




State of Wisconsin


LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 11/16/2006 (Per: PJK)





 Appendix A ... Part 03 of 04

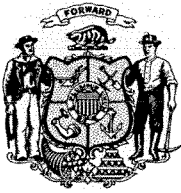
 The 2005 drafting file for LRB 05-4355

has been transferred to the drafting file for

2007 LRB 07-0843

 This cover sheet, the final request sheet, and the final version of the 2005 draft were copied on yellow paper, and returned to the original 2005 drafting file.

 The attached 2005 draft was incorporated into the new 2007 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2007 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-4355/P1

PJK:cjs:rs

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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

D-note
(Friday, if possible)

Rego cat.

1 AN ACT to create 14.82 and 601.58 of the statutes; relating to: The Interstate
2 Insurance Product Regulation Compact and the Interstate Insurance Product
3 Regulation Commission.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

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

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

1 the performance of his or her duties. The commission has the powers and duties
2 granted and imposed under s. 601.58.

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

4 **601.58 Interstate insurance product regulation compact.** The interstate
5 insurance product regulation compact is hereby enacted into law and entered into
6 by this state with all other jurisdictions legally joining therein, in substantially the
7 following form:

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

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

12 (b) To develop uniform standards for insurance products covered under the
13 compact.

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

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

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

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

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

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

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

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

8 (c) "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 (d) "Commission" means the interstate insurance product regulation
12 commission established by this compact.

13 (e) "Commissioner" means the chief insurance regulatory official of a state,
14 including, but not limited to, commissioner, superintendent, director, or
15 administrator.

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

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

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

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

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

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

6 (L) "Rule" means a statement of general or particular applicability and future
7 effect promulgated by the commission, including a uniform standard developed
8 under sub. (7), designed to implement, interpret, or prescribe law or policy or
9 describing the organization, procedure, or practice requirements of the commission,
10 which shall have the force and effect of law in the compacting states.

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

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

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

21 **(3) ARTICLE III - ESTABLISHMENT OF THE COMMISSION AND VENUE.** The compacting
22 states hereby create the interstate insurance product regulation commission.
23 Pursuant to sub. (4), the commission will have the power to develop uniform
24 standards for product lines, receive and provide prompt review of products filed
25 therewith, and give approval to those product filings satisfying applicable uniform

1 standards; provided, that it is not intended for the commission to be the exclusive
2 entity for receipt and review of insurance product filings. Nothing herein shall
3 prohibit any insurer from filing its product in any state wherein the insurer is
4 licensed to conduct the business of insurance, and any such filing shall be subject to
5 the laws of the state where filed. The commission is a body corporate and politic, and
6 an instrumentality of the compacting states. The commission is solely responsible
7 for its liabilities except as otherwise specifically provided in this compact. Venue is
8 proper and judicial proceedings by or against the commission shall be brought solely
9 and exclusively in a court of competent jurisdiction where the principal office of the
10 commission is located.

11 (4) ARTICLE IV – POWERS OF THE COMMISSION. The commission shall have all of
12 the following powers:

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

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

1 as of 2001. The commission shall consider whether any subsequent amendments to
2 the National Association of Insurance Commissioners' Long-Term Care Insurance
3 Model Act or Long-Term Care Insurance Model Regulation adopted by the National
4 Association of Insurance Commissioners require amending of the uniform standards
5 established by the commission for long-term care insurance products.

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

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

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

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

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

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

9 (i) To establish and maintain offices.

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

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

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

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

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

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

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

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

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

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

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

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

15 (v) To borrow money.

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

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

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

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

1 (5) ARTICLE V – ORGANIZATION OF THE COMMISSION. (a) Each compacting state
2 shall have one member. Each member shall be qualified to serve in such capacity
3 under the applicable law of the compacting state. Any member may be removed or
4 suspended from office as provided by the law of the state from which he or she shall
5 be appointed. Any vacancy occurring in the commission shall be filled in accordance
6 with the laws of the compacting state wherein the vacancy exists. Nothing herein
7 shall be construed to affect the manner in which a compacting state determines the
8 election or appointment and qualification of its own commissioner.

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

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

- 17 1. Establishing the fiscal year of the commission.
- 18 2. Providing reasonable procedures for appointing and electing members, as
19 well as holding meetings, of the management committee.
- 20 3. Providing reasonable standards and procedures for all of the following:
 - 21 a. The establishment and meetings of other committees.
 - 22 b. Governing any general or specific delegation of any authority or function of
23 the commission.
- 24 4. Providing reasonable procedures for calling and conducting meetings of the
25 commission that consist of a majority of commission members, ensuring reasonable

1 advance notice of each such meeting, and providing for the right of citizens to attend
2 each such meeting with enumerated exceptions designed to protect the public's
3 interest, the privacy of individuals, and insurers' proprietary information, including
4 trade secrets. The commission may meet in camera only after a majority of the entire
5 membership votes to close a meeting en toto or in part. As soon as practicable, the
6 commission must make public all of the following:

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

9 b. Votes taken during such meeting.

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

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

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

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

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

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



insurance

1 1. One member from each of the 6 compacting states with the largest premium
2 volume for individual and group annuities, life, disability income, and long-term
3 care insurance products, determined from the records of the National Association of
4 Insurance Commissioners for the prior year.

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

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

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

15 1. Managing the affairs of the commission in a manner consistent with the
16 bylaws and purposes of the commission.

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

25 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 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 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

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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.

Insert 20-14

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 the compacting states, which shall include a report of the
8 independent audit. The commission's internal accounts shall not be confidential and
9 such materials may be shared with the commissioner of any compacting state upon
10 request; provided, that any work papers related to any internal or independent audit
11 and any information regarding the privacy of individuals and insurers' proprietary
12 information, including trade secrets, shall remain confidential.

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

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

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

1 for the prior year, are compacting states. Thereafter, it shall become effective and
2 binding as to any other compacting state upon enactment of the compact into law by
3 that state.

add → ****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?*

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

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

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

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

21 (d) The commission shall notify the other compacting states of the introduction
22 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.

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).

24 (b) For any product approved ^{by} or certified to the commission, the rules, uniform
25 standards, and any other requirements of the commission shall constitute the

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

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

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

16 (d) All lawful actions of the commission, including all rules and operating
17 procedures promulgated by the commission, are binding upon the compacting states.

18 All agreements between the commission and the compacting states are binding in
19 accordance with their terms. Upon the request of a party to a conflict over the
20 meaning or interpretation of commission actions, and upon a majority vote of the
21 compacting states, the commission may issue advisory opinions regarding the
22 meaning or interpretation in dispute.

23 (e) In the event any provision of this compact exceeds the constitutional limits
24 imposed on the legislature of any compacting state, the obligations, duties, powers,
25 or jurisdiction sought to be conferred by that provision upon the commission shall be

Insert 26-15

① ineffective as to that compacting state, and ~~those~~ obligations, duties, powers, or
② jurisdiction shall remain in the compacting state and shall be exercised by the agency
③ thereof to which ~~those~~ ^{such} obligations, duties, powers, or jurisdiction are delegated by
④ law in effect at the time this compact becomes effective.

5

(END)

D-note

✓ 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, ✓ and 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. ✓

(END OF INSERT B)

INSERT 6-5

****NOTE: How should this paragraph be harmonized with s. 631.20, which requires insurance forms to be filed with the commissioner for approval? Also, I don't understand what is meant by a uniform standard having the force and effect of law *but only for those products filed with the commission*. Does that mean that the standards will apply only to the specific individual forms filed? Or does it mean that the standards will apply to forms for the *type* of insurance product if even one form for that type of insurance product is filed? Does it mean something else? ✓

(END OF INSERT 6-5)

INSERT 20-3

****NOTE: As mentioned before, could there be a conflict between this provision and s. 631.20? Could a product that is filed with the commission be approved by the commission but not approved by OCI in a filing under s. 631.20 (or vice versa)? What happens in that event? ✓

(END OF INSERT 20-3)

INSERT 20-14

****NOTE: This provision seems to provide that, in the event there is a conflict between the commission and OCI as to a product, the determination of the commission

supersedes that of OCI, at least if the commission approves a product. Correct? That still leaves open the question, however, of what happens if OCI approves a product but the commission does not. ✓

(END OF INSERT 20-14)

INSERT 26-15

****NOTE: Paragraph (b) seems to say that the commission's approval of a product supersedes any state approval or disapproval, but par. (c) seems to say that if the product is filed with the state (OCI), state law applies. Thus, under s. 631.20, a product could not be used in this state unless filed with and approved by OCI. Does s. 631.20 need to have an exception for products filed with and approved by the commission? ✓

(END OF INSERT 26-15)

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

LRB-4355/P1dn

PJK:cjs:rs

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stays

We made some minor technical changes, so please review to make sure that the draft still substantially satisfies the compact language. Also, there are some embedded notes.

Please review the analysis for accuracy.

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