

UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

NEW YORK LIFE INSURANCE	:	
COMPANY	:	
	:	
Plaintiff,	:	
	:	
VS.	:	C.A. NO. S 14-074/S
	:	
MASSIEL ORTIZ AND JULIA KLAH	:	
	:	
Defendants.	:	

**AMICUS CURIAE BRIEF OF THE NATIONAL ASSOCIATION OF INSURANCE
COMMISSIONERS IN SUPPORT OF THE OBJECTION OF PLAINTIFF,
NEW YORK LIFE INSURANCE COMPANY, TO THE OCTOBER 20, 2014
REPORT AND RECOMMENDATION**

The National Association of Insurance Commissioners (“NAIC”) hereby submits this amicus curiae brief in support of the Objection filed by Plaintiff, New York Life Insurance Company (“New York Life”), to the October 20, 2014 Report and Recommendation. The NAIC’s brief examines and explicates a number of important policy considerations and extends its analysis to the application of NAIC enactments and state statutes to the matters currently before the Court. For the reasons set forth below, the NAIC urges this Court to carefully consider the effect of construing the Interstate Insurance Product Regulation Compact (“Compact”) and the uniform standards applicable to the insurance product at issue.

I. IDENTITY OF AMICUS CURIAE

Founded in 1871, the NAIC is the U.S. standard-setting and regulatory support organization created and governed by the chief insurance regulators from the 50 states, the District of Columbia, and five U.S. territories. Through the NAIC, state insurance regulators establish standards and best practices, conduct peer review, and coordinate regulatory oversight.

NAIC staff supports these efforts and represents the collective views of state regulators domestically and internationally. The NAIC members, together with the centralized resources of the NAIC, form the national system of state-based insurance regulation in the U.S.

The NAIC's purpose is to provide its members with a national forum enabling them to work cooperatively on regulatory matters that transcend the boundaries of their own jurisdictions. Collectively, the state insurance commissioners work to develop model legislation, rules, regulations, white papers and actuarial guidelines that promote and establish uniform regulatory policy. Their overriding objectives are to protect consumers as well as to assist in maintaining the financial stability of the insurance industry.

The NAIC performs numerous crucial services on behalf of state governments including: developing and publishing model laws, regulations, bulletins, financial and accounting standards, white papers, consumer guides, handbooks, periodicals and the *Proceedings of the NAIC*. Hundreds of federal and state laws assign duties to the NAIC and incorporate NAIC standards, models and other publications.¹ In addition, the NAIC manages and coordinates the accreditation of insurance departments' oversight of financial solvency of multi-state insurance companies as well as maintains regulatory and financial databases of insurance company financial data.

II. INTEREST OF AMICUS CURIAE

The interest of the NAIC in this case arises out of the NAIC's development of the Compact, which is the model law that created the Interstate Insurance Product Regulation Commission. *See* NAIC Model Laws, Regulations and Guidelines, 692-1 to 692-22, (2014).

¹ For example, 15 U.S.C. § 6751 calls for the NAIC to determine, in consultation with its members, whether the uniformity or reciprocity required by [the Gramm-Leach-Bliley Act of 1999 with regard to licensing of insurance agents and brokers] has been achieved. In Rhode Island, § 27-12.1-2 requires insurers authorized to transact insurance to file annual and quarterly financial statement with NAIC in the format and scope required by the Superintendent.

The widespread adoption and application of the Compact is directly impacted by the issues raised in this matter and relates to the Objection to the October 20, 2014 Report and Recommendation filed by New York Life, which the NAIC appears as *amicus curiae* to support. The NAIC and its members, particularly the 44 jurisdictions that have adopted the Compact in virtually identical versions, have a vested interest in judicial interpretations of the Compact. As the creator and author of the Compact, the NAIC has an interest in participating in litigation involving application of the Compact as adopted by the Rhode Island General Assembly, particularly at this early stage of proceedings, to assist the Court in understanding the application of state law based on an NAIC model.

Additionally, NAIC members urge the Court to carefully consider the potential impact of construing the Compact and the uniform standards applicable to the insurance product at issue on not only the 44 Compacting States that have adopted the Compact, but also the consumers who have purchased products approved by the Commission and the insurance industry investment tied to those insurance products. The insurance policy in this case is approved for use in 36 other states. As of the end of October 2014, the Commission has issued approval for more than 3,200 insurance products since it became operational in 2007. This represents more than 12,700 insurance “forms” or documents. Use of the Commission by insurers in the asset-based product lines of life insurance, annuities, long-term care insurance and disability income insurance has grown from 38 companies in its first full year to 197 companies in 2014, which averages a 23% annual increase. Insurance companies using the Commission represent close to 75% of the national market in these product lines. These numbers illustrate the potential impact of a decision that calls the legal effect of Commission approval under the uniform standards into question. With more insurance companies using the Commission every year for an increasing

proportion of their product portfolios every year, the potential for disruption to the marketplace of a decision undermining the Commission's authority is significant, which could have a ripple effect on the ability of the states to work together through the NAIC to implement solutions to insurance issues.

Given the NAIC's long-standing interest in promoting effective regulation as embodied by model laws and regulations, the NAIC and its members have unique technical expertise and a compelling interest to convey the significant regulatory and marketplace consequences at stake in this matter. Furthermore, NAIC members, the consumers they represent and the insurance companies they regulate are reliant on the products approved by the Commission under the uniform standards adopted by a supermajority of the Compacting States. The NAIC seeks to aid the Court by offering the legal and regulatory position and public policy perspective of the association and NAIC member states.

III. SUMMARY OF THE ARGUMENT

The filing of an objection to a Report and Recommendation results in a *de novo* determination of the matter subject to the objection. *See* 28 U.S.C. § 636(b)(1). This Court will decide based on its independent review whether to accept Magistrate Judge Sullivan's Report and Recommendation that R.I. Gen. Laws § 27-4-26 controls the interest rate applicable to the death benefit proceeds to be paid by New York Life. The NAIC believes this recommendation is erroneous and should be rejected because the Rhode Island General Assembly embraced application of the uniform standards for insurance products submitted to the Commission when it adopted the Compact, R.I. Gen. Laws § 27-2.5-1 to 27-2.5-2 (the "Compact Statute").

The issues raised in this litigation include several matters of general and national concern to the membership of the NAIC, whose primary charge is protecting insurance consumers:

1. By developing the Compact, as enacted by the Rhode Island General Assembly at R.I. Gen. Laws § 27-2.5-1 to 27-2.5-2, the NAIC and its members are protecting insurance consumers by authorizing and overseeing a legal mechanism that establishes uniform product requirements for certain insurance products that supplants the individual states' product requirements.
2. The Report and Recommendation overlooks a well-developed body of law regarding the principles and effect of interstate compacts on state law.
3. The Report and Recommendation should be rejected because it fails to apply the Compact Statute Properly.
4. The Defendant mischaracterizes the opt out provisions of the Compact Statute.

IV. ARGUMENT

1. **BY DEVELOPING THE COMPACT, AS ENACTED BY THE RHODE ISLAND GENERAL ASSEMBLY AT R.I. GEN. LAWS § 27-2.5-1 TO § 27-2.5-2,, THE NAIC AND ITS MEMBERS ARE PROTECTING INSURANCE CONSUMERS BY AUTHORIZING AND OVERSEEING A LEGAL MECHANISM THAT ESTABLISHES UNIFORM PRODUCT REQUIREMENTS FOR CERTAIN INSURANCE PRODUCTS THAT SUPPLANTS THE INDIVIDUAL STATES' PRODUCT REQUIREMENTS.**

A. **Background of the Compact**

Since the early 1990s, state insurance regulators acting collectively as the NAIC recognized the need to identify and make improvements in certain areas of state insurance regulation. Unlike other financial services industries that are regulated at the federal level, insurance is regulated by the states. Insurance companies doing business in more than one state could therefore be subject to compliance with varying or even conflicting requirements across the spectrum of regulation. State insurance regulators identified as one area for modernization the process for filing, review and approval of insurance products. This objective is referred to as

“speed-to-market.” Monitoring and complying with the insurance product requirements of all U.S. jurisdictions effects the speed at which insurance companies can bring new products to market.

In 1999, the Gramm-Leach Bliley Act opened up competition between insurance companies, banks and securities firms. New products that blended investment and insurance products faced hurdles in receiving state regulatory approval. This highlighted the differences in the product approval process, its expense and timeliness within the financial services marketplace. Additionally, satisfying state-specific requirements resulted in multiple versions of a single product and the ongoing costs of administering each version.

In light of these challenges, the NAIC recognized it was important for any speed-to-market solution to address not only the uniformity of content requirements applicable to new products, but also to streamline the review and approval process for products offered on a multi-state platform. The motion to adopt the Compact provided: “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.” NAIC Proceedings, 2002 Proc. 4th Quarter 10.

B. Identification of Compact as the Solution

NAIC members determined that certain insurance products lent themselves to uniform treatment. Investment- or asset-based products like life insurance and annuities are generally not dependent on where a person lives. For instance, life insurance for a forty-year-old non-smoking, female is generally the same whether that person lives in Rhode Island or in Arizona as life insurance is based on standard mortality tables. This is differentiated from certain coverage

like homeowners or automobile insurance where geographical location is critical in the underwriting process. Insuring a home in coastal South Carolina is based on different exposures than insuring a home in Kansas—hurricanes are not prevalent in the Midwest, but tornadoes and hail storms are.

The notion that a single point of filing could protect consumers across the country regardless of where the insurance was issued and where the insured resides at the time of claim was a key factor supporting uniform treatment. NAIC members recognized that there was increased mobility of the population and a greater need for uniformity of some product lines. NAIC Proceedings, 2003 Proc. 3rd Quarter 34. 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. NAIC Proceedings, 2002 Proc. 4th Quarter 9-10. They also recognized a need to have some form of centralized filing to ensure consistent application of the national standards.

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. NAIC Proceedings, 2003 Proc. 3rd Quarter 34. CARFRA made progress in developing product standards, but was not successful because there was a general consensus that in order to fully address state variations in filing requirements, state laws

and regulations would need to be changed. *Id.* Because of these uncertainties in applicable filing requirements, companies were not comfortable filing with CARFRA. *Id.*

State insurance regulators knew they needed a way to facilitate interstate cooperation and develop national uniform standards that would be applicable in multiple states. Over the course of three years of study, an interstate compact emerged as the ideal way to address this issue. NAIC Proceedings, 2002 Proc. 4th Quarter 10. The purpose of the Compact was to create a legal mechanism for a single point of filing for insurers to file their insurance products for regulatory review and approval. NAIC Proceedings, 2002 Proc. 2nd Quarter 44. An interstate compact with carefully limited authority to apply uniform product standards created and adopted by the Compacting States would replace existing single-state 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.” NAIC Proceedings, 2002 Proc. 4th Quarter 9-10.

An NAIC working group prepared an initial draft of what would become the Compact in 2002. NAIC Proceedings, 2003 Proc. 3rd Quarter 34. The NAIC adopted the initial model in December 2002 with the understanding that it would be a starting point for discussion with state legislators, attorneys general, governors and other stakeholders.

Recognizing that the delegation of limited regulatory authority to the Commission formed by the Compact must work seamlessly with the other facets of regulation and consumer protection delegated by state legislatures to insurance regulators and attorneys general, NAIC members worked closely with the National Conference of State Legislatures (“NCSL”), the National Conference of Insurance Legislators (“NCOIL”), the National Association of Attorneys General and other state officials to further refine and enhance the compact legislation. In July 2003, the NAIC adopted eight amendments to the Compact, which is the current version adopted

by each of the Compacting States.² The Compact was endorsed by NCSL and NCOIL, and both organizations continue to actively promote it.

The Interstate Insurance Product Regulation Compact was created in March 2004 with adoption of the Compact by Colorado and Utah, representing the initial offer and acceptance to form the contract. Rhode Island adopted the Compact Statute in 2004.³ Per its terms, the Commission passed its operational threshold of adoption by 26 states or 40% of the national premium volume in the subject product lines. Both thresholds were achieved in May 2006. With this, the NAIC members' speed-to-market solution changed from an important initiative to a separate body with statutory authority to exercise a limited regulatory function as an instrumentality of the Compacting States.⁴ Forty-three States and Puerto Rico have now adopted the Compact.⁵

The Compact Statute creates a Commission authorized to develop uniform standards for the asset-based insurance product lines of individual and group life insurance, annuities, disability income insurance and long-term care insurance. For each of these products, the Compact Statute authorizes the Commission to serve as a central clearinghouse for prompt review and regulatory approval of insurance products based on the uniform standards on behalf of the Compacting States.

By Compacting States agreeing that the uniform standards apply to products voluntarily submitted to the Commission, the Compact facilitates the goal of speed to market by enabling

² The Compact is attached as Exhibit A.

³ Rhode Island's legislation was adopted in P.L. 2004, ch. 463, §1.

⁴ Article III, ¶ 2 of the Compact Statute provides, "The commission is a body corporate and politic, and an instrumentality of the compacting states."

⁵ The Compacting States are Alabama, Alaska, Arizona, Arkansas, Colorado, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, New Hampshire, New Jersey, New Mexico, Nevada, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Puerto Rico, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming.

insurance companies to issue uniform products in the Compacting States without having to obtain separate regulatory approval from each of the member states. A greater number of insurers bringing to market more quickly a greater number of products on a single national platform increases competition to the benefit of the consumer. However, in order for the Compact to work and uniformity to be achieved, Compacting States agree to accept the approved terms of insurance policies approved by the Commission even in circumstances where the Commission applies uniform standards that differ from or conflict with similar state laws.

2. THE REPORT AND RECOMMENDATION OVERLOOKS A WELL-DEVELOPED BODY OF LAW REGARDING THE PRINCIPLES AND EFFECT OF INTERSTATE COMPACTS ON STATE LAW.

A. The Legal Mechanism of an Interstate Compact

Interstate compacts find their genesis in colonial days and hold a unique status in American law. *Hess v. Port Authority Trans-Hudson Corporation*, 513 U.S. 30 (1994). An interstate compact is a formal agreement between two or more states that binds the compacting states to the terms of the compact's provisions. Interstate compacts are entered into for the purpose of addressing a particular problem that transcends state boundaries and have the force and effect of statutory law. *See* Council of State Governments National Center for Interstate Compacts, *Compacts as a Tool of the Game* (<http://www.csg.org/knowledgecenter/docs/ncic/ToolGame.pdf>).

Compacts are creatures of both statutory and contract law. While a compact must be statutorily authorized, a compact is to be construed as a contract because of the mutuality in which states accept compact legislation. The first state to enact an interstate compact makes an offer—the presentation of a reciprocal law to other state legislatures. When succeeding states enact the same interstate compact, there is acceptance. The consideration for the compact contract is found in the creation of a cooperative mechanism to address an issue of mutual

interest. See *Tarrant Regional Water District v. Herrmann*, 133 S. Ct. 2120, 2123 (2013). Therefore, compacts, when properly enacted, are fully enforceable contracts between the members in addition to possessing statutory legal standing within each state. Caroline N. Broun *et al.*, *THE EVOLVING USE AND THE CHANGING ROLE OF INTERSTATE COMPACTS: A PRACTITIONER'S GUIDE* 17-18 (2006).

Compacts are fundamentally instruments for contractually allocating collective state governing authority. This requires the member states to cede a portion of their individual sovereignty for the collective good of the member states. As observed in a frequently-cited compact case, *Hellmuth v. Wash. Metro. Area Transit Auth.*, 414 F. Supp. 408, 409 (D. Md. 1976),

Upon entering into an interstate compact, a state effectively surrenders a portion of its sovereignty; the compact governs the relations of the parties with respect to the subject matter of the agreement and is superior to both prior and subsequent law. Further, when enacted, a compact constitutes not only law, but a contract which may not be amended, modified, or otherwise altered without the consent of all parties. It, therefore, appears settled that one party may not enact legislation which would impose burdens upon the compact absent the concurrence of the other signatories.

Id. at 409. In *Hellmuth*, the court held that Maryland's Freedom of Information Act did not apply to the Washington Metropolitan Area Transit Authority, which is the administrative body formed by the Washington Metropolitan Area Transit Regulation Compact, on the basis that the compact member states had not agreed to be bound by Maryland law. Therefore, no court could order relief inconsistent with or not supported by the terms of the compact.

The Contracts Clause of the U.S. Constitution prohibits the impairment of contracts, and that prohibition extends to contracts formed by interstate compacts. States enacting a compact form a contractual relationship and are restricted by the Contracts Clause of the U.S. Constitution and analogous provisions of the respective state constitutions from enacting laws that may impair

the obligation of the parties to the interstate compact. *West Virginia ex rel Dyer v. Sims*, 341 U.S. 22, 23, and 28 (1951); *Texas v. New Mexico*, 482 U.S. 124, 128 (1987). “The constitutional prohibition against impairing contracts embraces all contracts, whether between individuals or states, and under it a state has no more power to impair an obligation into which it has entered than to impair an obligation of individuals.”⁶

B. Judicial Enforcement of Compacts

Another aspect of an interstate compact that relies on contract law is that courts are bound to enforce the express terms of an interstate compact. The special nature of compacts and the need to preserve the cooperation they represent in addressing issues that transcend state borders have given rise to well-established principles for construing the effect of compact provisions. These principles do not represent a departure for courts, which routinely apply the express terms of statutes and the express terms of contracts. As discussed, compacts are both statutory and contractual. A court has no authority to rewrite the terms of a compact by inserting conflicting state law over a specific compact provision. Thus, it is consistent with the well-established role of the court to enforce the express terms of a compact. See *Texas v. New Mexico*, 462 U.S. 554, 564 (1983) (stating that unless a compact is unconstitutional, “no court may order relief inconsistent with its express terms”). “The first and last order of business of a court addressing an approved interstate compact is ‘interpreting the compact.’” BROWN at 63 (quoting *Texas v. New Mexico*, 462 U.S. 554, 567-68).

In *Hess v. Port Authority Trans-Hudson Corp.*, 513 U.S. 30 (1994), the U.S. Supreme Court declined to follow a Special Master’s recommendation to impose a tie-breaking vote that the subject compact did not provide for, finding that “An interstate compact, by its very nature

⁶ Michael Herbert and Brian Mayster, 200 Years of Interstate Cooperation: Could a State Tax Case Be the End?, State Tax Notes 211, Footnote 11 (April 15, 2013).

shifts a part of a state's authority to another state or states, or to the agency the several states jointly create to run the compact." *Hess*, 513 U.S. at 42 (quoting M. Ridgeway, *Interstate Compacts: A Question of Federalism* 300 (1971)).

Dating back to the earliest compact cases, courts have consistently held that one state may not apply state law outside of a compact to a compact when that law conflicts with the express terms of a compact." *Green v. Biddle*, 21 U.S. 1 (1823). This extends to laws a compacting state might enact both prior to or subsequent to entering a compact. *Id.*

The seminal compact case of *Green v. Biddle*, illustrates the concept. In 1781, Virginia enacted a compact surrendering all land west of the Ohio River to the United States, and the terms of this compact were subsequently written into the Constitution of Kentucky, resulting in Kentucky joining the compact. *Green* recites that "the compact provided that all private rights and interests of lands, derived from the laws of Virginia, shall remain valid and secure under the laws of Kentucky, and shall be determined by the laws then existing in Virginia." *Id.* at 13. The Supreme Court held that legislation subsequently enacted by Kentucky that restricted rights of titleholders under Virginia law unconstitutionally infringed on Virginia's right to surrender the land in accordance with the compact. "Kentucky, therefore, being a party to the compact which guaranteed to claimants of land lying in that state under titles derived from Virginia their rights as they existed under the laws of Virginia, was incompetent to violate that contract by passing any law which rendered those rights less valid and secure." *Id.* at 93-93. Analogizing the instant case to *Green*, even if § 27-4-26 had been enacted subsequent to the Compact Statute, it would not control over the uniform standard or operate to thwart the General Assembly's express intent that the uniform standards "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." Article IV, ¶ 1.

The nature of a compact as a binding contract specifically authorized by the legislature—the same body that created state law that facially conflicts with provisions authorized by a compact—takes precedence over state law, except to the extent a compact expressly allows party states to deviate from the compact’s terms. *See McComb v. Wambaugh*, 934 F.2d 474, 479 (3d Cir. 1991) (“Having entered into a contract, a participant state may not unilaterally change its terms. A Compact also takes precedence over statutory law in member states.”); *Int’l Union v. Delaware River Joint Toll Bridge Comm’n*, 311 F.3d 273, 281 (3d Cir. 2002) (explaining there is no basis to alter or amend a compact unless provided in the compact’s terms).

Recent cases construing interstate compacts follow the same reasoning. In *Gillette Co. v. Franchise Tax Board*, 209 Cal. App. 4th 938 (Cal. Ct. App. 2012), a California Court of Appeal held that the Multistate Tax Compact (“MTC”) is a valid interstate compact binding California to its provisions. The compact provision at issue in *Gillette* permitted taxpayers in a compact member state⁷ to elect to apportion income under the compact’s equally weighted three factor tax apportionment formula or a compact member state’s alternative formula. California joined the MTC in 1976,⁸ and in 1993 enacted legislation that purported to require most taxpayers to exclusively use a formula with double-weighted sales apportionment—potentially defeating the core tenet of the MTC permitting the taxpayer to elect which formula to use. *Gillette* argued that even after the 1993 enactment, the MTC required California to accept the compact’s equally weighted apportionment formula, while California’s Franchise Tax Board argued the MTC provided California the flexibility to establish an exclusive formula.

The Court of Appeal ruled against the Franchise Tax Board on three grounds. First, the MTC is a binding agreement among sovereign signatory states that California cannot unilaterally

⁷ <http://www.mtc.gov/The-Commission/Member-States>

⁸ Cal. Rev. & Tax Code Sec. 38001 *et seq.*

alter or amend. Second, the state cannot impair contracts under either the state or federal constitution. Third, the purported change runs afoul of the California constitution's reenactment rule, which is intended to prevent implied repeal of sections. The Court held that having entered into the MTC, California could not, by subsequent legislation, unilaterally alter or amend its terms. California could avoid the application of the apportionment election only by repealing the statutory provision adopting the MTC, thereby withdrawing from the compact. *See also Int'l Business Machines, Inc. v. Dept. of Treasury*, 852 N.W.2d 865 (Mich. 2014). A petition for review in *Gillette* was granted by the California Supreme Court, *Gillette v. Franchise Tax Bd.*, 291 P.3d 327 (Cal. 2013), whose decision could have an impact on compacts covering several aspects of interstate commerce, public safety and environmental protection.

3. THE REPORT AND RECOMMENDATION SHOULD BE REJECTED BECAUSE IT FAILS TO APPLY THE COMPACT STATUTE PROPERLY.

A. The Report and Recommendation mischaracterizes the Compact Statute as a general statute conflicting with other state law.

The Report and Recommendation describes the Compact Statute as a general statute and notes that the statute itself does not establish the interest rate for death benefit proceeds. This is a mischaracterization. It is accurate that § 27-4-26 specifically determines the interest for death benefit proceeds for policies issued in, and beneficiaries located in, Rhode Island. Likewise, the statutory framework created by the Compact Statute and the resulting Uniform Standards and Operating Procedures establish a specific regime for insurance products submitted to the Commission.

The Report and Recommendation mistakenly concludes there is a conflict between the Compact Statute and other parts of the insurance code where none exists. The legal framework of the Compact affords an avenue for review, approval and certification of insurance products

that runs parallel to, and does not conflict with, a single-state product review and approval regime. This parallel structure is illustrated by provisions of the Compact Statute that set up a seamless integration of Commission-approved insurance products into the broader regulatory scheme.

NAIC members, as authors of the Compact, were better positioned than any other body to understand that to achieve the goal of uniformity, the statutory framework the Compact establishes would have to both (1) install a new set of product requirements that would naturally match some state requirements and vary from other state requirements and (2) integrate with the broader regulatory scheme of protecting insurance companies' financial solvency and overseeing the marketing, sales and administration of insurance products for the benefit of consumers. It would not serve the goal of speed-to-market for NAIC members to have adopted the Compact and supported its enactment in 44 jurisdictions only to add complexity to the filing, review and approval process.

For instance, Article XVI, ¶1 of the Compact Statute begins by providing “[n]othing herein prevents the enforcement of any other law of a compacting state, except as provided in paragraph b of this Section.” Subparagraph b sets forth the exclusive authority of the uniform standards and other requirements of the Commission to govern the content, approval and certification of products filed with the Commission. This grant of exclusive authority is significant, but limited. NAIC members took care to identify other areas of insurance product regulation that remain the province of the chief insurance regulators outside of their roles as Compacting States. These provisions include:

- Article VIII, ¶ 4, The Commissioner of any State ... 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.” Market conduct means appropriate regulatory oversight of the ways insurance companies distribute their products in the marketplace.⁹ An example is that individual Compacting States retain authority to regulate the process by which insurance companies must determine and document that sales of life insurance and annuities are suitable for seniors and other consumers.

- Article X, ¶ 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.” This provision refers to the insurance company licensing process that remains the responsibility of individual Compacting States.
- Article XVI, ¶ 1c, “All insurance products filed with individual States shall be subject to the laws of those States.” This provision preserves the existing product requirements of the individual Compacting States and the right of insurance companies to submit products directly to a state insurance department under the single-state regimes that predate the Commission. The Report and Recommendation cites this provision to support the conclusion that § 27-4-26 controls the interest payable on the death benefit. To the contrary, the provision illustrates the limited statutory delegation of regulatory authority to the Commission by preserving the parallel single-state product approval regime for insurance companies that wish to use it, either because no uniform standards apply to a specific product design or for other reasons.

⁹ Key Issues: Market Conduct Regulation,
http://www.naic.org/cipr_topics/topic_market_conduct_regulation.htm.

B. The Report and Recommendation mischaracterizes the binding effect of the Compact Statute in light of other state laws.

The Report and Recommendation also misrepresents the operation of Compact Statute provisions that refer to restricting other state laws. By stating that the Compact Statute “only requires ‘uniform standards,’” the Report and Recommendation overlooks that the uniform standards are legally binding product requirements for insurance products filed with the Commission. The Compact Statute clearly and repeatedly states that the Commission’s rules and uniform standards, and its application of them to product filings, shall have the force and effect of law and be binding in the Compacting States. *See* Art. II, ¶ 12 (“‘rule’ means a statement of general or particular applicability and future effect promulgated by the commission, including a uniform standard ... , which shall have the force and effect of law in the compacting states”); Art. IV, ¶ 1 (empowering the Commission 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”); Art. IV, ¶ 3 (empowering the Commission 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”); Art. IV, ¶ 3 (empowering the Commission 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”).

No further evaluation of the uniform standards in comparison to other state requirements is necessary, because with regard to insurance products filed with the Commission, the uniform standards apply to the exclusion of other state law on the same subject. The Compact Statute defines this subject as the “content, certification and approval” of insurance products:

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.

Art. XVI, ¶ 1b. The terms of the Compact Statute provide that the uniform standards are the exclusive provisions applicable to the content of insurance products filed with the Commission. This is the key principle of the contract among Compacting States. Revisiting the purpose of developing the Compact, it is this commitment to adopt and uphold legally binding uniform standards that achieves the goal of uniformity and elimination of state variations in asset-based insurance products. Primacy of the uniform standards permits an insurer to prepare, file, market and administer an insurance product uniformly in all Compacting States.

Taking the implication of the Report and Recommendation to its logical extreme, if it were necessary to compare each provision of the uniform standards to other state content laws and only give effect to Compact Statute provisions and uniform standards that do not “abrogate or restrict” a specific state law would nullify the effect and benefit of the Compact Statute and thwart the legislative intent to provide an avenue for uniform product requirements and a central point of filing for asset-based insurance products.

The Report and Recommendation refers to several provisions of Article XVI that preserve individual Compacting States’ enforcement of laws outside of the Compact Statute and

misconstrues what these provisions mean. The Report and Recommendation reasons that “no action taken by the commission shall abrogate or restrict ... state law relating to the construction of insurance contracts” means that the Court may set aside the provision in the insurance contract and apply state law outside of the Compact Statute. For insurance products approved by the Commission, to give effect to state law outside of the Compact Statute defeats the uniform standard, the legal effect of the Compact Statute and the uniformity it is designed to provide. Furthermore, it is not clear what justifies looking outside of the insurance policy at issue to determine whether it has been breached. The provisions of Article XVI that uphold access to courts, remedies available under state law, and state law relating to the construction of contracts mean that a breach of contract action on a Commission-approved policy must prove the same elements and may receive the same relief as an insurance policy that was not submitted to the Commission for approval.

The bargain of the Compact is that an insurance product submitted to the Commission is subject to a specific, legally binding set of content requirements, and once approved, it enters the marketplace on equal footing with any other insurance contract. To set aside a policy provision under the guise of statutory construction is not supported by the Compact Statute. The Report and Recommendation misunderstands how the Compact Statute preserves enforcement of other state laws by the Compacting States.

C. The interest on death benefit proceeds provision in the uniform standards is consistent with applicable law in the Compacting States.

The Report and Recommendation expresses a sense of puzzlement with New York Life’s reliance on Commission approval governing the applicable interest rate on the policy proceeds, characterizing it as “sheer novelty.” To the extent this reaction is based on the difference between the 1% interest payable under the policy and 9% requested by the policy beneficiary, the

NAIC can aid the court with the context for the uniform standards requirement and the balance of consumer protections provided by the uniform standards as a whole.

As an initial matter, the uniform standards do not specify that an insurance product must contain a mirror image of the wording used in the applicable uniform standard to describe the provision. Similar to other uniform standards, the Individual Term Life Insurance Policy Standards contains a drafting note within the Scope provision that “[o]ther terms may be used in the policy provided that they are used consistently.” *See* Affidavit of Karen Z. Schutter [Dkt# 39-1], Ex. A., p. 2.

The uniform standards are neither unique nor an outlier in permitting the interest credited to life insurance proceeds to accrue at a rate established by the insurance company. According to published NAIC research,¹⁰ 15 states, 11 of them Compacting States, have the same wording in statutes addressing the interest payable from the date of death under policies filed directly with these states. This count of 15 states is surpassed only by the number of states that do not provide for any interest until a certain amount of time has passed from the insured’s death or when the insurer receives notice of the insured’s death. Twenty-two states specify some level of penalty interest due on late payments, 11 of which specify that the penalty interest rate is that established by the insurance company for funds on deposit. In other words, 26 states permit the interest rate to be determined by the insurance company as do the uniform standards. The research indicates that Rhode Island and two other states require interest to accrue at a specified rate from the date of death. Rhode Island does not require additional interest to accrue for late payments. Lastly, five jurisdictions do not appear to have minimum requirements for interest payable on life insurance policy proceeds.

This amount of variation on a single aspect of an insurance policy illustrates the careful

¹⁰ NAIC’s Compendium of State Laws on Insurance Topics, II-LI-10-1 to -8 (2014).

balance the uniform standards strike between various content requirements in the laws of the 44 Compacting States. By necessity, creating and adopting a comprehensive set of product requirements for insurance products filed with the Commission means that the uniform standards match some state requirements and vary from others. It is not possible, nor would it achieve the promise of uniformity, for the uniform standards to be consistent with the content requirements of each individual Compacting State. The Compact Statute contains a standard of reasonability for uniform standards¹¹ and specifically acknowledges that one of its purposes is 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.” Article I, ¶ 5. Beyond these goals, developing uniform standards involves careful weighing of consumer interests, existing state law, applicable NAIC models and other guidance and marketplace customs.¹²

For example, interest on the death benefit is payable from the date of the insured’s death, when several states do not require interest to accrue provided the death benefit is paid within a specified period of time from the date of death or from when the insurance company receives a claim. Other examples of strong consumer protections in the Individual Term Life Insurance Policy Standards include:

- Only post-dispute, voluntary, binding arbitration is permitted per § 3B(1);
- Any arbitration must be conducted where the policy owner or beneficiary resides, with the cost borne by the insurance company per § 3B(2) and (3);

¹¹ The Commission is empowered to “exercise its rule-making authority and establish reasonable Uniform Standards for Products covered under the Compact” by Article IV, ¶2 and required to “promulgate reasonable Rules, including Uniform Standards, and Operating Procedures in order to effectively and efficiently achieve the purposes of this Compact” by Article VII, ¶1.

¹² The uniform standards development process originated with the NAIC before the Commission became operational and in 2012 was fully transitioned to the Commission’s collaborative committee structure.

- A penalty interest rate of 10% annually applies to late death benefit payments, on top of the regular interest due under the policy, per § 3G(2)(c).

Outside of the uniform standards, Rhode Island law does not provide for any of these requirements.

The legal mechanism of interstate compacts and the binding nature of the uniform standards dictate that Commission-approved products will vary from products filed directly with the Compacting States. These variations are not limited to the interest payable on death benefit proceeds, but the bargain the General Assembly embraced by enacting the Compact Statute is that strong consumer protections, a single point of filing and the ability to issue uniform insurance products across the Compacting States outweigh the extent to which Rhode Island's product requirements are supplanted.

4. THE DEFENDANT MISCHARACTERIZES THE OPT OUT PROVISIONS OF THE COMPACT STATUTE.

Defendant Ortiz argues that Rhode Island opted out of the Compact Statute via § 27-4-26. While it is accurate that a Compacting State “may opt out of a uniform standard, either by legislation or regulation duly promulgated by the insurance department,” this argument suffers from two fatal flaws. First, it is not possible to opt out of a specific provision within a uniform standard. The sovereign right to opt out of a uniform standard applies on a per-product basis. The Compact Statute defines a uniform standard as “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.” Article II, ¶ 15. The interest on death benefit proceeds provision at issue in this case is one requirement within the aggregate uniform standards for individual term life insurance policies. A Compacting State may use the legislative or regulatory methods in Article VII, ¶ 4 to opt out of the Individual Term Life Insurance Policy Standards as a whole.

Secondly, the Compact Statute requires an affirmative step to exercise the right to opt out. The existence of a general law stating a different requirement than a specific provision within a uniform standard is fundamentally different from the opt-out procedure set forth in the Compact Statute. This is particularly relevant as applied to a law that predates enactment of the Compact Statute as does § 27-4-26. If legislation enacted prior to a state's enactment of the Compact constituted the affirmative step required to effect an opt out, it would defeat the purposes of the Compact and make it impossible to discern which requirements apply to products filed with the Commission. We have already observed that the uniform standards vary from state-specific product requirements by necessity. We have also discussed the well-settled precedent that the terms of the contract formed by an interstate compact supersede conflicting state laws enacted both prior and subsequent to the compact's enactment.

An interstate compact case issued in 2014, *Int'l Business Machines, Inc. v. Dept. of Treasury*, 852 N.W.2d 865 (Mich. 2014), addressed the argument that a state could withdraw from an interstate compact by implication. In reviewing a Michigan statute enacted after Michigan joined the MTC, the Court of Appeals found a facial conflict between the MTC and the Business Tax Act ("BTA") and concluded that the Legislature had repealed the Compact's election provision by implication when it enacted the BTA. *Id.* at 869. The Michigan Supreme Court subsequently observed that repeals by implication are disfavored and if the legislature had intended to repeal a statutory provision, it would have done so explicitly. *Id.* at 871. The Court noted that the legislature had full knowledge of the MTC and its provisions when it enacted the BTA. "Had the Legislature believed that the Compact's election provision no longer had a place in Michigan's tax system or conflicted with the purpose of the BTA, it could have taken the necessary action to eliminate the election provision." *Id.* at 874-74.

The Michigan Supreme Court found fault with the lower court’s “rigid focus on state law outside of the compact—to the exclusion of the language and history of the Compact, and its place in Michigan’s tax scheme.” *Id.* at 877. It ultimately concluded that “Any conflict apparent from a first reading of these statutes is reconcilable when the statutes are read *in pari material*,” so the Department of Treasury failed to rebut the presumption against repeals by implication. *Id.* It was possible to harmonize the compact and other state law on the same topic, allowing the compact provision being contested “to serve its purpose of providing uniformity to multistate taxpayers.” *Id.*

Applying these principles to the contention that § 27-4-26 implicitly opted out of legally binding uniform standards, an appreciation for the language and history of the Compact, including the specific opt-out methods it provides, should resolve the question. This Court should not entertain the notion that § 27-4-26 represents the General Assembly’s intent to opt out of uniform standards promulgated in accordance with the Compact Statute.

IV. CONCLUSION

For the reasons set forth above, the NAIC respectfully urges this Court to sustain Plaintiff’s Objection to the Report and Recommendation.

NATIONAL ASSOCIATION OF
INSURANCE COMMISSIONERS
By Its Attorneys,

/s/ R. Kelly Sheridan

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CERTIFICATION

The undersigned hereby certifies that a true copy of the within document was filed electronically with the above-captioned Court, and notices of electronic filing were sent to the following persons on December 22, 2014.

- Nicholas P. Brown, nbrown@pierceatwood.com, mjosgood@pierceatwood.com
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There are no recipients on the manual notice list for this case.

/s/ R. Kelly Sheridan

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.

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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.

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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;

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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;

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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;

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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,

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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

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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.

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- 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.

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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

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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

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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,

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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

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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.

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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

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- 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.

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Appendix A

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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.

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

2002 Proc. 4th Quarter 9-14, 14-24 (adopted).
2003 Proc. 3rd Quarter 35, 36-46 (amended and reprinted).