

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 04 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.

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

LRB-4355/P1dn
PJK:cjs:rs

January 27, 2006

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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PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

- 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 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, that 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, 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.

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

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

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

19 (b) To develop uniform standards for insurance products covered under the
20 compact.

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

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

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

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

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

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

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

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

20 (c) "Compacting state" means any state that has enacted this compact
21 legislation and that has not withdrawn under sub. (14) (a) or been terminated under
22 sub. (14) (g).

23 (d) "Commission" means the interstate insurance product regulation
24 commission established by this compact.

1 (e) “Commissioner” means the chief insurance regulatory official of a state,
2 including, but not limited to, commissioner, superintendent, director, or
3 administrator.

4 (f) “Domiciliary state” means the state in which an insurer is incorporated or
5 organized; or, in the case of an alien insurer, its state of entry.

6 (g) “Insurer” means any entity licensed by a state to issue contracts of
7 insurance for any of the lines of insurance covered by this section.

8 (h) “Member” means the person chosen by a compacting state as its
9 representative to the commission, or his or her designee.

10 (i) “Noncompacting state” means any state that is not at the time a compacting
11 state.

12 (j) “Operating procedures” mean procedures promulgated by the commission
13 implementing a rule, a uniform standard, or a provision of this compact.

14 (k) “Product” means the form of a policy or contract, including any application,
15 endorsement, or related form that is attached to and made a part of the policy or
16 contract, and any evidence of coverage or certificate, for an individual or group
17 annuity, life insurance, disability income, or long-term care insurance product that
18 an insurer is authorized to issue.

19 (L) “Rule” means a statement of general or particular applicability and future
20 effect promulgated by the commission, including a uniform standard developed
21 under sub. (7), designed to implement, interpret, or prescribe law or policy or
22 describing the organization, procedure, or practice requirements of the commission,
23 which shall have the force and effect of law in the compacting states.

24 (m) “State” means any state, district, or territory of the United States of
25 America.

1 (n) “Third-party filer” means an entity that submits a product filing to the
2 commission on behalf of an insurer.

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

9 **(3) ARTICLE III - ESTABLISHMENT OF THE COMMISSION AND VENUE.** The compacting
10 states hereby create the interstate insurance product regulation commission.
11 Pursuant to sub. (4), the commission will have the power to develop uniform
12 standards for product lines, receive and provide prompt review of products filed
13 therewith, and give approval to those product filings satisfying applicable uniform
14 standards; provided, that it is not intended for the commission to be the exclusive
15 entity for receipt and review of insurance product filings. Nothing herein shall
16 prohibit any insurer from filing its product in any state wherein the insurer is
17 licensed to conduct the business of insurance, and any such filing shall be subject to
18 the laws of the state where filed. The commission is a body corporate and politic, and
19 an instrumentality of the compacting states. The commission is solely responsible
20 for its liabilities except as otherwise specifically provided in this compact. Venue is
21 proper and judicial proceedings by or against the commission shall be brought solely
22 and exclusively in a court of competent jurisdiction where the principal office of the
23 commission is located.

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

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

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

****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?

19 (c) To receive and review in an expeditious manner products filed with the
20 commission, and rate filings for disability income and long-term care insurance
21 products, and give approval of those products and rate filings that satisfy the

1 applicable uniform standard, where such approval shall have the force and effect of
2 law and be binding on the compacting states to the extent and in the manner
3 provided in the compact.

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

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

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

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

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

1 (i) To establish and maintain offices.

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

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

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

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

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

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

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

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

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

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

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

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

8 (v) To borrow money.

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

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

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

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

19 **(5) ARTICLE V – ORGANIZATION OF THE COMMISSION.** (a) Each compacting state
20 shall have one member. Each member shall be qualified to serve in such capacity
21 under the applicable law of the compacting state. Any member may be removed or
22 suspended from office as provided by the law of the state from which he or she shall
23 be appointed. Any vacancy occurring in the commission shall be filled in accordance
24 with the laws of the compacting state wherein the vacancy exists. Nothing herein

1 shall be construed to affect the manner in which a compacting state determines the
2 election or appointment and qualification of its own commissioner.

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

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

- 11 1. Establishing the fiscal year of the commission.
- 12 2. Providing reasonable procedures for appointing and electing members, as
13 well as holding meetings, of the management committee.
- 14 3. Providing reasonable standards and procedures for all of the following:
 - 15 a. The establishment and meetings of other committees.
 - 16 b. Governing any general or specific delegation of any authority or function of
17 the commission.
- 18 4. Providing reasonable procedures for calling and conducting meetings of the
19 commission that consist of a majority of commission members, ensuring reasonable
20 advance notice of each such meeting, and providing for the right of citizens to attend
21 each such meeting with enumerated exceptions designed to protect the public's
22 interest, the privacy of individuals, and insurers' proprietary information, including
23 trade secrets. The commission may meet in camera only after a majority of the entire
24 membership votes to close a meeting en toto or in part. As soon as practicable, the
25 commission must make public all of the following:

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

3 b. Votes taken during such meeting.

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

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

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

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

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

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

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

24 2. Four members from those compacting states with at least 2 percent of the
25 market based on the premium volume described in subd. 1., other than the 6

1 compacting states with the largest premium volume, selected on a rotating basis as
2 provided in the bylaws.

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

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

9 1. Managing the affairs of the commission in a manner consistent with the
10 bylaws and purposes of the commission.

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

19 3. Overseeing the offices of the commission.

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

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

1 (h) The management committee may, subject to the approval of the commission,
2 appoint or retain an executive director for such period, upon such terms and
3 conditions, and for such compensation as the commission determines appropriate.
4 The executive director shall serve as secretary to the commission, but may not be a
5 member of the commission. The executive director shall hire and supervise such
6 other staff as may be authorized by the commission.

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

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

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

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

22 (m) The members, officers, executive director, employees, and representatives
23 of the commission shall be immune from suit and liability, either personally or in
24 their official capacity, for any claim for damage to or loss of property or personal
25 injury or other civil liability caused by or arising out of or relating to any actual or

1 alleged act, error, or omission that occurred, or that the person against whom the
2 claim is made had a reasonable basis for believing occurred, within the scope of
3 commission employment, duties, or responsibilities; provided, that nothing in this
4 paragraph shall be construed to protect any such person from suit or liability for any
5 damage, loss, injury, or liability caused by the intentional or willful and wanton
6 misconduct of that person.

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

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

1 **(6) ARTICLE VI – MEETINGS AND ACTS OF THE COMMISSION.** (a) The commission
2 shall meet and take such actions as are consistent with the provisions of this compact
3 and the bylaws.

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

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

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

19 (b) Rules and operating procedures shall be made pursuant to a rule-making
20 process that conforms to the Model State Administrative Procedure Act of 1981 as
21 amended, as may be appropriate to the operations of the commission. Before the
22 commission adopts a uniform standard, the commission shall give written notice to
23 all relevant state legislative committees in each compacting state responsible for
24 insurance issues of its intention to adopt the uniform standard. The commission in

1 adopting a uniform standard shall consider fully all submitted materials and issue
2 a concise explanation of its decision.

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

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

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

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

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

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

21 (f) If a compacting state has formally initiated the process of opting out of a
22 uniform standard by regulation, and while the regulatory opt out is pending, the
23 compacting state may petition the commission, at least 15 days before the effective
24 date of the uniform standard, to stay the effectiveness of the uniform standard in that
25 state. The commission may grant a stay if it determines the regulatory opt out is

1 being pursued in a reasonable manner and there is a likelihood of success. If a stay
2 is granted or extended by the commission, the stay or extension thereof may postpone
3 the effective date by up to 90 days, unless affirmatively extended by the commission;
4 provided, that a stay may not be permitted to remain in effect for more than one year
5 unless the compacting state can show extraordinary circumstances that warrant a
6 continuance of the stay, including, but not limited to, the existence of a legal
7 challenge that prevents the compacting state from opting out. A stay may be
8 terminated by the commission upon notice that the rule-making process has been
9 terminated.

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

18 (8) ARTICLE VIII - COMMISSION RECORDS AND ENFORCEMENT. (a) The commission
19 shall promulgate rules establishing conditions and procedures for public inspection
20 and copying of its information and official records, except such information and
21 records involving the privacy of individuals and insurers' trade secrets. The
22 commission may promulgate additional rules under which it may make available to
23 federal and state agencies, including law enforcement agencies, records and
24 information otherwise exempt from disclosure, and may enter into agreements with

1 such agencies to receive or exchange information or records subject to nondisclosure
2 and confidentiality provisions.

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

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

20 (d) The commissioner of any state in which an insurer is authorized to do
21 business, or is conducting the business of insurance, shall continue to exercise his or
22 her authority to oversee the market regulation of the activities of the insurer in
23 accordance with the provisions of the state's law. The commissioner's enforcement
24 of compliance with the compact is governed by the following provisions:

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

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

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

19 **(10) ARTICLE X - PRODUCT FILING AND APPROVAL.** (a) Insurers and 3rd-party
20 filers seeking to have a product approved by the commission shall file the product
21 with, and pay applicable filing fees to, the commission. Nothing in this section shall
22 be construed to restrict or otherwise prevent an insurer from filing its product with
23 the insurance department in any state wherein the insurer is licensed to conduct the
24 business of insurance, and such filing shall be subject to the laws of the states where
25 filed.

****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?

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

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

****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.

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

1 discretion or otherwise not in accordance with the law, is subject to judicial review
2 in accordance with sub. (3).

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

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

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

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

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

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

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

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

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

21 (b) The compact shall become effective and binding upon legislative enactment
22 of the compact into law by 2 compacting states; provided, that the commission shall
23 become effective for purposes of adopting uniform standards for, reviewing, and
24 giving approval or disapproval of, products filed with the commission that satisfy
25 applicable uniform standards only after 26 states are compacting states or,

1 alternatively, only after states representing greater than 40 percent of the premium
2 volume for life insurance, annuity, disability income, and long-term care insurance
3 products, based on records of the National Association of Insurance Commissioners
4 for the prior year, are compacting states. Thereafter, it shall become effective and
5 binding as to any other compacting state upon enactment of the compact into law by
6 that state.

***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?

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

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

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

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

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

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

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

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

1 defaulting state must cure its default. If the defaulting state fails to cure the default
2 within the time period specified by the commission, the defaulting state shall be
3 terminated from the compact and all rights, privileges, and benefits conferred by this
4 compact shall be terminated from the effective date of termination.

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

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

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

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

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

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

23 **(16) ARTICLE XVI - BINDING EFFECT OF COMPACT AND OTHER LAWS.** (a) Nothing
24 herein prevents the enforcement of any other law of a compacting state, except as
25 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.

***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?

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

1 compacting states, the commission may issue advisory opinions regarding the
2 meaning or interpretation in dispute.

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

10

(END)