, such as the rule that any ambiguity will be construed against the drafter of the policy.

- c. All insurance products filed with individual States shall be subject to the laws of those States.
2. Binding Effect of this Compact
- a. All lawful actions of the Commission, including all Rules and Operating Procedures promulgated by the Commission, are binding upon the Compacting States.
  - b. All agreements between the Commission and the Compacting States are binding in accordance with their terms.
  - c. Upon the request of a party to a conflict over the meaning or interpretation of Commission actions, and upon a majority vote of the Compacting States, the Commission may issue advisory opinions regarding the meaning or interpretation in dispute.
  - d. In the event any provision of this Compact exceeds the constitutional limits imposed on the legislature of any Compacting State, the obligations, duties, powers or jurisdiction sought to be conferred by that provision upon the Commission shall be ineffective as to that Compacting State, and those obligations, duties, powers or jurisdiction shall remain in the Compacting State and shall be exercised by the agency thereof to which those obligations, duties, powers or jurisdiction are delegated by law in effect at the time this Compact becomes effective.

## Appendix A

### Interstate Insurance Product Regulation Compact

#### *Language for Preamble:*

“An Act intended to help States join together to establish an interstate compact to regulate designated insurance products.

Pursuant to terms and conditions of this Act, the State of \_\_\_\_\_ seeks to join with other States and establish the Interstate Insurance Product Regulation Compact, and thus become a member of the Interstate Insurance Product Regulation Commission. [Insert title or position of person] is hereby designated to serve as the representative of this State to the Commission.”

Alternatively, for those States using a specific selection process, (such as where the Governor or a joint conference of the state house and senate appoint the Member) the following sentence could be used as replacement for the second sentence in this paragraph: “The representative of this State to the Commission shall be selected as follows: [insert procedure for selection of Member].

#### *Language for those States where Preamble is considered insufficient:*

It is suggested that for those states where a preamble will not be sufficient, a separate section in the “unallocated” portion of the bill be used to incorporate the same language in the preamble. This will allow the body of compact legislation to remain consistent from state to state. Note: It will probably be necessary to coordinate with the legislative liaison in the insurance departments to confirm the correct approach for each state.

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*Chronological Summary of Actions (all references are to the Proceedings of the NAIC)*

2002 Proc. 4<sup>th</sup> Quarter 9-14, 14-24 (adopted).

2003 Proc. 3<sup>rd</sup> Quarter 35, 36-46 (amended and reprinted).

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## INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

**This chart is intended to provide readers with additional information to more easily access state statutes, regulations, bulletins or administrative rulings related to the NAIC model. Such guidance provides readers with a starting point from which they may review how each state has addressed the model and the topic being covered. The NAIC Legal Division has reviewed each state’s activity in this area and has determined whether the citation most appropriately fits in the Model Adoption column or Related State Activity column based on the definitions listed below. The NAIC’s interpretation may or may not be shared by the individual states or by interested readers.**

**This chart does not constitute a formal legal opinion by the NAIC staff on the provisions of state law and should not be relied upon as such. Nor does this state page reflect a determination as to whether a state meets any applicable accreditation standards. Every effort has been made to provide correct and accurate summaries to assist readers in locating useful information. Readers should consult state law for further details and for the most current information.**

**INTERSTATE INSURANCE PRODUCT REGULATION COMPACT**

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**INTERSTATE INSURANCE PRODUCT REGULATION COMPACT**

**KEY:**

**MODEL ADOPTION:** States that have citations identified in this column adopted the most recent version of the NAIC model in a **substantially similar manner**. This requires states to adopt the model in its entirety but does allow for variations in style and format. States that have adopted portions of the current NAIC model will be included in this column with an explanatory note.

**RELATED STATE ACTIVITY:** Examples of Related State Activity include but are not limited to: older versions of the NAIC model, statutes or regulations addressing the same subject matter, or other administrative guidance such as bulletins and notices. States that have citations identified in this column **only** (and nothing listed in the Model Adoption column) have **not** adopted the most recent version of the NAIC model in a **substantially similar manner**.

**NO CURRENT ACTIVITY:** No state activity on the topic as of the date of the most recent update. This includes states that have repealed legislation as well as states that have never adopted legislation.

| NAIC MEMBER          | MODEL ADOPTION                                   | RELATED STATE ACTIVITY  |
|----------------------|--|---|
| Alabama              | ALA. CODE §§ 27-60-1 to 27-60-3 (2011).          |   |
| Alaska               | ALASKA STAT. § 21.42.700 (2006).                 |   |
| American Samoa       | NO CURRENT ACTIVITY                              |   |
| Arizona              | ARIZ. REV. STAT. ANN. § 20-3251 (2014).          |   |
| Arkansas             | ARK. CODE ANN. §§ 23-67-601 to 23-67-602 (2013). |   |
| California           | NO CURRENT ACTIVITY                              |   |
| Colorado             | COLO. ADMIN. INS. REG. 24-60-3001 (2006).        |   |
| Connecticut          | 16 CONN. PUB. ACTS 119 (2016).                   |   |
| Delaware             | NO CURRENT ACTIVITY                              |   |
| District of Columbia |  | D.C. CODE § 31-1391 (2006) (authority to enter into compact). |
| Florida              |  | FLA. STAT. §§ 626.9931 to 626.9938 (2013).                    |

**INTERSTATE INSURANCE PRODUCT REGULATION COMPACT**

| <b>NAIC MEMBER</b> | <b>MODEL ADOPTION</b>                                      | <b>RELATED STATE ACTIVITY</b>   |
|--------------------|--|---------------------------------|
| Georgia            | GA. CODE ANN. §§ 33-59-1 to 33-59-2 (2006).                |                                 |
| Guam               | NO CURRENT ACTIVITY  |                                 |
| Hawaii             | HAWAII REV. STAT. §§ 431:30-101 to 431:30-124 (2004/2010). |                                 |
| Idaho              | IDAHO CODE §§ 41-5701 to 41-5702 (2005).                   |                                 |
| Illinois           | 45 ILL COMP. STAT. 160/1 to 160/99 (1996/2007).            |                                 |
| Indiana            | IND. CODE §§ 27-8-31-1 to 27-8-31-20 (2005).               | IND. CODE ANN. § 2-21-1 (2011). |
| Iowa               | IOWA CODE § 505A.1 (2003/2005).                            |                                 |
| Kansas             | KS. STAT. ANN. § 40-5301 (2006)                            |                                 |
| Kentucky           | KY. REV. STAT. ANN. § 304.51-010 (2006).                   |                                 |
| Louisiana          | LA. REV. STAT. ANN. §§ 22:2381 to 22:2382 (2008/2009).     |                                 |
| Maine              | ME. REV. STAT. ANN. TIT. 24-A §§ 2471 to 2487 (2004).      |                                 |
| Maryland           | MD. ANN. CODE INS. §§ 29-101 to 29-102 (2005).             |                                 |
| Massachusetts      | MASS. GEN. LAWS. ch. 175K §§ 1 to 16 (2006).               |                                 |
| Michigan           | MICH. COMP. LAWS. § 3.1031 (2007).                         |                                 |
| Minnesota          | MINN. STAT. §§ 60A.99 to 60A.991 (2006).                   |                                 |
| Mississippi        | MISS. CODE ANN. §§ 357-1 to 357-2 (2009).                  |                                 |

**INTERSTATE INSURANCE PRODUCT REGULATION COMPACT**

| <b>NAIC MEMBER</b> | <b>MODEL ADOPTION</b>                                     | <b>RELATED STATE ACTIVITY</b> |
|--------------------|---|-------------------------------|
| Missouri           | MO REV. STAT. §§ 374.351 to 374.352 (2009).               |                               |
| Montana            | Mont. Code Ann. §§ 33-39-101 to 33-39-103 (2013).         |                               |
| Nebraska           | NEB. REV. STAT. § 44-7801 (2005).                         |                               |
| Nevada             | NEV. REV. STAT. §§ 687C.010 to 687C.030 (2011/2013).      |                               |
| New Hampshire      | N.H. REV. STAT. ANN. §§ 408-C:1 to 408-C:16 (2004).       |                               |
| New Jersey         | N.J. ADMIN. CODE §§ 3:C.17B-37.1 to 3:C.17B-37-17 (2011). |                               |
| New Mexico         | N.M. STAT. § 59A-2 (2009).                                |                               |
| New York           | NO CURRENT ACTIVITY                                       |                               |
| North Carolina     | N.C. GEN. STAT. §§ 58-91-1 to 58-91-80 (2005).            |                               |
| North Dakota       | NO CURRENT ACTIVITY                                       |                               |
| Northern Marianas  | NO CURRENT ACTIVITY                                       |                               |
| Ohio               | OHIO REV. CODE ANN. § 3915.16 (2006).                     |                               |
| Oklahoma           | OKLA. STAT. tit. 36, § 7004 (2006).                       |                               |
| Oregon             | OR. REV. STAT. §§ 732.820 to 732.825 (2011/2012).         |                               |
| Pennsylvania       | PA. CONS. STAT. §§ 40-4101 to 4103 (2006).                |                               |
| Puerto Rico        | 26 LPRA §§ 8081 to 8096 (2005).                           |                               |
| Rhode Island       | R.I. GEN. LAWS §§ 27-2.5-1 to 27-2.5-2 (2004/2005).       |                               |

**INTERSTATE INSURANCE PRODUCT REGULATION COMPACT**

| <b>NAIC MEMBER</b> | <b>MODEL ADOPTION</b>                                  | <b>RELATED STATE ACTIVITY</b>         |
|--------------------|--|---------------------------------------|
| South Carolina     | S.C. CODE ANN. § 38 (2008).                            |                                       |
| South Dakota       | NO CURRENT ACTIVITY                                    |                                       |
| Tennessee          | TENN. CODE ANN. §§ 56-58-101 to 56-58-103 (2007/2012). |                                       |
| Texas              | TEX. INS. CODE ANN. §§ 5001.001 to 5001.002 (2005).    |                                       |
| Utah               | UTAH CODE ANN. § 31A-39-101 (2004).                    |                                       |
| Vermont            | VT. STAT. ANN. tit. 8 §§ 8500 to 8517 (2005).          | VT. STAT. ANN. tit. 8, § 3661 (2009). |
| Virgin Islands     | NO CURRENT ACTIVITY                                    |                                       |
| Virginia           | VA. CODE §§ 38.2-6100 to 38.2-6101 (2004).             |                                       |
| Washington         | WASH. REV. CODE ANN. § 48.130 (2005).                  |                                       |
| West Virginia      | W.V. CODE §§ 38-47-1 to 33-47-17 (2004).               |                                       |
| Wisconsin          | WIS. CODE ANN. § 601.59 (2008).                        |                                       |
| Wyoming            | WYO. STAT. § 26-15-201 (2006).                         |                                       |

## INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

### Proceeding Citations

Cited to the Proceedings of the NAIC

The commissioner leading the compact effort explained that in 2000 NAIC members adopted a Statement of Intent, which provided direction in modernizing state insurance regulation through initiatives designed to bring about greater regulatory efficiencies and uniformity. One of the key areas of this effort was “speed-to-market,” which was designed to streamline regulatory operations in the review of product filings as well as to develop uniform product standards where appropriate. In early 2001, state insurance regulators created CARFRA (Coordinated Advertising, Rate and Form Review Authority), a voluntary pilot program designed to allow regulators to set national product standards and create a single point of filing for designated insurance products, such as life insurance and annuities. Although CARFRA made progress in developing some product standards, it was unsuccessful in eliminating many state deviations. In many cases, state insurance regulators believed that the deviations could not be eliminated without changes to existing state laws. Insurers were unwilling to use the program because of their belief that it did not offer advantages over filing state by state. **2003 Proc. 3<sup>rd</sup> Quarter 34.**

During a meeting of the commissioners in February 2002, NAIC members discussed options for achieving true uniform product standards. They recognized that the financial services marketplace had changed in recent years and continued to evolve with increased competition in certain product lines from entities such as banks and securities firms. They also recognized that there was increased mobility of the population and a greater need for uniformity of some product lines. A working group was established to identify and analyze possible options and make a recommendation. In March 2002, the working group made a recommendation that state insurance regulators should consider the development of an interstate compact whereby state insurance regulators would jointly set uniform product standards and establish a single point of filing for designated insurance products. If properly structured, an interstate compact would allow the states to address the issue of state variations affecting product standards. **2003 Proc. 3<sup>rd</sup> Quarter 34.**

Thereafter, the Interstate Compact Working Group was established and charged with identifying key issues in creating an interstate compact and developing draft interstate compact legislation. The interstate compact would set up a multi-state public body that would (a) create strong national uniform product standards for designated product lines, (b) serve as a central point of filing for products, and (c) provide quality review of filings. This would all be accomplished while maintaining a high level of protection for insurance consumers. **2003 Proc. 3<sup>rd</sup> Quarter 34.**

When the NAIC began discussion of creating an interstate compact, reactions were mixed. One consumer advocate said he generally opposed the concept of an interstate compact, noting that from a historical perspective, the concept had not been very successful in the United States. A college professor said he had been a long-time supporter of interstate compacts. He noted that there were dozens of interstate compacts currently in force and working in a functional manner. **2002 Proc. 2<sup>nd</sup> Quarter 45.**

By the next quarterly meeting, a new draft had been prepared and comments were solicited. A representative from an insurance trade association spoke in support of efforts to make state insurance regulation more efficient. Her association supported the concept of an interstate compact to create national standards for products and to receive and approve filings. **2002 Proc. 3<sup>rd</sup> Quarter 48.**

A commissioner addressed the misperception that the formation of an interstate compact to serve as a single point of filing for regulatory review of product filings would somehow lessen consumer protections. He said this was certainly not the intent of state insurance regulators. From the beginning, the working group stated that consumer protections would not be sacrificed for the sake of regulatory efficiency. He said he was firmly committed to the position that regulatory efficiency could be achieved while administering effective consumer protections. **2002 Proc. 3<sup>rd</sup> Quarter 49.**

When the completed document was presented to the membership for adoption, a commissioner noted that the drafting group had held five public hearings and produced 12 drafts since the project was begun. Throughout the process, the working group and the NAIC legal staff were diligent in their efforts to address questions regarding constitutionality, preemption of state law, consumer protection, and other related issues. She noted that the NAIC Legal Division prepared and sent to all commissioners a memorandum covering many of the significant legal issues and she said they did believe there were any federal constitutional impediments. The research clearly showed that not all compacts required congressional consent. Pursuant to the McCarran-Ferguson Act, Congress delegated to the states the power to regulate the business of insurance and the proposed compact, so long as it did not increase the power of the states at the expense of the federal government, required no further formal consent of Congress. She noted that there had been questions raised about an alleged “sweeping preemption” of state laws. The working group developed language to strictly limit the reach of the compact to only those

## INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

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Cited to the Proceedings of the NAIC

matters that legislatures delegated to state insurance departments. The scope of the compact would be limited to those matters involving the development of product and advertising standards, and conducting a product approval process, for life, annuity, long term care and disability income products. Approval of advertisements would generally apply to only long term care insurance products. State attorneys general would not be precluded from enforcing state consumer fraud statutes. On the other hand, she emphasized that, in terms of product standards, the standards developed and adopted by the compacting states would replace existing standards unless a compacting state opted out. This represented a critical element of this compact—without it the goal of achieving uniformity would most likely be lost. **2002 Proc. 4<sup>th</sup> Quarter 9-10.**

One commissioner noted that interstate compacts were not a new concept. They have been in existence since the founding of this country. Compacts have evolved throughout the years and they have been used to handle such issues as water rights, taxation, child custody, environmental and social service issues. More than 200 existing interstate compacts were in existence. In the last two years, approximately 40 states have entered into an Interstate Compact for the Supervision of Adult Offenders. This compact contained similar language to the proposed Interstate Insurance Product Regulation Compact with respect to preempting existing state law that conflicted with the compact's provisions. The adult offenders compact also contained rulemaking authority to carry out its authority. She noted that work was also under way to develop an interstate compact to simplify tax treatment affecting multiple states. Interstate compacts have been used to handle many policy issues affecting multiple states. She said it was important to remember that state insurance regulators were following a well-worn path to solving interstate issues among the several states. **2002 Proc. 4<sup>th</sup> Quarter 9.**

One commissioner opined that the compact was a win-win-win for everyone: for consumers, industry, and for state insurance regulators. Life insurance companies (i.e., those companies that marketed life insurance, annuity, disability income insurance and long term care insurance products) were operating in a national market and competing against other financial services entities. Consumers frequently moved from state to state, which resulted in people living in the same neighborhood owning insurance products that met different regulatory standards. State insurance regulators recognized that there needed to be greater uniformity for these product standards. They also recognized a need to have some form of centralized filing. The commissioner recalled that there was a strong consensus among the commissioners at their conference early in 2002 that uniformity was a priority. The main question was how to get there in a way that preserved state sovereignty and the ability of state insurance regulators to protect consumers. The same would be true regarding other areas of state insurance regulation that might not be preserved if the path to uniformity was pursued through federal regulation. The proposed compact created a vehicle for developing uniform product standards and a national filing system. This met the industry's need for a single point of filing and allowed state insurance regulators to avoid duplication and make better use of resources. There would be a high level of expertise, which would allow for an efficient and effective centralized review of these products. Simply stated, the proposed compact provided an opportunity for state insurance regulators to set clear, high product standards while at the same time retaining state sovereignty. If a state did not like the standards developed by the joint commission, the state could opt out and go its own way. Most importantly, it preserved the ability of states to protect consumers. **2002 Proc. 4<sup>th</sup> Quarter 9-10.**

The membership considered the advisability of taking a vote on a document that did not yet have the support of state legislative organizations. The commissioner leading the effort urged the members to adopt the proposed compact because some of the groups were waiting for the NAIC to take formal action before they considered any proposal. They wanted to see what the NAIC adopted before weighing in on the matter so they were not trying to hit a moving target. Other interested groups would then be able to consider the compact and decide if they were comfortable with the product. If they determined they were not comfortable, then state insurance regulators would have to take another look. **2002 Proc. 4<sup>th</sup> Quarter 10.**

A commissioner stated that he supported the proposed compact and wanted to briefly discuss an important issue. Although there seemed to be no question that the proposed compact was good for the industry, there seemed to be a question about whether it was good for consumers. He said he believed the proposed compact was very good for consumers. Uniformity and consistency of product standards would definitely help those consumers who moved from state to state. It did not serve anybody's interest to have the standards vary state by state when the risk was the same. It was a well-crafted balance of state interests and consumers also would be protected. **2002 Proc. 4<sup>th</sup> Quarter 11.**



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### Proceeding Citations

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One state commissioner said that he was opposed to the compact at this time because it gave more rights to insurance companies than it did to insurance commissioners and consumers. He also stated that consumer representatives opposed the compact. He expressed concern that, without product standards in place, it was impossible to determine the quality of the standards. Once states were in the compact, he believed it would be difficult for them to opt out. It would be better to have the standards in place before the compact was adopted. **2002 Proc. 4<sup>th</sup> Quarter 13.**

The NAIC president noted that, as state insurance regulators have pursued this effort, the states have evolved into three different groups. The states in the first group said they were ready to go forward with the introducing the proposed compact legislation in their state legislatures. There were not a lot of states in this category, but there were some. In the second group were states that believed it would be very difficult to get legislation passed unless some influential group gave its endorsement. States in the second category, and there were many, were probably taking a “wait and see” approach to see how legislative groups reacted to the proposed compact. States in the third group had taken a position that they could not go to the legislature until product standards were developed. This would give them something to show the legislature about what the standards would be and how this process would work. She announced that, for the states in the third group, the process of developing product standards was underway. An ad hoc management committee was established to work on developing product standards. The committee was comprised of 14 states, as follows: the six largest premium volume states for life, annuities and long term care insurance products, four medium tier states, i.e., those with at least 2% of premium volume; and four states with less than 2% of premium volume, with one coming from each NAIC zone. **2002 Proc. 4<sup>th</sup> Quarter 13.**

After the NAIC adopted the model, regulators continued to work with other groups to consider amendments to the compact. Certain amendments were designed to alleviate the concern of some state attorneys general that the compact would prevent them from enforcing state consumer fraud statutes. Other proposed amendments would add definitions of product lines to the compact. **2003 Proc. 2<sup>nd</sup> Quarter 64.**

When the NAIC met in July 2003 to consider adopting an amended compact, the commissioner leading the drafting effort stated that members of one organization of legislators completed its review of the interstate compact and voted to recommend a small number of amendments. It was those amendments that were before the NAIC Executive Committee and Plenary for consideration and adoption. The commissioner also announced that another association of legislators adopted a resolution in support of the proposed interstate compact. **2003 Proc. 3<sup>rd</sup> Quarter 34.**

### Article I. Purposes

The chair of the working group created to draft the compact said that the purpose of the compact was to create a single point of filing for insurers to file their insurance products for regulatory review and approval. The state insurance commissioners would be responsible for overseeing the compact entity and developing uniform standards for various product lines. **2002 Proc. 2<sup>nd</sup> Quarter 44.**

The motion to adopt the compact stated additional reasons: “Whereas some insurance products are viewed as being at a competitive disadvantage in relation to those products issued by other financial services providers due to inconsistent standards and processes of state insurance regulation, and as a result, insurance companies and consumers could be better served; and whereas, over the past three years state insurance commissioners have recognized the need, and explored proposals, to improve the current system of state-based insurance regulation by implementing greater uniformity and efficiency in certain areas; and whereas, the Interstate Compact Working Group was established by state insurance commissioners in March of this year to develop draft interstate compact legislation to develop uniform standards for designated product lines, protect the interest of consumers of these products, and create a joint public agency to serve as a single point of filing; ...Now, Therefore, Be It Resolved: That the model legislation for the creation of the Interstate Insurance Product Approval Regulation Compact be adopted.” **2002 Proc. 4<sup>th</sup> Quarter 10.**

### Article II. Definitions

There was some discussion about the need to define life insurance, annuities, disability income insurance and long term care insurance. Based on a recommendation from an association of legislators, a drafting note was added instead. **2003 Proc. 3<sup>rd</sup> Quarter 34.**

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#### Article III. Establishment of the Commission and Venue

In response to concerns that had been raised, a commissioner said that with respect to potential legal issues, the U.S. Constitution authorized compacts and subsequent case law established parameters for the establishment and operation of a compact. The working group and NAIC legal staff researched many issues regarding compacts and there was a consensus that the proposed compact fit within those parameters. **2002 Proc. 4<sup>th</sup> Quarter 10.**

Section 1. In response to concerns that had been raised, a commissioner said that with respect to delegating powers to a “private entity,” the proposed compact did not create a private entity; rather it created an instrumentality of the states. **2002 Proc. 4<sup>th</sup> Quarter 10.**

When the compact was being considered for amendment, the first section was changed to refer to a “joint public agency” instead of an “entity.” **2003 Proc. 3<sup>rd</sup> Quarter 37.**

Section 2. When the compact was being amended, Section 2 was changed to answer a question raised about whether the compact would be a public or private entity. **2003 Proc. 3<sup>rd</sup> Quarter 34.**

The original model contained a section stating that the commission was a not for profit entity, separate and distinct from the individual compacting states. That provision was deleted before adoption of the revised compact document. **2003 Proc. 3<sup>rd</sup> Quarter 37.**

#### Article IV. Powers of the Commission

An interested party expressed concern about delegating authority to an interstate compact entity and the fact that the link between citizens and public officials would be further removed. **2002 Proc. 2<sup>nd</sup> Quarter 44.**

A consumer advocate echoed the concern about the regulators being further removed from the public. He spoke in favor of having some degree of consumer representation in the process. He recognized that this could present resource issues for the representatives. **2002 Proc. 2<sup>nd</sup> Quarter 44-45.**

A consumer advocate in one state described her participation in the process of developing state laws and regulations and her review of rate filings. Her main concern with the interstate compact concept was that the potential for involvement at the local level would be eliminated or substantially curtailed. **2002 Proc. 2<sup>nd</sup> Quarter 45.**

A consumer advocate from another state expressed concern that she would be required to travel outside her state in order to adequately represent the interests of her state’s residents. She stated that she did not have the resources needed to travel very much outside the state. **2002 Proc. 2<sup>nd</sup> Quarter 45.**

A representative from a seniors association spoke favorably about the benefits of uniformity and consistency. However, he wondered if the standards would provide less protection for consumers. **2002 Proc. 2<sup>nd</sup> Quarter 45.**

Section 2. When the first draft of the compact was reviewed, the chair said that the product lines envisioned to be covered by the interstate compact included annuities, life insurance, disability income insurance and long term care insurance. Products filed with the compact entity that satisfied the applicable uniform standards and received approval could thereafter be sold or issued in those compact states where the insurer was authorized to do business without the insurer making the same filing in the compact states. **2002 Proc. 2<sup>nd</sup> Quarter 44.**

An interested party express opposition to the inclusion of long term care insurance products in the proposed interstate compact at this time. She said the products were still evolving and it would be difficult to develop uniform standards on a national scale. It was too early to consider including long term care products within the scope of the proposed interstate compact. **2002 Proc. 2<sup>nd</sup> Quarter 44.**

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#### Article IV Section 2 (cont.)

Another interested party inquired whether the inclusion of the long term care products meant that the interstate compact would be required to develop uniform standards for this product line or whether it was optional. The chair responded that, if long term care products were included in the compact legislation, the compact entity would be empowered to develop uniform standard and would have the authority to take the action at its own discretion. **2002 Proc. 2<sup>nd</sup> Quarter 44.**

An interested party representing an insurer trade association spoke in favor of including long term care insurance in the compact, stating it was a good approach. **2002 Proc. 2<sup>nd</sup> Quarter 45.**

A consumer representative commented that the proposed compact would add another layer of bureaucracy to the product review and approval process and this deserved more consumer representation. A commissioner clarified that the role of the commission in setting uniform standards, reviewing product filings and approving those that met the applicable standard did not create another layer of bureaucracy. Insurers would not be required to file their products with the commission and would have the option of filing their products separately with individual states or filing with the commission. The choice was clearly up to the insurer. If the company chose to file with the commission, it would not have to file with the individual state insurance departments in addition to the commission. **2002 Proc. 3<sup>rd</sup> Quarter 49.**

A consumer advocate commented that it would be better if the uniform standards could be developed before the states enacted the compact legislation; however, she understood that this was not a realistic approach. **2002 Proc. 3<sup>rd</sup> Quarter 48.**

When the NAIC was considering adoption of the compact, a commissioner responded to the suggestion that the standards be inserted into the compact legislation. She commented that if the standards were placed in the compact legislation, then every time a change was made to the product standards, it would be necessary to adopt the changes in all the jurisdictions that participated in the compact. This would be an unworkable model. The working group drafted compact legislation that would lead to high standards, as well as give states an opportunity to opt out if they did not believe those standards would protect consumers in the state. **2002 Proc. 4<sup>th</sup> Quarter 9.**

A commissioner noted that there was a strong consensus among the commissioners at their conference early in 2002 that uniformity was a priority. The main question was how to get there in a way that preserved state sovereignty and the ability of state insurance regulators to protect consumers. The proposed compact created a vehicle for developing uniform product standards and a national filing system. This met the industry's need for a single point of filing and allowed state insurance regulators to avoid duplication and make better use of resources. There would be a high level of expertise, which would allow for an efficient and effective centralized review of these products. Simply stated, the proposed compact provided an opportunity for state insurance regulators to set clear, high product standards while at the same time retaining state sovereignty. If a state did not like the standards developed by the joint commission, the state could opt out and go its own way. Most importantly, it preserved the ability of states to protect consumers. **2002 Proc. 4<sup>th</sup> Quarter 10.**

Another commissioner commented that he believed the proposed compact would raise product standards and thus lead to an improvement over the existing system. A third commissioner concurred with the comments regarding the reasons the proposed compact would be better for consumers than the current process. She believed that product standards would be higher and that a centralized product approval process would provide a high quality review. For an example of "a race to the bottom," she said one only needed to look at federal preemption. She referred to debt cancellation insurance, where the only protection for consumers was disclosure. There was no loss ratio or rate review. **2002 Proc. 4<sup>th</sup> Quarter 11.**

One of the large state commissioners said that he had always taken the position that uniform standards should be developed prior to approving the compact. He said he believed the proposed compact was still a work in progress; that much work remained in developing uniform product standards. Until the standards were developed, he did not see the proposed compact being adopted by his state's legislature. **2002 Proc. 4<sup>th</sup> Quarter 12.**

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#### Article IV Section 2 (cont.)

The NAIC president noted that, as state insurance regulators have pursued the development of a compact, the states have evolved into three different groups. The states in the first group said they were ready to go forward with introducing the proposed compact legislation in their state legislatures. There were not a lot of states in this category, but there were some. In the second group were states that believed it would be very difficult to get legislation passed unless some influential group gave its endorsement. States in the second category, and there are many, were probably taking a “wait and see” approach to see how legislative groups reacted to the proposed compact. States in the third group have taken a position that they could not go to the legislature until product standards were developed. This would give them something to show the legislature about what the standards would be and how this process would work. She announced that, for the states in the third group, the process of developing product standards was underway. An ad hoc management committee was established to work on developing product standards. The committee was comprised of 14 states, as follows: the six largest premium volume states for life, annuities and long term care insurance products, four medium tier states, i.e., those with at least 2% of premium volume; and four states with less than 2% of premium volume, with one coming from each NAIC zone. **2002 Proc. 4<sup>th</sup> Quarter 13.**

Section 4. When considering filing requirements related to advertisements, an interested party spoke in support of the commission setting uniform standards, but requiring advertising to be filed with the commission only for long term care insurance or in limited situations where there was a regulatory necessity. **2002 Proc. 3<sup>rd</sup> Quarter 48.**

The chair asked an insurance trade association representative to clarify her association’s position on advertising. She said that, for non-long term care products, the commission should be able to require advertisements to be filed with the commission when there were market conduct issues requiring such an action. **2002 Proc. 3<sup>rd</sup> Quarter 48.**

Prior to adoption of the compact, the members engaged in a discussion regarding the difference between advertisements that were approved by the commission, as distinguished from advertisements that were used in the marketplace but were not subject to approval by the commission. The president commented that the only line of insurance where advertising was subject to approval by a significant number of the states was long term care insurance. For non-long term care insurance products, almost all states did not require the filing of advertisement for approval by state insurance regulators. As the working group was developing the proposed legislation, the members did not want to build a system based on prior approval of advertising where there is no such system in place currently. **2002 Proc. 4<sup>th</sup> Quarter 13.**

Section 13. A consumer advocate expressed concern about the notion of the compact accepting donations. She was concerned about industry funding and the appearance of impropriety. **2002 Proc. 2<sup>nd</sup> Quarter 45.**

#### Article V. Organization of the Commission

Section 1. When the compact was being considered for amendment in the summer of 2003 in response to comments from other associations, one recommendation was to add clarifying language related to the advance notice of meetings, provision for open meetings and the right of citizens to attend meetings, and to specify the procedure for closed meetings. The amendment also directed the compact commission to promulgate a code of ethics for its members and employees and prescribed the method by which the Compact Commission shall publish and file its bylaws. **2003 Proc. 3<sup>rd</sup> Quarter 35.**

Section 2. A commissioner commented that the management structure had been well thought out and thoroughly debated. **2002 Proc. 4<sup>th</sup> Quarter 11.**

Section 3. A consumer advocate spoke in favor of having consumer representation in the process. The chair asked for her thoughts regarding the role a consumer representative might play. She suggested that a consumer representative could participate fully in the activities of the commission, such as reviewing product filings, etc. Another consumer advocate suggested that the consumer representative could be funded through the NAIC, similarly to what was done for funded consumer representatives for NAIC meetings. **2002 Proc. 3<sup>rd</sup> Quarter 48-49.**

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#### Article V Section 2 (cont.)

A company representative responded that the idea of a consumer advisor was fine, but it was not appropriate to have a selected person making decisions about product approvals. This would amount to a delegation of regulatory power. **2002 Proc. 3<sup>rd</sup> Quarter 49.**

A commissioner said she saw some advantages to having consumer representatives involved in the activities of the commission, possibly in the form of a consumer advisory panel. A trade association representative said she did not object to having consumer representatives involved in the process; the question was to what degree. **2002 Proc. 3<sup>rd</sup> Quarter 49.**

#### Article VI. Meetings and Acts of the Commission

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

Section 3. When considering amendments in the summer of 2003, one suggestion was that language be added to specifically refer to the Model State Administrative Procedures Act (MSAPA) of 1981. It also was suggested to add language setting forth that the commission was required to consider fully all submitted materials and issue an explanation of its decisions. **2003 Proc. 3<sup>rd</sup> Quarter 35.**

Section 4. An interested party said the regulatory opt-out provisions needed to be revised to require the states to meet a higher standard to make it more difficult for states to opt out of uniform standards. He also suggested that uniform standards should remain effective in those states electing to opt out through regulation until the regulation was effective. In the draft before the group, the uniform standard would have been suspended upon the state insurance department giving notice of its intent to opt out. **2002 Proc. 3<sup>rd</sup> Quarter 48.**

A commissioner inquired about the phrase in the opt-out provision that said the commissioner should consider the “prevailing conditions in the state” when deciding to opt out. She said the working group tried to establish an opt-out test that required a state to show special conditions in the state in order to form the basis for an opt out by regulation. The interested party said her association would support language that set a high bar. The hope was that states would opt out of a uniform standard unless it could be shown that truly special circumstances existed in the state that were not sufficiently addressed by the uniform standard. **2002 Proc. 3<sup>rd</sup> Quarter 48.**

A commissioner asked a representative of an insurance trade association to clarify her association’s position with regard to long term care insurance products. The association representative said that her association would prefer not to have a “front end” opt out provision, but it appreciated the drafting note that had been added to urge state legislatures to refrain from using the front end opt out when enacting the interstate compact legislation. Inclusion of the provision would not prevent the association from supporting the compact. **2002 Proc. 3<sup>rd</sup> Quarter 48.**

An interested party commented that the standard should require a compelling showing in order for a state to opt out by regulation. For states electing to opt out by regulation, the uniform standards should not be suspended in the state when notice of opt out was given. Rather, the uniform standard should be applicable in the state opting out until the opt out was made effective. There was also a discussion about whether to permit opt out by regulation at all. However, the interested party stated that, assuming an appropriate opt out standard was used, a regulatory opt out would be acceptable. **2002 Proc. 3<sup>rd</sup> Quarter 48.**

#### Article VIII. Commission Records and Enforcement

Section 1. When the compact was being amended in the summer of 2003, one comment was that the model act directed the commission to promulgate rules establishing conditions and procedures for making its information available. However, in deferring the issue of public access to information to the bylaws, it granted the commission too much discretion regarding what information was to be made available to the public. An amendment was proposed that would direct the creation of provisions that promote public inspection and would clarify that only information pertaining to the privacy of individuals and trade secrets would not be made public. **2003 Proc. 3<sup>rd</sup> Quarter 35.**

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#### Article VIII (cont.)

The drafting note for Section 1 was also added at this time. **2003 Proc. 3<sup>rd</sup> Quarter 43.**

Section 4. While reviewing the first draft of the compact legislation, an interested party expressed concern about enforcement actions. The chair responded that the draft compact language provided for state insurance regulators to retain the right to oversee regulation of market activities in their respective states. **2002 Proc. 2<sup>nd</sup> Quarter 45.**

A commissioner raised a question about the preemptive effect on the ability of a state to regulate advertising and issues relating to market conduct activities. He pointed out the language in Section 4 of Article VIII that stated that the commissioner would continue to exercise his or her authority to oversee market regulation. Although this sounded acceptable, he expressed concern with subsequent qualifying language with respect to the market regulation of a product or advertisement that was approved by the commission. According to the language in the proposed compact, no activity of an insurer would constitute a violation of the provisions of the compact, except upon the final order of the commission. It was his interpretation that an individual state could not take an action with respect to advertisement unless the commission issued a final order. Based on his understanding of the language, he expressed doubts about the ability of a state to enforce the law. **2002 Proc. 4<sup>th</sup> Quarter 10-11.**

Another commissioner responded that all enforcement of state laws was done by the states. The language in Article VIII was intended to provide for consistent interpretation of the standards developed by the commission. When a state was trying to interpret what the compact meant, then the commission was allowed to have some say in that interpretation. **2002 Proc. 4<sup>th</sup> Quarter 11.**

A regulator stated that he believed the intent of this language was to balance the effort to have a uniform interpretation of the standards adopted by the commission among the states versus the concern that there be effective enforcement by the states and that the states retain the ability to enforce their advertisement standards within their own states. A commissioner acknowledged the incredible challenge of drafting language that balanced the ability of a state to enforce its laws versus the notion of uniformity. She expressed concern that the language questioned earlier broadened the scope of the compact. She was worried that the language will make it more difficult for a state insurance regulator to take enforcement action against an insurer. She stated she did not like this language and expressed her desire to have the language amended. **2002 Proc. 4<sup>th</sup> Quarter 11.**

The chair of the drafting group suggested that the members look at the issue of uniformity at two levels. One level was in the creation of the standards that will be applied to the product, which was a fairly straightforward proposition. The second point of uniformity had to do with avoiding the undoing of a single set of standards. If standards were developed for a product and subsequently there were 51 different interpretations, what essentially occurred was the “undoing” of a uniform product standard. Requiring the commission to have input regarding standards that it had developed would help preserve uniformity. The chair of the drafting group reminded the members that they were going to be the ones sitting as members of the commission. He believed that state insurance regulators sitting on the commission would support the states and allow them to aggressively pursue those companies that were acting in contravention of the standards. **2002 Proc. 4<sup>th</sup> Quarter 12.**

**Article IX. Dispute Resolution**

**Article X. Product Filing and Approval**

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#### **Article XI. Review of Commission Decisions Regarding Filings**

In providing for the review of decisions by the Interstate Compact Commission disapproving product filings, the compact provided for appeals to a review panel created by the Compact Commission. A question was raised regarding the provision that the review panel's decision "be the final action of the Commission and not subject to review by any court." Although there was additional language in the compact providing for judicial review of claims where the Compact Commission "acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law," it was felt that additional clarification was needed to avoid any inconsistency. When the compact was amended in the summer of 2003, a decision was made to strike the language stating that the review panel's decision "be the final action of the Commission and not subject to review by any court." **2003 Proc. 3<sup>rd</sup> Quarter 35.**

#### **Article XII. Finance**

Section 6. The compact model act required the financial accounts and reports of the Compact Commission to be audited annually by an independent certified public accountant. It also required the review of the independent auditor to include a management and performance audit at least every three years. This information was to be included in an annual report to the governors and state legislatures of all member states. However, the compact also provided that the commission's internal accounts, work papers related to internal audits and those related to the independent audit be treated as confidential, although that they could be shared with insurance commissioners from member states. A question was raised regarding the confidential treatment of the commission's internal accounts and internal audit work papers. An amendment proposed in the summer of 2003 was intended to keep internal and independent audit work papers confidential, but not to treat the commission's internal accounts as confidential. Additionally, confidential treatment would be afforded to information in order to protect the privacy of individuals and proprietary information of insurers. **2003 Proc. 3<sup>rd</sup> Quarter 35.**

#### **Article XIII. Compacting States, Effective Date and Amendment**

#### **Article XIV. Withdrawal, Default and Termination**

#### **Article XV. Severability and Construction**

#### **Article XVI. Binding Effect of Compact and Other Laws**

An interested party commented on an earlier draft, stating that the preemption language needed to be clarified so that there was a better understanding of when state laws were preempted by the compact law. **2002 Proc. 3<sup>rd</sup> Quarter 48.**

Section 1. When the compact was being considered for adoption, a regulator offered comments in response to the letter from the state attorneys general organization. She stated that the proposed compact did not preempt the powers of the state attorneys general to take enforcement action for false advertising, as well as deceptive or unfair trade practices. **2002 Proc. 4<sup>th</sup> Quarter 10.**

When the NAIC met in July 2003 to consider adopting an amended compact, the commissioner leading the drafting effort stated that members of one organization of legislators completed its review of the interstate compact and voted to recommend a small number of amendments. It should also be noted that during this conference call, a group of assistant state attorneys general expressed their approval of the proposed new language for Article XVI, regarding the binding effect of the compact on existing state laws. The commissioner also announced that another association of legislators adopted a resolution in support of the proposed interstate compact. **2003 Proc. 3<sup>rd</sup> Quarter 34.**

An amendment was proposed based on discussions with a group of assistant attorneys general and the desire to preserve the authority of state attorneys general to enforce laws regarding general consumer protection, including unfair or deceptive advertisement. There was also a reference added in the drafting note recognizing that in some states someone other than the state attorney general has the authority to enforce consumer protection laws in the state. **2003 Proc. 3<sup>rd</sup> Quarter 35.**

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**Appendix A**

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*Chronological Summary of Actions*

*December 2002: Model adopted.*

*July 2003: Model amended in response to comments from legislators and others.*