

WISCONSIN STATE
LEGISLATURE
COMMITTEE HEARING
RECORDS

2005-06

(session year)

Assembly

(Assembly, Senate or Joint)

Committee on
Insurance
(AC-In)

(Form Updated: 11/20/2008)

COMMITTEE NOTICES ...

➤ Committee Reports ... CR

**

➤ Executive Sessions ... ES

**

➤ Public Hearings ... PH

**

➤ Record of Comm. Proceedings ... RCP

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**INFORMATION COLLECTED BY COMMITTEE
FOR AND AGAINST PROPOSAL ...**

➤ Appointments ... Appt

**

Name:

➤ Clearinghouse Rules ... CRule

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➤ Hearing Records ... HR (bills and resolutions)

**

➤ Miscellaneous ... Misc

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(misc. to/from correspondence)

INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

Table of Contents

Article I.	Purposes
Article II.	Definitions
Article III.	Establishment of the Commission and Venue
Article IV.	Powers of the Commission
Article V.	Organization of the Commission
Article VI.	Meetings and Acts of the Commission
Article VII.	Rules & Operating Procedures: Rulemaking Functions of the Commission and Opting Out of Uniform Standards
Article VIII.	Commission Records and Enforcement
Article IX.	Dispute Resolution
Article X.	Product Filing and Approval
Article XI.	Review of Commission Decisions Regarding Filings
Article XII.	Finance
Article XIII.	Compacting States, Effective Date and Amendment
Article XIV.	Withdrawal, Default and Termination
Article XV.	Severability and Construction
Article XVI.	Binding Effect of Compact and Other Laws
Appendix A	

Article I. Purposes

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

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

6. To create the Interstate Insurance Product Regulation Commission; and
7. To perform these and such other related functions as may be consistent with the state regulation of the business of insurance.

Article II. Definitions

For purposes of this Compact:

1. "Advertisement" means any material designed to create public interest in a Product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy, as more specifically defined in the Rules and Operating Procedures of the Commission.
2. "Bylaws" mean those bylaws established by the Commission for its governance, or for directing or controlling the Commission's actions or conduct.
3. "Compacting State" means any State which has enacted this Compact legislation and which has not withdrawn pursuant to Article XIV, Section 1, or been terminated pursuant to Article XIV, Section 2.
4. "Commission" means the "Interstate Insurance Product Regulation Commission" established by this Compact.
5. "Commissioner" means the chief insurance regulatory official of a State including, but not limited to commissioner, superintendent, director or administrator.
6. "Domiciliary State" means the state in which an Insurer is incorporated or organized; or, in the case of an alien Insurer, its state of entry.
7. "Insurer" means any entity licensed by a State to issue contracts of insurance for any of the lines of insurance covered by this Act.
8. "Member" means the person chosen by a Compacting State as its representative to the Commission, or his or her designee.
9. "Non-compacting State" means any State which is not at the time a Compacting State.
10. "Operating Procedures" mean procedures promulgated by the Commission implementing a Rule, Uniform Standard or a provision of this Compact.
11. "Product" means the form of a policy or contract, including any application, endorsement, or related form which is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group

annuity, life insurance, disability income or long-term care insurance product that an Insurer is authorized to issue.

12. "Rule" means a statement of general or particular applicability and future effect promulgated by the Commission, including a Uniform Standard developed pursuant to Article VII of this Compact, designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the Commission, which shall have the force and effect of law in the Compacting States.
13. "State" means any state, district or territory of the United States of America.
14. "Third-Party Filer" means an entity that submits a Product filing to the Commission on behalf of an Insurer.
15. "Uniform Standard" means a standard adopted by the Commission for a Product line, pursuant to Article VII of this Compact, and shall include all of the Product requirements in aggregate; *provided*, that each Uniform Standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading or ambiguous provisions in a Product and the form of the Product made available to the public shall not be unfair, inequitable or against public policy as determined by the Commission.

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

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

Article III. Establishment of the Commission and Venue

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

Article IV. Powers of the Commission

The Commission shall have the following powers:

1. To promulgate Rules, pursuant to Article VII of this Compact, which shall have the force and effect of law and shall be binding in the Compacting States to the extent and in the manner provided in this Compact;
2. To exercise its rule-making authority and establish reasonable Uniform Standards for Products covered under the Compact, and Advertisement related thereto, which shall have the force and effect of law and shall be binding in the Compacting States, but only for those Products filed with the Commission, *provided*, that a Compacting State shall have the right to opt out of such Uniform Standard pursuant to Article VII, to the extent and in the manner provided in this Compact, and, *provided further*, that any Uniform Standard established by the Commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the National Association of Insurance Commissioners' Long-Term Care Insurance Model Act and Long-Term Care Insurance Model Regulation, respectively, adopted as of 2001. The Commission shall consider whether any subsequent amendments to the NAIC Long-Term Care Insurance Model Act or Long-Term Care Insurance Model Regulation adopted by the NAIC

require amending of the Uniform Standards established by the Commission for long-term care insurance products;

3. To receive and review in an expeditious manner Products filed with the Commission, and rate filings for disability income and long-term care insurance Products, and give approval of those Products and rate filings that satisfy the applicable Uniform Standard, where such approval shall have the force and effect of law and be binding on the Compacting States to the extent and in the manner provided in the Compact;
4. To receive and review in an expeditious manner Advertisement relating to long-term care insurance products for which Uniform Standards have been adopted by the Commission, and give approval to all Advertisement that satisfies the applicable Uniform Standard. For any product covered under this Compact, other than long-term care insurance products, the Commission shall have the authority to require an insurer to submit all or any part of its Advertisement with respect to that product for review or approval prior to use, if the Commission determines that the nature of the product is such that an Advertisement of the product could have the capacity or tendency to mislead the public. The actions of Commission as provided in this section shall have the force and effect of law and shall be binding in the Compacting States to the extent and in the manner provided in the Compact;

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

5. To exercise its rule-making authority and designate Products and Advertisement that may be subject to a self-certification process without the need for prior approval by the Commission.
6. To promulgate Operating Procedures, pursuant to Article VII of this Compact, which shall be binding in the Compacting States to the extent and in the manner provided in this Compact;
7. To bring and prosecute legal proceedings or actions in its name as the Commission; *provided*, that the standing of any state insurance department to sue or be sued under applicable law shall not be affected;
8. To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence;
9. To establish and maintain offices;
10. To purchase and maintain insurance and bonds;

11. To borrow, accept or contract for services of personnel, including, but not limited to, employees of a Compacting State;
12. To hire employees, professionals or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the Compact, and determine their qualifications; and to establish the Commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation and qualifications of personnel;
13. To accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; *provided* that at all times the Commission shall strive to avoid any appearance of impropriety;
14. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; *provided* that at all times the Commission shall strive to avoid any appearance of impropriety;
15. To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose of any property, real, personal or mixed;
16. To remit filing fees to Compacting States as may be set forth in the Bylaws, Rules or Operating Procedures;
17. To enforce compliance by Compacting States with Rules, Uniform Standards, Operating Procedures and Bylaws;

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

18. To provide for dispute resolution among Compacting States;
19. To advise Compacting States on issues relating to Insurers domiciled or doing business in Non-compacting jurisdictions, consistent with the purposes of this Compact;
20. To provide advice and training to those personnel in state insurance departments responsible for product review, and to be a resource for state insurance departments;
21. To establish a budget and make expenditures;
22. To borrow money;

23. To appoint committees, including advisory committees comprising Members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in the Bylaws;
24. To provide and receive information from, and to cooperate with law enforcement agencies;
25. To adopt and use a corporate seal; and
26. To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of the business of insurance.

Article V. Organization of the Commission

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

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

- b. Each Member shall be entitled to one vote and shall have an opportunity to participate in the governance of the Commission in accordance with the Bylaws. Notwithstanding any provision herein to the contrary, no action of the Commission with respect to the promulgation of a Uniform Standard shall be effective unless two-thirds (2/3) of the Members vote in favor thereof.
 - c. The Commission shall, by a majority of the Members, prescribe Bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes, and exercise the powers, of the Compact, including, but not limited to:

- i. Establishing the fiscal year of the Commission;
 - ii. Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the Management Committee;
 - iii. Providing reasonable standards and procedures: (i) for the establishment and meetings of other committees, and (ii) governing any general or specific delegation of any authority or function of the Commission;
 - iv. Providing reasonable procedures for calling and conducting meetings of the Commission that consists of a majority of Commission members, ensuring reasonable advance notice of each such meeting and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including trade secrets. The Commission may meet in camera only after a majority of the entire membership votes to close a meeting *en toto* or in part. As soon as practicable, the Commission must make public (i) a copy of the vote to close the meeting revealing the vote of each Member with no proxy votes allowed, and (ii) votes taken during such meeting;
 - v. Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the Commission;
 - vi. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the Commission. Notwithstanding any civil service or other similar laws of any Compacting State, the Bylaws shall exclusively govern the personnel policies and programs of the Commission;
 - vii. Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees; and
 - viii. Providing a mechanism for winding up the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment and/or reserving of all of its debts and obligations.
- d. The Commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the Compacting States.

2. Management Committee, Officers and Personnel

- a. A Management Committee comprising no more than fourteen (14) members shall be established as follows:
- i. One (1) member from each of the six (6) Compacting States with the largest premium volume for individual and group annuities, life, disability income and long-term care insurance products, determined from the records of the NAIC for the prior year;
 - ii. Four (4) members from those Compacting States with at least two percent (2%) of the market based on the premium volume described above, other than the six (6) Compacting States with the largest premium volume, selected on a rotating basis as provided in the Bylaws; and
 - iii. Four (4) members from those Compacting States with less than two percent (2%) of the market, based on the premium volume described above, with one (1) selected from each of the four (4) zone regions of the NAIC as provided in the Bylaws.

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

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

- b. The Management Committee shall have such authority and duties as may be set forth in the Bylaws, including but not limited to:
- i. Managing the affairs of the Commission in a manner consistent with the Bylaws and purposes of the Commission;
 - ii. Establishing and overseeing an organizational structure within, and appropriate procedures for, the Commission to provide for the

creation of Uniform Standards and other Rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a Compacting State to opt out of a Uniform Standard; *provided* that a Uniform Standard shall not be submitted to the Compacting States for adoption unless approved by two-thirds (2/3) of the members of the Management Committee;

- iii. Overseeing the offices of the Commission; and
 - iv. Planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the Commission.
- c. The Commission shall elect annually officers from the Management Committee, with each having such authority and duties, as may be specified in the Bylaws.
 - d. The Management Committee may, subject to the approval of the Commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the Commission may deem appropriate. The executive director shall serve as secretary to the Commission, but shall not be a Member of the Commission. The executive director shall hire and supervise such other staff as may be authorized by the Commission.

3. Legislative and Advisory Committees

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

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

4. Corporate Records of the Commission

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

5. Qualified Immunity, Defense and Indemnification

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

Article VI. Meetings and Acts of the Commission

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

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

1. **Rulemaking Authority.** The Commission shall promulgate reasonable Rules, including Uniform Standards, and Operating Procedures in order to effectively and efficiently achieve the purposes of this Compact. Notwithstanding the foregoing, in the event the Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this Act, or the powers granted hereunder, then such an action by the Commission shall be invalid and have no force and effect.
2. **Rulemaking Procedure.** Rules and Operating Procedures shall be made pursuant to a rulemaking process that conforms to the Model State Administrative Procedure Act of 1981 as amended, as may be appropriate to the operations of the Commission. Before the Commission adopts a Uniform Standard, the Commission shall give written notice to the relevant state legislative committee(s) in each Compacting State responsible for insurance issues of its intention to adopt the Uniform Standard. The Commission in adopting a Uniform Standard shall consider fully all submitted materials and issue a concise explanation of its decision.
3. **Effective Date and Opt Out of a Uniform Standard.** A Uniform Standard shall become effective ninety (90) days after its promulgation by the Commission or such later date as the Commission may determine; *provided, however,* that a Compacting State may opt out of a Uniform Standard as provided in this Article. "Opt out" shall be defined as any action by a Compacting State to decline to adopt or participate in a promulgated Uniform Standard. All other Rules and Operating Procedures, and amendments thereto, shall become effective as of the date specified in each Rule, Operating Procedure or amendment.
4. **Opt Out Procedure.** A Compacting State may opt out of a Uniform Standard, either by legislation or regulation duly promulgated by the Insurance Department

under the Compacting State's Administrative Procedure Act. If a Compacting State elects to opt out of a Uniform Standard by regulation, it must (a) give written notice to the Commission no later than ten (10) business days after the Uniform Standard is promulgated, or at the time the State becomes a Compacting State and (b) find that the Uniform Standard does not provide reasonable protections to the citizens of the State, given the conditions in the State. The Commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the State which warrant a departure from the Uniform Standard and determining that the Uniform Standard would not reasonably protect the citizens of the State. The Commissioner must consider and balance the following factors and find that the conditions in the State and needs of the citizens of the State outweigh: (i) the intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the Products subject to this Act; and (ii) the presumption that a Uniform Standard adopted by the Commission provides reasonable protections to consumers of the relevant Product.

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

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

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

Once the opt out of a Uniform Standard by a Compacting State becomes effective as provided under the laws of that State, the Uniform Standard shall have no further force and effect in that State unless and until the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the

laws of the State. If a Compacting State opts out of a Uniform Standard after the Uniform Standard has been made effective in that State, the opt out shall have the same prospective effect as provided under Article XIV for withdrawals.

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

Article VIII. Commission Records and Enforcement

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

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

insurers.

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

Drafting Note: It is not intended for the Compact to preempt a Compacting State's regulatory

authority to enforce State law pertaining to the manner in which the Products approved by the Commission are marketed, sold and administered in a Compacting State.

Article IX. Dispute Resolution

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

Article X. Product Filing and Approval

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

Article XI. Review of Commission Decisions Regarding Filings

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

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

Article XII. Finance

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

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

Article XIII. Compacting States, Effective Date and Amendment

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

Article XIV. Withdrawal, Default and Termination

1. Withdrawal
 - a. Once effective, the Compact shall continue in force and remain binding upon each and every Compacting State; *provided*, that a Compacting State may withdraw from the Compact ("Withdrawing State") by enacting a statute specifically repealing the statute which enacted the Compact into law.
 - b. The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any product filings approved or self-certified, or any Advertisement of such products, on the date the repealing statute becomes effective, except by mutual agreement of the Commission and the Withdrawing State unless the approval is rescinded by the Withdrawing State as provided in Paragraph e of this section.
 - c. The Commissioner of the Withdrawing State shall immediately notify the Management Committee in writing upon the introduction of legislation repealing this Compact in the Withdrawing State.

- d. The Commission shall notify the other Compacting States of the introduction of such legislation within ten (10) days after its receipt of notice thereof.
- e. The Withdrawing State is responsible for all obligations, duties and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the Commission and the Withdrawing State. The Commission's approval of Products and Advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the Withdrawing State, unless formally rescinded by the Withdrawing State in the same manner as provided by the laws of the Withdrawing State for the prospective disapproval of products or advertisement previously approved under state law.
- f. Reinstatement following withdrawal of any Compacting State shall occur upon the effective date of the Withdrawing State reenacting the Compact.

2. Default

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

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

3. Dissolution of Compact

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

Article XV. Severability and Construction

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

Article XVI. Binding Effect of Compact and Other Laws

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

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

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

2. Binding Effect of this Compact

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

Appendix A

Interstate Insurance Product Regulation Compact

Language for Preamble:

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

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

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

Language for those States where Preamble is considered insufficient:

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

Legislative History (all references are to the Proceedings of the NAIC)

2002 Proc. 3rd Quarter (adopted).

2003 Proc. 3rd Quarter (amended and reprinted).



PRESIDENT: SEN. STEVEN GELLER, FL
VICE PRESIDENT: REP. CRAND ELLARD, TX
SECRETARY: REP. FRANK WALD, ND
TREASURER: SEN. ALAN BAKER, MI
EXECUTIVE COMMITTEE CHAIR: REP. BRIAN KENNEDY, RI

November 20, 2004

The Honorable Michael Oxley
Chair, Financial Services Committee
2129 Rayburn House Office Building
Washington, D.C. 20515

The Honorable Richard Baker
Chair, Subcommittee on Capital Markets, Insurance,
& Government Sponsored Enterprises
2129 Rayburn House Office Building
Washington, D.C. 20515

Dear Chairmen Oxley and Baker:

We, the National Conference of Insurance Legislators (NCOIL) Executive Committee, are writing to convey our concerns with the State Modernization and Regulatory Transparency (SMART) Act discussion draft released on August 19, 2004. As we stated in a September 10 letter from NCOIL President State Senator Steven Geller (FL), the SMART Act is both unwise and unwarranted. We write now, as the governing body of NCOIL, to encourage you to revisit the draft in its current form.

NCOIL cannot support the SMART Act because it could:

- Undermine the role of state legislatures in the development of insurance public policy
- Undermine the authority of state insurance commissioners, who are elected in no fewer than 12 states, including the two most populous in the nation, as well as the authority of state insurance commissioners who are duly appointed by their elected governors
- Impose on taxpayers and consumers the costs of a new quasi-federal entity that very likely would evolve into a federal regulatory body
- Nullify and preempt many state insurance statutes that were enacted after input from consumers and businesses and after thoughtful consideration by state legislatures

- Hand over unprecedented legislative authority to the NAIC, a non-governmental organization not directly accountable to voters. This would:
 - generally, violate state sovereignty to make laws
 - specifically, nullify state authority that now exists under McCarran-Ferguson, requiring amendment of McCarran in order to eliminate a legislative anomaly

NCOIL cannot support any federal legislation that would encroach upon the states' authority to develop insurance public policy. Federal intervention in the regulation of insurance would cast aside the insurance public policy expertise of state legislatures and state insurance regulators in favor of an untested and inflexible system.

States are positioned best to bring about needed insurance regulatory reform. We have a long history of protecting consumers in the insurance marketplace, resulting in a far lower rate of scandal and consumer abuse than any other sector of the financial services industry, despite the fact that many states regulate a domestic insurance industry that dwarfs that of some developed countries. This is not a coincidence—insurance regulation closest to the consumer is best for the consumer.

State legislators have taken and will continue to take a leadership role in creating a more uniform, effective, and efficient state-based regulatory system that fosters innovation and a competitive insurance marketplace. To date, the states have made great strides enacting uniform laws in many of the areas of insurance regulation addressed in the SMART Act. Specifically:

- Forty-one states have enacted reciprocal producer licensing laws, exceeding the Congressional requirement of 29 jurisdictions
- Eight states have enacted uniform insurance product-approval laws. The compact legislation, which evolved from an NCOIL proposal described in testimony to your Committee in 1998 and in earlier NCOIL initiatives, has gained significant momentum.
- Twenty-four states have enacted property-casualty insurance rate deregulation. First embodied in an NCOIL model law in 1999, competitive rating in commercial insurance continues to be a hallmark of insurance rate regulatory reform. NCOIL adopted a model law in 2001 that extended competitive rating to personal lines, based on the Illinois approach. A flex-rating model adopted by NCOIL in 2004 is facilitating state initiatives toward more comprehensive competition. Further enactment of property-casualty regulatory reform is inevitable in 2005.
- All states have enacted consumer information privacy laws, based on model statutes offered to the states by NCOIL and the NAIC.

- Twenty-four states have adopted credit scoring legislation and/or regulation based on an NCOIL model law. No insurance issue has drawn greater attention in recent years than the use of credit history in the underwriting of insurance. The new state laws have been adopted after serious consumer, insurance industry, and academic input.
- States soon will consider legislation in the areas of market conduct regulation, insurance company licensing, and viatical settlements. NCOIL has adopted or supported NAIC model laws in each of these areas.

While state efforts aimed at modernization are far from complete, we believe we will have achieved comprehensive modernization and uniformity well before your proposal and the necessary amendments to McCarran wend their way through Congress.

The current system allows states to respond to specific marketplace issues resulting from such factors as geography, demographics, and consumer need. A one-size-fits-all approach to insurance regulation, as envisioned in the SMART Act, would straitjacket insurance regulation and place consumers at a significant disadvantage.

Despite opposition to the SMART Act, state legislators believe that Congress should play a role in insurance regulation, but that it should be a limited role. NCOIL believes Congress should continue to focus on insurance issues that are national in scope, such as terrorism insurance and natural disaster insurance.

We look forward to discussing regulatory modernization issues with you and would welcome you at future NCOIL meetings.

Sincerely yours,

Sen Steve Ellce, FL, President

Rep Craig Eiland, TX Vice President

Rep. James Dadd, N. D. SEC.

Senator Alan Searforn MI Treasurer

Rep Brian P. Kennedy RI - Chairman-Executive Committee

Rep George Heinze ND Chairman, IBL

Rep. Weyn M. Davids MN Chair Life Committee

Rep. Geoffrey C. Smith Chair House Insurance

Michael D. Bishop, State Senator, Mi chair Insurance

Pat Hume State Representative MI

Scott Funch Michigan State Representative 93rd Dist.

Falling Star MI State Rep 88th Dist.

Carroll H. Fennell, State Senate Dist 41 - New Mexico

Bill Walaska 5 Dist, Senator Dist. 30 R.I.

Sen. Quamrul H. Khan - Jim Poolman in Date

Loren R. Carter, State Representative, 93rd Dist, LA

Charles Young - chair of House Commerce Committee

~~V. C. (Milkey)~~ VT State Rep Windham 3-1, member of House Commerce Committee

Harvey S. Morgan, Delegate, Virginia, Chairman of Commerce + Labor Committee

James L. Seward, N.Y., Chair, State-Federal Relations Comm., NCOIL.

Chair, N.Y.S. Senate Insurance Committee

Sen. Bill Larkin, N.Y., NCOIL Past President

Harvey Tallackson, NH Senate, Past President, NCOIL

Rep. Lamy Taylor - TX

Sen. Joe Courtney, Conn.

Rep. Robert R. Dammann, KY

Rep. Terry Parke Illinois - Past NCOIL President

Assemblywoman Nancy Calhoun, New York

Rep. Shelly D. Bond - LA

Rep. Kathleen Keenan, NCOIL Past President & Health
Insurance Committee Chair

Sen. Neil Abeta, N.Y., Past Chair State Federal Relations Committee

cc: Sen. Richard Shelby
Rep. Barney Frank
Rep. Paul Kanjorski