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H.B. No. 2613

A BILL TO BE ENTITLED

AN ACT

relating to the adoption of the Interstate Insurance Product Regulation Compact.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The Insurance Code is amended by adding Title 15 to read as follows:

TITLE 15. INTERSTATE INSURANCE COMPACTS

CHAPTER 5001. INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

Sec. 5001.001. ADOPTION OF COMPACT; REPRESENTATIVE TO COMMISSION. Pursuant to the terms and conditions of this chapter, the state joins with other states that have adopted the Interstate Insurance Product Regulation Compact to establish and become a member of the Interstate Insurance Product Regulation Commission. The commissioner is the state's representative to that commission.

Sec. 5001.002. TERMS OF COMPACT.

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

1 provide prompt review of insurance products covered under the
2 Compact and in certain cases, advertisements related thereto,
3 submitted by insurers authorized to do business in one or more
4 Compacting States;

5 4. To give appropriate regulatory approval to those
6 product filings and advertisements satisfying the applicable
7 uniform standard;

8 5. To improve coordination of regulatory resources and
9 expertise between state insurance departments regarding the
10 setting of uniform standards and review of insurance products
11 covered under the Compact;

12 6. To create the Interstate Insurance Product
13 Regulation Commission; and

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

17 ARTICLE II. DEFINITIONS

18 For purposes of this Compact:

19 1. "Advertisement" means any material designed to
20 create public interest in a Product, or induce the public to
21 purchase, increase, modify, reinstate, borrow on, surrender,
22 replace or retain a policy, as more specifically defined in the
23 Rules and Operating Procedures of the Commission.

24 2. "Bylaws" mean those bylaws established by the
25 Commission for its governance, or for directing or controlling the
26 Commission's actions or conduct.

27 3. "Compacting State" means any State which has

1 enacted this Compact legislation and which has not withdrawn
2 pursuant to Article XIV, Section 1, or been terminated pursuant to
3 Article XIV, Section 2.

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

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

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

12 7. "Insurer" means any entity licensed by a State to
13 issue contracts of insurance for any of the lines of insurance
14 covered by this Act.

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

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

20 10. "Operating Procedures" mean procedures
21 promulgated by the Commission implementing a Rule, Uniform Standard
22 or a provision of this Compact.

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

1 insurance product that an Insurer is authorized to issue.

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

9 13. "State" means any state, district or territory of
10 the United States of America.

11 14. "Third-Party Filer" means an entity that submits a
12 Product filing to the Commission on behalf of an Insurer.

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

22 ARTICLE III. ESTABLISHMENT OF THE COMMISSION AND VENUE

23 1. The Compacting States hereby create and establish a joint
24 public agency known as the "Interstate Insurance Product Regulation
25 Commission." Pursuant to Article IV, the Commission will have the
26 power to develop Uniform Standards for Product lines, receive and
27 provide prompt review of Products filed therewith, and give

1 approval to those Product filings satisfying applicable Uniform
2 Standards; provided, it is not intended for the Commission to be the
3 exclusive entity for receipt and review of insurance product
4 filings. Nothing herein shall prohibit any Insurer from filing its
5 product in any State wherein the Insurer is licensed to conduct the
6 business of insurance; and any such filing shall be subject to the
7 laws of the State where filed.

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

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

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

16 ARTICLE IV. POWERS OF THE COMMISSION

17 The Commission shall have the following powers:

18 1. To promulgate Rules, pursuant to Article VII of
19 this Compact, which shall have the force and effect of law and shall
20 be binding in the Compacting States to the extent and in the manner
21 provided in this Compact;

22 2. To exercise its rule-making authority and establish
23 reasonable Uniform Standards for Products covered under the
24 Compact, and Advertisement related thereto, which shall have the
25 force and effect of law and shall be binding in the Compacting
26 States, but only for those Products filed with the Commission,
27 provided, that a Compacting State shall have the right to opt out of

1 such Uniform Standard pursuant to Article VII, to the extent and in
2 the manner provided in this Compact, and, provided further, that
3 any Uniform Standard established by the Commission for long-term
4 care insurance products may provide the same or greater protections
5 for consumers as, but shall not provide less than, those
6 protections set forth in the National Association of Insurance
7 Commissioners' Long-Term Care Insurance Model Act and Long-Term
8 Care Insurance Model Regulation, respectively, adopted as of 2001.
9 The Commission shall consider whether any subsequent amendments to
10 the NAIC Long-Term Care Insurance Model Act or Long-Term Care
11 Insurance Model Regulation adopted by the NAIC require amending of
12 the Uniform Standards established by the Commission for long-term
13 care insurance products;

14 3. To receive and review in an expeditious manner
15 Products filed with the Commission, and rate filings for disability
16 income and long-term care insurance Products, and give approval of
17 those Products and rate filings that satisfy the applicable Uniform
18 Standard, where such approval shall have the force and effect of law
19 and be binding on the Compacting States to the extent and in the
20 manner provided in the Compact;

21 4. To receive and review in an expeditious manner
22 Advertisement relating to long-term care insurance products for
23 which Uniform Standards have been adopted by the Commission, and
24 give approval to all Advertisement that satisfies the applicable
25 Uniform Standard. For any product covered under this Compact, other
26 than long-term care insurance products, the Commission shall have
27 the authority to require an insurer to submit all or any part of its

1 Advertisement with respect to that product for review or approval
2 prior to use, if the Commission determines that the nature of the
3 product is such that an Advertisement of the product could have the
4 capacity or tendency to mislead the public. The actions of
5 Commission as provided in this section shall have the force and
6 effect of law and shall be binding in the Compacting States to the
7 extent and in the manner provided in the Compact;

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

12 6. To promulgate Operating Procedures, pursuant to
13 Article VII of this Compact, which shall be binding in the
14 Compacting States to the extent and in the manner provided in this
15 Compact;

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

20 8. To issue subpoenas requiring the attendance and
21 testimony of witnesses and the production of evidence;

22 9. To establish and maintain offices;

23 10. To purchase and maintain insurance and bonds;

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

27 12. To hire employees, professionals or specialists,

1 and elect or appoint officers, and to fix their compensation,
2 define their duties and give them appropriate authority to carry
3 out the purposes of the Compact, and determine their
4 qualifications; and to establish the Commission's personnel
5 policies and programs relating to, among other things, conflicts of
6 interest, rates of compensation and qualifications of personnel;

7 13. To accept any and all appropriate donations and
8 grants of money, equipment, supplies, materials and services, and
9 to receive, utilize and dispose of the same; provided that at all
10 times the Commission shall strive to avoid any appearance of
11 impropriety;

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

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

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

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

23 18. To provide for dispute resolution among Compacting
24 States;

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

1 20. To provide advice and training to those personnel
2 in state insurance departments responsible for product review, and
3 to be a resource for state insurance departments;

4 21. To establish a budget and make expenditures;

5 22. To borrow money;

6 23. To appoint committees, including advisory
7 committees comprising Members, state insurance regulators, state
8 legislators or their representatives, insurance industry and
9 consumer representatives, and such other interested persons as may
10 be designated in the Bylaws;

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

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

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

17 ARTICLE V. ORGANIZATION OF THE COMMISSION

18 1. Membership, Voting and Bylaws

19 a. Each Compacting State shall have and be limited to
20 one Member. Each Member shall be qualified to serve in that
21 capacity pursuant to applicable law of the Compacting State. Any
22 Member may be removed or suspended from office as provided by the
23 law of the State from which he or she shall be appointed. Any
24 vacancy occurring in the Commission shall be filled in accordance
25 with the laws of the Compacting State wherein the vacancy exists.
26 Nothing herein shall be construed to affect the manner in which a
27 Compacting State determines the election or appointment and

1 qualification of its own Commissioner.

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

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

13 i. Establishing the fiscal year of the
14 Commission;

15 ii. Providing reasonable procedures for
16 appointing and electing members, as well as holding meetings, of
17 the Management Committee;

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

22 iv. Providing reasonable procedures for calling
23 and conducting meetings of the Commission that consist of a
24 majority of Commission members, ensuring reasonable advance notice
25 of each such meeting and providing for the right of citizens to
26 attend each such meeting with enumerated exceptions designed to
27 protect the public's interest, the privacy of individuals, and

1 insurers' proprietary information, including trade secrets. The
2 Commission may meet in camera only after a majority of the entire
3 membership votes to close a meeting en toto or in part. As soon as
4 practicable, the Commission must make public (i) a copy of the vote
5 to close the meeting revealing the vote of each Member with no proxy
6 votes allowed, and (ii) votes taken during such meeting;

7 v. Establishing the titles, duties and authority
8 and reasonable procedures for the election of the officers of the
9 Commission;

10 vi. Providing reasonable standards and
11 procedures for the establishment of the personnel policies and
12 programs of the Commission. Notwithstanding any civil service or
13 other similar laws of any Compacting State, the Bylaws shall
14 exclusively govern the personnel policies and programs of the
15 Commission;

16 vii. Promulgating a code of ethics to address
17 permissible and prohibited activities of commission members and
18 employees; and

19 viii. Providing a mechanism for winding up the
20 operations of the Commission and the equitable disposition of any
21 surplus funds that may exist after the termination of the Compact
22 after the payment and/or reserving of all of its debts and
23 obligations.

24 d. The Commission shall publish its bylaws in a
25 convenient form and file a copy thereof and a copy of any amendment
26 thereto, with the appropriate agency or officer in each of the
27 Compacting States.

1 2. Management Committee, Officers and Personnel

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

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

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

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

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

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

23 ii. Establishing and overseeing an
24 organizational structure within, and appropriate procedures for,
25 the Commission to provide for the creation of Uniform Standards and
26 other Rules, receipt and review of product filings, administrative
27 and technical support functions, review of decisions regarding the

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

6 iii. Overseeing the offices of the Commission;
7 and

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

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

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

23 3. Legislative and Advisory Committees

24 a. A legislative committee comprising state
25 legislators or their designees shall be established to monitor the
26 operations of, and make recommendations to, the Commission,
27 including the Management Committee; provided that the manner of

1 selection and term of any legislative committee member shall be as
2 set forth in the Bylaws. Prior to the adoption by the Commission of
3 any Uniform Standard, revision to the Bylaws, annual budget or
4 other significant matter as may be provided in the Bylaws, the
5 Management Committee shall consult with and report to the
6 legislative committee.

7 b. The Commission shall establish two (2) advisory
8 committees, one of which shall comprise consumer representatives
9 independent of the insurance industry, and the other comprising
10 insurance industry representatives.

11 c. The Commission may establish additional advisory
12 committees as its Bylaws may provide for the carrying out of its
13 functions.

14 4. Corporate Records of the Commission

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

17 5. Qualified Immunity, Defense and Indemnification

18 a. The Members, officers, executive director,
19 employees and representatives of the Commission shall be immune
20 from suit and liability, either personally or in their official
21 capacity, for any claim for damage to or loss of property or
22 personal injury or other civil liability caused by or arising out of
23 any actual or alleged act, error or omission that occurred, or that
24 the person against whom the claim is made had a reasonable basis for
25 believing occurred within the scope of Commission employment,
26 duties or responsibilities; provided, that nothing in this
27 paragraph shall be construed to protect any such person from suit

1 and/or liability for any damage, loss, injury or liability caused
2 by the intentional or willful and wanton misconduct of that person.

3 b. The Commission shall defend any Member, officer,
4 executive director, employee or representative of the Commission in
5 any civil action seeking to impose liability arising out of any
6 actual or alleged act, error or omission that occurred within the
7 scope of Commission employment, duties or responsibilities, or that
8 the person against whom the claim is made had a reasonable basis for
9 believing occurred within the scope of Commission employment,
10 duties or responsibilities; provided, that nothing herein shall be
11 construed to prohibit that person from retaining his or her own
12 counsel; and provided further, that the actual or alleged act,
13 error or omission did not result from that person's intentional or
14 willful and wanton misconduct.

15 c. The Commission shall indemnify and hold harmless
16 any Member, officer, executive director, employee or
17 representative of the Commission for the amount of any settlement
18 or judgment obtained against that person arising out of any actual
19 or alleged act, error or omission that occurred within the scope of
20 Commission employment, duties or responsibilities, or that such
21 person had a reasonable basis for believing occurred within the
22 scope of Commission employment, duties or responsibilities,
23 provided, that the actual or alleged act, error or omission did not
24 result from the intentional or willful and wanton misconduct of
25 that person.

1 ARTICLE VI. MEETINGS AND ACTS

2 OF THE COMMISSION

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

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

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

14 ARTICLE VII. RULES AND OPERATING PROCEDURES:

15 RULEMAKING FUNCTIONS OF THE COMMISSION

16 AND OPTING OUT OF UNIFORM STANDARDS

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

25 2. Rulemaking Procedure. Rules and Operating Procedures
26 shall be made pursuant to a rulemaking process that conforms to the
27 Model State Administrative Procedure Act of 1981 as amended, as may

1 be appropriate to the operations of the Commission. Before the
2 Commission adopts a Uniform Standard, the Commission shall give
3 written notice to the relevant state legislative committee(s) in
4 each Compacting State responsible for insurance issues of its
5 intention to adopt the Uniform Standard. The Commission in
6 adopting a Uniform Standard shall consider fully all submitted
7 materials and issue a concise explanation of its decision.

8 3. Effective Date and Opt Out of a Uniform Standard. A
9 Uniform Standard shall become effective ninety (90) days after its
10 promulgation by the Commission or such later date as the Commission
11 may determine; provided, however, that a Compacting State may opt
12 out of a Uniform Standard as provided in this Article. "Opt out"
13 shall be defined as any action by a Compacting State to decline to
14 adopt or participate in a promulgated Uniform Standard. All other
15 Rules and Operating Procedures, and amendments thereto, shall
16 become effective as of the date specified in each Rule, Operating
17 Procedure or amendment.

18 4. Opt Out Procedure. A Compacting State may opt out of a
19 Uniform Standard, either by legislation or regulation duly
20 promulgated by the Insurance Department under the Compacting
21 State's Administrative Procedure Act. If a Compacting State elects
22 to opt out of a Uniform Standard by regulation, it must (a) give
23 written notice to the Commission no later than ten (10) business
24 days after the Uniform Standard is promulgated, or at the time the
25 State becomes a Compacting State and (b) find that the Uniform
26 Standard does not provide reasonable protections to the citizens of
27 the State, given the conditions in the State. The Commissioner

1 shall make specific findings of fact and conclusions of law, based
2 on a preponderance of the evidence, detailing the conditions in the
3 State which warrant a departure from the Uniform Standard and
4 determining that the Uniform Standard would not reasonably protect
5 the citizens of the State. The Commissioner must consider and
6 balance the following factors and find that the conditions in the
7 State and needs of the citizens of the State outweigh: (i) the
8 intent of the legislature to participate in, and the benefits of, an
9 interstate agreement to establish national uniform consumer
10 protections for the Products subject to this Act; and (ii) the
11 presumption that a Uniform Standard adopted by the Commission
12 provides reasonable protections to consumers of the relevant
13 Product.

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

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

1 opting out becomes effective.

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

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

1 rulemaking process has been terminated.

2 7. Not later than thirty (30) days after a Rule or Operating
3 Procedure is promulgated, any person may file a petition for
4 judicial review of the Rule or Operating Procedure; provided, that
5 the filing of such a petition shall not stay or otherwise prevent
6 the Rule or Operating Procedure from becoming effective unless the
7 court finds that the petitioner has a substantial likelihood of
8 success. The court shall give deference to the actions of the
9 Commission consistent with applicable law and shall not find the
10 Rule or Operating Procedure to be unlawful if the Rule or Operating
11 Procedure represents a reasonable exercise of the Commission's
12 authority.

13 ARTICLE VIII. COMMISSION RECORDS AND ENFORCEMENT

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

24 2. Except as to privileged records, data and information,
25 the laws of any Compacting State pertaining to confidentiality or
26 nondisclosure shall not relieve any Compacting State Commissioner
27 of the duty to disclose any relevant records, data or information to

1 the Commission; provided, that disclosure to the Commission shall
2 not be deemed to waive or otherwise affect any confidentiality
3 requirement; and further provided, that, except as otherwise
4 expressly provided in this Act, the Commission shall not be subject
5 to the Compacting State's laws pertaining to confidentiality and
6 nondisclosure with respect to records, data and information in its
7 possession. Confidential information of the Commission shall
8 remain confidential after such information is provided to any
9 Commissioner.

10 3. The Commission shall monitor Compacting States for
11 compliance with duly adopted Bylaws, Rules, including Uniform
12 Standards, and Operating Procedures. The Commission shall notify
13 any non-complying Compacting State in writing of its noncompliance
14 with Commission Bylaws, Rules or Operating Procedures. If a
15 non-complying Compacting State fails to remedy its noncompliance
16 within the time specified in the notice of noncompliance, the
17 Compacting State shall be deemed to be in default as set forth in
18 Article XIV.

19 4. The Commissioner of any State in which an Insurer is
20 authorized to do business, or is conducting the business of
21 insurance, shall continue to exercise his or her authority to
22 oversee the market regulation of the activities of the Insurer in
23 accordance with the provisions of the State's law. The
24 Commissioner's enforcement of compliance with the Compact is
25 governed by the following provisions:

26 a. With respect to the Commissioner's market
27 regulation of a Product or Advertisement that is approved or

1 certified to the Commission, the content of the Product or
2 Advertisement shall not constitute a violation of the provisions,
3 standards or requirements of the Compact except upon a final order
4 of the Commission, issued at the request of a Commissioner after
5 prior notice to the Insurer and an opportunity for hearing before
6 the Commission.

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

16 ARTICLE IX. DISPUTE RESOLUTION

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

23 ARTICLE X. PRODUCT FILING AND APPROVAL

24 1. Insurers and Third-Party Filers seeking to have a Product
25 approved by the Commission shall file the Product with, and pay
26 applicable filing fees to, the Commission. Nothing in this Act
27 shall be construed to restrict or otherwise prevent an insurer from

1 filing its Product with the insurance department in any State
2 wherein the insurer is licensed to conduct the business of
3 insurance, and such filing shall be subject to the laws of the
4 States where filed.

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

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

18 ARTICLE XI. REVIEW OF COMMISSION DECISIONS

19 REGARDING FILINGS

20 1. Not later than thirty (30) days after the Commission has
21 given notice of a disapproved Product or Advertisement filed with
22 the Commission, the Insurer or Third Party Filer whose filing was
23 disapproved may appeal the determination to a review panel
24 appointed by the Commission. The Commission shall promulgate Rules
25 to establish procedures for appointing such review panels and
26 provide for notice and hearing. An allegation that the Commission,
27 in disapproving a Product or Advertisement filed with the

1 Commission, acted arbitrarily, capriciously, or in a manner that is
2 an abuse of discretion or otherwise not in accordance with the law,
3 is subject to judicial review in accordance with Article III,
4 Section 4.

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

11 ARTICLE XII. FINANCE

12 1. The Commission shall pay or provide for the payment of
13 the reasonable expenses of its establishment and organization. To
14 fund the cost of its initial operations, the Commission may accept
15 contributions and other forms of funding from the National
16 Association of Insurance Commissioners, Compacting States and
17 other sources. Contributions and other forms of funding from other
18 sources shall be of such a nature that the independence of the
19 Commission concerning the performance of its duties shall not be
20 compromised.

21 2. The Commission shall collect a filing fee from each
22 Insurer and Third Party Filer filing a product with the Commission
23 to cover the cost of the operations and activities of the Commission
24 and its staff in a total amount sufficient to cover the Commission's
25 annual budget.

26 3. The Commission's budget for a fiscal year shall not be
27 approved until it has been subject to notice and comment as set

1 forth in Article VII of this Compact.

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

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

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

26 7. No Compacting State shall have any claim to or ownership
27 of any property held by or vested in the Commission or to any

1 Commission funds held pursuant to the provisions of this Compact.

2 ARTICLE XIII. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

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

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

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

22 ARTICLE XIV. WITHDRAWAL, DEFAULT AND TERMINATION

23 1. Withdrawal

24 a. Once effective, the Compact shall continue in force
25 and remain binding upon each and every Compacting State; provided,
26 that a Compacting State may withdraw from the Compact ("Withdrawing
27 State") by enacting a statute specifically repealing the statute

1 which enacted the Compact into law.

2 b. The effective date of withdrawal is the effective
3 date of the repealing statute. However, the withdrawal shall not
4 apply to any product filings approved or self-certified, or any
5 Advertisement of such products, on the date the repealing statute
6 becomes effective, except by mutual agreement of the Commission and
7 the Withdrawing State unless the approval is rescinded by the
8 Withdrawing State as provided in Paragraph e of this section.

9 c. The Commissioner of the Withdrawing State shall
10 immediately notify the Management Committee in writing upon the
11 introduction of legislation repealing this Compact in the
12 Withdrawing State.

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

16 e. The Withdrawing State is responsible for all
17 obligations, duties and liabilities incurred through the effective
18 date of withdrawal, including any obligations, the performance of
19 which extend beyond the effective date of withdrawal, except to the
20 extent those obligations may have been released or relinquished by
21 mutual agreement of the Commission and the Withdrawing State. The
22 Commission's approval of Products and Advertisement prior to the
23 effective date of withdrawal shall continue to be effective and be
24 given full force and effect in the Withdrawing State, unless
25 formally rescinded by the Withdrawing State in the same manner as
26 provided by the laws of the Withdrawing State for the prospective
27 disapproval of products or advertisement previously approved under

1 state law.

2 f. Reinstatement following withdrawal of any
3 Compacting State shall occur upon the effective date of the
4 Withdrawing State reenacting the Compact.

5 2. Default

6 a. If the Commission determines that any Compacting
7 State has at any time defaulted ("Defaulting State") in the
8 performance of any of its obligations or responsibilities under
9 this Compact, the Bylaws or duly promulgated Rules or Operating
10 Procedures, then, after notice and hearing as set forth in the
11 Bylaws, all rights, privileges and benefits conferred by this
12 Compact on the Defaulting State shall be suspended from the
13 effective date of default as fixed by the Commission. The grounds
14 for default include, but are not limited to, failure of a Compacting
15 State to perform its obligations or responsibilities, and any other
16 grounds designated in Commission Rules. The Commission shall
17 immediately notify the Defaulting State in writing of the
18 Defaulting State's suspension pending a cure of the default. The
19 Commission shall stipulate the conditions and the time period
20 within which the Defaulting State must cure its default. If the
21 Defaulting State fails to cure the default within the time period
22 specified by the Commission, the Defaulting State shall be
23 terminated from the Compact and all rights, privileges and benefits
24 conferred by this Compact shall be terminated from the effective
25 date of termination.

26 b. Product approvals by the Commission or product
27 self-certifications, or any Advertisement in connection with such

1 product, that are in force on the effective date of termination
2 shall remain in force in the Defaulting State in the same manner as
3 if the Defaulting State had withdrawn voluntarily pursuant to
4 Section 1 of this article.

5 c. Reinstatement following termination of any
6 Compacting State requires a reenactment of the Compact.

7 3. Dissolution of Compact

8 a. The Compact dissolves effective upon the date of
9 the withdrawal or default of the Compacting State which reduces
10 membership in the Compact to one Compacting State.

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

16 ARTICLE XV. SEVERABILITY AND CONSTRUCTION

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

20 2. The provisions of this Compact shall be liberally
21 construed to effectuate its purposes.

22 ARTICLE XVI. BINDING EFFECT OF COMPACT AND OTHER LAWS

23 1. Other Laws

24 a. Nothing herein prevents the enforcement of any
25 other law of a Compacting State, except as provided in Paragraph b
26 of this section.

27 b. For any Product approved or certified to the

1 Commission, the Rules, Uniform Standards and any other requirements
2 of the Commission shall constitute the exclusive provisions
3 applicable to the content, approval and certification of such
4 Products. For Advertisement that is subject to the Commission's
5 authority, any Rule, Uniform Standard or other requirement of the
6 Commission which governs the content of the Advertisement shall
7 constitute the exclusive provision that a Commissioner may apply to
8 the content of the Advertisement. Notwithstanding the foregoing,
9 no action taken by the Commission shall abrogate or restrict: (i)
10 the access of any person to state courts; (ii) remedies available
11 under state law related to breach of contract, tort, or other laws
12 not specifically directed to the content of the Product; (iii)
13 state law relating to the construction of insurance contracts; or
14 (iv) the authority of the attorney general of the state, including
15 but not limited to maintaining any actions or proceedings, as
16 authorized by law.

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

19 2. Binding Effect of this Compact

20 a. All lawful actions of the Commission, including all
21 Rules and Operating Procedures promulgated by the Commission, are
22 binding upon the Compacting States.

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

25 c. Upon the request of a party to a conflict over the
26 meaning or interpretation of Commission actions, and upon a
27 majority vote of the Compacting States, the Commission may issue

1 advisory opinions regarding the meaning or interpretation in
2 dispute.

3 d. In the event any provision of this Compact exceeds
4 the constitutional limits imposed on the legislature of any
5 Compacting State, the obligations, duties, powers or jurisdiction
6 sought to be conferred by that provision upon the Commission shall
7 be ineffective as to that Compacting State, and those obligations,
8 duties, powers or jurisdiction shall remain in the Compacting State
9 and shall be exercised by the agency thereof to which those
10 obligations, duties, powers or jurisdiction are delegated by law in
11 effect at the time this Compact becomes effective.

12 SECTION 2. This Act takes effect immediately if it receives
13 a vote of two-thirds of all the members elected to each house, as
14 provided by Section 39, Article III, Texas Constitution. If this
15 Act does not receive the vote necessary for immediate effect, this
16 Act takes effect September 1, 2005.