

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 578*

Short Title: Interstate Insurance Product Reg. Compact.-AB (Public)

Sponsors: Senators Dalton; Atwater and Dorsett.

Referred to: Commerce.

March 16, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO ESTABLISH NORTH CAROLINA AS A MEMBER OF THE
3 INTERSTATE INSURANCE PRODUCT REGULATION COMPACT, TO
4 REQUIRE THE COMMISSIONER OF INSURANCE TO REPORT WHETHER
5 CONTINUED PARTICIPATION BY THIS STATE IN THE COMPACT IS IN
6 THE BEST INTEREST OF THE CITIZENS AND POLICYHOLDERS OF THIS
7 STATE, AND TO PROVIDE A SUNSET FOR PARTICIPATION IN THE
8 COMPACT.

9 The General Assembly of North Carolina enacts:

10 **SECTION 1.** Chapter 58 of the General Statutes is amended by adding the
11 following new Article to read:

"Article 90.

"Interstate Insurance Product Regulation Compact Act.

14 **"§ 58-90-1. Preamble.**

15 The Interstate Insurance Product Regulation Compact Act is intended to help states
16 join together to establish an interstate compact to regulate designated insurance
17 products.

18 Pursuant to terms and conditions of this Article, this State seeks to join with other
19 states and establish the Interstate Insurance Product Regulation Compact and thus
20 become a member of the Interstate Insurance Product Regulation Commission. The
21 Commissioner of Insurance, or the Commissioner's designee, is hereby designated to
22 serve as the representative of this State to the Commission.

23 **"§ 58-90-5. Purposes.**

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

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

- 1 (2) To develop uniform standards for insurance products covered under
2 the Compact.
- 3 (3) To establish a central clearinghouse to receive and provide prompt
4 review of insurance products covered under the Compact and, in
5 certain cases, advertisements related thereto, submitted by insurers
6 authorized to do business in one or more compacting states.
- 7 (4) To give appropriate regulatory approval to those product filings and
8 advertisements satisfying the applicable uniform standard.
- 9 (5) To improve coordination of regulatory resources and expertise
10 between state insurance departments regarding the setting of uniform
11 standards and review of insurance products covered under the
12 Compact.
- 13 (6) To create the Interstate Insurance Product Regulation Commission.
- 14 (7) To perform these and any other related function as may be consistent
15 with the state regulation of the business of insurance.

16 **"§ 58-90-10. Definitions.**

17 For purposes of this Article and the Compact:

- 18 (1) "Advertisement" means any material designed to create public interest
19 in a product, or induce the public to purchase, increase, modify,
20 reinstate, borrow on, surrender, replace, or retain a policy, as more
21 specifically defined in the Rules and Operating Procedures of the
22 Commission.
- 23 (2) "Bylaws" means those bylaws established by the Commission for its
24 governance, or for directing or controlling the Commission's actions or
25 conduct.
- 26 (3) "Compacting state" means any state which has enacted this Compact
27 legislation and which has not withdrawn or been terminated pursuant
28 to G.S. 58-90-70.
- 29 (4) "Commission" means the "Interstate Insurance Product Regulation
30 Commission" established by this Compact.
- 31 (5) "Commissioner" means the chief insurance regulatory official of a
32 state, including a commissioner, superintendent, director, or
33 administrator.
- 34 (6) "Domiciliary state" means the state in which an insurer is incorporated
35 or organized; or, in the case of an foreign insurer, its state of entry.
- 36 (7) "Insurer" means any entity licensed by a state to issue contracts of
37 insurance for any of the lines of insurance covered by this Article.
- 38 (8) "Member" means the person chosen by a compacting state as its
39 representative to the Commission, or that person's designee.
- 40 (9) "Noncompacting state" means any state which is not at the time a
41 compacting state.
- 42 (10) "Operating procedures" means procedures promulgated by the
43 Commission implementing a rule, uniform standard, or a provision of
44 this Compact.

- 1 (11) "Product" means the form of a policy or contract, including any
2 application, endorsement, or related form which is attached to and
3 made a part of the policy or contract, and any evidence of coverage or
4 certificate, for an individual or group annuity, life insurance, disability
5 income, or long-term care insurance product that an Insurer is
6 authorized to issue.
- 7 (12) "Rule" means a statement of general or particular applicability and
8 future effect promulgated by the Commission, including a uniform
9 standard developed pursuant to G.S. 58-90-35, designed to implement,
10 interpret, or prescribe law or policy or describing the organization,
11 procedure, or practice requirements of the Commission, which shall
12 have the force and effect of law in the compacting states.
- 13 (13) "State" means any state, district, or territory of the United States of
14 America.
- 15 (14) "Third-party filer" means an entity that submits a product filing to the
16 Commission on behalf of an insurer.
- 17 (15) "Uniform standard" means a standard adopted by the Commission for
18 a product line, pursuant to G.S. 58-90-35, and shall include all of the
19 product requirements in aggregate. Each uniform standard shall be
20 construed, whether express or implied, to prohibit the use of any
21 inconsistent, misleading, or ambiguous provisions in a product, and the
22 form of the product made available to the public shall not be unfair,
23 inequitable or against public policy as determined by the Commission.

24 **"§ 58-90-15. Establishment of the Commission and venue.**

25 (a) The compacting states hereby create and establish a joint public agency
26 known as the "Interstate Insurance Product Regulation Commission." Pursuant to
27 G.S. 58-90-20, the Commission shall have the power to develop uniform standards for
28 product lines, receive, and provide prompt review of products filed with the
29 Commission, and give approval to those product filings satisfying applicable uniform
30 standards. It is not intended for the Commission to be the exclusive entity for receipt
31 and review of insurance product filings. Nothing herein shall prohibit any insurer from
32 filing its product in any state wherein the insurer is licensed to conduct the business of
33 insurance; and that filing shall be subject to the laws of the state where filed.

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

36 (c) The Commission is solely responsible for its liabilities except as otherwise
37 specifically provided in this Compact.

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

41 **"§ 58-90-20. Powers of the Commission.**

42 The Commission shall have the following powers:

- 1 (1) To promulgate rules, pursuant to G.S. 58-90-35, which shall have the
2 force and effect of law and shall be binding in the compacting states to
3 the extent and in the manner provided in this Compact.
- 4 (2) To exercise its rule-making authority and establish reasonable uniform
5 standards for products covered under the Compact, and advertisement
6 related thereto, which shall have the force and effect of law and shall
7 be binding in the compacting states, but only for those products filed
8 with the Commission. Notwithstanding this subdivision, a compacting
9 state shall have the right to opt out of a uniform standard pursuant to
10 G.S. 58-90-35, to the extent and in the manner provided in this
11 Compact, and any uniform standard established by the Commission for
12 long-term care insurance products may provide the same or greater
13 protections for consumers as, but shall not provide less than, those
14 protections set forth in the National Association of Insurance
15 Commissioners' Long-Term Care Insurance Model Act and
16 Long-Term Care Insurance Model Regulation, respectively, adopted as
17 of 2001. The Commission shall consider whether any subsequent
18 amendments to the NAIC Long-Term Care Insurance Model Act or
19 Long-Term Care Insurance Model Regulation adopted by the NAIC
20 require amending of the uniform standards established by the
21 Commission for long-term care insurance products.
- 22 (3) To receive and review in an expeditious manner products filed with the
23 Commission, and rate filings for disability income and long-term care
24 insurance products, and give approval of those products and rate
25 filings that satisfy the applicable uniform standard, where the approval
26 shall have the force and effect of law and be binding on the
27 compacting states to the extent and in the manner provided in the
28 Compact.
- 29 (4) To receive and review in an expeditious manner advertisement relating
30 to long-term care insurance products for which uniform standards have
31 been adopted by the Commission and give approval to all
32 advertisement that satisfies the applicable uniform standard. For any
33 product covered under this Compact, other than long-term care
34 insurance products, the Commission shall have the authority to require
35 an insurer to submit all or any part of its advertisement with respect to
36 that product for review or approval prior to use, if the Commission
37 determines that the nature of the product is such that an advertisement
38 of the product could have the capacity or tendency to mislead the
39 public. The actions of the Commission as provided in this section shall
40 have the force and effect of law and shall be binding in the compacting
41 states to the extent and in the manner provided in the Compact.
- 42 (5) To exercise its rule-making authority and designate products and
43 advertisement that may be subject to a self-certification process
44 without the need for prior approval by the Commission.

- 1 (6) To promulgate operating procedures pursuant to G.S. 58-90-35 which
2 shall be binding in the compacting states to the extent and in the
3 manner provided in this Compact.
- 4 (7) To bring and prosecute legal proceedings or actions in its name as the
5 Commission except that the standing of any state insurance department
6 to sue or be sued under applicable law shall not be affected.
- 7 (8) To issue subpoenas requiring the attendance and testimony of
8 witnesses and the production of evidence.
- 9 (9) To establish and maintain offices.
- 10 (10) To purchase and maintain insurance and bonds.
- 11 (11) To borrow, accept, and contract for services of personnel, including
12 employees of a compacting state.
- 13 (12) To hire employees, professionals, or specialists, and elect or appoint
14 officers, and to fix their compensation, define their duties, and give
15 them appropriate authority to carry out the purposes of the Compact,
16 and determine their qualifications; and to establish the Commission's
17 personnel policies and programs relating to, among other things,
18 conflicts of interest, rates of compensation, and qualifications of
19 personnel.
- 20 (13) To accept any and all appropriate donations and grants of money,
21 equipment, supplies, materials, and services, and to receive, utilize,
22 and dispose of the same. At all times the Commission shall strive to
23 avoid any appearance of impropriety.
- 24 (14) To lease, purchase, accept appropriate gifts or donations of, or
25 otherwise to own, hold, improve, or use, any property, real, personal,
26 or mixed. At all times the Commission shall strive to avoid any
27 appearance of impropriety.
- 28 (15) To sell, convey, mortgage, pledge, lease, exchange, abandon, or
29 otherwise dispose of any property, real, personal, or mixed.
- 30 (16) To remit filing fees to compacting states as may be set forth in the
31 bylaws, rules, or operating procedures.
- 32 (17) To enforce compliance by compacting states with rules, uniform
33 standards, operating procedures, and bylaws.
- 34 (18) To provide for dispute resolution among compacting states.
- 35 (19) To advise compacting states on issues relating to insurers domiciled or
36 doing business in noncompacting jurisdictions, consistent with the
37 purposes of this Compact.
- 38 (20) To provide advice and training to those personnel in state insurance
39 departments responsible for product review, and to be a resource for
40 state insurance departments.
- 41 (21) To establish a budget and make expenditures.
- 42 (22) To borrow money.
- 43 (23) To appoint committees, including advisory committees comprising
44 members, state insurance regulators, state legislators or their

1 representatives, insurance industry and consumer representatives, and
2 such other interested persons as may be designated in the bylaws.

3 (24) To provide and receive information from, and to cooperate with, law
4 enforcement agencies.

5 (25) To adopt and use a corporate seal.

6 (26) To perform any other functions that may be necessary or appropriate to
7 achieve the purposes of this Compact consistent with the state
8 regulation of the business of insurance.

9 **"§ 58-90-25. Organization of the Commission.**

10 (a) Membership, Voting, and Bylaws. – Each compacting state shall have and be
11 limited to one member. Each member shall be qualified to serve in that capacity
12 pursuant to applicable law of the compacting state. Any member may be removed or
13 suspended from office as provided by the law of the state from which the member shall
14 be appointed. Any vacancy occurring in the Commission shall be filled in accordance
15 with the laws of the compacting state wherein the vacancy exists. Nothing herein shall
16 be construed to affect the manner in which a compacting state determines the election or
17 appointment and qualification of its own Commissioner.

18 Each member shall be entitled to one vote and shall have an opportunity to
19 participate in the governance of the Commission in accordance with the bylaws.
20 Notwithstanding any provision herein to the contrary, no action of the Commission with
21 respect to the promulgation of a uniform standard shall be effective unless two-thirds of
22 the members vote in favor of the uniform standard.

23 The Commission shall, by a majority of the members, prescribe bylaws to govern its
24 conduct as may be necessary or appropriate to carry out the purposes, and exercise the
25 powers, of the Compact, including:

26 (1) Establishing the fiscal year of the Commission.

27 (2) Providing reasonable procedures for appointing and electing members,
28 as well as holding meetings, of the Management Committee.

29 (3) Providing reasonable standards and procedures: (i) for the
30 establishment and meetings of other committees, and (ii) governing
31 any general or specific delegation of any authority or function of the
32 Commission.

33 (4) Providing reasonable procedures for calling and conducting meetings
34 of the Commission that consist of a majority of Commission members,
35 ensuring reasonable advance notice of each meeting and providing for
36 the right of citizens to attend each meeting with enumerated exceptions
37 designed to protect the public's interest, the privacy of individuals, and
38 insurers' proprietary information, including trade secrets. The
39 Commission may meet in camera only after a majority of the entire
40 membership votes to close a meeting in toto or in part. As soon as
41 practicable, the Commission must make public (i) a copy of the vote to
42 close the meeting revealing the vote of each member with no proxy
43 votes allowed, and (ii) votes taken during the meeting.

- 1 (5) Establishing the titles, duties, and authority and reasonable procedures
2 for the election of the officers of the Commission.
- 3 (6) Providing reasonable standards and procedures for the establishment
4 of the personnel policies and programs of the Commission.
5 Notwithstanding any civil service or other similar laws of any
6 compacting state, the bylaws shall exclusively govern the personnel
7 policies and programs of the Commission.
- 8 (7) Promulgating a code of ethics to address permissible and prohibited
9 activities of commission members and employees.
- 10 (8) Providing a mechanism for winding up the operations of the
11 Commission and the equitable disposition of any surplus funds that
12 may exist after the termination of the Compact after the payment or
13 reserving of all of its debts and obligations.

14 The Commission shall publish its bylaws in a convenient form and file a copy of the
15 bylaws and a copy of any amendment to the bylaws with the appropriate agency or
16 officer in each of the compacting states.

17 (b) Management Committee, Officers and Personnel. – A Management
18 Committee comprising no more than 14 members shall be established as follows:

- 19 (1) One member from each of the six compacting states with the largest
20 premium volume for individual and group annuities, life, disability
21 income, and long-term care insurance products, determined from the
22 records of the NAIC for the prior year.
- 23 (2) Four members from those compacting states with at least two percent
24 (2%) of the market based on the premium volume described above,
25 other than the six compacting states with the largest premium volume,
26 selected on a rotating basis as provided in the bylaws.
- 27 (3) Four members from those compacting states with less than two percent
28 (2%) of the market, based on the premium volume described above,
29 with one selected from each of the four zone regions of the NAIC as
30 provided in the bylaws.

31 The Management Committee shall have such authority and duties as may be set
32 forth in the bylaws, including but not limited to:

- 33 (1) Managing the affairs of the Commission in a manner consistent with
34 the bylaws and purposes of the Commission.
- 35 (2) Establishing and overseeing an organizational structure within, and
36 appropriate procedures for, the Commission to provide for the creation
37 of uniform standards and other rules, receipt and review of product
38 filings, administrative and technical support functions, review of
39 decisions regarding the disapproval of a product filing, and the review
40 of elections made by a compacting state to opt out of a uniform
41 standard, except that that a uniform standard shall not be submitted to
42 the compacting states for adoption unless approved by two-thirds of
43 the members of the Management Committee.
- 44 (3) Overseeing the offices of the Commission.

1 (4) Planning, implementing, and coordinating communications and
2 activities with other state, federal, and local government organizations
3 in order to advance the goals of the Commission.

4 The Commission shall elect annually officers from the Management Committee,
5 with each having the authority and duties specified in the bylaws.

6 The Management Committee may, subject to the approval of the Commission,
7 appoint or retain an executive director for a period of time, upon the terms and
8 conditions, and for the compensation deemed appropriate by the Commission. The
9 executive director shall serve as secretary to the Commission, but shall not be a member
10 of the Commission. The executive director shall hire and supervise any other staff
11 authorized by the Commission.

12 (c) Legislative and Advisory Committees. – A legislative committee comprising
13 state legislators or their designees shall be established to monitor the operations of, and
14 make recommendations to, the Commission, including the Management Committee.
15 The manner of selection and term of any legislative committee member shall be as set
16 forth in the bylaws. Prior to the adoption by the Commission of any uniform standard,
17 revision to the bylaws, annual budget, or other significant matter as may be provided in
18 the bylaws, the Management Committee shall consult with and report to the legislative
19 committee.

20 The Commission shall establish two advisory committees, one of which shall
21 comprise consumer representatives independent of the insurance industry, and the other
22 comprising insurance industry representatives.

23 The Commission may establish additional advisory committees as its bylaws may
24 provide for the carrying out of its functions.

25 (d) Corporate Records of the Commission. – The Commission shall maintain its
26 corporate books and records in accordance with the bylaws.

27 (e) Qualified Immunity, Defense, and Indemnification. – The members, officers,
28 executive director, employees, and representatives of the Commission shall be immune
29 from suit and liability, either personally or in their official capacity, for any claim for
30 damage to or loss of property or personal injury or other civil liability caused by or
31 arising out of any actual or alleged act, error, or omission that occurred, or that the
32 person against whom the claim is made had a reasonable basis for believing occurred
33 within the scope of Commission employment, duties, or responsibilities except that
34 nothing in this subsection shall be construed to protect any such person from suit or
35 liability for any damage, loss, injury, or liability caused by the intentional or willful and
36 wanton misconduct of that person.

37 The Commission shall defend any member, officer, executive director, employee, or
38 representative of the Commission in any civil action seeking to impose liability arising
39 out of any actual or alleged act, error, or omission that occurred within the scope of
40 Commission employment, duties, or responsibilities, or that the person against whom
41 the claim is made had a reasonable basis for believing occurred within the scope of
42 Commission employment, duties, or responsibilities as long as the actual or alleged act,
43 error, or omission did not result from that person's intentional or willful and wanton

1 misconduct. Nothing in this subsection shall be construed to prohibit that person from
2 retaining his or her own counsel.

3 The Commission shall indemnify and hold harmless any member, officer, executive
4 director, employee, or representative of the Commission for the amount of any
5 settlement or judgment obtained against that person arising out of any actual or alleged
6 act, error, or omission that occurred within the scope of Commission employment,
7 duties, or responsibilities, or that the person had a reasonable basis for believing
8 occurred within the scope of Commission employment, duties, or responsibilities as
9 long as the actual or alleged act, error, or omission did not result from the intentional or
10 willful and wanton misconduct of that person.

11 **"§ 58-90-30. Meetings; acts of the Commission.**

12 (a) The Commission shall meet and take such actions as are consistent with the
13 provisions of this Compact and the bylaws.

14 (b) Each member of the Commission shall have the right and power to cast a vote
15 to which that compacting state is entitled and to participate in the business and affairs of
16 the Commission. A member shall vote in person or by any means provided in the
17 bylaws. The bylaws may provide for members' participation in meetings by telephone or
18 other means of communication.

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

21 **"§ 58-90-35. Rules and operating procedures: rule-making functions of the**
22 **Commission and opting out of uniform standards.**

23 (a) Rule-Making Authority. – The Commission shall promulgate reasonable
24 rules, including uniform standards, and operating procedures in order to effectively and
25 efficiently achieve the purposes of this Compact. Notwithstanding the foregoing, in the
26 event the Commission exercises its rule-making authority in a manner that is beyond the
27 scope of the purposes of this Article, or the powers granted in this Article, then that
28 action by the Commission shall be invalid and have no force and effect.

29 (b) Rule-Making Procedure. – Rules and operating procedures shall be made
30 pursuant to a rule-making process that conforms to the Model State Administrative
31 Procedure Act of 1981 as amended, as may be appropriate to the operations of the
32 Commission. Before the Commission adopts a uniform standard, the Commission shall
33 give written notice to the relevant state legislative committee in each compacting state
34 responsible for insurance issues of its intention to adopt the uniform standard. The
35 Commission in adopting a uniform standard shall consider fully all submitted materials
36 and issue a concise explanation of its decision.

37 (c) Effective Date and Opt Out of a Uniform Standard. – A uniform standard
38 shall become effective 90 days after its promulgation by the Commission or such later
39 date as the Commission may determine except that a compacting state may opt out of a
40 uniform standard as provided in this Article. "Opt out" shall be defined as any action by
41 a compacting state to decline to adopt or participate in a promulgated uniform standard.
42 All other rules and operating procedures, and amendments to the rules and operating
43 procedures, shall become effective as of the date specified in each rule, operating
44 procedure, or amendment.

1 (d) Opt Out Procedure. – A compacting state may opt out of a uniform standard,
2 either by legislation or regulation duly promulgated by the insurance department under
3 the compacting state's administrative procedure act. If a compacting state elects to opt
4 out of a uniform standard by regulation, it must (i) give written notice to the
5 Commission no later than 10 business days after the uniform standard is promulgated,
6 or at the time the state becomes a compacting state and (ii) find that the uniform
7 standard does not provide reasonable protections to the citizens of the state, given the
8 conditions in the state. The Commissioner shall make specific findings of fact and
9 conclusions of law, based on a preponderance of the evidence, detailing the conditions
10 in the state that warrant a departure from the uniform standard and determining that the
11 uniform standard would not reasonably protect the citizens of the state. The
12 Commissioner must consider and balance the following factors and find that the
13 conditions in the state and needs of the citizens of the state outweigh:

- 14 (1) The intent of the legislature to participate in, and the benefits of, an
15 interstate agreement to establish national uniform consumer
16 protections for the products subject to this Article; and
17 (2) The presumption that a uniform standard adopted by the Commission
18 provides reasonable protections to consumers of the relevant product.

19 Notwithstanding the foregoing, a compacting state may, at the time of its enactment
20 of this Compact, prospectively opt out of all uniform standards involving long-term care
21 insurance products by expressly providing for the opt out in the enacted Compact, and
22 the opt out shall not be treated as a material variance in the offer or acceptance of any
23 state to participate in this Compact. The opt out shall be effective at the time of
24 enactment of this Compact by the compacting state and shall apply to all existing
25 uniform standards involving long-term care insurance products and those subsequently
26 promulgated.

27 (e) Effect of Opt Out. – If a compacting state elects to opt out of a uniform
28 standard, the uniform standard shall remain applicable in the compacting state electing
29 to opt out until such time the opt out legislation is enacted into law or the regulation
30 opting out becomes effective. Once the opt out of a uniform standard by a compacting
31 state becomes effective as provided under the laws of that state, the uniform standard
32 shall have no further force and effect in that state unless and until the legislation or
33 regulation implementing the opt out is repealed or otherwise becomes ineffective under
34 the laws of the state. If a compacting state opts out of a uniform standard after the
35 uniform standard has been made effective in that state, the opt out shall have the same
36 prospective effect as provided under G.S. 58-90-70 for withdrawals.

37 (f) Stay of Uniform Standard. – If a compacting state has formally initiated the
38 process of opting out of a uniform standard by regulation, and while the regulatory opt
39 out is pending, the compacting state may petition the Commission, at least 15 days
40 before the effective date of the uniform standard, to stay the effectiveness of the
41 uniform standard in that state. The Commission may grant a stay if it determines the
42 regulatory opt out is being pursued in a reasonable manner and there is a likelihood of
43 success. If a stay is granted or extended by the Commission, the stay or extension
44 thereof may postpone the effective date by up to 90 days, unless affirmatively extended

1 by the Commission. A stay shall not be permitted to remain in effect for more than one
2 year unless the compacting state can show extraordinary circumstances that warrant a
3 continuance of the stay, including the existence of a legal challenge that prevents the
4 compacting state from opting out. A stay may be terminated by the Commission upon
5 notice that the rule-making process has been terminated.

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

14 **"§ 58-90-40. Commission records and enforcement.**

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

23 (b) Except as to privileged records, data, and information, the laws of any
24 compacting state pertaining to confidentiality or nondisclosure shall not relieve any
25 compacting state commissioner of the duty to disclose any relevant records, data, or
26 information to the Commission. Disclosure to the Commission shall not be deemed to
27 waive or otherwise affect any confidentiality requirement. Except as otherwise
28 expressly provided in this Article, the Commission shall not be subject to the
29 compacting state's laws pertaining to confidentiality and nondisclosure with respect to
30 records, data, and information in its possession. Confidential information of the
31 Commission shall remain confidential after the information is provided to any
32 commissioner.

33 (c) The Commission shall monitor compacting states for compliance with duly
34 adopted bylaws, rules, including uniform standards, and operating procedures. The
35 Commission shall notify any noncomplying compacting state in writing of its
36 noncompliance with Commission bylaws, rules, or operating procedures. If a
37 noncomplying compacting state fails to remedy its noncompliance within the time
38 specified in the notice of noncompliance, the compacting state shall be deemed to be in
39 default as set forth in G.S. 58-90-70.

40 (d) The commissioner of any state in which an insurer is authorized to do
41 business, or is conducting the business of insurance, shall continue to exercise that
42 person's authority to oversee the market regulation of the activities of the insurer in
43 accordance with the provisions of the state's law. The commissioner's enforcement of
44 compliance with the Compact is governed by the following provisions:

- 1 (1) With respect to the commissioner's market regulation of a product or
2 advertisement that is approved or certified to the Commission, the
3 content of the product or advertisement shall not constitute a violation
4 of the provisions, standards, or requirements of the Compact except
5 upon a final order of the Commission, issued at the request of a
6 commissioner after prior notice to the insurer and an opportunity for
7 hearing before the Commission.
- 8 (2) Before a commissioner may bring an action for violation of any
9 provision, standard, or requirement of the Compact relating to the
10 content of an advertisement not approved or certified to the
11 Commission, the Commission, or an authorized Commission officer or
12 employee, must authorize the action. However, authorization pursuant
13 to this subdivision does not require notice to the insurer, opportunity
14 for hearing, or disclosure of requests for authorization or records of the
15 Commission's action on the requests.

16 **"§ 58-90-45. Dispute resolution.**

17 The Commission shall attempt, upon the request of a member, to resolve any
18 disputes or other issues that are subject to this Compact and which may arise between
19 two or more compacting states, or between compacting states and noncompacting states,
20 and the Commission shall promulgate an operating procedure providing for resolution
21 of those disputes.

22 **"§ 58-90-50. Product filing and approval.**

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

29 (b) The Commission shall establish appropriate filing and review processes and
30 procedures pursuant to Commission rules and operating procedures. Notwithstanding
31 any provision in this Article to the contrary, the Commission shall promulgate rules to
32 establish conditions and procedures under which the Commission will provide public
33 access to product filing information. In establishing rules, the Commission shall
34 consider the interests of the public in having access to the information, as well as
35 protection of personal medical and financial information and trade secrets, that may be
36 contained in a product filing or supporting information.

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

39 **"§ 58-90-55. Review of Commission decisions regarding filings.**

40 (a) Not later than 30 days after the Commission has given notice of a
41 disapproved product or advertisement filed with the Commission, the insurer or
42 third-party filer whose filing was disapproved may appeal the determination to a review
43 panel appointed by the Commission. The Commission shall promulgate rules to
44 establish procedures for appointing review panels and provide for notice and hearing.

1 An allegation that the Commission, in disapproving a product or advertisement filed
2 with the Commission, acted arbitrarily, capriciously, or in a manner that is an abuse of
3 discretion or otherwise not in accordance with the law, is subject to judicial review in
4 accordance with G.S. 58-90-15.

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

10 **"§ 58-90-60. Finance.**

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

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

22 (c) The Commission's budget for a fiscal year shall not be approved until it has
23 been subject to notice and comment as set forth in G.S. 58-90-35.

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

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

28 (f) The Commission shall keep complete and accurate accounts of all its internal
29 receipts, including grants and donations, and disbursements of all funds under its
30 control. The internal financial accounts of the Commission shall be subject to the
31 accounting procedures established under its bylaws. The financial accounts and reports,
32 including the system of internal controls and procedures of the Commission, shall be
33 audited annually by an independent certified public accountant. Upon the determination
34 of the Commission, but no less frequently than every three years, the review of the
35 independent auditor shall include a management and performance audit of the
36 Commission. The Commission shall make an annual report to the Governor and
37 legislature of the compacting states, which shall include a report of the independent
38 audit. The Commission's internal accounts shall not be confidential, and those materials
39 may be shared with the commissioner of any compacting state upon request except that
40 any work papers related to any internal or independent audit and any information
41 regarding the privacy of individuals and insurers' proprietary information, including
42 trade secrets, shall remain confidential.

1 (g) No compacting state shall have any claim to or ownership of any property
2 held by or vested in the Commission or to any Commission funds held pursuant to the
3 provisions of this Compact.

4 **"§ 58-90-65. Compacting states; effective date; amendment.**

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

6 (b) The Compact shall become effective and binding upon legislative enactment
7 of the Compact into law by two compacting states except that the Commission shall
8 become effective for purposes of adopting uniform standards for, reviewing, and giving
9 approval or disapproval of, products filed with the Commission that satisfy applicable
10 uniform standards only after 26 states are compacting states or, alternatively, by states
11 representing greater than forty percent (40%) of the premium volume for life insurance,
12 annuity, disability income, and long-term care insurance products, based on records of
13 the NAIC for the prior year. Thereafter, it shall become effective and binding as to any
14 other compacting state upon enactment of the Compact into law by that state.

15 (c) Amendments to the Compact may be proposed by the Commission for
16 enactment by the compacting states. No amendment shall become effective and binding
17 upon the Commission and the compacting states unless and until all compacting states
18 enact the amendment into law.

19 **"§ 58-90-70. Withdrawal; default; termination.**

20 (a) Withdrawal. – Once effective, the Compact shall continue in force and
21 remain binding upon each and every compacting state though a compacting state may
22 withdraw from the Compact ("withdrawing state") by enacting a statute specifically
23 repealing the statute which enacted the Compact into law.

24 The effective date of withdrawal is the effective date of the repealing statute.
25 However, the withdrawal shall not apply to any product filings approved or
26 self-certified, or any advertisement of such products, on the date the repealing statute
27 becomes effective, except by mutual agreement of the Commission and the withdrawing
28 state unless the approval is rescinded by the withdrawing state as provided in this
29 subsection.

30 The commissioner of the withdrawing state shall immediately notify the
31 Management Committee in writing upon the introduction of legislation repealing this
32 Compact in the withdrawing state.

33 The Commission shall notify the other compacting states of the introduction of such
34 legislation within 10 days after its receipt of the notice.

35 The withdrawing state is responsible for all obligations, duties, and liabilities
36 incurred through the effective date of withdrawal, including any obligations, the
37 performance of which extend beyond the effective date of withdrawal, except to the
38 extent those obligations may have been released or relinquished by mutual agreement of
39 the Commission and the withdrawing state. The Commission's approval of products and
40 advertisement prior to the effective date of withdrawal shall continue to be effective and
41 be given full force and effect in the withdrawing state, unless formally rescinded by the
42 withdrawing state in the same manner as provided by the laws of the withdrawing state
43 for the prospective disapproval of products or advertisement previously approved under
44 state law.

1 Reinstatement following withdrawal of any compacting state shall occur upon the
2 effective date of the withdrawing state reenacting the Compact.

3 (b) Default. – If the Commission determines that any compacting state has at any
4 time defaulted ("defaulting state") in the performance of any of its obligations or
5 responsibilities under this Compact, the bylaws or duly promulgated rules or operating
6 procedures, then, after notice and hearing as set forth in the bylaws, all rights,
7 privileges, and benefits conferred by this Compact on the defaulting state shall be
8 suspended from the effective date of default as fixed by the Commission. The grounds
9 for default include failure of a compacting state to perform its obligations or
10 responsibilities, and any other grounds designated in Commission rules. The
11 Commission shall immediately notify the defaulting state in writing of the defaulting
12 state's suspension pending a cure of the default. The Commission shall stipulate the
13 conditions and the time period within which the defaulting state must cure its default. If
14 the defaulting state fails to cure the default within the time period specified by the
15 Commission, the defaulting state shall be terminated from the Compact and all rights,
16 privileges, and benefits conferred by this Compact shall be terminated from the
17 effective date of termination.

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

22 Reinstatement following termination of any compacting state requires a reenactment
23 of the Compact.

24 (c) Dissolution of Compact. – The Compact dissolves effective upon the date of
25 the withdrawal or default of the compacting state which reduces membership in the
26 Compact to one compacting state.

27 Upon the dissolution of this Compact, the Compact becomes null and void and shall
28 be of no further force or effect, and the business and affairs of the Commission shall be
29 wound up and any surplus funds shall be distributed in accordance with the bylaws.

30 **"§ 58-90-75. Severability; construction.**

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

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

36 **"§ 58-90-80. Binding effect of Compact; other laws.**

37 (a) Other Laws. – Nothing herein prevents the enforcement of any other law of a
38 compacting state, except as provided in subsection (b) of this section.

39 For any product approved or certified to the Commission, the rules, uniform
40 standards, and any other requirements of the Commission shall constitute the exclusive
41 provisions applicable to the content, approval, and certification of such products. For
42 advertisement that is subject to the Commission's authority, any rule, uniform standard,
43 or other requirement of the Commission that governs the content of the advertisement
44 shall constitute the exclusive provision that a Commissioner may apply to the content of

1 the advertisement. Notwithstanding the foregoing, no action taken by the Commission
2 shall abrogate or restrict: (i) the access of any person to state courts; (ii) remedies
3 available under state law related to breach of contract, tort, or other laws not specifically
4 directed to the content of the product; (iii) state law relating to the construction of
5 insurance contracts; or (iv) the authority of the attorney general of the state, including,
6 but not limited to, maintaining any actions or proceedings, as authorized by law.

7 All insurance products filed with individual states shall be subject to the laws of
8 those states.

9 (b) Binding Effect of This Compact. – All lawful actions of the Commission,
10 including all rules and operating procedures promulgated by the Commission, are
11 binding upon the compacting states.

12 All agreements between the Commission and the compacting states are binding in
13 accordance with their terms.

14 Upon the request of a party to a conflict over the meaning or interpretation of
15 Commission actions, and upon a majority vote of the compacting states, the
16 Commission may issue advisory opinions regarding the meaning or interpretation in
17 dispute.

18 In the event any provision of this Compact exceeds the constitutional limits imposed
19 on the legislature of any compacting state, the obligations, duties, powers, or
20 jurisdiction sought to be conferred by that provision upon the Commission shall be
21 ineffective as to that compacting state, and those obligations, duties, powers, or
22 jurisdiction shall remain in the compacting state and shall be exercised by the agency
23 thereof to which those obligations, duties, powers, or jurisdiction are delegated by law
24 in effect at the time this Compact becomes effective."

25 **SECTION 2.** The Commissioner may submit interim reports to the General
26 Assembly as deemed appropriate by the Commissioner on the effectiveness of the
27 State's participation in the Compact. No later than January 1, 2009, the Commissioner
28 shall submit a final report to the General Assembly on the effectiveness of the State's
29 participation in the Compact. The report may include consideration of any issues
30 deemed relevant by the Commissioner to the State's participation in the Compact and
31 may include recommended legislative proposals related to the Compact. The report shall
32 include the Commissioner's recommendation to the General Assembly as to whether the
33 State's continued participation in the Compact is in the best interest of the citizens of
34 this State.

35 **SECTION 3.** This act becomes effective October 1, 2005, and expires
36 October 1, 2009.