



1995 ASSEMBLY BILL 637

October 26, 1995 - Introduced by Representatives LORGE, ALBERS and BALDUS.
Referred to Committee on Insurance, Securities and Corporate Policy.

1 **AN ACT** *to amend* 15.01 (2); and *to create* 14.83, 601.415 (11) and 601.59 of the
2 statutes; **relating to:** ratifying the interstate insurance receivership compact,
3 creating the interstate insurance receivership commission, granting
4 rule-making authority and making an appropriation.

Analysis by the Legislative Reference Bureau

This bill ratifies the interstate insurance receivership compact (compact). The main purposes of the compact are to promote and develop orderly, efficient, cost-effective and uniform insurer receivership laws and operations and to coordinate interaction between insurer receivership and guaranty fund operations. Any state may join in the compact by ratifying it by statute. The functions under the compact are performed by the interstate insurance receivership commission (commission), which is created by the compact. The commission is composed of members who represent the compacting states. Each compacting state has one member, and one vote, on the commission. The commissioner of insurance, or his or her designee, is the commission member representing this state.

The commission is a body corporate of each compacting state and has the usual corporate powers, such as to elect or appoint officers, employes or attorneys, to borrow money, to accept donations and grants of money, to prescribe bylaws for its operation, to establish a budget and make expenditures, to lease or purchase real or personal property, to sell or mortgage real or personal property, to bring or prosecute legal proceedings, to establish and maintain offices and to purchase insurance and bonds. In addition, the commission has the power to promulgate rules that are binding on the compacting states and to enforce those rules, to oversee, supervise and coordinate the activities of receivers in compacting states, to monitor the activities and functions of guaranty funds in the compacting states, to act as a receiver of insurers, to provide advice and training regarding receiverships in the compacting states and to provide for dispute resolution among compacting states and receivers.

The primary functions of the commission are the oversight of receiverships in the compacting states and the promulgation of rules related to the operation of receiverships. To aid the commission in the first primary function, each compacting state must keep the commission informed of receiverships in the state by providing notice to the commission of those receiverships and by submitting certain reports regarding those receiverships. Receivers in the compacting states must submit to the commission reports and other information requested by the commission. The commission will analyze the information received and may make recommendations to a compacting state for improving the performance of its receivers. The commission may act as receiver of any insurer in a compacting state upon the request of the commissioner of the compacting state or if the commissioner, while acting as receiver, fails to comply with commission rules or operating procedures. With regard to the 2nd primary function, within 3 years after ratification of the compact by at least 2 states, the commission is required to promulgate uniform provisions for the operation of receiverships among the compacting states. The uniform provisions will become law in the compacting states upon legislative enactment in a majority of the compacting states. A compacting state, however, may exempt itself from the application of a uniform provision if the state expressly rejects the provision by legislative enactment.

The expenses of the commission are to be paid through annual assessments against each compacting state and each insurer authorized to do a direct insurance business in a compacting state. The commission is exempt from taxation in the compacting states.

Any compacting state may withdraw from the compact by repealing the state's statute that ratifies the compact. A compacting state may also be terminated from the compact if it defaults in any of its obligations under the compact and fails to cure the default within the time specified by the commission. The entire compact dissolves if membership is at any time reduced to one state.

Current law provides for the grounds, and procedures to be followed, for the rehabilitation and liquidation of insurers doing business in this state, actions in which the insurers are subject to receivership.

This bill will be referred to the joint survey committee on tax exemptions for a detailed analysis, which will be printed as an appendix to this bill.

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

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

- 1 **SECTION 1.** 14.83 of the statutes is created to read:
- 2 **14.83 Interstate insurance receivership commission.** There is created an
- 3 interstate insurance receivership commission as specified in s. 601.59 (3). The

1 member of the commission representing this state shall be the commissioner of
2 insurance or his or her designated representative. The commission member shall
3 serve without compensation but shall be reimbursed from the appropriation under
4 s. 20.145 (1) (g) for actual and necessary expenses incurred in the performance of his
5 or her duties. The commission has the powers and duties granted and imposed under
6 s. 601.59.

7 **SECTION 2.** 15.01 (2) of the statutes is amended to read:

8 15.01 (2) "Commission" means a 3-member governing body in charge of a
9 department or independent agency or of a division or other subunit within a
10 department, except for the sentencing commission which shall consist of 17
11 members, the Wisconsin waterways commission which shall consist of 5 members,
12 the parole commission which shall consist of 5 members and the Fox river
13 management commission which shall consist of 7 members. A Wisconsin group
14 created for participation in a continuing interstate body, or the interstate body itself,
15 shall be known as a "commission", but is not a commission for purposes of s. 15.06.
16 The parole commission created under s. 15.145 (1) shall be known as a "commission",
17 but is not a commission for purposes of s. 15.06.

18 **SECTION 3.** 601.415 (11) of the statutes is created to read:

19 601.415 (11) INTERSTATE INSURANCE RECEIVERSHIP COMMISSION. The
20 commissioner or a designated representative shall serve as a member of the
21 interstate insurance receivership commission under ss. 14.83 and 601.59 (3).

22 **SECTION 4.** 601.59 of the statutes is created to read:

23 **601.59 Interstate insurance receivership compact.** The interstate
24 insurance receivership compact is hereby enacted into law and entered into by this

1 state with all other jurisdictions legally joining therein, in the form substantially as
2 follows:

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

6 (a) To promote, develop and facilitate orderly, efficient, cost-effective and
7 uniform insurer receivership laws and operations.

8 (b) To coordinate interaction between insurer receivership and guaranty
9 association operations.

10 (c) To create the interstate insurance receivership commission.

11 (d) To perform these and such other related functions as may be consistent with
12 the state regulation of the business of insurance pursuant to the
13 McCarran-Ferguson act.

14 (2) ARTICLE II — DEFINITIONS. In this compact:

15 (a) "Bylaws" means those bylaws prescribed by the commission for its
16 governance, or for directing or controlling the commission's actions or conduct.

17 (b) "Compacting state" means any state which has enacted enabling legislation
18 for this compact.

19 (c) "Commission" means the interstate insurance receivership commission
20 created by this compact.

21 (d) "Commissioner" means the chief insurance regulatory official of a state.

22 (e) "Deputy receiver" means any person appointed or retained by a receiver and
23 who is the receiver's duly authorized representative for administering one or more
24 estates.

1 (f) "Domiciliary state" means the state in which an insurer is incorporated or
2 organized; or, in the case of an alien insurer, its state of entry; or, in the case of an
3 unauthorized insurer not incorporated, organized, or entered in any state, a state
4 where the insurer is engaged in or doing business.

5 (g) "Estate" means the assets and liabilities of any insurer in receivership.

6 (h) "Guaranty association" means an insurance guaranty fund or association
7 or any similar entity now or hereafter created by statute in a compacting state, other
8 than a receivership, to pay or assume, in whole or in part, the contractual claim
9 obligations of insolvent insurers.

10 (i) "Insurer" means any person or entity that has done, purports to do, is doing
11 or is licensed to do any insurance or reinsurance business, or that is or has been
12 subject to the authority of, or to liquidation, rehabilitation, supervision, conservation
13 or ancillary receivership by, any commissioner.

14 (j) "Member" means the commissioner of a compacting state or his or her
15 designee, who shall be a person officially connected with the commissioner and who
16 is wholly or principally employed by the commissioner.

17 (k) "Noncompacting state" means any state which has not enacted enabling
18 legislation for this compact.

19 (L) "Operating procedures" means those procedures promulgated by the
20 commission implementing a rule, an existing law in a compacting state or a provision
21 of this compact.

22 (m) "Publication" means the act of publishing in the official state publication
23 in a compacting state or in such other publication as may be established by the
24 commission.

1 (n) "Receiver" means receiver, liquidator, rehabilitator, conservator or ancillary
2 receiver as the context requires.

3 (o) "Receivership" means any liquidation, rehabilitation, conservation or
4 ancillary receivership proceeding as the context requires.

5 (p) "Rules" means acts of the commission, duly promulgated pursuant to sub.
6 (7), substantially affecting interested parties in addition to the commission, which
7 shall have the force and effect of law in the compacting states.

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

9 **(3) ARTICLE III — ESTABLISHMENT OF THE COMMISSION AND VENUE.** The
10 compacting states hereby create the interstate insurance receivership commission.
11 The commission is a body corporate of each compacting state. The commission is a
12 not-for-profit entity, separate and distinct from the compacting states. The
13 commission is solely responsible for its liabilities except as otherwise provided in this
14 compact. Except as otherwise specifically provided in state or federal law in the
15 jurisdiction where the commission's principal office is located or where the
16 commission is acting as receiver, venue is proper, and judicial proceedings by or
17 against the commission shall be brought, in a court of competent jurisdiction where
18 the commission's principal office is located.

19 **(4) ARTICLE IV — POWERS OF THE COMMISSION.** The commission shall have all
20 of the following powers:

21 (a) To promulgate rules which shall have the force and effect of statutory law
22 and shall be binding in the compacting states to the extent and in the manner
23 provided in this compact.

24 (b) To promulgate operating procedures which shall be binding in the
25 compacting states to the extent and in the manner provided in this compact.

1 (c) To oversee, supervise and coordinate the activities of receivers in
2 compacting states.

3 (d) To act as receiver of insurers organized under the laws of, engaged in or
4 doing the business of insurance in, a compacting state upon the request of the
5 commissioner of such state or when grounds for receivership by the commission exist
6 under sub. (9).

7 (e) To act as deputy receiver of insurers organized under the laws of, engaged
8 in or doing the business of insurance in, a noncompacting state in accordance with
9 sub. (9).

10 (f) To act as ancillary receiver in a compacting state of an insurer domiciled in
11 a noncompacting state.

12 (g) To monitor the activities and functions of guaranty associations in the
13 compacting states.

14 (h) To delegate its operating authority or functions; provided, that its
15 rule-making authority under sub. (7) shall not be delegated.

16 (i) To bring or prosecute legal proceedings or actions in its name as the
17 commission, or in the name of the commission acting as receiver.

18 (j) To bring or prosecute legal proceedings or actions as receiver on behalf of an
19 estate or its policyholders and creditors; provided, that any guaranty association's
20 standing to sue or be sued under applicable law shall not be affected.

21 (jm) To issue subpoenas requiring the attendance and testimony of witnesses
22 and the production of evidence.

23 (k) To establish and maintain offices.

24 (L) To purchase and maintain insurance and bonds.

1 (m) To borrow, accept or contract for services of personnel, including, but not
2 limited to, members and their staff.

3 (n) To elect or appoint such officers, attorneys, employes or agents, and to fix
4 their compensation, define their duties and determine their qualifications; and to
5 establish the commission's personnel policies and programs relating to, among other
6 things, conflicts of interest, rates of compensation and qualifications of personnel.

7 (o) To accept any and all donations and grants of money, equipment, supplies,
8 materials and services, and to receive, utilize and dispose of the same.

9 (p) To lease, purchase, accept gifts or donations of, or otherwise to own, hold,
10 improve or use, any property, real, personal or mixed.

11 (pm) To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise
12 dispose of any property, real, personal or mixed.

13 (q) To enforce compliance with commission rules, operating procedures and
14 bylaws.

15 (r) To provide for dispute resolution among compacting states and receivers.

16 (s) To represent and advise compacting states on issues relating to insurers
17 domiciled or doing business in noncompacting jurisdictions, consistent with the
18 purposes of this compact.

19 (t) To provide advice and training to receivership personnel of compacting
20 states, and to be a resource for compacting states by maintaining a reference library
21 of relevant materials.

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

23 (v) To borrow money.

24 (w) To appoint committees including, but not limited to, an industry advisory
25 committee and an executive committee of members.

1 (x) To provide and receive information relating to receiverships and guaranty
2 associations, and to cooperate with law enforcement agencies.

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

4 (z) To perform such other functions as may be necessary or appropriate to
5 achieve the purposes of this compact as may be consistent with the state regulation
6 of the business of insurance pursuant to the McCarran-Ferguson act.

7 **(5) ARTICLE V — ORGANIZATION OF THE COMMISSION.** (a) Each compacting state
8 shall have one member. Each member shall be qualified to serve in such capacity
9 under the applicable law of the compacting state. Each compacting state retains the
10 discretionary right to determine the due election or appointment and qualification
11 of its own commissioner, and to fill all vacancies of its member. Each member shall
12 be entitled to one vote.

13 (b) The commission shall, by a majority of the members, prescribe bylaws to
14 govern its conduct as may be necessary or appropriate to carry out the purposes of
15 the compact, including, but not limited to, all of the following:

16 1. Establishing the fiscal year of the commission.

17 2. Providing reasonable standards and procedures for the establishment of
18 committees and governing any general or specific delegation of any authority or
19 function of the commission.

20 3. Providing reasonable procedures for calling and conducting meetings of the
21 commission, and ensuring reasonable notice of each such meeting.

22 4. Establishing the titles and responsibilities of the officers of the commission.

23 5. Providing reasonable standards and procedures for the establishment of the
24 personnel policies and programs of the commission. Notwithstanding any civil

1 service or other similar laws of any compacting state, the bylaws shall exclusively
2 govern the personnel policies and programs of the commission.

3 6. Providing a mechanism for winding up the operations of the commission and
4 the equitable return of any surplus funds that may exist after the dissolution of the
5 compact after the payment or reserving of all of its debts and obligations.

6 (c) The commission shall, by a majority of the members, elect annually from
7 among its members a chairperson and a vice chairperson, each of whom shall have
8 such authorities and duties as may be specified in the bylaws. The chairperson or,
9 in his or her absence or disability, a member designated in accordance with the
10 bylaws, shall preside at all meetings of the commission. The officers so elected shall
11 serve without compensation or remuneration from the commission; provided that,
12 subject to the availability of budgeted funds, the officers shall be reimbursed for any
13 actual and necessary costs and expenses incurred by them in the performance of
14 their duties and responsibilities as officers of the commission.

15 (d) The commission may, by a majority of the members, appoint or retain an
16 executive director for such period, upon such terms and conditions and for such
17 compensation as the commission determines appropriate. The executive director
18 shall serve as secretary to the commission, but shall not be a member of the
19 commission. The executive director shall hire and supervise such other staff as may
20 be authorized by the commission.

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

23 (f) The members, officers, executive director and employes of the commission
24 shall be immune from suit and liability, either personally or in their official capacity,
25 for any claim for damage to or loss of property or personal injury or other civil liability

1 caused or arising out of or relating to any actual or alleged act, error or omission that
2 occurred, or that such person had a reasonable basis for believing occurred within
3 the scope of commission employment, duties or responsibilities; provided, that
4 nothing in this paragraph shall be construed to protect any such person from suit or
5 liability for any damage, loss, injury or liability caused by the intentional or wilful
6 and wanton misconduct of any such person, or to protect the commission acting as
7 receiver under sub. (9).

8 (g) The commission shall defend any commissioner of a compacting state, or his
9 or her representatives or employes, or the commission's representatives or employes,
10 in any civil action seeking to impose liability, arising out of or relating to any actual
11 or alleged act, error or omission that occurred within the scope of commission
12 employment, duties or responsibilities, or that such person had a reasonable basis
13 for believing occurred within the scope of commission employment, duties or
14 responsibilities; provided, that the actual or alleged act, error or omission did not
15 result from gross negligence or intentional wrongdoing on the part of such person.

16 (h) The commission shall indemnify and hold the commissioner of a compacting
17 state, or his or her representatives or employes, or the commission's representatives
18 or employes, harmless in the amount of any settlement or judgment obtained against
19 such person arising out of or relating to any actual or alleged act, error or omission
20 that occurred within the scope of commission employment, duties or responsibilities,
21 or that such person had a reasonable basis for believing occurred within the scope
22 of commission employment, duties or responsibilities; provided, that the actual or
23 alleged act, error or omission did not result from gross negligence or intentional
24 wrongdoing on the part of such person.

1 (i) The costs and expenses of defense and indemnification of the commission
2 acting as receiver of an estate shall be paid as administrative expenses from the
3 assets of that estate unless such costs and expenses are covered by insurance
4 maintained by the commission.

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

8 (b) Except as otherwise provided in this compact and unless a greater
9 percentage is required by the bylaws, in order to constitute an act of the commission,
10 such act shall have been taken at a meeting of the commission and shall have
11 received an affirmative vote of a majority of the members.

12 (c) Each member of the commission shall have the right and power to cast a vote
13 to which that compacting state is entitled and to participate in the business and
14 affairs of the commission. A member shall vote in person and may not delegate his
15 or her vote to another member. The bylaws may provide for members' participation
16 in meetings by telephone or other means of telecommunication.

17 (d) The commission shall meet at least once during each calendar year. The
18 chairperson of the commission may call additional meetings at any time and, upon
19 the request of a majority of the members, shall call additional meetings.

20 (e) The commission's rules shall establish conditions and procedures under
21 which the commission shall make its information and official records available to the
22 public for inspection or copying. The commission may exempt from disclosure any
23 information or official records to the extent disclosure would adversely affect
24 personal privacy rights or proprietary interests. In promulgating such rules, the
25 commission may consider any special circumstances pertaining to insurer

1 insolvencies, but shall be guided by the principles embodied in state and federal
2 freedom of information laws. The commission may promulgate additional rules
3 under which it may make available to law enforcement agencies records and
4 information otherwise exempt from disclosure, and may enter into agreements with
5 law enforcement agencies to receive or exchange information or records subject to
6 nondisclosure and confidentiality provisions.

7 (f) Public notice shall be given of all meetings and all meetings shall be open
8 to the public, except as set forth in the rules or as otherwise provided in this compact.
9 The commission shall promulgate rules consistent with the principles contained in
10 the government in sunshine act, 5 USC 552b. The commission and any of its
11 committees may close a meeting to the public if it determines by two-thirds vote that
12 an open meeting would likely do any of the following:

13 1. Relate solely to the commission's internal personnel practices and
14 procedures.

15 2. Disclose matters specifically exempted from disclosure by statute.

16 3. Disclose trade secrets or commercial or financial information which is
17 privileged or confidential.

18 4. Involve accusing any person of a crime or formally censuring any person.

19 5. Disclose information of a personal nature where disclosure would constitute
20 a clearly unwarranted invasion of personal privacy.

21 6. Disclose investigatory records compiled for law enforcement purposes.

22 7. Disclose information contained in or related to examination, operating or
23 condition reports prepared by, or on behalf or for the use of, the commission with
24 respect to a regulated entity for the purpose of regulation or supervision of such
25 entity.

1 8. Disclose information, the premature disclosure of which would significantly
2 endanger the stability of a regulated entity.

3 9. Specifically relate to the commission's issuance of a subpoena or its
4 participation in a civil action or proceeding.

5 (g) For every meeting closed under par. (f), the commission's chief legal officer
6 shall publicly certify that, in his or her opinion, the meeting may be closed to the
7 public, and shall reference each relevant exemptive provision. The commission shall
8 keep minutes which shall fully and clearly describe all matters discussed in any
9 meeting and shall provide a full and accurate summary of any actions taken, and the
10 reasons therefor, including a description of each of the views expressed on any item
11 and the record of any rollcall vote, reflected in the vote of each member on the
12 question. All documents considered in connection with any action shall be identified
13 in the minutes.

14 **(7) ARTICLE VII — RULE-MAKING FUNCTIONS OF THE COMMISSION.** (a) The
15 commission shall promulgate rules and operating procedures in order to effectively
16 and efficiently achieve the purposes of this compact; provided, that the commission
17 shall not promulgate any rules directly relating to guaranty associations, including,
18 but not limited to, rules governing coverage, funding or assessment mechanisms; or
19 altering the statutory priorities for distributing assets out of an estate, except
20 pursuant to rules promulgated under par. (c).

21 (b) Rule making shall occur according to the criteria set forth in this subsection
22 and the rules and operating procedures promulgated pursuant thereto. Such rule
23 making shall substantially conform to the principles of the federal administrative
24 procedure act, 5 USCS 551, et seq., and the federal advisory committee act, 5 USCS
25 app. 2, section 1, et seq.

1 (c) Other than the promulgation of such rules as are necessary for the orderly
2 operation of the commission, the first rule to be considered by the commission shall
3 be uniform provisions governing insurer receiverships including, but not limited to,
4 provisions requiring compacting states to implement, execute and administer in a
5 fair, just, effective and efficient manner rules and operating procedures relating to
6 receiverships. The commission shall, within 3 years after the adoption of this
7 compact by 2 or more states, promulgate such uniform provisions through the
8 rule-making process. Such uniform provisions shall become law in all of the
9 compacting states upon legislative enactment in a majority of the compacting states.

10 (d) All rules and amendments shall become binding as of the date specified in
11 the rule or amendment; provided, that if a compacting state expressly rejects a rule
12 or amendment through legislative enactment as of the expiration of the 2nd full
13 calendar year after the rule is promulgated, the rule or amendment shall have no
14 further force or effect in the rejecting compacting state. If a majority of compacting
15 states reject a rule, then the rule shall have no further force or effect in any
16 compacting state.

17 (e) When promulgating a rule or operating procedure, the commission shall do
18 all of the following:

19 1. Publish the proposed rule or operating procedure, stating with particularity
20 the text of the rule or operating procedure which is proposed and the reason for the
21 proposed rule or operating procedure.

22 2. Allow persons to submit written data, facts, opinions and arguments, which
23 information the commission shall make publicly available.

24 3. Provide an opportunity for an informal hearing.

1 4. Promulgate a final rule or operating procedure and its effective date, if
2 appropriate, based on the rule-making record.

3 (f) Not later than 60 days after a rule or operating procedure is promulgated,
4 any interested person may file a petition in a court of competent jurisdiction where
5 the commission's principal office is located for judicial review of the rule or operating
6 procedure. If the court finds that the commission's action is not supported by
7 substantial evidence in the rule-making record, the court shall hold the rule
8 unlawful and set it aside.

9 **(8) ARTICLE VIII — OVERSIGHT AND DISPUTE RESOLUTION BY THE COMMISSION.** (a)
10 The commission shall oversee the administration and operations of receiverships in
11 compacting states, and shall monitor receiverships being administered in
12 noncompacting states which may significantly affect compacting states.

13 (b) To aid its monitoring, oversight and coordination responsibilities, the
14 commission shall establish operating procedures requiring each member to submit
15 to the commission the following written reports:

16 1. An initial report upon a finding or other official action by the compacting
17 state that grounds exist for receivership of an insurer doing business in more than
18 one state. Thereafter, reports shall be submitted periodically and as otherwise
19 required pursuant to the commission's operating procedures. The commission shall
20 be entitled to receive notice of, and shall have standing to appear in, compacting
21 states' receiverships.

22 2. An initial report of the status of an insurer within a reasonable time after
23 the initiation of a receivership.

24 (c) The commission shall promulgate operating procedures requiring receivers
25 to submit to the commission periodic written reports and such additional

1 information and documentation as the commission may reasonably request. Each
2 compacting state's receivers shall establish the capability to obtain and provide all
3 records, data and information required by the commission in accordance with the
4 commission's operating procedures.

5 (d) Except as to privileged records, data and information, the laws of any
6 compacting state pertaining to confidentiality or nondisclosure shall not relieve any
7 compacting state commissioner of the responsibility to disclose any relevant records,
8 data or information to the commission; provided, that disclosure to the commission
9 shall not be deemed to waive or otherwise affect any confidentiality requirement; and
10 further provided, that the commission shall be subject to the compacting state's laws
11 pertaining to confidentiality and nondisclosure with respect to all such records, data
12 and information in its possession.

13 (e) The courts and executive agencies in each compacting state shall enforce
14 this compact and shall take all actions necessary and appropriate to effectuate the
15 compact's purposes and intent. In any receivership or other judicial or
16 administrative proceeding in a compacting state pertaining to the subject matter of
17 this compact which may affect the powers, responsibilities or actions of the
18 commission, the commission shall be entitled to receive all service of process in any
19 such proceeding, and shall have standing to intervene in the receivership or
20 proceeding for all purposes.

21 (f) The commission shall analyze and correlate records, data, information and
22 reports received from receivers and guaranty associations, and shall make
23 recommendations for improving their performance to the compacting states. The
24 commission shall include summary information and data regarding its oversight
25 functions in its annual report.

1 (g) The commission shall attempt, upon the request of a member, to resolve any
2 disputes or other issues which are subject to this compact and which may arise
3 among compacting states and noncompacting states.

4 (h) The compacting states shall report to the commission on issues or activities
5 of concern to them, and cooperate with and support the commission in the discharge
6 of its duties and responsibilities.

7 (i) The commission shall promulgate an operating procedure providing for
8 binding dispute resolution for disputes among receivers.

9 (j) The commission shall facilitate voluntary dispute resolution for disputes
10 among guaranty associations and receivers.

11 **(9) ARTICLE IX — RECEIVERSHIP FUNCTIONS OF THE COMMISSION.** (a) The
12 commission has authority to act as receiver of any insurer domiciled, engaged in or
13 doing business in a compacting state upon the request of the commissioner of such
14 compacting state, or as otherwise provided in this compact. As receiver, the
15 commission shall have all powers and duties pursuant to the receivership laws of the
16 domiciliary state. The commission shall maintain accounts of receipts and
17 disbursements of the estates for which it is acting as receiver, consistent with the
18 accounting practices and procedures set forth in the bylaws. The commission shall
19 cause an annual audit of each estate for which it is acting as receiver to be conducted
20 by an independent certified public accountant. The costs and expenses of such audit
21 shall be paid as administrative expenses from the assets of the estate. The
22 commission may not cause an annual audit to be conducted of any estate which lacks
23 sufficient assets to pay the costs and expenses of such audit. The commission as
24 receiver may delegate its receivership duties and functions, and may contract with
25 others for that purpose.

1 (b) The commission shall act as receiver of any insurer domiciled or doing
2 business in a compacting state in the event that the member acting as receiver in that
3 compacting state fails to comply with duly promulgated commission rules or
4 operating procedures. The commission shall notify the member in writing of his or
5 her noncompliance with commission rules or operating procedures. If the member
6 acting as receiver fails to remedy the noncompliance within 10 days after receipt of
7 the notification, the commission may petition the supervising court before which the
8 receivership is pending for an order substituting and appointing the commission as
9 receiver of the estate.

10 (c) The commission may not act as receiver of an estate that appears to lack
11 sufficient assets to fund such receivership unless the compacting state makes
12 provisions for the payment of the estate's administrative expenses satisfactory to the
13 commission.

14 (d) The commission may act as deputy receiver for any insurer domiciled or
15 doing business in a noncompacting state in accordance with that state's laws, upon
16 request of that noncompacting state's commissioner and approval of the commission.

17 (e) With respect to receiverships pending in a compacting state on the effective
18 date of this paragraph [revisor inserts date], all of the following apply:

19 1. The commission may act as receiver of an insurer upon the request of that
20 compacting state's member and approval of the commission.

21 2. The commission shall oversee, monitor and coordinate the activities of all
22 receiverships pending in that compacting state regardless of whether the
23 commission is acting as receiver of estates in that state.

24 **(10) ARTICLE X — FINANCE.** (a) The commission shall pay or provide for the
25 payment of the reasonable expenses of its establishment and organization.

1 (b) Except as otherwise provided in this compact or by act of the commission,
2 the costs and expenses of each compacting state shall be the sole and exclusive
3 responsibility of the respective compacting state. The commission may pay or
4 provide for actual and necessary costs and expenses for attendance of its members
5 at official meetings of the commission or its designated committees.

6 (c) The commission shall levy on and collect an annual assessment from each
7 compacting state and each insurer authorized to do business in a compacting state
8 and writing direct insurance to cover the cost of the internal operations and activities
9 of the commission and its staff in a total amount sufficient to cover the commission's
10 annual budget. With respect to the assessments, all of the following apply:

11 1. The aggregate annual assessment amount shall be allocated 75% to insurers
12 and 25% to compacting states. The insurers' portion shall be allocated to each
13 insurer by the percentage derived from a fraction, the numerator of which shall be
14 the gross direct written premium received on that insurer's business in all
15 compacting states and the denominator of which shall be the gross direct written
16 premium received by all insurers on business in all compacting states. The
17 compacting states' portion shall be allocated to each compacting state by the
18 percentage derived from a fraction, the numerator of which shall be the gross direct
19 written premium received by all insurers on business in that compacting state and
20 the denominator shall be the gross direct written premium received on all insurers
21 on business in all compacting states. Each compacting state's portion shall be funded
22 as designated by that state's legislature. In no event shall an insurer's assessment
23 be less than \$50 or more than \$25,000; provided, that affiliated insurers' combined
24 assessments shall not exceed \$50,000. Upon the request of an insurer, the

1 commission may exempt or defer the assessment of any insurer, if such assessment
2 would cause the insurer's financial impairment.

3 2. These assessments may not be used to pay any costs or expenses incurred
4 by the commission and its staff acting as receiver of estates. Such costs and expenses
5 shall be paid as administrative expenses from the assets of the estates as provided
6 by law, except as otherwise provided in this compact.

7 3. Each insurer authorized to do business in a compacting state shall timely pay
8 assessments to the commission. Failure to pay such assessments shall not be
9 grounds for the revocation, suspension or denial of an insurer's authority to do
10 business, but shall subject the insurer to suit by the commission for recovery of any
11 assessment due, attorneys fees and costs, together with interest from the date the
12 assessment is due at a rate of 10% per year, and to civil forfeiture in an amount to
13 be determined by the commissioner of that compacting state in which the insurer
14 received the greatest premium in the year next preceding the first year for which the
15 insurer is delinquent in payment of assessments.

16 (d) The commission shall be reimbursed in the following manner for the costs
17 and expenses incurred by the commission and its staff acting as receiver of estates
18 to the extent that an insurer's assets may be insufficient for the effective
19 administration of its estate:

20 1. If the insurer is domiciled in a compacting state, the estate shall be closed
21 unless that compacting state makes provisions for reimbursing the commission.

22 2. If the insurer is unauthorized to do business in a compacting state or if the
23 insurer is domiciled in a noncompacting state and subject to ancillary receivership,
24 the commission and such state shall make provisions for reimbursing the
25 commission prior to the commission becoming receiver of such insurer.

1 (e) To fund the cost of the initial operations of the commission until its first
2 annual budget is adopted and related assessments have been made, contributions
3 from compacting states and others may be accepted and a one-time assessment on
4 insurers doing a direct insurance business in the compacting states may be made not
5 to exceed \$450 per insurer.

6 (f) The commission's adopted budget for a fiscal year may not be approved until
7 it has been subject to notice and comment as set forth for rules and operating
8 procedures in sub. (7) (e). The budget shall determine the amount of the annual
9 assessment. The commission may accumulate a net worth not to exceed 30% of its
10 then annual cost of operation to provide for contingencies and events not
11 contemplated. These accumulated funds shall be held separately and may not be
12 used for any other purpose. The commission's budget may include a provision for a
13 contribution to the commission's net worth.

14 (g) The commission shall be exempt from all taxation in and by the compacting
15 states.

16 (h) The commission may not pledge the credit of any compacting state, except
17 by and with the appropriate legal authority of that compacting state.

18 (i) The commission shall keep complete and accurate accounts of all its internal
19 receipts, including grants and donations, and disbursements of all funds, other than
20 receivership assets, under its control. The internal financial accounts of the
21 commission shall be subject to the accounting procedures established under its
22 bylaws. The financial accounts and reports including the system of internal controls
23 and procedures of the commission shall be audited annually by an independent
24 certified public accountant. Upon the determination of the commission, but no less
25 frequently than every 3 years, the review of such independent auditor shall include

1 a management and performance audit of the commission. The report of such
2 independent audit shall be made available to the public and shall be included in and
3 become part of the annual report of the commission to the governors and legislatures
4 of the compacting states. The commission's internal accounts, any workpapers
5 related to any internal audit and any workpapers related to the independent audit,
6 shall be confidential; provided, that such materials shall be made available in
7 compliance with the order of any court of competent jurisdiction, pursuant to such
8 reasonable rules as the commission shall promulgate and to any commissioner or
9 governor of a compacting state, or their duly authorized representatives.

10 (j) No compacting state shall have any claim to or ownership of any property
11 held by or vested in the commission or the commission acting as receiver or to any
12 other commission funds held pursuant to the provisions of this compact.

13 **(11) ARTICLE XI — COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT.** (a) Any
14 state is eligible to become a compacting state.

15 (b) The compact shall become effective and binding upon legislative enactment
16 of the compact into law by 2 compacting states. Thereafter, it shall become effective
17 and binding as to any other compacting state upon enactment of the compact into law
18 by that state.

19 (c) Amendments to the compact may be proposed by the commission for
20 enactment by the compacting states. No amendment shall become effective and
21 binding upon the commission and the compacting states unless and until it is enacted
22 into law by unanimous consent of the compacting states.

23 **(12) ARTICLE XII — WITHDRAWAL, DEFAULT AND TERMINATION.** (a) Once effective,
24 the compact shall continue in force and remain binding upon each and every

1 compacting state; provided, that a compacting state may withdraw from the compact
2 by repealing the statute which enacted the compact into law.

3 (b) The effective date of withdrawal is the effective date of the repeal; provided,
4 that the repeal shall not apply to any receiverships for which the commission is
5 acting as receiver that are pending on the date of the repeal except by mutual
6 agreement of the commission and the withdrawing state.

7 (c) The withdrawing state shall immediately notify the chairperson of the
8 commission in writing upon the introduction of legislation repealing this compact in
9 the withdrawing state.

10 (d) The commission shall notify the other compacting states of the withdrawing
11 state's intention to withdraw within 60 days after its receipt of the notice under par.
12 (c).

13 (e) The withdrawing state is responsible for all assessments, obligations and
14 liabilities incurred through the effective date of withdrawal, including any
15 obligations, the performance of which extend beyond the effective date of
16 withdrawal, except to the extent those obligations may have been released or
17 relinquished by mutual agreement of the commission and the withdrawing state.
18 Notwithstanding the foregoing, the withdrawing state is responsible for the costs
19 and expenses of its estates subject to this compact that are pending on the date of
20 repeal; the commission and the other estates subject to this compact shall not bear
21 any costs or expenses related to the withdrawing state's estates unless otherwise
22 mutually agreed upon between the commission and the withdrawing state.

23 (f) Reinstatement following withdrawal of any compacting state shall occur
24 upon the withdrawing state reenacting the compact or upon a later date determined
25 by the commission.

1 (g) If the commission determines that any compacting state has at any time
2 defaulted in the performance of any of its obligations or responsibilities under this
3 compact, the bylaws or duly promulgated rules, all rights, privileges and benefits
4 conferred by this compact and any agreements entered into pursuant to this compact
5 shall be suspended from the effective date of default as fixed by the commission. The
6 grounds for default include, but are not limited to, failure of a compacting state to
7 perform such obligations or responsibilities and any other grounds designated in
8 commission rules. The commission shall immediately notify the defaulting state in
9 writing of the defaulting state's suspension pending a cure of the default. The
10 commission shall stipulate the conditions and the time period within which the
11 defaulting state must cure its default. If the defaulting state fails to cure the default
12 within the time period specified by the commission, the defaulting state shall be
13 terminated from the compact upon an affirmative vote of a majority of the
14 compacting states and all rights, privileges and benefits conferred by this compact
15 shall be terminated from the effective date of termination.

16 (h) Within 60 days after the effective date of termination of a defaulting state,
17 the commission shall notify the governor and the majority and minority leaders of
18 the defaulting state's legislature of such termination.

19 (i) The termination of a defaulting state shall apply to all receiverships for
20 which the commission is acting as receiver that are pending on the effective date of
21 termination except by mutual agreement of the commission and the defaulting state.

22 (j) The defaulting state is responsible for all assessments, obligations and
23 liabilities incurred through the effective date of termination, and is responsible for
24 the costs and expenses relating to its estates subject to this compact that are pending
25 on the date of the termination. The commission and the other estates subject to this

1 compact shall not bear any costs or expenses relating to the defaulting state's estates
2 unless otherwise mutually agreed upon between the commission and the defaulting
3 state.

4 (k) Reinstatement following termination of any compacting state requires both
5 a reenactment of the compact by the defaulting state and the approval of the
6 commission pursuant to the rules.

7 (L) The compact dissolves effective upon the date of the withdrawal or the
8 termination by default of the compacting state which reduces membership in the
9 compact to one compacting state.

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

14 **(13) ARTICLE XIII — SEVERABILITY AND CONSTRUCTION.** (a) The provisions of this
15 compact shall be severable, and if any phrase, clause, sentence or provision is
16 declared unenforceable by a court of competent jurisdiction, the remaining
17 provisions of the compact shall be enforceable.

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

20 **(14) ARTICLE XIV — BINDING EFFECT OF COMPACT AND OTHER LAWS.** (a) Nothing
21 herein prevents the enforcement of any other law of a compacting state that is not
22 inconsistent with this compact. All compacting states' laws conflicting with this
23 compact are superseded to the extent of the conflict.

24 (b) All lawful actions of the commission, including all rules and operating
25 procedures promulgated by the commission, are binding upon the compacting states.

1 All agreements between the commission and the compacting states are binding in
2 accordance with their terms. Upon the request of a party to a conflict over meaning
3 or interpretation of commission actions, and upon a majority vote of the compacting
4 states, the commission may issue advisory opinions regarding such meaning or
5 interpretation.

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

13

(END)