

1 **INTERSTATE INSURANCE PRODUCT**

2 **REGULATION - COMPACT**

3 2004 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: John L. Valentine**

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7 **LONG TITLE**

8 **General Description:**

9 This bill amends the Insurance Title to enact the Interstate Insurance Product  
10 Regulation Compact.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ provides a purpose statement;
- 14 ▶ provides definitions;
- 15 ▶ establishes the Interstate Insurance Product Regulation Commission and venue for  
16 proceedings by or against the commission;
- 17 ▶ establishes the powers of the commission;
- 18 ▶ addresses the organization of the commission;
- 19 ▶ addresses meetings and acts of the commission;
- 20 ▶ provides for rulemaking by the commission including establishing uniform  
21 standards from which a state can opt out;
- 22 ▶ addresses commission records and enforcement;
- 23 ▶ provides for dispute resolution;
- 24 ▶ provides for product filing and approval;
- 25 ▶ addresses the finances of the commission;
- 26 ▶ provides for compacting states, effective date, and amendment;
- 27 ▶ provides for withdrawal, default, and termination;



- 28           ▶ provides for severability and construction of the compact; and
- 29           ▶ addresses binding effect of the compact and other laws.

30 **Monies Appropriated in this Bill:**

31           None

32 **Other Special Clauses:**

33           This bill takes effect on May 3, 2004, except that the compact provides that it takes  
34 effect upon legislative enactment by two Compacting States and the Commission  
35 becomes effective for certain purposes only after 26 states are Compacting States or  
36 states representing greater than 40% of premium volume for life insurance, annuity,  
37 disability income, and long-term care insurance products enact the compact.

38 **Utah Code Sections Affected:**

39 ENACTS:

40           **31A-38-101**, Utah Code Annotated 1953

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42 *Be it enacted by the Legislature of the state of Utah:*

43           Section 1. Section **31A-38-101** is enacted to read:

44           **CHAPTER 38. INTERSTATE INSURANCE PRODUCT REGULATION COMPACT**

45           **31A-38-101. Interstate Insurance Product Regulation Compact.**

46           Pursuant to the terms and conditions of this Act, the State of Utah seeks to join with  
47 other States and establish the Interstate Insurance Product Regulation Compact, and thus  
48 become a member of the Interstate Insurance Product Regulation Commission. Utah's  
49 insurance commissioner is hereby designated to serve as the representative of this State to the  
50 Commission.

51   ARTICLE I. PURPOSES

52           The purposes of this Compact are, through means of joint and cooperative action among the  
53 Compacting States:

- 54           1. To promote and protect the interest of consumers of individual and group annuity,  
55 life insurance, disability income and long-term care insurance products;
- 56           2. To develop uniform standards for insurance products covered under the Compact;
- 57           3. To establish a central clearinghouse to receive and provide prompt review of  
58 insurance products covered under the Compact and in certain cases, advertisements related

59 thereto, submitted by insurers authorized to do business in one or more Compacting States;

60 4. To give appropriate regulatory approval to those product filings and advertisements  
61 satisfying the applicable uniform standard;

62 5. To improve coordination of regulatory resources and expertise between state  
63 insurance departments regarding the setting of uniform standards and review of insurance  
64 products covered under the Compact;

65 6. To create the Interstate Insurance Product Regulation Commission; and

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

68 ARTICLE II. DEFINITIONS

69 For purposes of this Compact:

70 1. "Advertisement" means any material designed to create public interest in a Product,  
71 or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or  
72 retain a policy, as more specifically defined in the Rules and Operating Procedures of the  
73 Commission.

74 2. "Bylaws" mean those bylaws established by the Commission for its governance, or  
75 for directing or controlling the Commission's actions or conduct.

76 3. "Compacting State" means any State which has enacted this Compact legislation and  
77 which has not withdrawn pursuant to Article XIV, Section 1, or been terminated pursuant to  
78 Article XIV, Section 2.

79 4. "Commission" means the "Interstate Insurance Product Regulation Commission"  
80 established by this Compact.

81 5. "Commissioner" means the chief insurance regulatory official of a State including,  
82 but not limited to commissioner, superintendent, director or administrator.

83 6. "Domiciliary State" means the state in which an Insurer is incorporated or organized;  
84 or, in the case of an alien Insurer, its state of entry.

85 7. "Insurer" means any entity licensed by a State to issue contracts of insurance for any  
86 of the lines of insurance covered by this Act.

87 8. "Member" means the person chosen by a Compacting State as its representative to  
88 the Commission, or his or her designee.

89 9. "Non-compacting State" means any State which is not at the time a Compacting

90 State.

91 10. "Operating Procedures" mean procedures promulgated by the Commission  
92 implementing a Rule, Uniform Standard or a provision of this Compact.

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

97 12. "Rule" means a statement of general or particular applicability and future effect  
98 promulgated by the Commission, including a Uniform Standard developed pursuant to Article  
99 VII of this Compact, designed to implement, interpret, or prescribe law or policy or describing  
100 the organization, procedure, or practice requirements of the Commission, which shall have the  
101 force and effect of law in the Compacting States.

102 13. "State" means any state, district or territory of the United States of America.

103 14. "Third-Party Filer" means an entity that submits a Product filing to the Commission  
104 on behalf of an Insurer.

105 15. "Uniform Standard" means a standard adopted by the Commission for a Product  
106 line, pursuant to Article VII of this Compact, and shall include all of the Product requirements  
107 in aggregate; provided, that each Uniform Standard shall be construed, whether express or  
108 implied, to prohibit the use of any inconsistent, misleading or ambiguous provisions in a  
109 Product and the form of the Product made available to the public shall not be unfair,  
110 inequitable or against public policy as determined by the Commission.

111 ARTICLE III. ESTABLISHMENT OF THE COMMISSION AND VENUE

112 1. The Compacting States hereby create and establish a joint public agency known as  
113 the "Interstate Insurance Product Regulation Commission." Pursuant to Article IV, the  
114 Commission will have the power to develop Uniform Standards for Product lines, receive and  
115 provide prompt review of Products filed therewith, and give approval to those Product filings  
116 satisfying applicable Uniform Standards; provided, it is not intended for the Commission to be  
117 the exclusive entity for receipt and review of insurance product filings. Nothing herein shall  
118 prohibit any Insurer from filing its product in any State wherein the Insurer is licensed to  
119 conduct the business of insurance; and any such filing shall be subject to the laws of the State  
120 where filed.

121 2. The Commission is a body corporate and politic, and an instrumentality of the  
122 Compacting States.

123 3. The Commission is solely responsible for its liabilities except as otherwise  
124 specifically provided in this Compact.

125 4. Venue is proper and judicial proceedings by or against the Commission shall be  
126 brought solely and exclusively in a Court of competent jurisdiction where the principal office  
127 of the Commission is located.

128 ARTICLE IV. POWERS OF THE COMMISSION

129 The Commission shall have the following powers:

130 1. To promulgate Rules, pursuant to Article VII of this Compact, which shall have the  
131 force and effect of law and shall be binding in the Compacting States to the extent and in the  
132 manner provided in this Compact;

133 2. To exercise its rulemaking authority and establish reasonable Uniform Standards for  
134 Products covered under the Compact, and Advertisement related thereto, which shall have the  
135 force and effect of law and shall be binding in the Compacting States, but only for those  
136 Products filed with the Commission, provided, that a Compacting State shall have the right to  
137 opt out of such Uniform Standard pursuant to Article VII, to the extent and in the manner  
138 provided in this Compact, and, provided further, that any Uniform Standard established by the  
139 Commission for long-term care insurance products may provide the same or greater protections  
140 for consumers as, but shall not provide less than, those protections set forth in the National  
141 Association of Insurance Commissioners' Long-Term Care Insurance Model Act and  
142 Long-Term Care Insurance Model Regulation, respectively, adopted as of 2001. The  
143 Commission shall consider whether any subsequent amendments to the NAIC Long-Term Care  
144 Insurance Model Act or Long-Term Care Insurance Model Regulation adopted by the NAIC  
145 require amending of the Uniform Standards established by the Commission for long-term care  
146 insurance products;

147 3. To receive and review in an expeditious manner Products filed with the  
148 Commission, and rate filings for disability income and long-term care insurance Products, and  
149 give approval of those Products and rate filings that satisfy the applicable Uniform Standard,  
150 where such approval shall have the force and effect of law and be binding on the Compacting  
151 States to the extent and in the manner provided in the Compact;

152           4. To receive and review in an expeditious manner Advertisement relating to long-term  
153 care insurance products for which Uniform Standards have been adopted by the Commission,  
154 and give approval to all Advertisement that satisfies the applicable Uniform Standard. For any  
155 product covered under this Compact, other than long-term care insurance products, the  
156 Commission shall have the authority to require an insurer to submit all or any part of its  
157 Advertisement with respect to that product for review or approval prior to use, if the  
158 Commission determines that the nature of the product is such that an Advertisement of the  
159 product could have the capacity or tendency to mislead the public. The actions of Commission  
160 as provided in this section shall have the force and effect of law and shall be binding in the  
161 Compacting States to the extent and in the manner provided in the Compact;

162           5. To exercise its rulemaking authority and designate Products and Advertisement that  
163 may be subject to a self-certification process without the need for prior approval by the  
164 Commission;

165           6. To promulgate Operating Procedures, pursuant to Article VII of this Compact, which  
166 shall be binding in the Compacting States to the extent and in the manner provided in this  
167 Compact;

168           7. To bring and prosecute legal proceedings or actions in its name as the Commission;  
169 provided, that the standing of any state insurance department to sue or be sued under applicable  
170 law shall not be affected;

171           8. To issue subpoenas requiring the attendance and testimony of witnesses and the  
172 production of evidence;

173           9. To establish and maintain offices;

174           10. To purchase and maintain insurance and bonds;

175           11. To borrow, accept or contract for services of personnel, including, but not limited  
176 to, employees of a Compacting State;

177           12. To hire employees, professionals or specialists, and elect or appoint officers, and to  
178 fix their compensation, define their duties and give them appropriate authority to carry out the  
179 purposes of the Compact, and determine their qualifications; and to establish the Commission's  
180 personnel policies and programs relating to, among other things, conflicts of interest, rates of  
181 compensation and qualifications of personnel;

182           13. To accept any and all appropriate donations and grants of money, equipment,

183 supplies, materials and services, and to receive, utilize and dispose of the same; provided that  
184 at all times the Commission shall strive to avoid any appearance of impropriety;

185 14. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own,  
186 hold, improve or use, any property, real, personal or mixed; provided that at all times the  
187 Commission shall strive to avoid any appearance of impropriety;

188 15. To sell, convey, mortgage, pledge, lease, exchange, abandon or otherwise dispose  
189 of any property, real, personal or mixed;

190 16. To remit filing fees to Compacting States as may be set forth in the Bylaws, Rules  
191 or Operating Procedures;

192 17. To enforce compliance by Compacting States with Rules, Uniform Standards,  
193 Operating Procedures and Bylaws;

194 18. To provide for dispute resolution among Compacting States;

195 19. To advise Compacting States on issues relating to Insurers domiciled or doing  
196 business in Non-compacting jurisdictions, consistent with the purposes of this Compact;

197 20. To provide advice and training to those personnel in state insurance departments  
198 responsible for product review, and to be a resource for state insurance departments;

199 21. To establish a budget and make expenditures;

200 22. To borrow money;

201 23. To appoint committees, including advisory committees comprising Members, state  
202 insurance regulators, state legislators or their representatives, insurance industry and consumer  
203 representatives, and such other interested persons as may be designated in the Bylaws;

204 24. To provide and receive information from, and to cooperate with law enforcement  
205 agencies;

206 25. To adopt and use a corporate seal; and

207 26. To perform such other functions as may be necessary or appropriate to achieve the  
208 purposes of this Compact consistent with the state regulation of the business of insurance.

#### 209 ARTICLE V. ORGANIZATION OF THE COMMISSION

210 1. Membership, Voting and Bylaws

211 a. Each Compacting State shall have and be limited to one Member. Each Member  
212 shall be qualified to serve in that capacity pursuant to applicable law of the Compacting State.  
213 Any Member may be removed or suspended from office as provided by the law of the State

214 from which he or she shall be appointed. Any vacancy occurring in the Commission shall be  
215 filled in accordance with the laws of the Compacting State wherein the vacancy exists. Nothing  
216 herein shall be construed to affect the manner in which a Compacting State determines the  
217 election or appointment and qualification of its own Commissioner.

218 b. Each Member shall be entitled to one vote and shall have an opportunity to  
219 participate in the governance of the Commission in accordance with the Bylaws.  
220 Notwithstanding any provision herein to the contrary, no action of the Commission with  
221 respect to the promulgation of a Uniform Standard shall be effective unless two-thirds (2/3) of  
222 the Members vote in favor thereof.

223 c. The Commission shall, by a majority of the Members, prescribe Bylaws to govern its  
224 conduct as may be necessary or appropriate to carry out the purposes, and exercise the powers,  
225 of the Compact, including, but not limited to:

226 i. establishing the fiscal year of the Commission;

227 ii. providing reasonable procedures for appointing and electing members, as well as  
228 holding meetings, of the Management Committee;

229 iii. providing reasonable standards and procedures: (i) for the establishment and  
230 meetings of other committees, and (ii) governing any general or specific delegation of any  
231 authority or function of the Commission;

232 iv. providing reasonable procedures for calling and conducting meetings of the  
233 Commission that consists of a majority of Commission members, ensuring reasonable advance  
234 notice of each such meeting, and providing for the right of citizens to attend each such meeting  
235 with enumerated exceptions designed to protect the public's interest, the privacy of individuals,  
236 and insurers' proprietary information, including trade secrets. The Commission may meet in  
237 camera only after a majority of the entire membership votes to close a meeting en toto or in  
238 part. As soon as practicable, the Commission must make public (i) a copy of the vote to close  
239 the meeting revealing the vote of each Member with no proxy votes allowed, and (ii) votes  
240 taken during such meeting;

241 v. establishing the titles, duties and authority and reasonable procedures for the election  
242 of the officers of the Commission;

243 vi. providing reasonable standards and procedures for the establishment of the  
244 personnel policies and programs of the Commission. Notwithstanding any civil service or other



245 similar laws of any Compacting State, the Bylaws shall exclusively govern the personnel  
246 policies and programs of the Commission;

247 vii. promulgating a code of ethics to address permissible and prohibited activities of  
248 commission members and employees; and

249 viii. providing a mechanism for winding up the operations of the Commission and the  
250 equitable disposition of any surplus funds that may exist after the termination of the Compact  
251 after the payment and/or reserving of all of its debts and obligations.

252 d. The Commission shall publish its bylaws in a convenient form and file a copy  
253 thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of  
254 the Compacting States.

255 2. Management Committee, Officers and Personnel

256 a. A Management Committee comprising no more than fourteen (14) members shall be  
257 established as follows:

258 (i) One (1) member from each of the six (6) Compacting States with the largest  
259 premium volume for individual and group annuities, life, disability income and long-term care  
260 insurance products, determined from the records of the NAIC for the prior year;

261 (ii) Four (4) members from those Compacting States with at least two percent (2%) of  
262 the market based on the premium volume described above, other than the six (6) Compacting  
263 States with the largest premium volume, selected on a rotating basis as provided in the Bylaws,  
264 and;

265 (iii) Four (4) members from those Compacting States with less than two percent (2%)  
266 of the market, based on the premium volume described above, with one (1) selected from each  
267 of the four (4) zone regions of the NAIC as provided in the Bylaws.

268 b. The Management Committee shall have such authority and duties as may be set forth  
269 in the Bylaws, including but not limited to:

270 i. managing the affairs of the Commission in a manner consistent with the Bylaws and  
271 purposes of the Commission;

272 ii. establishing and overseeing an organizational structure within, and appropriate  
273 procedures for, the Commission to provide for the creation of Uniform Standards and other  
274 Rules, receipt and review of product filings, administrative and technical support functions,  
275 review of decisions regarding the disapproval of a product filing, and the review of elections

276 made by a Compacting State to opt out of a Uniform Standard; provided that a Uniform  
277 Standard shall not be submitted to the Compacting States for adoption unless approved by  
278 two-thirds (2/3) of the members of the Management Committee;

279 iii. overseeing the offices of the Commission; and

280 iv. planning, implementing, and coordinating communications and activities with other  
281 state, federal and local government organizations in order to advance the goals of the  
282 Commission.

283 c. The Commission shall elect annually officers from the Management Committee,  
284 with each having such authority and duties, as may be specified in the Bylaws.

285 d. The Management Committee may, subject to the approval of the Commission,  
286 appoint or retain an executive director for such period, upon such terms and conditions and for  
287 such compensation as the Commission may deem appropriate. The executive director shall  
288 serve as secretary to the Commission, but shall not be a Member of the Commission. The  
289 executive director shall hire and supervise such other staff as may be authorized by the  
290 Commission.

291 3. Legislative and Advisory Committees

292 a. A legislative committee comprising state legislators or their designees shall be  
293 established to monitor the operations of, and make recommendations to, the Commission,  
294 including the Management Committee; provided that the manner of selection and term of any  
295 legislative committee member shall be as set forth in the Bylaws. Prior to the adoption by the  
296 Commission of any Uniform Standard, revision to the Bylaws, annual budget or other  
297 significant matter as may be provided in the Bylaws, the Management Committee shall consult  
298 with and report to the legislative committee.

299 b. The Commission shall establish two (2) advisory committees, one of which shall  
300 comprise consumer representatives independent of the insurance industry, and the other  
301 comprising insurance industry representatives.

302 c. The Commission may establish additional advisory committees as its Bylaws may  
303 provide for the carrying out of its functions.

304 4. Corporate Records of the Commission

305 The Commission shall maintain its corporate books and records in accordance with the  
306 Bylaws.

307 5. Qualified Immunity, Defense and Indemnification

308 a. The Members, officers, executive director, employees and representatives of the  
309 Commission shall be immune from suit and liability, either personally or in their official  
310 capacity, for any claim for damage to or loss of property or personal injury or other civil  
311 liability caused by or arising out of any actual or alleged act, error or omission that occurred, or  
312 that the person against whom the claim is made had a reasonable basis for believing occurred  
313 within the scope of Commission employment, duties or responsibilities; provided, that nothing  
314 in this paragraph shall be construed to protect any such person from suit and/or liability for any  
315 damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of  
316 that person.

317 b. The Commission shall defend any Member, officer, executive director, employee or  
318 representative of the Commission in any civil action seeking to impose liability arising out of  
319 any actual or alleged act, error or omission that occurred within the scope of Commission  
320 employment, duties or responsibilities, or that the person against whom the claim is made had a  
321 reasonable basis for believing occurred within the scope of Commission employment, duties or  
322 responsibilities; provided, that nothing herein shall be construed to prohibit that person from  
323 retaining his or her own counsel; and provided further, that the actual or alleged act, error or  
324 omission did not result from that person's intentional or willful and wanton misconduct.

325 c. The Commission shall indemnify and hold harmless any Member, officer, executive  
326 director, employee or representative of the Commission for the amount of any settlement or  
327 judgment obtained against that person arising out of any actual or alleged act, error or omission  
328 that occurred within the scope of Commission employment, duties or responsibilities, or that  
329 such person had a reasonable basis for believing occurred within the scope of Commission  
330 employment, duties or responsibilities, provided, that the actual or alleged act, error or  
331 omission did not result from the intentional or willful and wanton misconduct of that person.

332 ARTICLE VI. MEETINGS AND ACTS OF THE COMMISSION

333 1. The Commission shall meet and take such actions as are consistent with the  
334 provisions of this Compact and the Bylaws.

335 2. Each Member of the Commission shall have the right and power to cast a vote to  
336 which that Compacting State is entitled and to participate in the business and affairs of the  
337 Commission. A Member shall vote in person or by such other means as provided in the

338 Bylaws. The Bylaws may provide for Members' participation in meetings by telephone or other  
339 means of communication.

340 3. The Commission shall meet at least once during each calendar year. Additional  
341 meetings shall be held as set forth in the Bylaws.

342 ARTICLE VII. RULES & OPERATING PROCEDURES: RULEMAKING FUNCTIONS  
343 OF THE COMMISSION AND OPTING OUT OF UNIFORM STANDARDS

344 1. Rulemaking Authority. The Commission shall promulgate reasonable Rules,  
345 including Uniform Standards, and Operating Procedures in order to effectively and efficiently  
346 achieve the purposes of this Compact. Notwithstanding the foregoing, in the event the  
347 Commission exercises its rulemaking authority in a manner that is beyond the scope of the  
348 purposes of this Act, or the powers granted hereunder, then such an action by the Commission  
349 shall be invalid and have no force and effect.

350 2. Rulemaking Procedure. Rules and Operating Procedures shall be made pursuant to a  
351 rulemaking process that conforms to the Model State Administrative Procedure Act of 1981 as  
352 amended, as may be appropriate to the operations of the Commission. Before the Commission  
353 adopts a Uniform Standard, the Commission shall give written notice to the relevant state  
354 legislative committee(s) in each Compacting State responsible for insurance issues of its  
355 intention to adopt the Uniform Standard. The Commission in adopting a Uniform Standard  
356 shall consider fully all submitted materials and issue a concise explanation of its decision.

357 3. Effective Date and Opt Out of a Uniform Standard. A Uniform Standard shall  
358 become effective ninety (90) days after its promulgation by the Commission or such later date  
359 as the Commission may determine; provided, however, that a Compacting State may opt out of  
360 a Uniform Standard as provided in this Article. "Opt out" shall be defined as any action by a  
361 Compacting State to decline to adopt or participate in a promulgated Uniform Standard. All  
362 other Rules and Operating Procedures, and amendments thereto, shall become effective as of  
363 the date specified in each Rule, Operating Procedure or amendment.

364 4. Opt Out Procedure. A Compacting State may opt out of a Uniform Standard, either  
365 by legislation or regulation duly promulgated by the Insurance Department under the  
366 Compacting State's Administrative Procedure Act. If a Compacting State elects to opt out of a  
367 Uniform Standard by regulation, it must (a) give written notice to the Commission no later than  
368 ten (10) business days after the Uniform Standard is promulgated, or at the time the State

369 becomes a Compacting State and (b) find that the Uniform Standard does not provide  
370 reasonable protections to the citizens of the State, given the conditions in the State. The  
371 Commissioner shall make specific findings of fact and conclusions of law, based on a  
372 preponderance of the evidence, detailing the conditions in the State which warrant a departure  
373 from the Uniform Standard and determining that the Uniform Standard would not reasonably  
374 protect the citizens of the State. The Commissioner must consider and balance the following  
375 factors and find that the conditions in the State and needs of the citizens of the State outweigh:  
376 (i) the intent of the legislature to participate in, and the benefits of, an interstate agreement to  
377 establish national uniform consumer protections for the Products subject to this Act; and (ii)  
378 the presumption that a Uniform Standard adopted by the Commission provides reasonable  
379 protections to consumers of the relevant Product.

380 Notwithstanding the foregoing, a Compacting State may, at the time of its enactment of  
381 this Compact, prospectively opt out of all Uniform Standards involving long-term care  
382 insurance products by expressly providing for such opt out in the enacted Compact, and such  
383 an opt out shall not be treated as a material variance in the offer or acceptance of any State to  
384 participate in this Compact. Such an opt out shall be effective at the time of enactment of this  
385 Compact by the Compacting State and shall apply to all existing Uniform Standards involving  
386 long-term care insurance products and those subsequently promulgated.

387 5. Effect of Opt Out. If a Compacting State elects to opt out of a Uniform Standard,  
388 the Uniform Standard shall remain applicable in the Compacting State electing to opt out until  
389 such time the opt out legislation is enacted into law or the regulation opting out becomes  
390 effective.

391 Once the opt out of a Uniform Standard by a Compacting State becomes effective as  
392 provided under the laws of that State, the Uniform Standard shall have no further force and  
393 effect in that State unless and until the legislation or regulation implementing the opt out is  
394 repealed or otherwise becomes ineffective under the laws of the State. If a Compacting State  
395 opts out of a Uniform Standard after the Uniform Standard has been made effective in that  
396 State, the opt out shall have the same prospective effect as provided under Article XIV for  
397 withdrawals.

398 6. Stay of Uniform Standard. If a Compacting State has formally initiated the process  
399 of opting out of a Uniform Standard by regulation, and while the regulatory opt out is pending,

400 the Compacting State may petition the Commission, at least fifteen (15) days before the  
401 effective date of the Uniform Standard, to stay the effectiveness of the Uniform Standard in  
402 that State. The Commission may grant a stay if it determines the regulatory opt out is being  
403 pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or  
404 extended by the Commission, the stay or extension thereof may postpone the effective date by  
405 up to ninety (90) days, unless affirmatively extended by the Commission; provided, a stay may  
406 not be permitted to remain in effect for more than one (1) year unless the Compacting State can  
407 show extraordinary circumstances which warrant a continuance of the stay, including, but not  
408 limited to, the existence of a legal challenge which prevents the Compacting State from opting  
409 out. A stay may be terminated by the Commission upon notice that the rulemaking process has  
410 been terminated.

411 7. Not later than thirty (30) days after a Rule or Operating Procedure is promulgated,  
412 any person may file a petition for judicial review of the Rule or Operating Procedure; provided,  
413 that the filing of such a petition shall not stay or otherwise prevent the Rule or Operating  
414 Procedure from becoming effective unless the court finds that the petitioner has a substantial  
415 likelihood of success. The court shall give deference to the actions of the Commission  
416 consistent with applicable law and shall not find the Rule or Operating Procedure to be  
417 unlawful if the Rule or Operating Procedure represents a reasonable exercise of the  
418 Commission's authority.

#### 419 ARTICLE VIII. COMMISSION RECORDS AND ENFORCEMENT

420 1. The Commission shall promulgate Rules establishing conditions and procedures for  
421 public inspection and copying of its information and official records, except such information  
422 and records involving the privacy of individuals and insurers' trade secrets. The Commission  
423 may promulgate additional Rules under which it may make available to federal and state  
424 agencies, including law enforcement agencies, records and information otherwise exempt from  
425 disclosure, and may enter into agreements with such agencies to receive or exchange  
426 information or records subject to nondisclosure and confidentiality provisions.

427 2. Except as to privileged records, data and information, the laws of any Compacting  
428 State pertaining to confidentiality or nondisclosure shall not relieve any Compacting State  
429 Commissioner of the duty to disclose any relevant records, data or information to the  
430 Commission; provided, that disclosure to the Commission shall not be deemed to waive or

431 otherwise affect any confidentiality requirement; and further provided, that, except as otherwise  
432 expressly provided in this Act, the Commission shall not be subject to the Compacting State's  
433 laws pertaining to confidentiality and nondisclosure with respect to records, data and  
434 information in its possession. Confidential information of the Commission shall remain  
435 confidential after such information is provided to any Commissioner.

436 3. The Commission shall monitor Compacting States for compliance with duly adopted  
437 Bylaws, Rules, including Uniform Standards, and Operating Procedures. The Commission  
438 shall notify any non-complying Compacting State in writing of its noncompliance with  
439 Commission Bylaws, Rules or Operating Procedures. If a non-complying Compacting State  
440 fails to remedy its noncompliance within the time specified in the notice of noncompliance, the  
441 Compacting State shall be deemed to be in default as set forth in Article XIV.

442 4. The Commissioner of any State in which an Insurer is authorized to do business, or  
443 is conducting the business of insurance, shall continue to exercise his or her authority to  
444 oversee the market regulation of the activities of the Insurer in accordance with the provisions  
445 of the State's law. The Commissioner's enforcement of compliance with the Compact is  
446 governed by the following provisions:

447 a. With respect to the Commissioner's market regulation of a Product or  
448 Advertisement that is approved or certified to the Commission, the content of the Product or  
449 Advertisement shall not constitute a violation of the provisions, standards or requirements of  
450 the Compact except upon a final order of the Commission, issued at the request of a  
451 Commissioner after prior notice to the Insurer and an opportunity for hearing before the  
452 Commission.

453 b. Before a Commissioner may bring an action for violation of any provision, standard  
454 or requirement of the Compact relating to the content of an Advertisement not approved or  
455 certified to the Commission, the Commission, or an authorized Commission officer or  
456 employee, must authorize the action. However, authorization pursuant to this Paragraph does  
457 not require notice to the Insurer, opportunity for hearing or disclosure of requests for  
458 authorization or records of the Commission's action on such requests.

#### 459 ARTICLE IX. DISPUTE RESOLUTION

460 The Commission shall attempt, upon the request of a Member, to resolve any disputes  
461 or other issues that are subject to this Compact and which may arise between two or more

462 Compacting States, or between Compacting States and Non-compacting States, and the  
463 Commission shall promulgate an Operating Procedure providing for resolution of such  
464 disputes.

465 ARTICLE X. PRODUCT FILING AND APPROVAL

466 1. Insurers and Third-Party Filers seeking to have a Product approved by the  
467 Commission shall file the Product with, and pay applicable filing fees to, the Commission.  
468 Nothing in this Act shall be construed to restrict or otherwise prevent an insurer from filing its  
469 Product with the insurance department in any State wherein the insurer is licensed to conduct  
470 the business of insurance, and such filing shall be subject to the laws of the States where filed.

471 2. The Commission shall establish appropriate filing and review processes and  
472 procedures pursuant to Commission Rules and Operating Procedures. Notwithstanding any  
473 provision herein to the contrary, the Commission shall promulgate Rules to establish  
474 conditions and procedures under which the Commission will provide public access to Product  
475 filing information. In establishing such Rules, the Commission shall consider the interests of  
476 the public in having access to such information, as well as protection of personal medical and  
477 financial information and trade secrets, that may be contained in a Product filing or supporting  
478 information.

479 3. Any Product approved by the Commission may be sold or otherwise issued in those  
480 Compacting States for which the Insurer is legally authorized to do business.

481 ARTICLE XI. REVIEW OF COMMISSION DECISIONS REGARDING FILINGS

482 1. Not later than thirty (30) days after the Commission has given notice of a  
483 disapproved Product or Advertisement filed with the Commission, the Insurer or Third Party  
484 Filer whose filing was disapproved may appeal the determination to a review panel appointed  
485 by the Commission. The Commission shall promulgate Rules to establish procedures for  
486 appointing such review panels and provide for notice and hearing. An allegation that the  
487 Commission, in disapproving a Product or Advertisement filed with the Commission, acted  
488 arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in  
489 accordance with the law, is subject to judicial review in accordance with Article III, Section 4.

490 2. The Commission shall have authority to monitor, review and reconsider Products  
491 and Advertisement subsequent to their filing or approval upon a finding that the product does  
492 not meet the relevant Uniform Standard. Where appropriate, the Commission may withdraw or



493 modify its approval after proper notice and hearing, subject to the appeal process in Section 1  
494 above.

#### 495 ARTICLE XII. FINANCE

496 1. The Commission shall pay or provide for the payment of the reasonable expenses of  
497 its establishment and organization. To fund the cost of its initial operations, the Commission  
498 may accept contributions and other forms of funding from the National Association of  
499 Insurance Commissioners, Compacting States and other sources. Contributions and other forms  
500 of funding from other sources shall be of such a nature that the independence of the  
501 Commission concerning the performance of its duties shall not be compromised.

502 2. The Commission shall collect a filing fee from each Insurer and Third Party Filer  
503 filing a product with the Commission to cover the cost of the operations and activities of the  
504 Commission and its staff in a total amount sufficient to cover the Commission's annual budget.

505 3. The Commission's budget for a fiscal year shall not be approved until it has been  
506 subject to notice and comment as set forth in Article VII of this Compact.

507 4. The Commission shall be exempt from all taxation in and by the Compacting States.

508 5. The Commission shall not pledge the credit of any Compacting State, except by and  
509 with the appropriate legal authority of that Compacting State.

510 6. The Commission shall keep complete and accurate accounts of all its internal  
511 receipts, including grants and donations, and disbursements of all funds under its control. The  
512 internal financial accounts of the Commission shall be subject to the accounting procedures  
513 established under its Bylaws. The financial accounts and reports including the system of  
514 internal controls and procedures of the Commission shall be audited annually by an  
515 independent certified public accountant. Upon the determination of the Commission, but no  
516 less frequently than every three (3) years, the review of the independent auditor shall include a  
517 management and performance audit of the Commission. The Commission shall make an  
518 Annual Report to the Governor and legislature of the Compacting States, which shall include a  
519 report of the independent audit. The Commission's internal accounts shall not be confidential  
520 and such materials may be shared with the Commissioner of any Compacting State upon  
521 request, provided, however, that any work papers related to any internal or independent audit  
522 and any information regarding the privacy of individuals and insurers' proprietary information,  
523 including trade secrets, shall remain confidential.

524 7. No Compacting State shall have any claim to or ownership of any property held by  
525 or vested in the Commission or to any Commission funds held pursuant to the provisions of  
526 this Compact.

527 ARTICLE XIII. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

528 1. Any State is eligible to become a Compacting State.

529 2. The Compact shall become effective and binding upon legislative enactment of the  
530 Compact into law by two Compacting States; provided, the Commission shall become effective  
531 for purposes of adopting Uniform Standards for, reviewing, and giving approval or disapproval  
532 of, Products filed with the Commission that satisfy applicable Uniform Standards only after  
533 twenty-six (26) States are Compacting States or, alternatively, by States representing greater  
534 than forty percent (40%) of the premium volume for life insurance, annuity, disability income  
535 and long-term care insurance products, based on records of the NAIC for the prior year.  
536 Thereafter, it shall become effective and binding as to any other Compacting State upon  
537 enactment of the Compact into law by that State.

538 3. Amendments to the Compact may be proposed by the Commission for enactment by  
539 the Compacting States. No amendment shall become effective and binding upon the  
540 Commission and the Compacting States unless and until all Compacting States enact the  
541 amendment into law.

542 ARTICLE XIV. WITHDRAWAL, DEFAULT AND TERMINATION

543 1. Withdrawal

544 a. Once effective, the Compact shall continue in force and remain binding upon each  
545 and every Compacting State; provided, that a Compacting State may withdraw from the  
546 Compact ("Withdrawing State") by enacting a statute specifically repealing the statute which  
547 enacted the Compact into law.

548 b. The effective date of withdrawal is the effective date of the repealing statute.  
549 However, the withdrawal shall not apply to any product filings approved or self-certified, or  
550 any Advertisement of such products, on the date the repealing statute becomes effective, except  
551 by mutual agreement of the Commission and the Withdrawing State unless the approval is  
552 rescinded by the Withdrawing State as provided in Paragraph e of this section.

553 c. The Commissioner of the Withdrawing State shall immediately notify the  
554 Management Committee in writing upon the introduction of legislation repealing this Compact

555 in the Withdrawing State.

556 d. The Commission shall notify the other Compacting States of the introduction of  
557 such legislation within ten (10) days after its receipt of notice thereof.

558 e. The Withdrawing State is responsible for all obligations, duties and liabilities  
559 incurred through the effective date of withdrawal, including any obligations, the performance  
560 of which extend beyond the effective date of withdrawal, except to the extent those obligations  
561 may have been released or relinquished by mutual agreement of the Commission and the  
562 Withdrawing State. The Commission's approval of Products and Advertisement prior to the  
563 effective date of withdrawal shall continue to be effective and be given full force and effect in  
564 the Withdrawing State, unless formally rescinded by the Withdrawing State in the same manner  
565 as provided by the laws of the Withdrawing State for the prospective disapproval of products or  
566 advertisement previously approved under state law.

567 f. Reinstatement following withdrawal of any Compacting State shall occur upon the  
568 effective date of the Withdrawing State reenacting the Compact.

569 2. Default

570 a. If the Commission determines that any Compacting State has at any time defaulted  
571 ("Defaulting State") in the performance of any of its obligations or responsibilities under this  
572 Compact, the Bylaws or duly promulgated Rules or Operating Procedures, then, after notice  
573 and hearing as set forth in the Bylaws, all rights, privileges and benefits conferred by this  
574 Compact on the Defaulting State shall be suspended from the effective date of default as fixed  
575 by the Commission. The grounds for default include, but are not limited to, failure of a  
576 Compacting State to perform its obligations or responsibilities, and any other grounds  
577 designated in Commission Rules. The Commission shall immediately notify the Defaulting  
578 State in writing of the Defaulting State's suspension pending a cure of the default. The  
579 Commission shall stipulate the conditions and the time period within which the Defaulting  
580 State must cure its default. If the Defaulting State fails to cure the default within the time  
581 period specified by the Commission, the Defaulting State shall be terminated from the  
582 Compact and all rights, privileges and benefits conferred by this Compact shall be terminated  
583 from the effective date of termination.

584 b. Product approvals by the Commission or product self-certifications, or any  
585 Advertisement in connection with such product, that are in force on the effective date of

586 termination shall remain in force in the Defaulting State in the same manner as if the  
587 Defaulting State had withdrawn voluntarily pursuant to Section 1 of this Article.

588 c. Reinstatement following termination of any Compacting State requires a  
589 reenactment of the Compact.

590 3. Dissolution of Compact

591 a. The Compact dissolves effective upon the date of the withdrawal or default of the  
592 Compacting State which reduces membership in the Compact to one Compacting State.

593 b. Upon the dissolution of this Compact, the Compact becomes null and void and shall  
594 be of no further force or effect, and the business and affairs of the Commission shall be wound  
595 up and any surplus funds shall be distributed in accordance with the Bylaws.

596 ARTICLE XV. SEVERABILITY AND CONSTRUCTION

597 1. The provisions of this Compact shall be severable; and if any phrase, clause,  
598 sentence or provision is deemed unenforceable, the remaining provisions of the Compact shall  
599 be enforceable.

600 2. The provisions of this Compact shall be liberally construed to effectuate its  
601 purposes.

602 ARTICLE XVI. BINDING EFFECT OF COMPACT AND OTHER LAWS

603 1. Other Laws

604 a. Nothing herein prevents the enforcement of any other law of a Compacting State,  
605 except as provided in Paragraph b of this Article.

606 b. For any Product approved or certified to the Commission, the Rules, Uniform  
607 Standards and any other requirements of the Commission shall constitute the exclusive  
608 provisions applicable to the content, approval and certification of such Products. For  
609 Advertisement that is subject to the Commission's authority, any Rule, Uniform Standard or  
610 other requirement of the Commission which governs the content of the Advertisement shall  
611 constitute the exclusive provision that a Commissioner may apply to the content of the  
612 Advertisement. Notwithstanding the foregoing, no action taken by the Commission shall  
613 abrogate or restrict: (i) the access of any person to state courts; (ii) remedies available under  
614 state law related to breach of contract, tort, or other laws not specifically directed to the content  
615 of the Product; (iii) state law relating to the construction of insurance contracts; or (iv) the  
616 authority of the attorney general of the state, including but not limited to maintaining any

617 actions or proceedings, as authorized by law.

618 c. All insurance products filed with individual States shall be subject to the laws of  
619 those States.

620 2. Binding Effect of this Compact

621 a. All lawful actions of the Commission, including all Rules and Operating Procedures  
622 promulgated by the Commission, are binding upon the Compacting States.

623 b. All agreements between the Commission and the Compacting States are binding in  
624 accordance with their terms.

625 c. Upon the request of a party to a conflict over the meaning or interpretation of  
626 Commission actions, and upon a majority vote of the Compacting States, the Commission may  
627 issue advisory opinions regarding the meaning or interpretation in dispute.

628 d. In the event any provision of this Compact exceeds the constitutional limits imposed  
629 on the legislature of any Compacting State, the obligations, duties, powers or jurisdiction  
630 sought to be conferred by that provision upon the Commission shall be ineffective as to that  
631 Compacting State, and those obligations, duties, powers or jurisdiction shall remain in the  
632 Compacting State and shall be exercised by the agency thereof to which those obligations,  
633 duties, powers or jurisdiction are delegated by law in effect at the time this Compact becomes  
634 effective.

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**Legislative Review Note**

**as of 2-3-04 11:46 AM**

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

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**Fiscal Note**  
**Bill Number SB0162**

**Interstate Insurance Project Regulation - Compact**

*06-Feb-04*

*10:49 AM*

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**State Impact**

No fiscal impact.

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**Individual and Business Impact**

No fiscal impact.

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**Office of the Legislative Fiscal Analyst**