

## CHAPTER 120

AN ACT establishing the "Interstate Insurance Product Regulation Compact," and supplementing subtitle 3 of Title 17B of the New Jersey Statutes.

**BE IT ENACTED** *by the Senate and General Assembly of the State of New Jersey:*

C.17B:37-1 Short title, findings, declarations.

1. a. This act shall be known and may be cited as the "Interstate Insurance Product Regulation Compact."

b. The Legislature finds and declares that the purposes of this act, through means of joint and cooperative action among the compacting states, are to:

(1) promote and protect the interests 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 this act;

(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 or more compacting states;

(4) give appropriate regulatory approval to those 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 the 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's regulation of the business of insurance.

C.17B:37-2 Definitions relative to the "Interstate Insurance Product Regulation Compact."

2. For the purposes of this act:

"Advertisement" means any material designed to create public interest in an insurance 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 Interstate Insurance Product Regulation Commission established by section 3 of this act.

"Bylaws" mean those bylaws established by the Interstate Insurance Product Regulation Commission for its governance, or for directing or controlling the commission's actions or conduct.

"Commission" means the Interstate Insurance Product Regulation Commission established by section 3 of this act.

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

"Compact" means the "Interstate Insurance Product Regulation Compact" established by this act.

"Compacting state" means any state which has enacted this or similar compact legislation and which has not withdrawn or been terminated pursuant to section 14 of this act.

"Domiciliary state" means the state in which an insurer is incorporated or organized; or, in the case of an alien insurer, its state of entry.

"Insurer" means any entity licensed by a state to issue contracts of insurance for any of the lines of insurance covered by this act.

"Member" means the person chosen by a compacting state as its representative to the

commission, or his designee.

"Non-compacting state" means any state which is not a compacting state.

"Operating procedures" means procedures promulgated by the commission implementing a rule, uniform standard, or a provision of this act.

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

"Rule" means a statement of general or particular applicability and future effect promulgated by the commission, including a uniform standard developed pursuant to section 7 of this act, designed to implement, interpret, or prescribe law or policy, or describing the organization, procedure, or practice requirements of the commission, which shall have the force and effect of law in the compacting states.

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

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

"Uniform standard" means a standard adopted by the commission for a product line, pursuant to section 7 of this act, and shall include all of the product requirements in aggregate; provided, that each uniform standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading, or ambiguous provisions in a product, and the form of the product made available to the public shall not be unfair, inequitable, or against public policy as determined by the commission.

C.17B:37-3 "Interstate Insurance Product Regulation Commission."

3. a. The compacting states hereby create and establish a joint public agency known as the "Interstate Insurance Product Regulation Commission." Pursuant to section 4 of this act, the commission shall develop uniform standards for product lines, receive and provide prompt review of products filed therewith, and give approval to those product filings satisfying applicable uniform standards; however, it is not intended for the commission to be the exclusive entity for receipt and review of insurance product filings. Nothing in this act shall prohibit an insurer from filing its product in any state in which the insurer is licensed to conduct the business of insurance, which filing shall be subject to the laws of the state where filed.

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

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

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

C.17B:37-4 Powers of commission.

4. The commission shall have the following powers:

a. To promulgate rules, pursuant to section 7 of this act, which shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in this act;

b. To exercise its rule-making authority and establish reasonable uniform standards for products covered under this act, and advertisements related thereto, which shall have the

force and effect of law and shall be binding in the compacting states, but only for those products filed with the commission, provided, that a compacting state shall have the right to opt out of those uniform standards pursuant to section 7 of this act, to the extent and in the manner provided in this act, and, provided further, that any uniform standard established by the commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the National Association of Insurance Commissioners' (NAIC) 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 amendment of the uniform standards established by the commission for long-term care insurance products;

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

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

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

f. To promulgate operating procedures, pursuant to section 7 of this act, which shall be binding in the compacting states to the extent and in the manner provided in this act;

g. To bring and prosecute legal proceedings or actions in its name as the commission; however, the standing of any state insurance department to sue or be sued under applicable law shall not be affected;

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

i. To establish and maintain offices;

j. To purchase and maintain insurance and bonds;

k. To borrow, accept, or contract for services of personnel, including, but not limited to, employees of a compacting state;

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

m. To accept any appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; provided, at all times

the commission shall strive to avoid any appearance of impropriety;

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

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

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

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

r. To provide for dispute resolution among compacting states;

s. To advise compacting states on issues relating to insurers domiciled or doing business in non-compacting jurisdictions, consistent with the purposes of this act;

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

u. To establish a budget and make expenditures;

v. To borrow money;

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

x. To provide and receive information from, and to cooperate with, law enforcement agencies;

y. To adopt and use a corporate seal; and

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

C.17B:37-5 Membership of commission; organization; bylaws.

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

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

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

(a) establishing the fiscal year of the commission;

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

(c) providing reasonable standards and procedures for the establishment and meetings of

other committees, and governing any general or specific delegation of any authority or function of the commission;

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

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

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

(g) promulgating a code of ethics to address permissible and prohibited activities of commission members and employees; and

(h) providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of the compact established by this act, after the payment and reserving of all of its debts and obligations.

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

b. (1) A management committee comprising no more than 14 members shall be established as follows:

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

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

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

(2) The management committee shall have that authority and those duties as may be set forth in the bylaws, including but not limited to:

(a) managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission;

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

(c) overseeing the offices of the commission; and

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

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

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

c. (1) A legislative committee comprised of state legislators or their designees, provided in a manner of selection and for terms as shall be set forth in the bylaws, shall be established to monitor the operations of, and make recommendations to, the commission, including the management committee; provided that the manner of selection and term of any legislative committee member shall be as set forth in the bylaws. Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget, or other significant matter as may be provided in the bylaws, the management committee shall consult with and report to the legislative committee.

(2) The commission shall establish two advisory committees, one of which shall be comprised of consumer representatives independent of the insurance industry, and the other comprised of insurance industry representatives.

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

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

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

(2) The commission shall defend any member, officer, executive director, employee, or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, so long as that actual or alleged act, error, or omission did not result from that person's intentional or willful and wanton misconduct; however, nothing herein shall be construed to prohibit that person from retaining his own counsel.

(3) The commission shall indemnify and hold harmless any member, officer, executive director, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that the person had a reasonable basis for believing occurred within the

scope of commission employment, duties, or responsibilities, so long as that actual or alleged act, error, or omission did not result from the intentional or willful and wanton misconduct of that person.

C.17B:37-6 Meetings, actions.

6. a. The commission shall meet and take those actions consistent with the provisions of this act and the bylaws.

b. Each member of the commission shall have the right and power to cast a vote to which that compacting state is entitled, and to participate in the business and affairs of the commission. A member shall vote in person or by 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 once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

C.17B:37-7 Rules, uniform standards, operating procedures.

7. a. The commission shall promulgate reasonable rules, including uniform standards and operating procedures, in order to effectively and efficiently achieve the purposes of this act. Notwithstanding the foregoing, if the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this act, or the powers granted hereunder, that action by the commission shall be invalid and have no force and effect.

b. Rules and operating procedures shall be made pursuant to a rulemaking process that conforms to the Model State Administrative Procedure Act of 1981 adopted by the National Conference of Commissioners on Uniform State Laws, as amended, as may be appropriate to the operations of the commission. Before the commission adopts a uniform standard, the commission shall give written notice to the relevant state legislative committee or committees in each compacting state responsible for insurance issues of its intention to adopt the uniform standard. The commission, in adopting a uniform standard, shall consider fully all submitted materials and issue a concise explanation of its decision.

c. A uniform standard shall become effective 90 days after its promulgation by the commission, or a later date determined by the commission; however, a compacting state may opt out of a uniform standard as provided in subsection d. of this section. As used in this section, "opt out" means any action by a compacting state to decline to adopt or participate in a promulgated uniform standard. All other rules and operating procedures, and amendments thereto, shall become effective as of the date specified in each rule, operating procedure, or amendment.

d. (1) A compacting state may opt out of a uniform standard, either by legislation or regulation, duly promulgated by the insurance department under the compacting state's administrative procedure act. If a compacting state elects to opt out of a uniform standard by regulation, it shall give written notice to the commission no later than 10 business days after the uniform standard is promulgated, or at the time the state becomes a compacting state and finds that the uniform standard does not provide reasonable protections to the citizens of the state, given the conditions in that state. The commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state which warrant a departure from the uniform standard and determining that the uniform standard would not reasonably protect the citizens of that state. The commissioner shall consider and balance the following factors, and find that the conditions in the state and needs of the citizens of the state outweigh:

(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 act; and

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

(2) Notwithstanding the provisions of paragraph (1) of this subsection, a compacting state may, at the time of its enactment of the compact, prospectively opt out of all uniform standards involving long-term care insurance products by expressly providing therefor in the act, and that opt out shall not be treated as a material variance in the offer or acceptance of any state to participate in the compact. Such an opt out shall be effective at the time of enactment of the compact by the compacting state, and shall apply to all existing uniform standards involving long-term care insurance products and those subsequently promulgated.

(3) In accordance with the provisions of paragraph (2) of this subsection, this State prospectively opts out of all uniform standards involving long-term care insurance products promulgated by the commission, as this State has previously enacted the "New Jersey Long-Term Care Insurance Act," P.L.2003, c.207 (C.17B:27E-1 et seq.), which facilitates flexibility and innovation in the development of long-term care insurance coverage.

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

Once the opt out of a uniform standard by a compacting state becomes effective as provided under the laws of that state, the uniform standard shall have no further force and effect in that state unless 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 that state, the opt out shall have the same prospective effect as provided pursuant to section 14 of this act for withdrawal from the compact.

f. If a compacting state has formally initiated the process of opting out of a uniform standard by regulation, and while the regulatory opt out is pending, the compacting state may petition the commission, at least 15 days before the effective date of the uniform standard, to stay the effectiveness of the uniform standard in that state. The commission may grant a stay if it determines that the regulatory opt out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the commission, the stay or extension thereof may postpone the effective date by up to 90 days, unless affirmatively extended by the commission; however, a stay may not be permitted to remain in effect for more than one year unless the compacting state can show extraordinary circumstances which warrant a continuance of the stay, including, but not limited to, the existence of a legal challenge which prevents the compacting state from opting out. A stay may be terminated by the commission upon notice that the rulemaking process has been terminated.

g. Not later than 30 days after a rule or operating procedure is promulgated, any person may file a petition for judicial review of the rule or operating procedure; however, the filing of that 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.

information and official records.

8. a. The commission shall promulgate rules establishing conditions and procedures for public inspection and copying of its information and official records, except for information and records involving the privacy of individuals and insurers' trade secrets. The commission may promulgate additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with those 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 deemed to waive or otherwise affect any confidentiality requirement, and further, except as otherwise expressly provided in this act, the commission shall not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in its possession. Confidential information of the commission shall remain confidential after that information is provided to any commissioner.

c. The commission shall monitor compacting states for compliance with duly adopted bylaws, rules, including uniform standards, and operating procedures. The commission shall notify any non-complying compacting state in writing of its noncompliance with commission bylaws, rules, or operating procedures. If a non-complying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state shall be deemed to be in default as provided in section 14 of this act.

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 provisions:

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

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

C.17B:37-9 Resolution of disputes, issues subject to compact.

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

C.17B:37-10 Approval process for product.

10. 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 act shall be construed to restrict or otherwise prevent an insurer from filing its product with the insurance department in any state wherein the insurer is licensed to conduct the business of insurance, and that filing shall be subject to the laws of the states where filed.

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

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

C.17B:37-11 Disapproved product or advertisement; appeal.

11. a. Not later than 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 promulgate rules to establish procedures for appointing those review panels and provide for notice and hearing. An allegation that the commission, in disapproving a product or advertisement filed with the commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with subsection d. of section 3 of this act.

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

C.17B:37-12 Payment of reasonable expenses of establishment, organization.

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

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

c. The commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in section 7 of this act.

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

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

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

g. No compacting state shall have any claim to or ownership of any property held by or vested in the commission, or to any commission funds held pursuant to the provisions of this act.

#### C.17B:37-13 Eligibility of states to join compact.

13. a. Any state is eligible to become a compacting state.

b. The compact shall become effective and binding upon legislative enactment of the compact into law by two compacting states; 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 26 states are compacting states or, alternatively, by states representing greater than 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, the compact shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state.

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

#### C.17B:37-14 Withdrawal, termination, reinstatement.

14. a. (1) Once effective, the compact shall continue in force and remain binding upon each compacting state; however, a compacting state may withdraw from the compact by repealing the statute which enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any product filings approved or self-certified, or any advertisement of those products, prior to or 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 paragraph (5) of this subsection.

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

(4) The commission shall notify the other compacting states of the introduction of such

legislation within 10 days after its receipt of notice thereof.

(5) 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 mutual agreement of the commission and the withdrawing state. The commission's approval of products and advertisements prior to the effective date of withdrawal shall continue to be effective and be given full 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 advertisements previously approved under state law.

(6) Reinstatement following withdrawal of any compacting state shall occur upon the effective date of the withdrawing state reenacting the compact.

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

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

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

c. (1) The compact shall dissolve effective upon the date of the withdrawal or default of the compacting state which reduces membership in the compact to one compacting state.

(2) Upon the dissolution of the compact, the compact shall become void and shall be of no further effect, and the business and affairs of the commission shall be completed, and any surplus funds shall be distributed in accordance with the bylaws.

#### C.17B:37-15 Severability; liberal construction.

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

b. The provisions of this act shall be liberally construed to effectuate its purposes.

#### C.17B:37-16 Enforcement of laws of compacting state unaffected.

16. a. (1) Nothing herein shall prevent the enforcement of any other law of a compacting state, except as provided in subsection b. of this section.

(2) For any product approved or certified by the commission, the rules, uniform standards, and any other requirements of the commission shall constitute the exclusive provisions applicable to the content, approval, and certification of that product. For any

advertisement that is subject to the commission's authority, any rule, uniform standard, or other requirement of the commission which governs the content of the advertisement shall constitute the exclusive provision that a commissioner may apply to the content of the advertisement. Notwithstanding the foregoing, no action taken by the commission shall abrogate or restrict:

- (a) the access of any person to state courts;
  - (b) remedies available under state law related to breach of contract, tort, or other laws not specifically directed to the content of the product;
  - (c) state law relating to the construction of insurance contracts; or
  - (d) the authority of the attorney general of the state, including, but not limited to, maintaining any actions or proceedings, as authorized by law.
- (3) All insurance products filed with individual states shall be subject to the laws of those states.

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

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

(3) 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.

(4) In the event any provision of the compact exceeds the constitutional 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 shall be 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 thereof to which those obligations, duties, powers, or jurisdiction are delegated by law in effect at the time the compact becomes effective.

C.17B:37-17 Report to Legislature.

17. The Commissioner of Banking and Insurance shall report to the Legislature, as provided pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), within one year of the effective date of this act or within one year of the operational date of the compact for the long-term care insurance products, whichever is later, the commissioner's non-binding recommendation as to whether the State should participate in the compact with respect to all uniform standards involving long-term care insurance products under the compact.

18. This act shall take effect upon enactment of the compact into law by two compacting states.

Approved January 5, 2011.