WEST VIRGINIA LEGISLATURE
Regular Session, 2004

ENROLLED

Committee Substitute for Committee Substitute for
SENATE BILL NO. 431

(By Senator Minard)

PASSED March 12, 2004

In Effect ninety days after Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 431
(SENATOR MINARD, original sponsor)
[Passed March 12, 2004; in effect ninety days from passage.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-47-1, §33-47-2, §33-47-3, §33-47-4, §33-47-5, §33-47-6, §33-47-7, §33-47-8, §33-47-9, §33-47-10, §33-47-11, §33-47-12, §33-47-13, §33-47-14, §33-47-15, §33-47-16 and §33-47-17, all relating to the establishment and operation of an interstate compact for the review and approval of certain lines of insurance products; setting forth the purposes for establishing the compact; protecting the interests of consumers and promoting uniform standards for insurance products; setting forth definitions; establishing the interstate insurance product regulation commission which has the power to develop uniform standards for product lines, to receive and approve those product filings and to be an instrumentality of the compacting states; setting forth the powers of the interstate

insurance product regulation commission to promulgate rules, establish reasonable uniform standards for product filings, review products filed with the commission, review advertisement relating to long-term care insurance, exercise its rule-making authority, bring legal actions, issue subpoenas, undertake activities relating to the administration of the commission and appoint committees; setting forth provisions relating to organization of the commission; memberships and voting rights of states and participation in the governance of the commission; creation and content of bylaws of the commission; setting forth provisions relating to meetings and acts of the commission; establishing rule-making authority of the commission; exempting rules promulgated by the commission from the provisions of chapter twenty-nine-a of this code; allowing states to opt out of rules promulgated by the commission; setting forth provisions relating to the maintenance and disclosure of commission records; commission's power to monitor states' compliance with the compact, but preserving to states the ability to regulate the market conduct of insurers; setting forth provisions relating to resolution of disputes between compacting states and noncompacting states; setting forth requirements for filing products with the commission; setting forth appeal rights of insurers following disapproval of filings; setting forth provisions relating to the mechanism for funding the operations of the commission, including the collection of filing fees; setting forth the circumstances under which the compact will become effective and requiring twenty-six states or states representing forty percent of premium volume for the effected insurance lines to adopt the compact before the commission may adopt uniform standards and approve filings; setting forth the procedures for states to withdraw from the compact and circumstances under which a state will be determined to be in default of the compact; provisions relating to severability; requiring the insurance commissioner to file in the state register rules or uniform standards adopted by the commission and which have become effective in this state; and provisions relating to the binding effect of the compact.
Be it enacted by the Legislature of West Virginia:

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §33-47-1, §33-47-2, §33-47-3, §33-47-4, §33-47-5, §33-47-6, §33-47-7, §33-47-8, §33-47-9, §33-47-10, §33-47-11, §33-47-12, §33-47-13, §33-47-14, §33-47-15, §33-47-16 and §33-47-17, all to read as follows:

ARTICLE 47. INTERSTATE INSURANCE PRODUCT REGULATION COMPACT.

§33-47-1. Purposes.

Pursuant to terms and conditions of this article, the state of West Virginia seeks to join with other states and establish the interstate insurance product regulation compact and thus become a member of the interstate insurance product regulation commission. The insurance commissioner is hereby designated to serve as the representative of this state to the commission.

The purposes of this compact are, through means of joint and cooperative action among the compacting states:

(1) To promote and protect the interest of consumers of individual and group annuity, life insurance, disability income and long-term care insurance products;

(2) To develop uniform standards for insurance products covered under the compact;

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

(4) To give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard;
(5) To improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the compact;

(6) To create the interstate insurance product regulation commission; and

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


For purposes of this compact:

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

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

(c) "Compacting state" means any state which has enacted this compact legislation and which has not withdrawn pursuant to subsection (a), section fourteen of this article or been terminated pursuant to subsection (b) of said section.

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

(e) "Commissioner" means the insurance commissioner of the state of West Virginia.

(f) "Domiciliary state" means the state in which an insurer is incorporated or organized; or, in the case of an alien insurer, its state of entry.
(g) "Insurer" means any entity licensed by a state to issue contracts of insurance for any of the lines of insurance covered by this article.

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

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

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

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

(l) "Rule" means a statement of general or particular applicability and future effect promulgated by the commission, including a uniform standard developed pursuant to section seven of this article, designed to implement, interpret or prescribe law or policy or describing the organization, procedure or practice requirements of the commission, which shall have the force and effect of law in the compacting states.

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

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

(o) "Uniform standard" means a standard adopted by the commission for a product line, pursuant to section seven of this article and shall include all of the product requirements in aggregate: Provided, That each uniform standard
shall be construed, whether express or implied, to prohibit
the use of any inconsistent, misleading or ambiguous
provisions in a product and the form of the product made
available to the public shall not be unfair, inequitable or
against public policy as determined by the commission.

§33-47-3. Establishment of the commission and venue.

(a) The compacting states hereby create and establish a
joint public agency known as the “interstate insurance
product regulation commission”. Pursuant to section four
of this article, the commission will have the power to
develop uniform standards for product lines, receive and
provide prompt review of products filed therewith and
give approval to those product filings satisfying applicable
uniform standards: Provided, That it is not intended for
the commission to be the exclusive entity for receipt and
review of insurance product filings. Nothing herein shall
prohibit any insurer from filing its product in any state
wherein the insurer is licensed to conduct the business of
insurance; and any such filing shall be subject to the laws
of the state where filed.

(b) The commission is a body corporate and politic and
an instrumentality of the compacting states.

(c) The commission is solely responsible for its liabilities
except as otherwise specifically provided in this article.

(d) Venue is proper and judicial proceedings by or
against the commission shall be brought solely and
exclusively in a court of competent jurisdiction where the
principal office of the commission is located.


The commission shall have the following powers:

(a) To promulgate rules, pursuant to section seven of this
article, which shall have the force and effect of law and
shall be binding in the compacting states to the extent and
in the manner provided in this article;
(b) To exercise its rule-making authority and establish reasonable uniform standards for products covered under the compact, and advertisement related thereto, which shall have the force and effect of law and shall be binding in the compacting states, but only for those products filed with the commission: Provided, That a compacting state shall have the right to opt out of any uniform standard pursuant to section seven of this article, to the extent and in the manner provided in this article: Provided, however, That any uniform standard established by the commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the national association of insurance commissioners' long-term care insurance model act and long-term care insurance model regulation, respectively, adopted as of two thousand one. The commission shall consider whether any subsequent amendments to the national association of insurance commissioners' long-term care insurance model act or the long-term care insurance model regulation adopted by the national association of insurance commissioners require the commissioner to amend the uniform standards established by the commission for long-term care insurance products;

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

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

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

(f) To promulgate operating procedures, pursuant to
section seven of this article, which shall be binding in the
compacting states to the extent and in the manner pro-
vided in this article;

(g) To bring and prosecute legal proceedings or actions
in its name as the commission: Provided, That the stand-
ing of any state insurance department to sue or be sued
under applicable law shall not be affected;

(h) To issue subpoenas requiring the attendance and
testimony of witnesses and the production of evidence;

(i) To establish and maintain offices;

(j) To purchase and maintain insurance and bonds;

(k) To borrow, accept or contract for services of person-
nel, including, but not limited to, employees of a compact-
ing state;

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

(m) To accept any and all appropriate donations and grants of money, equipment, supplies, materials and services and to receive, utilize and dispose of the same: Provided, That at all times the commission shall strive to avoid any appearance of impropriety;

(n) To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed: Provided, That at all times the commission shall strive to avoid any appearance of impropriety;

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

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

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

(r) To provide for dispute resolution among compacting states;

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

(t) To provide advice and training to those personnel in state insurance departments responsible for product review and to be a resource for state insurance departments;

(u) To establish a budget and make expenditures;

(v) To borrow money;
(w) To appoint committees, including advisory committees comprising members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives and any other interested persons as may be designated in the bylaws;

(x) To provide and receive information from, and to cooperate with, law-enforcement agencies;

(y) To adopt and use a corporate seal; and

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

§33-47-5. Organization of the commission.

(a) Membership, voting and bylaws of the commission shall be as follows:

(1) Each compacting state shall have and be limited to one member. Each member shall be qualified to serve in that capacity pursuant to applicable law of the compacting state. Any member may be removed or suspended from office as provided by the law of the state from which he or she is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compacting state wherein the vacancy exists. Nothing herein may be construed to affect the manner in which a compacting state determines the election or appointment and qualification of its own commissioner.

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

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

(A) Establishing the fiscal year of the commission;

(B) Providing reasonable procedures for appointing and
electing members, as well as holding meetings, of the
management committee;

(C) Providing reasonable standards and procedures for
the establishment and meetings of other committees, and
providing standards and procedures governing any general
or specific delegation of any authority or function of the
commission;

(D) Providing reasonable procedures for calling and
conducting meetings of the commission that consist of a
majority of commission members, ensuring reasonable
advance notice of each such meeting and providing for the
right of citizens to attend each such meeting with enumerated
exceptions designed to protect the public's interest,
the privacy of individuals, and insurers' proprietary
information, including trade secrets. The commission may
meet in camera only after a majority of the entire membership votes to close a meeting en toto or in part. As soon as practicable, the commission must make public a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed, and the votes taken during such meeting;

(E) Establishing the titles, duties and authority and
reasonable procedures for the election of the officers of the
commission;

(F) Providing reasonable standards and procedures for
the establishment of the personnel policies and programs
of the commission. Notwithstanding any civil service or
other similar laws of any compacting state, the bylaws
shall exclusively govern the personnel policies and pro-
grams of the commission;
(G) Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees; and

(H) Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact after the payment and reserving of all of its debts and obligations.

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

(b) Management committee, officers and personnel.

(1) A Management committee comprising no more than fourteen members shall be established as follows:

(A) One member from each of the six compacting states with the largest premium volume for individual and group annuities, life, disability income and long-term care insurance products, determined from the records of the NAIC for the prior year;

(B) Four members from those compacting states with at least two percent of the market based on the premium volume described above, other than the six compacting states with the largest premium volume, selected on a rotating basis as provided in the bylaws; and

(C) Four members from those compacting states with less than two percent of the market, based on the premium volume described above, with one selected from each of the four zone regions of the NAIC as provided in the bylaws.

(2) The management committee shall have such authority and duties as may be set forth in the bylaws, including, but not limited to:
(A) Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission;

(B) Establishing and overseeing an organizational structure within, and appropriate procedures for, the commission to provide for the creation of uniform standards and other rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a compacting state to opt out of a uniform standard: Provided, That a uniform standard shall not be submitted to the compacting states for adoption unless approved by two thirds of the members of the management committee;

(C) Overseeing the offices of the commission; and

(D) Planning, implementing and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the commission.

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

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

(c) Legislative and advisory committees.

(1) A legislative committee comprising state legislators or their designees shall be established to monitor the operations of, and make recommendations to, the commiss-

sion, including the management committee: Provided,
That the manner of selection and term of any legislative
committee member shall be as set forth in the bylaws.
Prior to the adoption by the commission of any uniform
standard, revision to the bylaws, annual budget or other
significant matter as may be provided in the bylaws, the
management committee shall consult with and report to
the legislative committee.

(2) The commission shall establish two advisory commit-
tees, one of which shall comprise consumer representatives
independent of the insurance industry, and the other
comprising insurance industry representatives.

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

(d) Corporate records of the commission.

The commission shall maintain its corporate books and
records in accordance with the bylaws.

(e) Qualified immunity, defense and indemnification.

(1) The members, officers, executive director, employees
and representatives of the commission shall be immune
from suit and liability, either personally or in their official
capacity, for any claim for damage to or loss of property or
personal injury or other civil liability caused by or arising
out of any actual or alleged act, error or omission that
occurred, or that the person against whom the claim is
made had a reasonable basis for believing occurred within
the scope of commission employment, duties or responsi-
bilities: Provided, That nothing in this subdivision shall
be construed to protect any such person from suit or
liability for any damage, loss, injury or liability caused by
the intentional or willful and wanton misconduct of that
person.

(2) The commission shall defend any member, officer,
executive director, employee or representative of the

commission in any civil action seeking to impose liability
arising out of any actual or alleged act, error or omission
that occurred within the scope of commission employment,
duties or responsibilities, or that the person against whom
the claim is made had a reasonable basis for believing
occurred within the scope of commission employment,
duties or responsibilities: Provided, That nothing herein
shall be construed to prohibit that person from retaining
his or her own counsel: Provided, however, That the
actual or alleged act, error or omission did not result from
that person's intentional or willful and wanton miscon-
duct.

(3) The commission shall indemnify and hold harmless
any member, officer, executive director, employee or
representative of the commission for the amount of any
settlement or judgment obtained against that person
arising out of any actual or alleged act, error or omission
that occurred within the scope of commission employment,
duties or responsibilities or that such person had a reason-
able basis for believing occurred within the scope of
commission employment, duties or responsibilities:
Provided, That the actual or alleged act, error or omission
did not result from the intentional or willful and wanton
misconduct of that person.

§33-47-6. Meetings and acts of the commission.

(a) The commission shall meet and take such actions as
are consistent with the provisions of this compact and the
bylaws.

(b) Each member of the commission shall have the right
and power to cast a vote to which that compacting state is
entitled and to participate in the business and affairs of
the commission. A member shall vote in person or by such
other means as provided in the bylaws. The bylaws may
provide for members' participation in meetings by tele-
phone or other means of communication.
(c) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

§33-47-7. Rules and operating procedures: rule-making functions of the commission and opting out of uniform standards.

(a) Rule-making authority. — The commission shall promulgate reasonable rules, including uniform standards, and operating procedures in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the commission exercises its rule-making authority in a manner that is beyond the scope of the purposes of this article, or the powers granted hereunder, then such an action by the commission shall be invalid and have no force and effect.

(b) Rule-making procedure. — Rules and operating procedures shall be made pursuant to a rule-making process that conforms to the model state administrative procedure act of 1981, as amended, as may be appropriate to the operations of the commission. Before the commission adopts a uniform standard, the commission shall give written notice to the relevant state legislative committee or committees in each compacting state responsible for insurance issues of its intention to adopt the uniform standard. The commission in adopting a uniform standard shall consider fully all submitted materials and issue a concise explanation of its decision. Notwithstanding any provision of this code to the contrary, the commission is authorized to promulgate rules in the manner set forth in this section. Rules promulgated by the commission pursuant to this section are not subject to the provisions of article three, chapter twenty-nine-a of this code and will become effective pursuant to the procedures set forth in this section notwithstanding any provisions of article three, chapter twenty-nine-a of this code to the contrary.

(c) Effective date and opt out of a uniform standard. — A uniform standard shall become effective ninety (90) days
Recall that a compacting state may opt out of a uniform standard, either by legislation or regulation duly promulgated by the insurance department under the compacting state's administrative procedure act. If a compacting state elects to opt out of a uniform standard by regulation, it must: (a) Give written notice to the commission no later than ten business days after the uniform standard is promulgated, or at the time the state becomes a compacting state; and (b) find that the uniform standard does not provide reasonable protections to the citizens of the state, given the conditions in the state. The commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state which warrant a departure from the uniform standard and determining that the uniform standard would not reasonably protect the citizens of the state. The commissioner must consider and balance the following factors and find that the conditions in the state and needs of the citizens of the state outweigh: (i) The intent of the Legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the products subject to this article; and (ii) the presumption that a uniform standard adopted by the commission provides reasonable protections to consumers of the relevant product.

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

(e) Effect of opt out. — If a compacting state elects to opt
out of a uniform standard, the uniform standard shall
remain applicable in the compacting state electing to opt
out until such time as the opt out legislation is enacted
into law or the regulation opting out becomes effective.

Once the opt out of a uniform standard by a compacting
state becomes effective as provided under the laws of that
state, the uniform standard shall have no further force and
effect in that state unless and until the legislation or
regulation implementing the opt out is repealed or other-
wise becomes ineffective under the laws of the state. If a
compacting state opts out of a uniform standard after the
uniform standard has been made effective in that state, the
opt out shall have the same prospective effect as provided
under section fourteen of this article for withdrawals.

(f) Stay of uniform standard. — If a compacting state has
formally initiated the process of opting out of a uniform
standard by regulation, and while the regulatory opt out
is pending, the compacting state may petition the commis-
ion, at least fifteen days before the effective date of the
uniform standard, to stay the effectiveness of the uniform
standard in that state. The commission may grant a stay
if it determines the regulatory opt out is being pursued in
a reasonable manner and there is a likelihood of success.
If a stay is granted or extended by the commission, the
stay or extension thereof may postpone the effective date
by up to ninety days, unless affirmatively extended by the
commission: Provided, That a stay may not be permitted
to remain in effect for more than one year unless the
compacting state can show extraordinary circumstances which warrant a continuance of the stay, including, but not limited to, the existence of a legal challenge which prevents the compacting state from opting out. A stay may be terminated by the commission upon notice that the rule-making process has been terminated.

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


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

(b) Except as to privileged records, data and information, the laws of any compacting state pertaining to confidentiality or nondisclosure shall not relieve any compacting state commissioner of the duty to disclose any relevant records, data or information to the commission:
Provided, That disclosure to the commission shall not be deemed to waive or otherwise affect any confidentiality requirement: Provided, however, That, except as otherwise expressly provided in this article, the commission shall not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data and information in its possession. Confidential information of the commission shall remain confidential after such information is provided to any commissioner.

(c) The commission shall monitor compacting states for compliance with duly adopted bylaws, rules, including uniform standards, and operating procedures. The commission shall notify any noncomplying compacting state in writing of its noncompliance with commission bylaws, rules or operating procedures. If a noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state shall be deemed to be in default as set forth in section fourteen of this article.

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

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

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


The commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and which may arise between two or more compacting states, or between compacting states and noncompacting states, and the commission shall promulgate an operating procedure providing for resolution of such disputes.

§33-47-10. Product filing and approval.

(a) Insurers and third-party filers seeking to have a product approved by the commission shall file the product with, and pay applicable filing fees to, the commission. Nothing in this article shall be construed to restrict or otherwise prevent an insurer from filing its product with the insurance department in any state wherein the insurer is licensed to conduct the business of insurance, and such filing shall be subject to the laws of the states where filed.

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

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


(a) Not later than thirty days after the commission has given notice of a disapproved product or advertisement filed with the commission, the insurer or third-party filer whose filing was disapproved may appeal the determination to a review panel appointed by the commission. The commission shall promulgate rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the commission, in disapproving a product or advertisement filed with the commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with subsection (d), section three of this article.

(b) The commission shall have authority to monitor, review and reconsider products and advertisements subsequent to their filing or approval upon a finding that the product does not meet the relevant uniform standard. Where appropriate, the commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in subsection (a) of this section.


(a) The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the commission may accept contributions and other forms of funding from the national association of insurance commissioners, compacting states and other sources. Contributions and other forms of funding from other sources
shall be of such a nature that the independence of the
commission concerning the performance of its duties shall
not be compromised.

(b) The commission shall collect a filing fee from each
insurer and third party filer filing a product with the
commission to cover the cost of the operations and activi-
ties of the commission and its staff in a total amount
sufficient to cover the commission's annual budget.

(c) The commission's budget for a fiscal year shall not be
approved until it has been subject to notice and comment
as set forth in section seven of this article.

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

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

(f) The commission shall keep complete and accurate
accounts of all its internal receipts, including grants and
donations, and disbursements of all funds under its
control. The internal financial accounts of the commission
shall be subject to the accounting procedures established
under its bylaws. The financial accounts and reports
including the system of internal controls and procedures
of the commission shall be audited annually by an inde-
pendent certified public accountant. Upon the determina-
tion of the commission, but no less frequently than every
three years, the review of the independent auditor shall
include a management and performance audit of the
commission. The commission shall make an annual report
to the governor and Legislature of the compacting states,
which shall include a report of the independent audit. The
commission's internal accounts shall not be confidential
and such materials may be shared with the commissioner
of any compacting state upon request: Provided, That any
work papers related to any internal or independent audit
and any information regarding the privacy of individuals
and insurers' proprietary information, including trade
secrets, shall remain confidential.

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

§33-47-13. Compacting states, effective date and amendment.

(a) Any state is eligible to become a compacting state.

(b) The compact shall become effective and binding upon
legislative enactment of the compact into law by two
compacting states: Provided, That the commission shall
become effective for purposes of adopting uniform stan-
dards for, reviewing and giving approval or disapproval of,
products filed with the commission that satisfy applicable
uniform standards only after twenty-six states are com-
paring states or, alternatively, by states representing
greater than forty percent of the premium volume for life
insurance, annuity, disability income and long-term care
insurance products, based on records of the national
association of insurance commissioners for the prior year.
Thereafter, it shall become effective and binding as to any
other compacting state upon enactment of the compact
into law by that state.

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


(a) Withdrawal.

(1) Once effective, the compact shall continue in force
and remain binding upon each and every compacting state:
Provided, That a compacting state may withdraw from the
compact by enacting a statute specifically repealing the 
statute which enacted the compact into law.

(2) The effective date of withdrawal is the effective date 
of the repealing statute. However, the withdrawal shall 
not apply to any product filings approved or self-certified, 
or any advertisement of such products, on the date the 
repealing statute becomes effective, except by mutual 
agreement of the commission and the withdrawing state 
unless the approval is rescinded by the withdrawing state 
as provided in subdivision (5) of this subsection.

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

(4) The commission shall notify the other compacting 
states of the introduction of such legislation within ten 
days after its receipt of notice thereof.

(5) The withdrawing state is responsible for all obliga-
tions, duties and liabilities incurred through the effective 
date of withdrawal, including any obligations, the perfor-
mance of which extend beyond the effective date of 
withdrawal, except to the extent those obligations may 
have been released or relinquished by mutual agreement 
of the commission and the withdrawing state. The commis-
sion’s approval of products and advertisement prior to the 
effective date of withdrawal shall continue to be effective 
and be given full force and effect in the withdrawing state, 
unless formally rescinded by the withdrawing state in the 
same manner as provided by the laws of the withdrawing 
state for the prospective disapproval of products or 
advertisement previously approved under state law.

(6) Reinstatement following withdrawal of any compact-
ing state shall occur upon the effective date of the with-
drawing state reenacting the compact.

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

(2) Product approvals by the commission or product self-certifications, or any advertisement in connection with such product, that are in force on the effective date of termination shall remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to subsection (a) of this section.

(3) Reinstatement following termination of any compacting state requires a reenactment of the compact.

c) Dissolution of compact.

(1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.
(2) Upon the dissolution of this compact, the compact becomes null and void and shall be of no further force or effect, and the business and affairs of the commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.


(a) The provisions of this compact shall be severable; and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

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


(a) Other laws.

(1) Nothing herein prevents the enforcement of any other law of a compacting state, except as provided in subdivision (2) of this subsection.

(2) For any product approved or certified to the commission, the rules, uniform standards and any other requirements of the commission shall constitute the exclusive provisions applicable to the content, approval and certification of such products. For advertisements that are subject to the commission’s authority, any rule, uniform standard or other requirement of the commission which governs the content of the advertisements shall constitute the exclusive provision that a commissioner may apply to the content of the advertisement. Notwithstanding the foregoing, no action taken by the commission shall abrogate or restrict: (i) The access of any person to state courts; (ii) remedies available under state law related to breach of contract, tort or other laws not specifically directed to the content of the product; (iii) state law relating to the construction of insurance contracts; or (iv) the authority of the attorney general of the state, includ-

22 ing, but not limited to, maintaining any actions or pro-
23 ceedings, as authorized by law.

24 (3) All insurance products filed with individual states
25 shall be subject to the laws of those states.

26 (b) Binding effect of this compact. –

27 (1) All lawful actions of the commission, including all
28 rules and operating procedures promulgated by the
29 commission, are binding upon the compacting states.

30 (2) All agreements between the commission and the
31 compacting states are binding in accordance with their
32 terms.

33 (3) Upon the request of a party to a conflict over the
34 meaning or interpretation of commission actions and upon
35 a majority vote of the compacting states, the commission
36 may issue advisory opinions regarding the meaning or
37 interpretation in dispute.

38 (4) In the event any provision of this compact exceeds the
39 constitutional limits imposed on the legislature of any
40 compacting state, the obligations, duties, powers or
41 jurisdiction sought to be conferred by that provision upon
42 the commission shall be ineffective as to that compacting
43 state and those obligations, duties, powers or jurisdiction
44 shall remain in the compacting state and shall be exercised
45 by the agency thereof to which those obligations, duties,
46 powers or jurisdiction are delegated by law in effect at the
47 time this compact becomes effective.

§33-47-17. Filing of rules by the insurance commissioner.

1 The insurance commissioner shall, pursuant to the
2 provisions of section four, article three, chapter twenty-
3 nine-a of this code, file in the state register any rules or
4 uniform standards which have been adopted by the
5 commission and have become effective in this state.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within is approved this the 2nd Day of April 2004.

Governor