SENATE BILL No. 634

DIGEST OF INTRODUCED BILL

Citations Affected: IC 27-8-31; IC 34-30-2-116.9.

Synopsis: Insurance product regulation compact. Provides for an interstate insurance product regulation compact.

Effective: July 1, 2005.

Paul

January 24, 2005, read first time and referred to Committee on Insurance and Financial Institutions.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type.~~

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~*this style type*~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

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SENATE BILL No. 634

A BILL FOR AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 27-8-31 IS ADDED TO THE INDIANA CODE AS A **NEW** CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 31. Interstate Insurance Product Regulation Compact

Sec. 1. The purposes of this compact are, through means of joint and cooperative action among the compacting states, to:

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

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

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

(4) give appropriate regulatory approval to product filings

and advertisements satisfying the applicable uniform standard;

(5) improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the compact;

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

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

Sec. 2. (a) The definitions in this section apply throughout this chapter.

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

(c) "Bylaws" mean bylaws established by the commission for the governance, direction, or control of the commission.

(d) "Commission" refers to the interstate insurance product regulation commission established by section 3 of this chapter.

(e) "Commissioner" refers to the insurance commissioner appointed under IC 27-1-1-2.

(f) "Compacting state" means a state that:

(1) has enacted this compact; and

(2) has not:

(A) withdrawn as provided in section 15 of this chapter; or

(B) been terminated as provided in section 16 of this chapter.

(g) "Defaulting state" means a compacting state that defaults, as described in section 16 of this chapter.

(h) "Domiciliary state" means the state in which an insurer is incorporated or organized, or the state of entry of an alien insurer.

(i) "Insurer" means an entity licensed by a state to issue contracts of insurance for the lines of insurance covered by this chapter.

(j) "Member" means the commissioner or the commissioner's designee. A commissioner's designee must be an employee of the department of insurance.

(k) "NAIC" refers to the National Association of Insurance Commissioners.

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(l) "Noncompacting state" means a state that is not a compacting state.

(m) "Operating procedures" mean procedures adopted by the commission to implement a rule, a uniform standard, or a provision of this compact.

(n) "Opt out" means any action by a compacting state to decline to adopt or participate in a promulgated uniform standard.

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

(p) "Rule" means a statement of general or particular applicability and future effect adopted by the commission, including a uniform standard developed under section 8 of this chapter, that is designed to implement or interpret law or prescribe policy or that describes the organization, procedure, or practice requirements of the commission.

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

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

(s) "Uniform standard" means a standard adopted by the commission for a product line under section 8 of this chapter. The term includes all the product requirements. However:

(1) each uniform standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading, or ambiguous provisions in a product; and

(2) the form of the product made available to the public shall not be unfair, inequitable, or against public policy as determined by the commission.

(t) "Withdrawing state" means a compacting state that withdraws from the compact under section 15 of this chapter.

Sec. 3. (a) The compacting states hereby establish a joint public agency known as the interstate insurance product regulation commission. Under section 4 of this chapter, the commission may:

(1) develop uniform standards for product lines;

(2) receive and provide prompt review of products filed with the commission; and

(3) give approval to product filings satisfying applicable

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uniform standards.

However, it is not intended for the commission to be the exclusive entity for receipt and review of insurance product filings. This chapter does not prohibit an insurer from filing the insurer's product in a state where the insurer is licensed to conduct the business of insurance and any such filing is subject to the laws of the state where filed.

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

(c) The commission is a nonprofit entity, separate and distinct from the individual compacting states.

(d) The commission is solely responsible for the commission's liabilities except as otherwise specifically provided in this compact.

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

Sec. 4. The commission has the following powers:

(1) To adopt rules under section 8 of this chapter, which are binding in the compacting states to the extent and in the manner provided in this compact.

(2) To exercise the commission's rulemaking authority and establish reasonable uniform standards for products covered under the compact and advertisement related to the products, which are binding in the compacting states, but only for those products filed with the commission. However, a compacting state has the right to opt out of the uniform standard under section 8(d) of this chapter, to the extent and in the manner provided in this compact, and any uniform standard established by the commission for long term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the NAIC's long term care insurance model act and long term care insurance model regulation, respectively, adopted as of 2001. The commission shall consider whether any subsequent amendments to the NAIC long term care insurance model act or long term care insurance model regulation adopted by the NAIC require amending the uniform standards established by the commission for long term care insurance products.

(3) To receive and review in an expeditious manner products filed with the commission, rate filings for disability income and long term care insurance products, and give approval of

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those products and rate filings that satisfy the applicable uniform standard, where the approval is binding on the compacting states to the extent and in the manner provided in the compact.

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

(5) To exercise the commission's rulemaking authority and designate products and advertisement that may be subject to a self-certification process without the need for prior approval by the commission.

(6) To adopt operating procedures under section 8 of this chapter, which are binding in the compacting states to the extent and in the manner provided in this compact.

(7) To bring and prosecute legal proceedings or actions in the commission's name as the commission, provided that the standing of any state insurance department to sue or be sued under applicable law shall not be affected.

(8) To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence.

(9) To establish and maintain offices.

(10) To purchase and maintain insurance and bonds.

(11) To borrow, accept, or contract for services of personnel, including employees of a compacting state.

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

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compensation, and qualifications of personnel.

(13) To accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, use, and dispose of the same. At all times the commission shall strive to avoid any appearance of impropriety.

(14) To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use any property, real, personal, or mixed. At all times the commission shall strive to avoid any appearance of impropriety.

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

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

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

(18) To provide for dispute resolution among compacting states.

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

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

(21) To establish a budget and make expenditures.

(22) To borrow money.

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

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

(25) To adopt and use a corporate seal.

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

Sec. 5. (a) Each compacting state shall have and be limited to one (1) member. Each member shall be qualified to serve in that capacity under applicable law of the compacting state. Any member may be removed or suspended from office as provided by

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the law of the state from which the member is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compacting state where the vacancy exists. Nothing in this section shall be construed to affect the manner in which a compacting state determines the election or appointment and qualification of the compacting state's commissioner.

(b) Each member is entitled to one (1) vote and is entitled to an opportunity to participate in the governance of the commission in accordance with the bylaws. Notwithstanding any provision in this chapter to the contrary, no action of the commission with respect to the promulgation of a uniform standard is effective unless two-thirds (2/3) of the members vote in favor of adoption.

(c) The commission shall, by a majority of the members, prescribe bylaws to govern the commission's conduct as may be necessary or appropriate to carry out the purposes and exercise the powers of the compact, including the following:

(1) Establishing the fiscal year of the commission.

(2) Providing reasonable procedures for appointing and electing members and holding meetings of the management committee.

(3) Providing reasonable standards and procedures:

(A) for the establishment and meetings of other committees; and

(B) governing any general or specific delegation of any authority or function of the commission.

(4) Providing reasonable procedures for calling and conducting meetings of the commission and ensuring reasonable advance notice of each meeting, including:

(A) requiring a majority of commission members to attend a meeting;

(B) providing for the right of citizens to attend the meetings with enumerated exceptions designed to:

(i) protect the public interest;

(ii) protect the privacy of individuals; and

(iii) insure proprietary information, including trade secrets;

(C) allowing a meeting in camera only after a majority of the members of the commission votes to close a meeting en toto or in part, with no proxy voting; and

(D) providing for the commission, as soon as practicable after a vote to close a meeting as described in clause (C), to make public:

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(i) a copy of the vote to close the meeting revealing the vote of each member; and

(ii) votes taken during the meeting.

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

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

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

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

(d) The commission shall publish bylaws in a convenient form and file a copy of the bylaws and amendments to the bylaws with the appropriate agency or officer in each compacting state.

Sec. 6. (a) A management committee comprising not more than fourteen (14) members shall be established as follows:

(1) One (1) member from each of the six (6) compacting states with the largest premium volume for individual and group annuities, life, disability income, and long term care insurance products, determined from the records of the NAIC for the prior year.

(2) Four (4) members from those compacting states with at least two percent (2%) of the market based on the premium volume described in subdivision (1), other than the six (6) compacting states with the largest premium volume, selected on a rotating basis as provided in the bylaws.

(3) Four (4) members from those compacting states with less than two percent (2%) of the market, based on the premium volume described in subdivision (1), with one (1) selected from each of the four (4) zone regions of the NAIC as provided in the bylaws.

(b) The management committee has the authority and duties as may be set forth in the bylaws, including the following:

(1) Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission.

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(2) Establishing and overseeing an organizational structure within, and appropriate procedures for, the commission to provide for the creation of uniform standards and other rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a compacting state to opt out of a uniform standard. However, a uniform standard shall not be submitted to the compacting states for adoption unless approved by two-thirds (2/3) of the members of the management committee.

(3) Overseeing the offices of the commission.

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

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

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

(e) A legislative committee comprised of state legislators or state legislators' designees shall be established to monitor the operations of and make recommendations to the commission, including the management committee. However, the manner of selection and term of any legislative committee member shall be as set forth in the bylaws. Before the commission adopts any uniform standard, revision to the bylaws, annual budget, or other significant matter as may be provided in the bylaws, the management committee shall consult with and report to the legislative committee. The commission may establish additional advisory committees as the commission's bylaws may provide for the carrying out of the commission's functions.

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

(g) The members, officers, executive director, employees, and representatives of the commission are immune from suit and liability, either personally or in their official capacity, for any

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claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred, within the scope of commission employment, duties, or responsibilities. However, nothing in this subsection shall be construed to protect any person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful and wanton misconduct of the person.

(h) The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities. However:

(1) nothing in this subsection shall be construed to prohibit that person from retaining the person's own counsel; and

(2) this subsection applies only if the actual or alleged act, error, or omission did not result from the person's intentional or willful and wanton misconduct.

(i) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against the person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities. However, this subsection applies only if the actual or alleged act, error, or omission did not result from the intentional or willful and wanton misconduct of that person.

Sec. 7. (a) The commission shall meet and take any actions that are consistent with this compact and the bylaws.

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

(c) The commission shall meet at least one (1) time during each

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calendar year. Additional meetings shall be held as set forth in the bylaws.

Sec. 8. (a) The commission shall adopt reasonable rules, including uniform standards, and operating procedures in order to effectively and efficiently achieve the purposes of this compact. However, if the commission exercises the commission's rulemaking authority in a manner that is beyond the scope of the purposes of this chapter or the powers granted in this chapter, the action by the commission is invalid.

(b) Rules and operating procedures shall be made according to a rulemaking process that substantially conforms to the principles of the model state administrative procedure act of 1981, as amended, as may be appropriate to the operations of the commission. Before the commission adopts a uniform standard, the commission shall give written notice to the relevant state legislative committees in each compacting state responsible for insurance issues of the commission's intention to adopt the uniform standard. The commission, in adopting a uniform standard, shall fully consider all submitted materials and issue a concise explanation of the commission's decision.

(c) A uniform standard becomes effective ninety (90) days after the uniform standard's adoption by the commission or on a later date as the commission may determine. However, a compacting state may opt out of a uniform standard as provided in subsection (d). All other rules and operating procedures and amendments to the other rules and operating procedures become effective as of the date specified in each rule, operating procedure, or amendment.

(d) A compacting state may opt out of a uniform standard, either by legislation or by rule adopted by the insurance department under the compacting state's administrative procedure act. If a compacting state elects to opt out of a uniform standard by rule, the compacting state must:

(1) give written notice to the commission not later than ten (10) business days after the uniform standard is adopted or at the time the state becomes a compacting state; and

(2) find that the uniform standard does not provide reasonable protections to the citizens of the state, given the conditions in the state. The commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state that warrant a departure from the uniform standard and determining that the uniform standard would not

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reasonably protect the citizens of the state. The commissioner must balance, consider, and find that the conditions in the state and needs of the citizens of the state outweigh the following factors:

(A) The intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the products subject to this chapter.

(B) The presumption that a uniform standard adopted by the commission provides reasonable protections to consumers of the relevant product.

However, a compacting state may, at the time of the compacting state's enactment of this compact, prospectively opt out of all uniform standards involving long term care insurance products by expressly providing for an opt out in the enacted compact, and the opt out shall not be treated as a material variance in the offer or acceptance of any state to participate in this compact. The opt out is effective at the time of enactment of this compact by the compacting state and shall apply to all existing uniform standards involving long term care insurance products and those subsequently adopted.

(e) If a compacting state elects to opt out of a uniform standard, the uniform standard remains applicable in the compacting state electing to opt out until the time the opt out legislation is enacted or the regulation opting out becomes effective. Once the opt out of a uniform standard by a compacting state becomes effective as provided under the laws of the state, the uniform standard is not binding in the state unless and until the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the laws of the state. If a compacting state opts out of a uniform standard after the uniform standard has been made effective in the state, the opt out shall have the same prospective effect as provided under section 15 of this chapter for withdrawals.

(f) If a compacting state has formally initiated the process of opting out of a uniform standard by rule while the regulatory opt out is pending, the compacting state may petition the commission, not less than fifteen (15) days before the effective date of the uniform standard, to stay the effectiveness of the uniform standard in the compacting state. The commission may grant a stay if the commission determines the regulatory opt out is being pursued in a reasonable manner and there is a likelihood of success. If a stay

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is granted or extended by the commission, the stay or extension may postpone the effective date by not more than ninety (90) days, unless the stay is extended by the commission. However, a stay may not be permitted to remain in effect for more than one (1) year unless the compacting state can show extraordinary circumstances that warrant a continuance of the stay, including the existence of a legal challenge that prevents the compacting state from opting out. A stay may be terminated by the commission on notice that the rulemaking process has been terminated.

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

Sec. 9. (a) The commission shall adopt rules establishing conditions and procedures for public inspection and copying of the commission's information and official records, except information and records involving the privacy of individuals and trade secrets of insurers. The commission may adopt additional rules under which the commission may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with these agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

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

(c) The commission shall monitor compacting states for

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compliance with duly adopted bylaws, rules, including uniform standards, and operating procedures. The commission shall notify any noncomplying compacting state in writing of the noncomplying compacting state's noncompliance with commission bylaws, rules, or operating procedures. If a noncomplying compacting state fails to remedy the noncomplying compacting state's noncompliance within the time specified in the notice of noncompliance, the compacting state is considered to be in default as set forth in section 16 of this chapter.

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

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

(2) Before a commissioner may bring an action for violation of a provision, standard, or requirement of the compact related to the content of an advertisement not approved or certified to the commission, the commission or an authorized commission officer or employee must authorize the action. However, authorization under this subdivision does not require:

(A) notice to the insurer;

(B) opportunity for hearing; or

(C) disclosure of:

(i) requests for authorization; or

(ii) records of the commission's action on a request described in item (i).

Sec. 10. The commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and that may arise between two (2) or more compacting states, or between compacting states and noncompacting states, and the commission shall adopt an operating

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procedure providing for resolution of any disputes.

Sec. 11. (a) Insurers and third party filers seeking to have a product approved by the commission shall file the product with and pay applicable filing fees to the commission. Nothing in this chapter restricts or otherwise prevents an insurer from filing the insurer's product with the insurance department in any state where the insurer is licensed to conduct the business of insurance, and the filing is subject to the laws of the states where filed.

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

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

Sec. 12. (a) Not later than thirty (30) days after the commission has given notice of a disapproved product or advertisement filed with the commission, the insurer or third party filer whose filing was disapproved may appeal the determination to a review panel appointed by the commission. The commission shall adopt rules to establish procedures for appointing the review panels and provide for notice and hearing. An allegation that the commission, in disapproving a product or an advertisement filed with the commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with section 3(e) of this chapter.

(b) The commission may monitor, review, and reconsider products and advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant uniform standard. If appropriate, the commission may withdraw or modify the commission's approval after proper notice and hearing, subject to the appeal process in subsection (a).

Sec. 13. (a) The commission shall pay or provide for the payment of the reasonable expenses of the commission's establishment and organization. To fund the cost of the

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commission's initial operations, the commission may accept contributions and other forms of funding from the NAIC, compacting states, and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the commission concerning the performance of the commission's duties is not compromised.

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

(c) The commission's budget for a fiscal year may not be approved until the commission's budget has been subject to notice and comment as set forth in section 8(b) of this chapter.

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

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

(f) The commission shall keep complete and accurate accounts of all the commission's internal receipts, including grants and donations, and disbursements of all funds under the commission's control. The internal financial accounts of the commission are subject to the accounting procedures established under the commission's bylaws. The financial accounts and reports, including the system of internal controls and procedures of the commission, shall be audited annually by an independent certified public accountant. Upon the determination of the commission, but not less frequently than every three (3) years, the review of the independent auditor shall include a management and performance audit of the commission. The commission shall make an annual report, to the governor and legislature of the compacting states, including a report of the independent audit. The commission's internal accounts are not confidential and such internal account materials may be shared with the commissioner of any compacting state upon request. However, work papers related to internal or independent audit and information regarding the privacy of individuals and proprietary information of insurers, including trade secrets, is confidential.

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

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Sec. 14. (a) Any state is eligible to become a compacting state. The compact becomes effective and binding upon legislative enactment of the compact into law by two (2) compacting states. However, the commission shall become effective for purposes of adopting uniform standards for, reviewing, and giving approval or disapproval of products filed with the commission that satisfy applicable uniform standards only after twenty-six (26) states are compacting states or, alternatively, by states representing greater than forty percent (40%) of the premium volume for life insurance, annuity, disability income, and long term care insurance products, based on records of the NAIC for the prior year. Thereafter, it becomes effective and binding as to any other compacting state upon enactment of the compact into law by that state.

(b) Amendments to the compact may be proposed by the commission for enactment by the compacting states. An amendment does not become effective and binding upon the commission and the compacting states unless and until all compacting states enact the amendment into law.

Sec. 15. (a) Once effective, the compact continues in force and remains binding upon each compacting state. However, a compacting state may withdraw from the compact by enacting a statute specifically repealing the statute that enacted the compact into law.

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

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

(d) The commission shall notify the other compacting states of the introduction of the legislation within ten (10) days after the commission's receipt of notice of the introduction of the legislation.

(e) The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by

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mutual agreement of the commission and the withdrawing state. The commission's approval of products and advertisement before the effective date of withdrawal shall continue to be effective and be given full force and effect in the withdrawing state, unless formally rescinded by the withdrawing state in the same manner as provided by the laws of the withdrawing state for the prospective disapproval of products or advertisement previously approved under state law.

(f) Reinstatement following withdrawal of any compacting state occurs on the effective date of the withdrawing state reenacting the compact.

Sec. 16. (a) If the commission determines that any compacting state has at any time defaulted in the performance of any of the compacting state's obligations or responsibilities under this compact, the bylaws, or adopted rules or operating procedures, after notice and hearing as set forth in the bylaws, all rights, privileges, and benefits conferred by this compact on the defaulting state shall be suspended from the effective date of default as fixed by the commission. The grounds for default include:

(1) failure of a compacting state to perform its obligations or responsibilities; or

(2) any other grounds designated in commission rules.

The commission shall immediately notify the defaulting state in writing of the defaulting state's suspension pending a cure of the default. The commission shall stipulate the conditions and the period within which the defaulting state must cure the defaulting state's default. If the defaulting state fails to cure the default within the period specified by the commission, the defaulting state shall be terminated and the compact and all rights, privileges, and benefits conferred by this compact shall be terminated on the effective date of termination.

(b) Product approvals by the commission, product self-certifications, or any advertisement in connection with the product that is in force on the effective date of termination shall remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily under section 15 of this chapter.

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

Sec. 17. The compact dissolves effective on the date of the withdrawal or default of the compacting state that reduces membership in the compact to one (1) compacting state. Upon the

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dissolution of this compact, the compact is void and is of no further force or effect, and the business and affairs of the commission shall be wound up and any surplus funds shall be distributed in accordance with the bylaws.

Sec. 18. The provisions of this compact are severable and if any phrase, clause, sentence, or provision is considered unenforceable, the remaining provisions of the compact are enforceable. The provisions of this compact shall be liberally construed to effectuate the compact's purposes.

Sec. 19. (a) Nothing in this chapter prevents the enforcement of any other law of a compacting state, except as provided in subsection (b).

(b) For a product approved or certified to the commission, the rules, uniform standards, and any other requirements of the commission constitute the exclusive provisions applicable to the content, approval, and certification of the products. For an advertisement that is subject to the commission's authority, any rule, uniform standard, or other requirement of the commission that governs the content of the advertisement constitutes the exclusive provision that a commissioner may apply to the content of the advertisement. However, no action taken by the commission shall abrogate or restrict:

(1) the access of any person to state courts;

(2) remedies available under state law related to breach of contract, tort, or other laws not specifically directed to the content of the product;

(3) state law relating to the construction of insurance contracts; or

(4) the authority of the attorney general of the state, including maintaining actions or proceedings, as authorized by law.

(c) All insurance products filed with individual states are subject to the laws of those states.

Sec. 20. (a) All lawful actions of the commission, including all rules and operating procedures adopted by the commission, are binding upon the compacting states.

(b) All agreements between the commission and the compacting states are binding in accordance with the terms of the agreements.

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

(d) If any provision of this compact exceeds the constitutional

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limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the commission is ineffective as to that compacting state, and those obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency of the compacting state to which those obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.

SECTION 2. IC 34-30-2-116.9 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 116.9. IC 27-8-31-6(g) (Concerning the interstate insurance product regulation commission).**

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