



State of Wisconsin
2007 - 2008 LEGISLATURE

LRB-0843/P2
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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

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1 **AN ACT to repeal** 628.347 (1) (c); **to renumber and amend** 631.20 (1); **to amend**
2 628.347 (title), 628.347 (1) (b), 628.347 (2) (a), 628.347 (2) (b) 1., 628.347 (2) (b)
3 2., 628.347 (2) (b) 3., 628.347 (2) (b) 4., 628.347 (2) (c) (intro.), 628.347 (3) (f) 2.,
4 628.347 (5) (a), 628.347 (5) (b), 628.347 (5) (c), 628.347 (6) (b), 628.347 (6) (c),
5 628.347 (7), 628.347 (8) (a), 631.01 (3), 631.20 (2) (intro.), 631.20 (3), 631.20 (6)
6 (title), 631.20 (6) (a), 631.20 (6) (b), 631.36 (1) (a) and 655.24 (1); and **to create**
7 14.82, 601.58, 631.20 (1b), 631.20 (1c) (c), 631.20 (1g), 631.20 (1m), 631.20 (6)
8 (c) and 631.20 (6) (d) of the statutes; **relating to:** the Interstate Insurance
9 Product Regulation Compact, the Interstate Insurance Product Regulation
10 Commission, and granting rule-making authority.

Analysis by the Legislative Reference Bureau

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(This analysis addresses only the compact.)

This bill enacts the Interstate Insurance Product Regulation Compact (compact). The stated purposes of the compact include promoting and protecting the interests of consumers of annuity, life insurance, disability income, and long-term care insurance products (insurance products); developing uniform standards for insurance products; establishing a central clearinghouse for review of insurance

products, and advertisements related to insurance products, that are filed with the Interstate Insurance Product Regulation Commission (commission); and giving regulatory approval to insurance products and related advertisements filed with the commission. The compact accomplishes its purposes through the commission, which is created in the bill. Each compacting state has one member on the commission, with one vote. Under the bill, the commissioner of insurance, or his or her designee, is the commission member from this state.

The commission is a body politic and corporate. The bill specifies, among other things, all of the following related to the commission: its organization, including required management and legislative committees; its powers, including rule making; meeting, voting, and notice requirements; requirements related to record keeping and confidentiality of its records; liability, and immunity from liability, of its members; monitoring and enforcement of compliance by the compacting states with its rules, standards, bylaws, and operating procedures; the financing of its operations, including the imposition of fees; auditing requirements; and reporting requirements.

One of the most important functions of the commission is establishing uniform standards for insurance products, which have the force and effect of law in the states that enact the compact for products filed with the commission. The uniform standards relate to the form of a policy or contract, including an application and evidence of coverage, for an insurance product and are intended to prohibit the use of inconsistent, misleading, or ambiguous provisions in insurance products. Before adopting a uniform standard, the commission must give written notice to the legislative committees of the compacting states with jurisdiction over insurance matters. A uniform standard becomes effective 90 days after it is promulgated by the commission, or at a later date determined by the commission. However, a compacting state may opt out of a uniform standard, by legislation or administrative rule, in accordance with procedures outlined in the bill. In addition, when enacting the compact a compacting state may prospectively opt out of all uniform standards established by the commission relating to long-term care insurance products; under this bill, however, Wisconsin does not prospectively opt out of those uniform standards.

Under current law, except for certain very limited types of insurance, all insurance forms must be filed with and approved by the commissioner of insurance before they may be used in this state. Under the bill, an important function of the commission is receiving and reviewing insurance products, rate filings for disability income and long-term care insurance products, and advertisements relating to long-term care insurance products for which the commission has developed uniform standards, which are voluntarily filed with the commission by insurers seeking the approval of the commission. The commission may approve those insurance products, rate filings, and advertisements that satisfy applicable uniform standards adopted by the commission. The approval has the force and effect of law in the compacting states, and any insurance product that is approved by the commission may be sold in any of the compacting states. In addition, if the commission determines that the advertisement of an insurance product, other than a long-term care insurance

product, could have the capacity or tendency to mislead the public, the commission may require an insurer to submit its advertisement for that insurance product for the commission's review or approval before the advertisement may be used. The commission may also designate products and advertisement that may be self-certified without prior approval by the commission.

The bill provides that the compact becomes effective and binding when two states enact it, except that the commission becomes effective for purposes of adopting uniform standards and reviewing and approving insurance products only after 26 states, or states representing greater than 40 percent of the premium volume for insurance products, become compacting states. In general, only states that enact the compact are subject to its provisions and the authority of the commission. The bill provides that a state may withdraw from the compact by repealing its enacting statute. A compacting state may be terminated from the compact if it defaults in the performance of any of its obligations or responsibilities under the compact.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 14.82 of the statutes is created to read:

2 **14.82 Interstate insurance product regulation commission.** There is
3 created an interstate insurance product regulation commission as specified in s.
4 601.58 (3). The member of the commission representing this state shall be the
5 commissioner of insurance or his or her designated representative. The commission
6 member shall serve without compensation but shall be reimbursed from the
7 appropriation under s. 20.145 (1) (g) for actual and necessary expenses incurred in
8 the performance of his or her duties. The commission has the powers and duties
9 granted and imposed under s. 601.58.

10 **SECTION 2.** 601.58 of the statutes is created to read:

11 **601.58 Interstate insurance product regulation compact.** The interstate
12 insurance product regulation compact is hereby enacted into law and entered into

Insert 3-9 ✓

1 by this state with all other jurisdictions legally joining therein, in substantially the
2 following form:

3 (1) ARTICLE I - PURPOSES. Through means of joint and cooperative action among
4 the compacting states, the purposes of this compact include all of the following:

5 (a) To promote and protect the interest of consumers of individual and group
6 annuity, life insurance, disability income, and long-term care insurance products.

7 (b) To develop uniform standards for insurance products covered under the
8 compact.

9 (c) To establish a central clearinghouse to receive and provide prompt review
10 of insurance products covered under the compact and, in certain cases,
11 advertisements related thereto, submitted by insurers authorized to do business in
12 one or more compacting states.

13 (d) To give appropriate regulatory approval to those product filings and
14 advertisements satisfying the applicable uniform standard.

15 (e) To improve coordination of regulatory resources and expertise between state
16 insurance departments regarding the setting of uniform standards and review of
17 insurance products covered under the compact.

18 (f) To create the interstate insurance product regulation commission.

19 (g) To perform these and such other related functions as may be consistent with
20 the state regulation of the business of insurance.

21 (2) ARTICLE II - DEFINITIONS. In this compact:

22 (a) "Advertisement" means any material designed to create public interest in
23 a product or to induce the public to purchase, increase, modify, reinstate, borrow on,
24 surrender, replace, or retain a policy, as more specifically defined in the rules and
25 operating procedures of the commission.

1 (b) "Bylaws" mean those bylaws established by the commission for its
2 governance, or for directing or controlling the commission's actions or conduct.

3 (c) "Commission" means the interstate insurance product regulation
4 commission established by this compact.

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

8 (e) "Compacting state" means any state that has enacted this compact
9 legislation and that has not withdrawn under sub. (14) (a) or been terminated under
10 sub. (14) (g).

11 (f) "Domiciliary state" means the state in which an insurer is incorporated or
12 organized; or, in the case of an alien insurer, its state of entry.

13 (g) "Insurer" means any entity licensed by a state to issue contracts of
14 insurance for any of the lines of insurance covered by this section.

15 (h) "Member" means the person chosen by a compacting state as its
16 representative to the commission, or his or her designee.

17 (i) "Noncompacting state" means any state that is not at the time a compacting
18 state.

19 (j) "Operating procedures" mean procedures promulgated by the commission
20 implementing a rule, a uniform standard, or a provision of this compact.

21 (k) "Product" means the form of a policy or contract, including any application,
22 endorsement, or related form that is attached to and made a part of the policy or
23 contract, and any evidence of coverage or certificate, for an individual or group
24 annuity, life insurance, disability income, or long-term care insurance product that
25 an insurer is authorized to issue.

1 (L) To hire employees, professionals, or specialists, and elect or appoint officers,
2 and to fix their compensation, define their duties and give them appropriate
3 authority to carry out the purposes of the compact, and determine their
4 qualifications; and to establish the commission's personnel policies and programs
5 relating to, among other things, conflicts of interest, rates of compensation, and
6 qualifications of personnel.

7 (m) "State" means any state, district, or territory of the United States of
8 America.

9 (n) "Third-party filer" means an entity that submits a product filing to the
10 commission on behalf of an insurer.

11 (o) "Uniform standard" means a standard adopted by the commission for a
12 product line, pursuant to sub. (7), and shall include all of the product requirements
13 in the aggregate; provided, that each uniform standard shall be construed, whether
14 express or implied, to prohibit the use of any inconsistent, misleading, or ambiguous
15 provisions in a product and the form of the product made available to the public shall
16 not be unfair, inequitable, or against public policy as determined by the commission.

17 **(3) ARTICLE III - ESTABLISHMENT OF THE COMMISSION AND VENUE.** The compacting
18 states hereby create the interstate insurance product regulation commission.
19 Pursuant to sub. (4), the commission will have the power to develop uniform
20 standards for product lines, receive and provide prompt review of products filed
21 therewith, and give approval to those product filings satisfying applicable uniform
22 standards; provided, that it is not intended for the commission to be the exclusive
23 entity for receipt and review of insurance product filings. Nothing herein shall
24 prohibit any insurer from filing its product in any state wherein the insurer is
25 licensed to conduct the business of insurance, and any such filing shall be subject to

1 the laws of the state where filed. The commission is a body corporate and politic, and
2 an instrumentality of the compacting states. The commission is solely responsible
3 for its liabilities except as otherwise specifically provided in this compact. Venue is
4 proper and judicial proceedings by or against the commission shall be brought solely
5 and exclusively in a court of competent jurisdiction where the principal office of the
6 commission is located.

7 (4) ARTICLE IV - POWERS OF THE COMMISSION. The commission shall have all of
8 the following powers:

9 (a) To promulgate rules, pursuant to sub. (7), which shall be binding in the
10 compacting states to the extent and in the manner provided in this compact.

11 (b) To exercise its rule-making authority and establish reasonable uniform
12 standards for products covered under the compact, and advertisement related
13 thereto, which shall have the force and effect of law and shall be binding in the
14 compacting states, but only for those products filed with the commission; provided,
15 that a compacting state shall have the right to opt out of such uniform standard
16 pursuant to sub. (7), to the extent and in the manner provided in this compact; and
17 provided further, that any uniform standard established by the commission for
18 long-term care insurance products may provide the same or greater protections for
19 consumers as, but shall not provide less than, those protections set forth in the
20 National Association of Insurance Commissioners' Long-Term Care Insurance
21 Model Act and Long-Term Care Insurance Model Regulation, respectively, adopted
22 as of 2001. The commission shall consider whether any subsequent amendments to
23 the National Association of Insurance Commissioners' Long-Term Care Insurance
24 Model Act or Long-Term Care Insurance Model Regulation adopted by the National

1 Association of Insurance Commissioners require amending of the uniform standards
2 established by the commission for long-term care insurance products.

3 (c) To receive and review in an expeditious manner products filed with the
4 commission, and rate filings for disability income and long-term care insurance
5 products, and give approval of those products and rate filings that satisfy the
6 applicable uniform standard, where such approval shall have the force and effect of
7 law and be binding on the compacting states to the extent and in the manner
8 provided in the compact.

9 (d) To receive and review in an expeditious manner advertisement relating to
10 long-term care insurance products for which uniform standards have been adopted
11 by the commission, and give approval to all advertisement that satisfies the
12 applicable uniform standard. For any product covered under this compact, other
13 than long-term care insurance products, the commission shall have the authority to
14 require an insurer to submit all or any part of its advertisement with respect to that
15 product for review or approval prior to use, if the commission determines that the
16 nature of the product is such that an advertisement of the product could have the
17 capacity or tendency to mislead the public. The actions of the commission as
18 provided in this subsection shall have the force and effect of law and shall be binding
19 in the compacting states to the extent and in the manner provided in the compact.

20 (e) To exercise its rule-making authority and designate products and
21 advertisement that may be subject to a self-certification process without the need
22 for prior approval by the commission.

23 (f) To promulgate operating procedures, pursuant to sub. (7), that shall be
24 binding in the compacting states to the extent and in the manner provided in this
25 compact.

1 (g) To bring and prosecute legal proceedings or actions in its name as the
2 commission; provided, that the standing of any state insurance department to sue
3 or be sued under applicable law shall not be affected.

4 (h) To issue subpoenas requiring the attendance and testimony of witnesses
5 and the production of evidence.

6 (i) To establish and maintain offices.

7 (j) To purchase and maintain insurance and bonds.

8 (k) To borrow, accept, or contract for services of personnel, including, but not
9 limited to, employees of a compacting state.

10 (L) To hire employees, professionals, or specialists, and elect or appoint officers,
11 and to fix their compensation, define their duties and give them appropriate
12 authority to carry out the purposes of the compact, and determine their
13 qualifications; and to establish the commission's personnel policies and programs
14 relating to, among other things, conflicts of interest, rates of compensation, and
15 qualifications of personnel.

16 (m) To accept any and all appropriate donations and grants of money,
17 equipment, supplies, materials, and services, and to receive, utilize, and dispose of
18 the same; provided, that at all times the commission shall strive to avoid any
19 appearance of impropriety.

20 (n) To lease, purchase, accept appropriate gifts or donations of, or otherwise
21 own, hold, improve, or use, any property, real, personal, or mixed; provided, that at
22 all times the commission shall strive to avoid any appearance of impropriety.

23 (o) To sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise
24 dispose of any property, real, personal, or mixed.

1 (p) To remit filing fees to compacting states as may be set forth in the bylaws,
2 rules, or operating procedures.

3 (q) To enforce compliance by compacting states with rules, uniform standards,
4 operating procedures, and bylaws.

5 (r) To provide for dispute resolution among compacting states.

6 (s) To advise compacting states on issues relating to insurers domiciled or doing
7 business in noncompacting jurisdictions, consistent with the purposes of this
8 compact.

9 (t) To provide advice and training to those personnel in state insurance
10 departments responsible for product review, and to be a resource for state insurance
11 departments.

12 (u) To establish a budget and make expenditures.

13 (v) To borrow money.

14 (w) To appoint committees, including advisory committees comprising
15 members, state insurance regulators, state legislators or their representatives,
16 insurance industry and consumer representatives, and such other interested
17 persons as may be designated in the bylaws.

18 (x) To provide and receive information from, and to cooperate with, law
19 enforcement agencies.

20 (y) To adopt and use a corporate seal.

21 (z) To perform such other functions as may be necessary or appropriate to
22 achieve the purposes of this compact consistent with the state regulation of the
23 business of insurance.

24 **(5) ARTICLE V - ORGANIZATION OF THE COMMISSION.** (a) Each compacting state
25 shall have one member. Each member shall be qualified to serve in such capacity

1 under the applicable law of the compacting state. Any member may be removed or
2 suspended from office as provided by the law of the state from which he or she shall
3 be appointed. Any vacancy occurring in the commission shall be filled in accordance
4 with the laws of the compacting state wherein the vacancy exists. Nothing herein
5 shall be construed to affect the manner in which a compacting state determines the
6 election or appointment and qualification of its own commissioner.

7 (b) Each member shall be entitled to one vote and shall have an opportunity
8 to participate in the governance of the commission in accordance with the bylaws.
9 Notwithstanding any provision herein to the contrary, no action of the commission
10 with respect to the promulgation of a uniform standard shall be effective unless
11 two-thirds of the members vote in favor thereof.

12 (c) The commission shall, by a majority of the members, prescribe bylaws to
13 govern its conduct as may be necessary or appropriate to carry out the purposes, and
14 exercise the powers, of the compact, including, but not limited to:

- 15 1. Establishing the fiscal year of the commission.
- 16 2. Providing reasonable procedures for appointing and electing members, as
17 well as holding meetings, of the management committee.
- 18 3. Providing reasonable standards and procedures for all of the following:
 - 19 a. The establishment and meetings of other committees.
 - 20 b. Governing any general or specific delegation of any authority or function of
21 the commission.
- 22 4. Providing reasonable procedures for calling and conducting meetings of the
23 commission that consist of a majority of commission members, ensuring reasonable
24 advance notice of each such meeting, and providing for the right of citizens to attend
25 each such meeting with enumerated exceptions designed to protect the public's

1 interest, the privacy of individuals, and insurers' proprietary information, including
2 trade secrets. The commission may meet in camera only after a majority of the entire
3 membership votes to close a meeting en toto or in part. As soon as practicable, the
4 commission must make public all of the following:

5 a. A copy of the vote to close the meeting revealing the vote of each member with
6 no proxy votes allowed.

7 b. Votes taken during such meeting.

8 5. Establishing the titles, duties, and authority, and reasonable procedures for
9 the election, of the officers of the commission.

10 6. Providing reasonable standards and procedures for the establishment of the
11 personnel policies and programs of the commission. Notwithstanding any civil
12 service or other similar laws of any compacting state, the bylaws shall exclusively
13 govern the personnel policies and programs of the commission.

14 7. Promulgating a code of ethics to address permissible and prohibited
15 activities of commission members and employees.

16 8. Providing a mechanism for winding up the operations of the commission and
17 the equitable disposition of any surplus funds that may exist after the termination
18 of the compact after the payment or reserving of all of its debts and obligations.

19 (d) The commission shall publish its bylaws in a convenient form and file a copy
20 thereof and a copy of any amendment thereto, with the appropriate agency or officer
21 in each of the compacting states.

22 (e) A management committee comprising no more than 14 members shall be
23 established as follows:

24 1. One member from each of the 6 compacting states with the largest premium
25 volume for individual and group annuities, life insurance, disability income, and

1 long-term care insurance products, determined from the records of the National
2 Association of Insurance Commissioners for the prior year.

3 2. Four members from those compacting states with at least 2 percent of the
4 market based on the premium volume described in subd. 1., other than the 6
5 compacting states with the largest premium volume, selected on a rotating basis as
6 provided in the bylaws.

7 3. Four members from those compacting states with less than 2 percent of the
8 market, based on the premium volume described in subd. 1., with one selected from
9 each of the 4 zone regions of the National Association of Insurance Commissioners
10 as provided in the bylaws.

11 (f) The management committee shall have such authority and duties as may
12 be set forth in the bylaws, including, but not limited to, all of the following:

13 1. Managing the affairs of the commission in a manner consistent with the
14 bylaws and purposes of the commission.

15 2. Establishing and overseeing an organizational structure within, and
16 appropriate procedures for, the commission to provide for the creation of uniform
17 standards and other rules, receipt and review of product filings, administrative and
18 technical support functions, review of decisions regarding the disapproval of a
19 product filing, and the review of elections made by a compacting state to opt out of
20 a uniform standard; provided, that a uniform standard shall not be submitted to the
21 compacting states for adoption unless approved by two-thirds of the members of the
22 management committee.

23 3. Overseeing the offices of the commission.

1 4. Planning, implementing, and coordinating communications and activities
2 with other state, federal, and local government organizations in order to advance the
3 goals of the commission.

4 (g) The commission shall elect annually officers from the management
5 committee, with each having such authority and duties as may be specified in the
6 bylaws.

7 (h) The management committee may, subject to the approval of the commission,
8 appoint or retain an executive director for such period, upon such terms and
9 conditions, and for such compensation as the commission determines appropriate.
10 The executive director shall serve as secretary to the commission, but may not be a
11 member of the commission. The executive director shall hire and supervise such
12 other staff as may be authorized by the commission.

13 (i) A legislative committee comprising state legislators or their designees shall
14 be established to monitor the operations of, and make recommendations to, the
15 commission, including the management committee; provided, that the manner of
16 selection and term of any legislative committee member shall be as set forth in the
17 bylaws. Prior to the adoption by the commission of any uniform standard, revision
18 to the bylaws, annual budget, or other significant matter as may be provided in the
19 bylaws, the management committee shall consult with and report to the legislative
20 committee.

21 (j) The commission shall establish 2 advisory committees, one of which shall
22 comprise consumer representatives independent of the insurance industry, and the
23 other comprising insurance industry representatives.

24 (k) The commission may establish additional advisory committees as its bylaws
25 may provide for the carrying out of its functions.

1 (L) The commission shall maintain its corporate books and records in
2 accordance with the bylaws.

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

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

23 (o) The commission shall indemnify and hold harmless any member, officer,
24 executive director, employee, or representative of the commission for the amount of
25 any settlement or judgment obtained against that person arising out of any actual

1 or alleged act, error, or omission that occurred within the scope of commission
2 employment, duties, or responsibilities, or that such person had a reasonable basis
3 for believing occurred within the scope of commission employment, duties, or
4 responsibilities; provided, that the actual or alleged act, error, or omission did not
5 result from the intentional or willful and wanton misconduct of that person.

6 (6) ARTICLE VI - MEETINGS AND ACTS OF THE COMMISSION. (a) The commission
7 shall meet and take such actions as are consistent with the provisions of this compact
8 and the bylaws.

9 (b) Each member of the commission shall have the right and power to cast a vote
10 to which that compacting state is entitled and to participate in the business and
11 affairs of the commission. A member shall vote in person or by such other means as
12 provided in the bylaws. The bylaws may provide for members' participation in
13 meetings by telephone or other means of communication.

14 (c) The commission shall meet at least once during each calendar year.
15 Additional meetings shall be held as set forth in the bylaws.

16 (7) ARTICLE VII - RULES AND OPERATING PROCEDURES; RULE-MAKING FUNCTIONS
17 OF THE COMMISSION AND OPTING OUT OF UNIFORM STANDARDS. (a) The commission shall
18 promulgate reasonable rules, including uniform standards, and operating
19 procedures in order to effectively and efficiently achieve the purposes of this
20 compact. Notwithstanding the foregoing, in the event the commission exercises its
21 rule-making authority in a manner that is beyond the scope of the purposes of this
22 section, or the powers granted hereunder, then such an action by the commission
23 shall be invalid and have no force and effect.

24 (b) Rules and operating procedures shall be made pursuant to a rule-making
25 process that conforms to the Model State Administrative Procedure Act of 1981 as

1 amended, as may be appropriate to the operations of the commission. Before the
2 commission adopts a uniform standard, the commission shall give written notice to
3 all relevant state legislative committees in each compacting state responsible for
4 insurance issues of its intention to adopt the uniform standard. The commission in
5 adopting a uniform standard shall consider fully all submitted materials and issue
6 a concise explanation of its decision.

7 (c) A uniform standard shall become effective 90 days after its promulgation
8 by the commission or such later date as the commission may determine; provided,
9 that a compacting state may opt out of a uniform standard as provided in this
10 subsection. "Opt out" shall be defined as any action by a compacting state to decline
11 to adopt or participate in a promulgated uniform standard. All other rules and
12 operating procedures, and amendments thereto, shall become effective as of the date
13 specified in each rule, operating procedure, or amendment.

14 (d) 1. A compacting state may opt out of a uniform standard either by legislation
15 or regulation duly promulgated by the insurance department under the compacting
16 state's administrative procedure act. If a compacting state elects to opt out of a
17 uniform standard by regulation, it must give written notice to the commission no
18 later than 10 business days after the uniform standard is promulgated, or at the time
19 the state becomes a compacting state, and find that the uniform standard does not
20 provide reasonable protections to the citizens of the state, given the conditions in the
21 state. The commissioner shall make specific findings of fact and conclusions of law,
22 based on a preponderance of the evidence, detailing the conditions in the state that
23 warrant a departure from the uniform standard and determining that the uniform
24 standard would not reasonably protect the citizens of the state. The commissioner

1 must consider and balance all of the following factors and find that the conditions in
2 the state and needs of the citizens of the state outweigh all of the following factors:

3 a. The intent of the legislature to participate in, and the benefits of, an
4 interstate agreement to establish national uniform consumer protections for the
5 products subject to this section.

6 b. The presumption that a uniform standard adopted by the commission
7 provides reasonable protections to consumers of the relevant product.

8 2. Notwithstanding subd. 1., a compacting state may, at the time of its
9 enactment of this compact, prospectively opt out of all uniform standards involving
10 long-term care insurance products by expressly providing for such opt out in the
11 enacted compact, and such an opt out may not be treated as a material variance in
12 the offer or acceptance of any state to participate in this compact. Such an opt out
13 shall be effective at the time of enactment of this compact by the compacting state
14 and shall apply to all existing uniform standards involving long-term care insurance
15 products and those subsequently promulgated.

16 (e) If a compacting state elects to opt out of a uniform standard, the uniform
17 standard shall remain applicable in the compacting state electing to opt out until
18 such time as the opt out legislation is enacted into law or the regulation opting out
19 becomes effective. Once the opt out of a uniform standard by a compacting state
20 becomes effective as provided under the laws of that state, the uniform standard
21 shall have no further force or effect in that state unless and until the legislation or
22 regulation implementing the opt out is repealed or otherwise becomes ineffective
23 under the laws of the state. If a compacting state opts out of a uniform standard after
24 the uniform standard has been made effective in that state, the opt out shall have
25 the same prospective effect as provided under sub. (14) for withdrawals.

1 (f) If a compacting state has formally initiated the process of opting out of a
2 uniform standard by regulation, and while the regulatory opt out is pending, the
3 compacting state may petition the commission, at least 15 days before the effective
4 date of the uniform standard, to stay the effectiveness of the uniform standard in that
5 state. The commission may grant a stay if it determines the regulatory opt out is
6 being pursued in a reasonable manner and there is a likelihood of success. If a stay
7 is granted or extended by the commission, the stay or extension thereof may postpone
8 the effective date by up to 90 days, unless affirmatively extended by the commission;
9 provided, that a stay may not be permitted to remain in effect for more than one year
10 unless the compacting state can show extraordinary circumstances that warrant a
11 continuance of the stay, including, but not limited to, the existence of a legal
12 challenge that prevents the compacting state from opting out. A stay may be
13 terminated by the commission upon notice that the rule-making process has been
14 terminated.

15 (g) Not later than 30 days after a rule or operating procedure is promulgated,
16 any person may file a petition for judicial review of the rule or operating procedure;
17 provided, that the filing of such a petition may not stay or otherwise prevent the rule
18 or operating procedure from becoming effective unless the court finds that the
19 petitioner has a substantial likelihood of success. The court shall give deference to
20 the actions of the commission consistent with applicable law and shall not find the
21 rule or operating procedure to be unlawful if the rule or operating procedure
22 represents a reasonable exercise of the commission's authority.

23 **(8) ARTICLE VIII - COMMISSION RECORDS AND ENFORCEMENT.** (a) The commission
24 shall promulgate rules establishing conditions and procedures for public inspection
25 and copying of its information and official records, except such information and

1 records involving the privacy of individuals and insurers' trade secrets. The
2 commission may promulgate additional rules under which it may make available to
3 federal and state agencies, including law enforcement agencies, records and
4 information otherwise exempt from disclosure, and may enter into agreements with
5 such agencies to receive or exchange information or records subject to nondisclosure
6 and confidentiality provisions.

7 (b) Except as to privileged records, data, and information, the laws of any
8 compacting state pertaining to confidentiality or nondisclosure may not relieve any
9 compacting state commissioner of the duty to disclose any relevant records, data, or
10 information to the commission; provided, that disclosure to the commission shall not
11 be deemed to waive or otherwise affect any confidentiality requirement; and
12 provided further, that, except as otherwise expressly provided in this section, the
13 commission shall not be subject to the compacting state's laws pertaining to
14 confidentiality and nondisclosure with respect to records, data, and information in
15 its possession. Confidential information of the commission shall remain confidential
16 after such information is provided to any commissioner.

17 (c) The commission shall monitor compacting states for compliance with duly
18 adopted bylaws, rules, including uniform standards, and operating procedures. The
19 commission shall notify any noncomplying compacting state in writing of its
20 noncompliance with commission bylaws, rules, or operating procedures. If a
21 noncomplying compacting state fails to remedy its noncompliance within the time
22 specified in the notice of noncompliance, the compacting state shall be deemed to be
23 in default under sub. (14).

24 (d) The commissioner of any state in which an insurer is authorized to do
25 business, or is conducting the business of insurance, shall continue to exercise his or

1 her authority to oversee the market regulation of the activities of the insurer in
2 accordance with the provisions of the state's law. The commissioner's enforcement
3 of compliance with the compact is governed by the following provisions:

4 1. With respect to the commissioner's market regulation of a product or
5 advertisement that is approved by or certified to the commission, the content of the
6 product or advertisement shall not constitute a violation of the provisions,
7 standards, or requirements of the compact except upon a final order of the
8 commission, issued at the request of a commissioner after prior notice to the insurer
9 and an opportunity for hearing before the commission.

10 2. Before a commissioner may bring an action for violation of any provision,
11 standard, or requirement of the compact relating to the content of an advertisement
12 not approved by or certified to the commission, the commission, or an authorized
13 commission officer or employee, must authorize the action. However, authorization
14 pursuant to this subdivision does not require notice to the insurer, opportunity for
15 hearing, or disclosure of requests for authorization or records of the commission's
16 action on such requests.

17 **(9) ARTICLE IX - DISPUTE RESOLUTION.** The commission shall attempt, upon the
18 request of a member, to resolve any disputes or other issues that are subject to this
19 compact and that may arise between 2 or more compacting states, or between
20 compacting states and noncompacting states, and the commission shall promulgate
21 an operating procedure providing for resolution of such disputes.

22 **(10) ARTICLE X - PRODUCT FILING AND APPROVAL.** (a) Insurers and 3rd-party
23 filers seeking to have a product approved by the commission shall file the product
24 with, and pay applicable filing fees to, the commission. Nothing in this section shall
25 be construed to restrict or otherwise prevent an insurer from filing its product with

1 the insurance department in any state wherein the insurer is licensed to conduct the
2 business of insurance, and such filing shall be subject to the laws of the states where
3 filed.

4 (b) The commission shall establish appropriate filing and review processes and
5 procedures pursuant to commission rules and operating procedures.
6 Notwithstanding any provision herein to the contrary, the commission shall
7 promulgate rules to establish conditions and procedures under which the
8 commission will provide public access to product filing information. In establishing
9 such rules, the commission shall consider the interests of the public in having access
10 to such information, as well as protection of personal medical and financial
11 information and trade secrets, that may be contained in a product filing or
12 supporting information.

13 (c) Any product approved by the commission may be sold or otherwise issued
14 in those compacting states for which the insurer is legally authorized to do business.

15 (11) ARTICLE XI - REVIEW OF COMMISSION DECISIONS REGARDING FILINGS. (a) Not
16 later than 30 days after the commission has given notice of a disapproved product
17 or advertisement filed with the commission, the insurer or 3rd-party filer whose
18 filing was disapproved may appeal the determination to a review panel appointed by
19 the commission. The commission shall promulgate rules to establish procedures for
20 appointing such review panels and provide for notice and hearing. An allegation that
21 the commission, in disapproving a product or advertisement filed with the
22 commission, acted arbitrarily, capriciously, or in a manner that is an abuse of
23 discretion or otherwise not in accordance with the law, is subject to judicial review
24 in accordance with sub. (3).

1 (b) The commission shall have authority to monitor, review, and reconsider
2 products and advertisement subsequent to their filing or approval upon a finding
3 that the product does not meet the relevant uniform standard. Where appropriate,
4 the commission may withdraw or modify its approval after proper notice and
5 hearing, subject to the appeal process in par. (a).

6 **(12) ARTICLE XII - FINANCE.** (a) The commission shall pay or provide for the
7 payment of the reasonable expenses of its establishment and organization. To fund
8 the cost of its initial operations, the commission may accept contributions and other
9 forms of funding from the National Association of Insurance Commissioners,
10 compacting states, and other sources. Contributions and other forms of funding from
11 other sources shall be of such a nature that the independence of the commission
12 concerning the performance of its duties shall not be compromised.

13 (b) The commission shall collect a filing fee from each insurer and 3rd-party
14 filer filing a product with the commission to cover the cost of the operations and
15 activities of the commission and its staff in a total amount sufficient to cover the
16 commission's annual budget.

17 (c) The commission's budget for a fiscal year may not be approved until it has
18 been subject to notice and comment as set forth in sub. (7).

19 (d) The commission shall be exempt from all taxation in and by the compacting
20 states.

21 (e) The commission may not pledge the credit of any compacting state, except
22 by and with the appropriate legal authority of that compacting state.

23 (f) The commission shall keep complete and accurate accounts of all its internal
24 receipts, including grants and donations, and disbursements of all funds under its
25 control. The internal financial accounts of the commission shall be subject to the

1 accounting procedures established under its bylaws. The financial accounts and
2 reports including the system of internal controls and procedures of the commission
3 shall be audited annually by an independent certified public accountant. Upon the
4 determination of the commission, but no less frequently than every 3 years, the
5 review of the independent auditor shall include a management and performance
6 audit of the commission. The commission shall make an annual report to the
7 governor and legislature of each of the compacting states, which shall include a
8 report of the independent audit. The commission's internal accounts shall not be
9 confidential and such materials may be shared with the commissioner of any
10 compacting state upon request; provided, that any work papers related to any
11 internal or independent audit and any information regarding the privacy of
12 individuals and insurers' proprietary information, including trade secrets, shall
13 remain confidential.

14 (g) No compacting state shall have any claim to or ownership of any property
15 held by or vested in the commission or to any commission funds held pursuant to the
16 provisions of this compact.

17 **(13) ARTICLE XIII - COMPACTING STATES, EFFECTIVE DATE, AND AMENDMENT.** (a)
18 Any state is eligible to become a compacting state.

19 (b) The compact shall become effective and binding upon legislative enactment
20 of the compact into law by 2 compacting states; provided, that the commission shall
21 become effective for purposes of adopting uniform standards for, reviewing, and
22 giving approval or disapproval of, products filed with the commission that satisfy
23 applicable uniform standards only after 26 states are compacting states or,
24 alternatively, only after states representing greater than 40 percent of the premium
25 volume for life insurance, annuity, disability income, and long-term care insurance

1 products, based on records of the National Association of Insurance Commissioners
2 for the prior year, are compacting states. Thereafter, it shall become effective and
3 binding as to any other compacting state upon enactment of the compact into law by
4 that state.

5 (c) Amendments to the compact may be proposed by the commission for
6 enactment by the compacting states. No amendment shall become effective and
7 binding upon the commission and the compacting states unless and until all
8 compacting states enact the amendment into law.

9 (14) ARTICLE XIV - WITHDRAWAL, DEFAULT, AND TERMINATION. (a) Once effective,
10 the compact shall continue in force and remain binding upon each and every
11 compacting state; provided, that a compacting state may withdraw from the compact
12 ("withdrawing state") by enacting a statute specifically repealing the statute that
13 enacted the compact into law.

14 (b) The effective date of withdrawal is the effective date of the repealing statute.
15 The withdrawal shall not apply to any product filings approved or self-certified, or
16 any advertisement of such products, on the date the repealing statute becomes
17 effective, except by mutual agreement of the commission and the withdrawing state,
18 unless the approval is rescinded by the withdrawing state as provided in par. (e).

****NOTE: Some rewording of par. (b) was necessary. Is the new language consistent
with the intended meaning? How is the choice between the alternatives made? Is it
whichever occurs first? Does the commission decide?

19 (c) The commissioner of the withdrawing state shall immediately notify the
20 management committee in writing upon the introduction of legislation repealing this
21 compact in the withdrawing state.

22 (d) The commission shall notify the other compacting states of the introduction
23 of such legislation within 10 days after its receipt of notice thereof.

1 (e) The withdrawing state is responsible for all obligations, duties, and
2 liabilities incurred through the effective date of withdrawal, including any
3 obligations, the performance of which extend beyond the effective date of
4 withdrawal, except to the extent those obligations may have been released or
5 relinquished by mutual agreement of the commission and the withdrawing state.
6 The commission's approval of products and advertisement prior to the effective date
7 of withdrawal shall continue to be effective and be given full force and effect in the
8 withdrawing state, unless formally rescinded by the withdrawing state in the same
9 manner as provided by the laws of the withdrawing state for the prospective
10 disapproval of products or advertisement previously approved under state law.

11 (f) Reinstatement following withdrawal of any compacting state shall occur
12 upon the effective date of the withdrawing state reenacting the compact.

13 (g) If the commission determines that any compacting state has at any time
14 defaulted ("defaulting state") in the performance of any of its obligations or
15 responsibilities under this compact, the bylaws, or duly promulgated rules or
16 operating procedures, then, after notice and hearing as set forth in the bylaws, all
17 rights, privileges, and benefits conferred by this compact on the defaulting state
18 shall be suspended from the effective date of default as fixed by the commission. The
19 grounds for default include, but are not limited to, failure of a compacting state to
20 perform its obligations or responsibilities and any other grounds designated in
21 commission rules. The commission shall immediately notify the defaulting state in
22 writing of the defaulting state's suspension pending a cure of the default. The
23 commission shall stipulate the conditions and the time period within which the
24 defaulting state must cure its default. If the defaulting state fails to cure the default
25 within the time period specified by the commission, the defaulting state shall be

1 terminated from the compact and all rights, privileges, and benefits conferred by this
2 compact shall be terminated from the effective date of termination.

3 (h) Product approvals by the commission or product self-certifications, or any
4 advertisement in connection with such product, that are in force on the effective date
5 of termination shall remain in force in the defaulting state in the same manner as
6 if the defaulting state had withdrawn voluntarily under par. (a).

7 (i) Reinstatement following termination of any compacting state requires a
8 reenactment of the compact.

9 (j) The compact dissolves effective upon the date of the withdrawal or default
10 of the compacting state that reduces membership in the compact to one compacting
11 state.

***NOTE: Since a defaulting state has an opportunity to cure a default before it is
terminated, should this say "the date of the withdrawal or *termination* of the compacting
state" instead of "the date of the withdrawal or *default* of the compacting state"?

12 (k) Upon the dissolution of this compact, the compact becomes null and void and
13 shall be of no further force or effect, and the business and affairs of the commission
14 shall be wound up and any surplus funds shall be distributed in accordance with the
15 bylaws.

16 (15) ARTICLE XV - SEVERABILITY AND CONSTRUCTION. (a) The provisions of this
17 compact shall be severable; and if any phrase, clause, sentence, or provision is
18 deemed unenforceable, the remaining provisions of the compact shall be enforceable.

19 (b) The provisions of this compact shall be liberally construed to effectuate its
20 purposes.

21 (16) ARTICLE XVI - BINDING EFFECT OF COMPACT AND OTHER LAWS. (a) Nothing
22 herein prevents the enforcement of any other law of a compacting state, except as
23 provided in par. (b).

1 (b) For any product approved by or certified to the commission, the rules,
2 uniform standards, and any other requirements of the commission shall constitute
3 the exclusive provisions applicable to the content, approval, and certification of such
4 products. For advertisement that is subject to the commission's authority, any rule,
5 uniform standard, or other requirement of the commission that governs the content
6 of the advertisement shall constitute the exclusive provision that a commissioner
7 may apply to the content of the advertisement. Notwithstanding the foregoing, no
8 action taken by the commission shall abrogate or restrict any of the following:

- 9 1. The access of any person to state courts.
- 10 2. Remedies available under state law related to breach of contract, tort, or
11 other laws not specifically directed to the content of the product.
- 12 3. State law relating to the construction of insurance contracts.
- 13 4. The authority of the secretary of agriculture, trade and consumer protection
14 or the attorney general of the state, including, but not limited to, maintaining any
15 actions or proceedings, as authorized by law.

16 (c) All insurance products filed with individual states shall be subject to the
17 laws of those states.

18 (d) All lawful actions of the commission, including all rules and operating
19 procedures promulgated by the commission, are binding upon the compacting states.
20 All agreements between the commission and the compacting states are binding in
21 accordance with their terms. Upon the request of a party to a conflict over the
22 meaning or interpretation of commission actions, and upon a majority vote of the
23 compacting states, the commission may issue advisory opinions regarding the
24 meaning or interpretation in dispute.

✓
Insert 29-7

1 (e) In the event any provision of this compact exceeds the constitutional limits
2 imposed on the legislature of any compacting state, the obligations, duties, powers,
3 or jurisdiction sought to be conferred by that provision upon the commission shall be
4 ineffective as to that compacting state, and such obligations, duties, powers, or
5 jurisdiction shall remain in the compacting state and shall be exercised by the agency
6 thereof to which such obligations, duties, powers, or jurisdiction are delegated by law
7 in effect at the time this compact becomes effective.

8 SECTION 3. 628.347 (title) of the statutes is amended to read:

9 628.347 (title) **Suitability of annuity sales to senior consumers.**

10 SECTION 4. 628.347 (1) (b) of the statutes is amended to read:

11 628.347 (1) (b) "Recommendation" means advice provided by an insurance
12 intermediary, or an insurer if no intermediary is involved, to an individual ~~senior~~
13 consumer that results in the purchase or exchange of an annuity in accordance with
14 that advice.

15 SECTION 5. 628.347 (1) (c) of the statutes is repealed.

16 SECTION 6. 628.347 (2) (a) of the statutes is amended to read:

17 628.347 (2) (a) Except as provided in par. (c), an insurance intermediary, or
18 insurer if no intermediary is involved, may not recommend to a ~~senior~~ consumer the
19 purchase or exchange of an annuity if the recommendation results in an insurance
20 transaction or series of insurance transactions unless the intermediary or insurer
21 has reasonable grounds to believe that the recommendation is suitable for the ~~senior~~
22 consumer on the basis of facts disclosed by the ~~senior~~ consumer as to his or her
23 investments, other insurance products, and financial situation and needs.

24 SECTION 7. 628.347 (2) (b) 1. of the statutes is amended to read:

25 628.347 (2) (b) 1. The ~~senior~~ consumer's financial status.

1 **SECTION 8.** 628.347 (2) (b) 2. of the statutes is amended to read:

2 628.347 (2) (b) 2. The ~~senior~~ consumer's tax status.

3 **SECTION 9.** 628.347 (2) (b) 3. of the statutes is amended to read:

4 628.347 (2) (b) 3. The ~~senior~~ consumer's investment objectives.

5 **SECTION 10.** 628.347 (2) (b) 4. of the statutes is amended to read:

6 628.347 (2) (b) 4. Any other information that is reasonably appropriate for
7 determining the suitability of a recommendation to the ~~senior~~ consumer.

8 **SECTION 11.** 628.347 (2) (c) (intro.) of the statutes is amended to read:

9 628.347 (2) (c) (intro.) An insurance intermediary, or insurer if no intermediary
10 is involved, has no obligation under par. (a) to a ~~senior~~ consumer related to a
11 recommendation if the ~~senior~~ consumer does any of the following:

12 **SECTION 12.** 628.347 (3) (f) 2. of the statutes is amended to read:

13 628.347 (3) (f) 2. Include in its system of supervision an insurance
14 intermediary's recommendations made to ~~senior~~ consumers of products other than
15 annuities offered by the insurer, general agent, or independent agency.

16 **SECTION 13.** 628.347 (5) (a) of the statutes is amended to read:

17 628.347 (5) (a) Order an insurer to take reasonably appropriate corrective
18 action for any ~~senior~~ consumer harmed by a violation of this section by the insurer
19 or the insurer's insurance intermediary.

20 **SECTION 14.** 628.347 (5) (b) of the statutes is amended to read:

21 628.347 (5) (b) Order an insurance intermediary to take reasonably
22 appropriate corrective action for any ~~senior~~ consumer harmed by a violation of this
23 section by the insurance intermediary.

24 **SECTION 15.** 628.347 (5) (c) of the statutes is amended to read:

1 628.347 (5) (c) Order a general agent or independent agency that employs or
2 contracts with an insurance intermediary to sell, or solicit the sale of, annuities to
3 senior consumers to take reasonably appropriate corrective action for any senior
4 consumer harmed by a violation of this section by the insurance intermediary.

5 **SECTION 16.** 628.347 (6) (b) of the statutes is amended to read:

6 628.347 (6) (b) A penalty under par. (a) for a violation of sub. (2) (a), (b), or (d),
7 including a forfeiture, may be reduced or eliminated to the extent provided by rule
8 of the commissioner if corrective action is taken for the senior consumer promptly
9 after the violation is discovered.

10 **SECTION 17.** 628.347 (6) (c) of the statutes is amended to read:

11 628.347 (6) (c) The commissioner may promulgate rules related to the
12 reduction or elimination of penalties for violations of this section on the basis of
13 prompt action taken to correct any harm caused to senior consumers by the
14 violations.

15 **SECTION 18.** 628.347 (7) of the statutes is amended to read:

16 628.347 (7) **RECORD KEEPING.** An insurer and an insurance intermediary,
17 including a general agent and an independent agency, shall maintain, or be able to
18 make available to the commissioner, records of the information collected from a
19 senior consumer and other information used in making a recommendation that was
20 the basis for an insurance transaction for 6 years after the insurance transaction is
21 completed by the insurer, except as otherwise permitted by the commissioner by rule.
22 An insurer may, but is not required to, maintain records on behalf of an insurance
23 intermediary, including a general agent and an independent agency.

24 **SECTION 19.** 628.347 (8) (a) of the statutes is amended to read:

1 628.347 (8) (a) Direct response solicitations in which no recommendation is
2 made based on information collected from the senior consumer.

3 SECTION 20. 631.01 (3) of the statutes is amended to read:

4 631.01 (3) OCEAN MARINE INSURANCE. Sections 631.03 to 631.09, 631.15 (1) and
5 (4), 631.20 (4) (1c), 631.27, 631.41 to 631.51, 631.64 to 631.81 and 631.85 apply to
6 ocean marine insurance; the commissioner may specify by rule that ocean marine
7 contracts are subject to other provisions of this chapter upon a finding that the
8 interests of Wisconsin insureds or creditors or of the public in this state so require.

9 SECTION 21. 631.20 (1) of the statutes is renumbered 631.20 (1c), and 631.20
10 (1c) (a), as renumbered, is amended to read:

11 631.20 (1c) (a) ~~No~~ Except as provided in par. (c) and sub. (1g), no form subject
12 to s. 631.01 (1), except as exempted under s. 631.01 (2) to (5) or by rule under par. (b),
13 may be used unless it has been filed with and approved by the commissioner and
14 unless the insurer certifies that the form complies with chs. 600 to 655 and rules
15 promulgated under chs. 600 to 655. It is deemed approved if it is not disapproved
16 within 30 days after filing, or within a 30-day extension of that period ordered by the
17 commissioner prior to the expiration of the first 30 days.

18 SECTION 22. 631.20 (1b) of the statutes is created to read:

19 631.20 (1b) DEFINITION. In this section, "product" has the meaning given in s.
20 601.58 (2) (k).

21 SECTION 23. 631.20 (1c) (c) of the statutes is created to read:

22 631.20 (1c) (c) A form first used on or after the effective date of this paragraph
23 [revisor inserts date], is exempt from par. (a) except for any of the following:

- 24 1. A form subject to s. 655.24 (1).
25 2. A form for a worker's compensation policy.

Insert 32-20

and not already filed under par. (a)

NO ~~4~~ Subject to sub. (1m), a

1 3. A form for a Medicare replacement policy or a Medicare supplement policy.

2 4. A form for a long-term care insurance policy, including a form for a nursing
3 home policy or home health care policy.

4 5. A form filed under ch. 149.

5 6. A form issued by an insurer ordered by the commissioner under s. 601.41 (4)
6 to file forms under par. (a). The commissioner may require an insurer to file forms
7 under par. (a) to secure compliance with the law, including if the commissioner
8 determines that the insurer violated sub. (1m).

9 7. A form that includes an appraisal or arbitration provision not specifically
10 authorized by rule. The entire form, including the appraisal or arbitration provision,
11 is subject to par. (a).

12 8. A form that contains a clause subject to s. 631.21, but only as to the clause.

13 11. ~~9~~ A form required to be filed under par. (a) by a rule promulgated by the
14 commissioner.

Insert 33-12

15 SECTION 24. 631.20 (1g) of the statutes is created to read:

16 631.20 (1g) EXEMPT IF APPROVED BY COMMISSION. Notwithstanding sub. (1c) (e)

17 1. to 9., a form for a product is exempt from subs. (1c) (a) and (1m) if it is approved
18 by or self-certified to, and not disapproved by, the Interstate Insurance Product
19 Regulation Commission under s. 601.58, unless otherwise provided by a rule
20 promulgated by the commissioner under s. 601.58 (7) (d).

****NOTE: Is proposed s. 601.58 (7) (d) the citation you had in mind for a rule promulgated by the commissioner under s. 601.58?

****NOTE: I assumed the forms that are not exempt under sub. (1c) (c) are exempt if approved by the commission. Is this correct?

21 SECTION 25. 631.20 (1m) of the statutes is created to read:

Insert 34-3

1 631.20 (1m) USE OF CERTAIN FORMS. On or after the effective date of this
2 subsection ... [revisor inserts date], an insurer may not use a form that is exempt
3 from sub. (1c) (a) solely because of sub. (1c) (c) unless the insurer does all of the
4 following:

5 1. ~~(a)~~ Files the form with the commissioner, in the manner and format prescribed
6 by the commissioner, at least 30 days before its use.

7 3. ~~(b)~~ Certifies, in the form prescribed by the commissioner, that the form
8 complies with chs. 600 to 655 and rules promulgated under chs. 600 to 655. The
9 commissioner may require an insurer to include specific compliance certifications.

10 The certification shall be executed by the insurer's ~~senior~~ officer responsible for
11 policy form development. No insurer may file, and no ~~insurer's~~ officer may execute, a false
12 certification.

13 SECTION 26. 631.20 (2) (intro.) of the statutes is amended to read:

14 631.20 (2) GROUNDS FOR DISAPPROVAL. (intro.) The commissioner may
15 disapprove a form under sub. (1c) (a) or (3) upon a finding:

16 SECTION 27. 631.20 (3) of the statutes is amended to read:

17 631.20 (3) SUBSEQUENT DISAPPROVAL. Whenever the commissioner finds, after
18 a hearing, that a form approved or deemed to be approved under sub. ~~(1)~~ ^{plain} (1c) (a)
19 would, a form filed under sub. (1m), or a form subject to subsequent disapproval
20 under s. 601.58 (14) should be disapproved under sub. (2) if newly filed, the
21 commissioner may order that on or before a date not less than 30 nor more than 90
22 days after the order the use of the form shall be discontinued or appropriate changes
23 shall be made.

***NOTE: Should the cross-reference for disapprovals by the commission be s. 601.58 (11) (b) in addition to or instead of s. 601.58 (14)? Should s. 601.58 (14) be limited to s. 601.58 (14) (e)?

Insert 34-6

as required under par. (b)

****NOTE: I'm not sure what "a form subject to subsequent disapproval under s. 601.58 (14)" is. Is it a form that has been disapproved by the commission? Aren't all forms approved by the commission under s. 601.58 subject to subsequent disapproval? Does the commissioner have the authority to disapprove a form that was approved by the commission?

1 SECTION 28. 631.20 (6) (title) of the statutes is amended to read:

2 631.20 (6) (title) ~~APPROVED FORM WHICH~~ FORM THAT VIOLATES STATUTE OR RULE.

3 SECTION 29. 631.20 (6) (a) of the statutes is amended to read:

4 631.20 (6) (a) The penalties under s. 601.64 (3) to (5) may not be imposed
5 against an insurer for using a form that does not comply with a statute or rule if the
6 statute or rule was in effect on the date the form was approved or deemed to be
7 approved under sub. (1) ~~(1c)~~ (a).

8 SECTION 30. 631.20 (6) (b) of the statutes is amended to read:

9 631.20 (6) (b) Use of a form that does not comply with a statute or rule which
10 takes effect after the date the form was approved or deemed to be approved under
11 sub. (1) ~~(1c)~~ (a) is a violation of the statute or rule, and the penalties under s. 601.64
12 may be imposed against the insurer using the form.

13 SECTION 31. 631.20 (6) (c) of the statutes is created to read:

14 631.20 (6) (c) Except as otherwise provided by the Interstate Insurance Product
15 Regulation Commission, an insurer's use of a form or advertisement in violation of
16 s. 601.58 or the rules, uniform standards, or other requirements of the Interstate
17 Insurance Product Regulation Commission applicable to the content, approval, or
18 certification of a product is a violation of an insurance statute subject to the penalties
19 and remedial orders provided under chs. 600 to 655, including ss. 601.41 (4) and
20 601.64.

21 SECTION 32. 631.20 (6) (d) of the statutes is created to read:

1 631.20 (6) (d) Except as provided in par. (a) or by the Interstate Insurance
 2 Product Regulation Commission, an insurer's use of a form, including a form filed
 3 under sub. (1m) and not subsequently disapproved under sub. (3) or s. 601.58, that
 4 violates chs. 600 to 655 or rules promulgated under chs. 600 to 655 is a violation of
 5 an insurance statute or rule subject to the penalties and remedial orders provided
 6 under chs. 600 to 655, including ss. 601.41 (4) and 601.64.

7 SECTION 33. 631.36 (1) (a) of the statutes is amended to read:

8 631.36 (1) (a) *General.* Except as otherwise provided in this section or in other
 9 statutes or by rule under par. (c), this section applies to all contracts of insurance
 10 based on forms which that are subject to filing and approval under s. 631.20 (1) (1c)
 11 (a).

12 SECTION 34. 655.24 (1) of the statutes is amended to read:

13 655.24 (1) No insurer may enter into or issue any policy of health care liability
 14 insurance until its policy form has been submitted to and approved by the
 15 commissioner under s. 631.20 (1) (1c) (a). The filing of a policy form by any insurer
 16 with the commissioner for approval shall constitute, on the part of the insurer, a
 17 conclusive and unqualified acceptance of all provisions of this chapter, and an
 18 agreement by it to be bound hereby as to any policy issued by it to any health care
 19 provider.

20 (END)

D-note

Insat 36-19 ✓

2007-2008 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0843/P3ins
PJK:jld:rs

INSERT 3-9

1 **SECTION 1.** 40.55 (1) [✓] of the statutes is amended to read:

2 40.55 (1) Except as provided in sub. (5), the state shall offer, through the group
3 insurance board, to eligible employees under s. 40.02 (25) (bm) and to state
4 annuitants long-term care insurance policies which have been approved for sale in
5 this state by filed with [✓] the office of the commissioner of insurance and which have
6 been approved for offering under contracts established by the group insurance board
7 if the insurer requests that the policy be offered and the state shall also allow an
8 eligible employee or a state annuitant to purchase those policies for his or her spouse
9 or parent.

History: 1987 a. 356; 1989 a. 31; 1991 a. 152.

10 **SECTION 2.** 100.205 (6) [✓] (intro.) of the statutes is amended to read:

11 100.205 (6) (intro.) Every warrantor shall purchase a policy of insurance
12 covering the financial integrity of its warranties. The policy of insurance shall be on
13 a form approved by the commissioner of insurance under s. 631.20 [✓] and shall have the
14 following minimum provisions:

History: 1983 a. 428; 1985 a. 29; 1995 a. 27.

(END OF INSERT 3-9)

INSERT 29-7

15 **SECTION 3.** 605.03 (1) (a) [✓] of the statutes is amended to read:

16 605.03 (1) (a) *Mandatory coverage.* The property fund shall provide protection
17 against fire and extended coverage perils. The coverage shall be at least as favorable
18 as that customarily provided by policies approved by filed with [✓] the commissioner for
19 the use of private insurers in insuring comparable property.

History: 1973 c. 117.

20 **SECTION 4.** 607.02 (1) [✓] of the statutes is amended to read:

↓

Ins 29-7 contd

1 607.02 (1) TYPES OF POLICIES PERMITTED. Subject to sub. (2), the life fund may
 2 issue to any resident of the state any kind of life insurance with any riders or
 3 endorsements thereto that would be filed with the commissioner ~~would approve~~ for
 4 issuance by private insurers authorized to do a life insurance business in this state.
 5 Coverages may be combined and granted in the same policy by the life fund to the
 6 same extent as by a private life insurer.

History: 1973 c. 117.

7 **SECTION 5.** 612.51 (1) of the statutes is repealed.

(END OF INSERT 29-7)

INSERT 32-20

8 **SECTION 6.** 631.01 (4m) of the statutes is amended to read:

9 631.01 (4m) RUSTPROOFING WARRANTIES INSURANCE. An insurer issuing a policy
 10 of insurance to cover a warranty, as defined in s. 100.205 (1) (g), shall comply with
 11 s. 632.18 and the policy shall be on a form approved by the commissioner under s.
 12 631.20.

History: 1975 c. 375, 421; 1985 a. 29; 1987 a. 247; 1991 a. 250; 1995 a. 242; 1997 a. 27.

13 **SECTION 7.** 631.20 (1) (a) of the statutes is amended to read:

14 631.20 (1) (a) No form subject to s. 631.01 (1), except as exempted under par.
 15 (c), sub. (1g), or s. 631.01 (2) to (5) or by rule under par. (b), may be used unless it has
 16 been filed with and approved by the commissioner and unless the insurer certifies
 17 that the form complies with chs. 600 to 655 and rules promulgated under chs. 600
 18 to 655. It is deemed approved if it is not disapproved within 30 days after filing, or



Ins 32-20 Contd

1 within a 30-day extension of that period ordered by the commissioner prior to the
2 expiration of the first 30 days.

History: 1975 c. 375, 421; 1979 c. 218; 1987 a. 247; 1999 a. 9; 2005 a. 74.

(END OF INSERT 32-20)

INSERT 33-12

- 3 9. A form subject to s. 618.41 (6m). ✓
- 4 10. A warranty contract form.

(END OF INSERT 33-12)

INSERT 33-17

5 *note*, as defined in s. 601.58 (2) (k), that *NO*

(END OF INSERT 33-17)

INSERT 33-19

6 *note* is exempt from subs. (1) (a) and (1m) (a) *NO*

(END OF INSERT 33-19)

INSERT 34-3

7 *NO* (a) Except as exempted under sub. (1g) or s. 631.01 (2) to (5) or by a rule
 8 promulgated by the commissioner, an insurer may not, on or after the effective date
 9 of this paragraph ... [revisor inserts date], use a form that is exempt from sub. (1)
 10 (a) under sub. (1) (c) *NO*

(END OF INSERT 34-3)

INSERT 34-6

***NOTE: Should this be "at least 30 days" or "not more than 30 days"? The suggested language means "exactly 30 days." Is that what you intend?

↓

ins 34-6 cont'd

1 2. Files the form in the manner and format, and with the attachments,
2 prescribed by the commissioner. ✓

(END OF INSERT 34-6)

INSERT 34-10

91

3 (b) An insurer shall provide the certification under par. (a) 3. ✓ in the form
4 prescribed by the commissioner. NO ✓

(END OF INSERT 34-10)

INSERT 36-19

1004

5 SECTION 8. 631.20 (6) (a) of the statutes is renumbered 631.20 (6) (a) (intro.)
6 and amended to read:

7 631.20 (6) (a) (intro.) The penalties under s. 601.64 (3) to (5) may not be imposed
8 against an insurer for using any of the following: ✓

9 1. Using a form that does not comply with a statute or rule, including a rule or
10 uniform standard adopted by the Interstate Insurance Product Regulation
11 Commission, if the statute or rule was in effect on the date the form was approved
12 or deemed to be approved under sub. (1) (a) or s. 601.58.

History: 1975 c. 375, 421; 1979 c. 218; 1987 a. 247; 1999 a. 9; 2005 ✓4.

13 SECTION 9. 631.20 (6) (a) 2. of the statutes is created to read:

14 631.20 (6) (a) 2. The use of a form solely based on a finding of the commissioner
15 that the content of the form is misleading under s. 628.34 (1). ✓

***NOTE: Is this really intended to mean that the insurer used a form solely because the commissioner found that the content of the form was misleading? That doesn't make sense to me. Is the intended meaning actually that the penalties do not apply if the only problem with the form is that the commissioner found the content to be misleading?

16 SECTION 10. 631.20 (6) (b) of the statutes is amended to read:

17 631.20 (6) (b) Use An insurer's use of a form that does not comply with a statute
18 or rule which, including a rule or uniform standard adopted by the Interstate

↓

Ins 36-19 contd 2004

1 Insurance Product Regulation Commission, that takes effect after the date the form
2 was approved or deemed to be approved under sub. (1) (a) or s. 601.58 is a violation
3 of the statute or rule, and the penalties under s. 601.64 may be imposed against the
4 insurer using the form.

5 History: 1975 c. 375, 421; 1979 c. 218; 1987 a. 247; 1999 a. 9; 2005 a. 74.

SECTION 11. 631.20 (6) (c) of the statutes is created to read:

6 631.20 (6) (c) Except as provided in par. (a) 2., an insurer's use of a form filed
7 under sub. (1m) that violates chs. 600 to 655 or rules promulgated under chs. 600 to
8 655 is a violation of the statute or rule, regardless of whether the form has been
9 subsequently disapproved under sub. (3). The insurer is subject to the penalties and
10 remedial orders provided under chs. 600 to 655, including ss. 601.41 (4) and 601.64.

11 **SECTION 12.** 631.21 (1) (intro.) of the statutes is amended to read:

12 631.21 (1) REQUIRED APPROVAL. (intro.) Despite the filing or general approval
13 of a form under s. 631.20, the following clauses are not approved may not be used
14 even if contained in the form unless the commissioner gives explicit approval to
15 them:

16 History: 1975 c. 375; 1985 a. 280.

SECTION 13. 631.23 (1) (intro.) of the statutes is amended to read:

17 631.23 (1) PROMULGATION OF CLAUSES. (intro.) The commissioner may not
18 promulgate mandatory uniform clauses that preclude an insurer from filing its own
19 forms for approval under s. 631.20; the commissioner may only disapprove such
20 forms on the basis of the criteria stated in that section. Subject thereto, the
21 commissioner may promulgate authorized clauses by rule upon a finding that:

22 History: 1975 c. 375, 421; 1979 c. 221.

SECTION 14. 631.36 (1) (a) of the statutes is amended to read:

23 631.36 (1) (a) *General.* Except as otherwise provided in this section or in other
24 statutes or by rule under par. (c), this section applies to all contracts of insurance

[Handwritten mark]

Ins 36-19 cont'd 3074

1 based on forms which that are subject to filing and approval under s. 601.58 or 631.20

2 (1) (a).

3 History: 1975 c. 375, 421; 1977 c. 444 s. 11; 1979 c. 102; 1979 c. 110 s. 60 (1); 1981 c. 83; 1985 a. 335; 1989 a. 187, 332, 359; 1991 a. 315; 1995 a. 259; 1997 a. 27; 1999 a. 9.

3 **SECTION 15.** 632.32 (4) (intro.) of the statutes is amended to read:

4 **632.32 (4) REQUIRED UNINSURED MOTORIST AND MEDICAL PAYMENTS COVERAGES.**

5 (intro.) Every policy of insurance subject to this section that insures with respect to
6 any motor vehicle registered or principally garaged in this state against loss
7 resulting from liability imposed by law for bodily injury or death suffered by any
8 person arising out of the ownership, maintenance, or use of a motor vehicle shall
9 contain therein or supplemental thereto the following provisions approved by the
10 commissioner:

11 History: 1975 c. 375, 421; 1979 c. 102, 104; 1979 c. 177 ss. 67, 68; 1979 c. 221; 1981 c. 284; 1983 a. 243, 459; 1985 a. 146 s. 8; 1995 a. 21, 448; 1997 a. 48; 1999 a. 31, 162.

11 **SECTION 16.** 632.45 (2) of the statutes is amended to read:

12 **632.45 (2) AMENDMENTS.** Any contract under sub. (1) shall state whether it may
13 be amended as to investment policy, voting rights, and conduct of the business and
14 affairs of any segregated account. Subject to any preemptive provision of federal law,
15 any such amendment is subject to filing and approval under s. 631.20 and approval
16 by a majority of the policyholders in the segregated account.

17 History: 1975 c. 375; 1977 c. 153 s. 6; 1977 c. 339 s. 44; 1979 c. 89, 102; 1977; 1989 a. 332.

17 **SECTION 17.** 646.35 (6) (bm) of the statutes is amended to read:

18 **646.35 (6) (bm)** For coverages continued pursuant to par. (b), the fund may
19 substitute a comprehensive health insurance policy approved by the commissioner
20 for a health maintenance organization policy that is subject to sub. (3), and increase
21 rates or premiums for the substituted coverage as provided in sub. (5).

22 History: 1979 c. 109; 1983 a. 120; 1985 a. 216; 1989 a. 23; 1995 a. 236; 2003 a. 261; 2005 a. 253.

22 **SECTION 18. Effective dates.** This act takes effect on the day after publication,

23 except as follows:

↓

Ins 36-19 cont'd 484

1 (1) INSURANCE FORM FILING. The treatment of sections 40.55 (1), 100.205 (6)
 2 (intro.), 605.03 (1) (a), 607.02 (1), 612.51 (1), 631.01 (4m), 631.20 (1) (a) and (c), (1g),
 3 (1m), (2) (intro.), (3), ~~(6)~~ ^{and} (b), and (c), 631.21 (1) (intro.), 631.23 (1) (intro.),
 4 631.36 (1) (a), 632.32 (4) (intro.), 632.45 (2), and 646.35 (6) (bm) of the statutes, the
 5 renumbering and amendment of section 631.20 (6) (a) of the statutes, and the
 6 creation of section 631.20 (6) (a) 2. of the statutes take effect on the first day of the
 7 4th month beginning after publication.

8 (2) SUITABILITY OF ANNUITY SALES. The treatment of section 628.347 (title), (1)
 9 (b) and (c), (2) (a), (b) 1., 2., 3., and 4., and (c) (intro.), (3) (f) 2., (5) (a), (b), and (c), (6)
 10 (b) and (c), (7), and (8) (a) of the statutes takes effect on the first day of the 7th month
 11 beginning after publication.

(END OF INSERT 36-19)

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0843/P3dn

PJK/ldrs

date

KEEP

After your review of this version, I think the draft will be ready for a complete analysis and introduction. I still have a few questions/comments:

In s. 631.20 (1) (c), I changed the suggested language from "a form first filed on or after the effective date" to a "form first used and not already filed under par. (a) on or after the effective date." Since such a form is exempt from par. (a), which includes a filing requirement, it didn't make sense to me to say that a form first filed on or after the effective date is exempt from the filing requirement. Additionally, I assumed there may be a timing problem with saying that a form first used on or after the effective date is exempt from the filing requirement because a form may already have been filed by that date but not used until after that date. Is the provision, as I have drafted it, ok?

See the embedded NOTE regarding "30 days" following s. 631.20 (1m) (a) 1. and the embedded NOTE following s. 631.20 (6) (a) 2. I have removed all embedded NOTES from the previous version of the draft even though they were not addressed. I assumed that, if a NOTE was not addressed, no changes were needed.

Is it possible that some forms that are not exempt from s. 631.20 (1) (a) under s. 631.20 (1) (c) 1. to 11., such as long-term care insurance policy forms, would be exempt under s. 631.20 (1g)? In other words, could the interstate insurance product regulation commission approve a form listed under s. 631.20 (1) (c) 1. to 11.? If that is the case, we need to indicate which takes precedence. (The suggested language removed the "Notwithstanding sub. (1) (c)" language in s. 631.20 (1g) of the previous version.)

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0843/P3dn
PJK:jld:nwn

May 2, 2007

After your review of this version, I think the draft will be ready for a complete analysis and introduction. I still have a few questions/comments:

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Kahler, Pam

From: Nepple, Fred - OCI
Sent: Thursday, May 10, 2007 3:35 PM
To: Kahler, Pam
Cc: Ruch, Guenther H - OCI; Ezalarab, Sue - OCI
Subject: COMPACT Draft

Pam

The OCI staff has no further comments on your last draft so please regard my last email as final.

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