

INTERSTATE INSURANCE
PRODUCT REGULATION COMMISSION



States, Strength & Speed Aligned

August 25, 2014

The Honorable Kevin M. McCarty
Commissioner
Florida Office of Insurance Regulation
200 East Gaines Street
Tallahassee, Florida 32399-0305

Dear Commissioner McCarty –

The Interstate Insurance Product Regulation Commission (Commission) convened on August 15, 2014 at which time it adopted the Report and Recommendation of its Regulatory Counsel Committee finding that Chapter 2013-14, Laws of Florida, now codified as FL Stat. §§626.9931-626.9932, contained several material variances from the Model Interstate Insurance Product Regulation Compact Act which has been adopted by 44 Compacting States to date. Because of these material variances, Florida's Compact law does not appear to constitute an acceptance to enact and join this Compact.

On behalf of the Commission, I commend the Florida legislature and the Florida Office of Insurance Regulation for demonstrating their openness to join its sister states in this state-centric organization which was created to uphold and strengthen state-based regulation of asset-protection insurance products. With the ever-growing encroachment of federal regulation of the life insurance industry, the Commission demonstrates that states can join together to develop uniform product standards to benefit all consumers of these mobile-borne products and deliver speed-to-market efficiencies for insurance products being offered in the highly-competitive financial sector marketplace.

The Commission provides this recommendation and finding in response to your June 12th letter notifying it that Florida cannot proceed with implementing the Compact until such time as the Commission communicates its assent to the additional terms and conditions imposed by the Florida Legislature. The Report and Recommendation (attached hereto) lays out a factual overview of the history of the Compact and identifies the additional terms and conditions in Florida's law. This Report provides an overview of key legal principles of interstate compacts and this Compact in particular, including the extent to which states can unilaterally amend the terms of a Compact. Finally, this report analyzes four areas or provisions where Florida included additional terms and conditions to the Model Compact.

As stated in the Report, the Model Compact effects a limited delegation of authority, carefully prescribed and subject to reasonable, detailed safeguards and meaningful oversight by the legislature and insurance regulator in each Compacting State. The limited delegation involves the authority as an interstate commission of member states to develop, adopt and apply Uniform

Standards that operate as the exclusive content requirements to products filed, reviewed and approved by the Commission allowing each state the sovereign right to opt out by legislation or by regulation of a Uniform Standard in accordance with the state's administrative procedures laws. Florida's law reflects that Florida is willing to enact the Model Compact in large part but unable or unwilling to agree to this limited delegation to the Commission to the same extent and in the same manner as other Compacting States.

As we have all faced in developing national, and even global, solutions and standards for efficient and effective insurance regulation, uniform standards will not in all cases match the specific laws, regulations and requirements of each state or jurisdiction. If "the standard must match my law" was the requirement (as it purports to require in the "additional terms and conditions" in the current Florida Compact law), meaningful and beneficial uniformity would be impossible to achieve. As noted in FLOIR's 2013 Report to its Legislature titled *The Interstate Insurance Product Regulation Compact and Consumer Protections under Florida Law*, the majority of requirements within the Uniform Standards are equivalent to Florida's requirements with the Uniform Standards having more stringent requirements in certain areas and Florida having more stringent requirements in certain areas.

On behalf of your fellow Commissioners that are Compacting States, we would ask Florida to consider removing the material variances in order to enact the Model Compact Act. We are optimistic we can work with Florida to address concerns with provisions of Uniform Standards and welcome the opportunity to discuss further.

Please feel free to contact me or the other IIPRC Officers or our Executive Director if you have questions or wish to discuss. Thank you again for working with the Commission to resolve this matter and we hope Florida will consider further action to join this Compact.

Sincerely,



The Honorable Roger A. Sevigny
New Hampshire Insurance Commissioner
Chair of the Interstate Insurance Product Regulation Commission

Cc: The Honorable Michael F. Consedine, Pennsylvania Insurance Commissioner
Vice Chair of the Interstate Insurance Product Regulation Commission

The Honorable Joseph G. Murphy, Massachusetts Insurance Commissioner
Treasurer of the Interstate Insurance Product Regulation Commission

Karen Z. Schutter
Executive Director of the Interstate Insurance Product Regulation Commission



REPORT AND RECOMMENDATION OF THE IIPRC REGULATORY COUNSEL COMMITTEE

On June 30, 2014, the Management Committee of the Interstate Insurance Product Regulation Commission formed a Regulatory Counsel Committee from Compacting States for the purpose of working with the Executive Director, the NAIC Legal Division and outside counsel to provide guidance and recommendations to the Commission in responding to the notification from Commissioner Kevin M. McCarty of the Florida Office of Insurance Regulation regarding Chapter 2013-140, Laws of Florida, in which the Florida Legislature expressed its intention, subject to certain additional terms and conditions, to join the Interstate Insurance Product Regulation Compact and to become a member of the Commission.

The Regulatory Counsel Committee makes the following report which provides a factual summary, overview of the legal principles, and an analysis of whether Chapter 2013-140, Laws of Florida was an effective adoption of the Compact. Based on this analysis, the Regulatory Counsel Committee recommends that the Commission find that the Compact statute enacted by Florida is materially different from the enactments of the 44 other Compacting states, and the Commission is not able to recognize Florida as having adopted the Compact.

FACTUAL SUMMARY

The Interstate Insurance Product Regulation Compact (Compact) was created in March 2004 when Colorado, followed shortly by Utah, enacted the National Association of Insurance Commissioners (NAIC) Model Law #692 (referred to herein as the Model Compact). Pursuant to the terms of the Model Compact, the Compacting States created and established a joint public agency known as the Commission, and each Compacting State is a member of the Interstate Insurance Product Regulation Commission (Commission).

Pursuant to the preamble and enumerated purposes, the Model Compact is intended to bring states together to establish an interstate compact to regulate designated insurance products, specifically, individual and group annuity, life insurance, disability income insurance and long-term care insurance products. This purpose is accomplished by the Commission's development and adoption of uniform standards that are the exclusive provisions applicable to the content, approval and certification of products submitted to the Commission. The Model Compact also creates a central office to receive and provide prompt review and approval of insurance products submitted to the Commission for compliance with the uniform standards.

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The Model Compact provides that the Commission became operational for purposes of adopting uniform standards when it met one of its two threshold goals for enactment by: (1) 26 Compacting States or (2) Compacting States representing greater than 40% of the premium volume. The Commission reached both of these threshold goals with 27 Compacting States in June 2006. Today, the Model Compact has been enacted by 43 states and Puerto Rico (referred to as 44 Compacting States) – which collectively represents almost 75% of the nationwide premium volume for the authorized product lines. To date, the Commission has adopted 93 uniform standards for all the individual Product lines for annuity, life insurance, disability income insurance and long-term care insurance and for one group life insurance Product line. These uniform standards are the basis for review and approval of insurance products on behalf of all Compacting States, to the extent any state has not opted out of a uniform standard.

In 2013, the Florida legislature adopted and the Florida Governor signed into law House Bill 383, an act titled the “Interstate Insurance Product Regulation Compact.” This law known as Chapter 2013-140, Laws of Florida, specified an effective date of July 1, 2014 and is now codified as FL Stat. §§ 626.9931-626.9938 (referred to herein as Florida’s Compact Statute). Among the findings in its enabling legislation, the Florida legislature stated “[t]he state, pursuant to the terms and conditions of this act, seeks to join with other states and establish the Interstate Insurance Product Regulation Compact and thus become a member of the Interstate Insurance Product Regulation Commission.”

The Florida Compact Statute has added terms and conditions that are not in the Model Compact. Appendix A is the Model Compact showing the modifications from the Florida Compact Statute in redlined format. The following list highlights notable additional terms and conditions:

1. With respect to the definitions of the terms “Advertisement,” “Operating Procedures,” “Rule” and “Uniform Standard,” the Florida Compact Statute added the condition to these terms to be “as of March 1, 2013, and subsequent amendments thereto if the methodology remains substantially consistent.”
2. The Florida Compact Statute added a new provision under Qualified Immunity, Defense and Indemnification indicating the liability for acts, errors or omissions occurring in Florida of members, officers, executive director, employees and representatives of the Commission may not exceed limits of liability under Florida constitution and laws.
3. Under “Commission Records and Enforcement” where the Model Compact provides that the Commission’s confidential information remains confidential after being provided to a Compacting State, the Florida Compact Statute added a condition that the Commission’s confidential information when in the possession of Florida officials shall be subject to Florida public record laws.
4. The Florida Compact Statute added several new provisions to the end of the Model Compact including:

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- a. Prospectively opts out of any new uniform standard, or amendments to existing uniform standards, adopted by the Commission after March 1, 2013, if such amendments substantially alter or add to existing uniform standards;
- b. The authority to opt out of a uniform standard by an order issued pursuant to the Florida Administrative Procedures Act;
- c. Opts out of specified provisions of uniform standards such as the 10-day period for the unconditional refund of premiums;
- d. Opts out of “any other uniform standard that conflicts with statutes or rules of this state providing consumer protections for products covered by the compact”;
- e. Conditions regarding Article XVI, Section 1(b) of the Model Compact which reads “[f]or any product approved or certified to the Commission, the Rules, Uniform Standards and any other requirements of the Commission shall constitute the exclusive provisions applicable to the content, approval and certification of such Products”; specifies that notwithstanding this provision certain Florida laws still apply such as “[i]nterest on surrender proceeds pursuant to §627.482, Florida Statutes”;
- f. The Commission is subject to Florida unemployment taxes for any person employed by the commission who performs services for it within this state and taxation on any commission business or activity conducted or performed in Florida;
- g. Conditions regarding Articles VIII and X of the Model Compact with respect to access to Commission records by a Florida resident including a provision that requests for trade secret or matters of privacy of individual with respect to Commission records would be referred and responded to by the Florida Commissioner in accordance with Florida laws;
- h. A provision that if the new sections added by the Florida Compact Statutes are invalidated by the courts, such a ruling renders the entire act invalid.

On June 12, 2014, Commissioner McCarty provided notice to Commission Chair and New Hampshire Commissioner Roger A. Sevigny “notifying the Commission that Florida cannot proceed with implementing the Compact unless and until such time as the Commission communicates its assent to the terms and conditions imposed by the Legislature.” On June 27, 2014, Commissioner McCarty provided notice to Commissioner Sevigny that “[s]ince the Commission has not yet assented to these terms and conditions and Florida’s status as a compacting state has not been resolved, effective July 1, 2014, Florida will not recognize approvals for products that have only Compact

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Commission approval. Insurers will need to have products filed and approved at the Office of Insurance Regulation until such time as Florida is a member.”

On June 30, 2014, an emergency meeting of the Management Committee was held for the purpose of initiating a process for reviewing and responding to Florida’s notice. The Management Committee formed a Regulatory Counsel Committee from Compacting States for the purpose of working with the Executive Director, the NAIC Legal Division and outside counsel to provide guidance and recommendations to the Commission in responding to Florida’s notification. The Management Committee authorized the Executive Director, subject to certain parameters, in consultation with the Regulatory Counsel Committee, to retain and consult with outside legal counsel to assist in providing legal guidance on this matter. Thomas J. Bond with Greenberg Traurig in Austin, Texas, was retained as outside legal counsel for this purpose. The members of the Regulatory Counsel Committee are Commissioner Sevigny and regulatory counsel from Indiana, Pennsylvania, Texas and Virginia.

The Regulatory Counsel Committee is approaching this task in a manner consistent with the Interstate Insurance Product Regulation Commission Operating Procedure for the Issuance of Advisory and Interpretive Opinions. Florida’s request that the Commission communicate its assent to the Legislature’s terms and conditions is sufficient to constitute a request for advisory opinion under Section 103 of the Operating Procedure. Section 105 of the Operating Procedure calls for the Executive Director to seek the input of advisory committees, retain outside legal counsel, and forward a final draft of the advisory opinion to the Commission members for review and a vote regarding approval.

OVERVIEW OF LEGAL PRINCIPLES

Interstate compacts find their genesis in colonial days and hold a unique status in American law. *Hess v. Port Authority Trans-Hudson Corporation*, 513 US 30 (1994). They are formal agreements between two or more states that bind the compacting states to the terms of the compact’s provisions. Interstate compacts are entered into for the purpose of addressing a particular problem that transcends state boundaries and have the force and effect of statutory law. CAROLINE N. BROUN ET AL., *THE EVOLVING USE AND THE CHANGING ROLE OF INTERSTATE COMPACTS: A PRACTITIONER’S GUIDE* 21-22 (2006).

Compacts are construed as contracts because of the manner in which they are enacted. When the first state enacts an interstate compact, there is an *offer* (the presentation of a reciprocal law to other state legislatures). When succeeding states enact the same interstate compact, there is an *acceptance*. The *consideration* for the interstate compact is found in the creation of a cooperative mechanism to address an issue of mutual interest. BROUN at 18; *Tarrant Regional Water District v. Herrmann*, 133 S. Ct. 2120, 2123 (2013).

Keeping with the principles of contract law, it is a fundamental tenet that no act constitutes an acceptance unless it is an acceptance of the offer that has been made. When the first state legislature enacts an interstate compact, any subsequent state legislatures

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accept this offer by enacting the interstate compact in substantially identical form to that contained in the offering state's enactment. BROWN at 18.

Unlike laws such as the Uniform Commercial Code or NAIC Model Laws, interstate compacts are not subject to unilateral amendment. Where states retain authority to unilaterally alter a reciprocal agreement, the agreement will generally not rise to the level of a compact enforceable as a contract between states. *Northeast Bancorp v. Bd. of Governors of Fed. Reserve Sys.*, 472 U.S. 159, 175 (1985).

Compacts are a fundamental departure from the more common mechanisms of state-based adjustments to interstate relations or the creation of uniformity between states because they are fundamentally instruments for contractually allocating collective state governing authority. This in turn, may require the member states to cede a portion of their individual sovereignty for the collective good of the member states. Therefore, compacts, when properly enacted, are fully enforceable contracts between the members in addition to possessing legal standing within each state. BROWN at 17-18.

The Contracts Clause of the U.S. Constitution prohibits the impairment of contracts and that prohibition extends to interstate compacts. As observed in a frequently-cited compact case, *Hellmuth v. WMATA*, "Upon entering into an interstate compact, a state effectively surrenders a portion of its sovereignty; the compact governs the relations of the parties with respect to the subject matter of the agreement and is superior to both prior and subsequent law. Further, when enacted, a compact constitutes not only law, but a contract which may not be amended, modified, or otherwise altered without the consent of all parties. It, therefore, appears settled that one party may not enact legislation which would impose burdens upon the compact absent the concurrence of the other signatories." *Hellmuth v. Wash. Metro. Area Transit Auth.*, 414 F.Supp. 408, 409 (D.Md. 1976).

Because interstate compacts are contracts, states which enact the compact legislation become parties to the contractual relationship with the other member states and are restricted by the contract clause of the U.S. Constitution and analogous provisions of the respective state constitutions from enacting laws which may impair the obligation of the parties to the interstate compact. See *West Virginia ex rel Dyer v. Sims*, 341 U.S. 22, 23, and 28 (1951); *Texas v. New Mexico*, 482 U.S. 124, 128 (1987). Once established, interstate compacts can only be amended or terminated in accordance with the terms of the compact or by mutual consent of the members by adopting identical substantive language. In other words, amending compacts requires the same process that is used to create them unless the interstate compact at issue specifies other mechanisms within its terms.

THE INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

The language of the Model Compact echoes the principles of compact law cited above and should be construed consistent with the applicable case law.

Article II of the Model Compact provides:

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“Compacting State” means any state which has enacted this Compact legislation and which has not withdrawn pursuant to Article XIV, Section 1, or been terminated pursuant to Article XIV, Section 2.

Article XIII of the Model Compact reiterates the importance of enacting the Model Compact and is based on the offer and acceptance framework:

The Compact shall become effective and binding upon legislative enactment of the Compact into law by two Compacting States...Thereafter, it shall become effective and binding as to any other Compacting State upon enactment of the Compact into law by that state.

Article XIII of the Model Compact addresses amendments to its terms as follows:

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

Article XVI of the Model Compact also addresses the binding effect of its terms and addresses those situations where a particular provision of the Compact exceeds the constitutional limits in a Compacting State as follows:

In the event any provision of this 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 the Compacting State, and those obligations, duties, powers or jurisdictions 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 this Compact becomes effective.

This emphasis on the necessity of adopting the Compact legislation, the uniformity with which any amendments must be legislatively enacted, and the binding effect of the Compact legislation, with limited constitutional exceptions, demonstrates: (1) the contractual obligations states enter into when they join the Compact, and (2) that states enter the Compact when they enact the same legislation enacted by the Compacting States. A legislative enactment that alters the contractual rights and obligations of the Compacting States must be carefully analyzed to determine whether variations from the Model Compact are materially different from the enactments of the Compacting States.

ANALYSIS OF FLORIDA COMPACT STATUTE

When Colorado and then 43 succeeding Compacting States enacted the Model Compact into law, they became part of an interstate compact agreement. The Compact came into

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existence when the Model Compact was enacted by Colorado creating the offer to its sister states. Over the next 10 years, 42 other states and one territory accepted this offer to join the Compact by enacting the Model Compact in substantially similar form.

Based on a plain reading of FL Stat. §§ 626.9931-626.9938, the Florida Compact Statute is different than the Model Compact in that it adds new terms and conditions not in the Model Compact or in the 44 respective state laws that enacted the Model Compact. According to the IIPRC Office, the Florida Compact Statute is the first law to be enacted with substantive changes to the terms of the language in the Model Compact (see items 1-3 under the list of additional terms and conditions in the Factual Summary) and new terms that may impact the language in the Model Compact (see item 4 under the list in the Factual Summary).

In its enabling legislation, Florida indicated its intent to join the Model Compact and become a member of the Commission. Key questions with regard to these additional terms and conditions are whether they materially and unilaterally amend the Model Compact and thus the agreement between the Compacting States and whether they could impair the contractual obligations between the parties to the Model Compact.

It is not necessary to analyze each of Florida's changes or deviations from the Model Compact as the following selected examples are identified for purposes of finding that the Florida Compact Statute would materially and unilaterally amend the Model Compact and would impair the contractual obligations thereunder. These examples have been identified as the Florida Compact Statute explicitly states the new terms and conditions are applicable notwithstanding certain enumerated provisions of the Model Compact.

EXAMPLE 1 – Changes to certain Definitions in Article II of the Model Compact FL. Stat. §

“Advertisement” means any material designed to create public interest in a Product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy, as more specifically defined in the Rules and Operating Procedures of the Commission **adopted as of March 1, 2013, and subsequent amendments thereto if the methodology remains substantially consistent.**

“Operating Procedures” mean procedures promulgated by the Commission **as of March 1, 2013, and subsequent amendments thereto if the methodology remains substantially consistent**, implementing a Rule, Uniform Standard or a provision of this Compact.

“Rule” means a statement of general or particular applicability and future effect promulgated by the Commission **as of March 1, 2013, and subsequent amendments thereto if the methodology remains substantially consistent**, including a Uniform Standard developed pursuant to Article VII of this Compact,

“Uniform Standard” means a standard adopted by the Commission **as of March 1, 2013,**

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and subsequent amendments thereto if the methodology remains substantially consistent, for a Product line, pursuant to Article VII of this Compact, and shall include all of the Product requirements in aggregate

ANALYSIS: This added language changes the plain and practical meaning of these terms and has implications for how to apply these terms when referenced in other sections of the Model Compact.

The Model Compact, Article II defines a Uniform Standard to mean a standard adopted by the Commission for a product line, pursuant to Article VII. The Florida Compact Statute changes the definition of Uniform Standard to limit to only those uniform standards adopted as of March 1, 2013 which arguably means that a new uniform standard adopted by the Commission after March 1, 2013 would not be a uniform standard for purposes of the Florida Compact Statute.

The impact of this definitional limitation presumably affects the references to Uniform Standard throughout the Model Compact. For instance, one of the powers of the Commission in Articles III and VII is to promulgate reasonable Rules including Uniform Standards and Operating Procedures in order to effectively and efficiently achieve the purposes of this Compact. Because the Florida Compact Statute has limited the definitions of Rules, Uniform Standards and Operating Procedures, it would cause confusion as to whether the Commission has the power to exercise rulemaking and adopt new Rules, Uniform Standards and Operating Procedures adopted after March 1, 2013, and as to the validity of product approvals issued by the Commission, not only on behalf of Florida, but potentially on behalf of every Compacting State.

If these revised definitions were only applicable to Florida and its Compact membership, it would still call into question whether Florida can exercise its rights and obligations under the Model Compact (not only as a member of the Commission but as an automatic member of the Management Committee due to its asset-based premium volume) with respect to Advertisements, Rules, Operating Procedures and Uniform Standards that are new or substantively amended after March 1, 2013. When the Commission considers a new Uniform Standard, is Florida eligible to vote considering the definitional limitations seemingly intended to effect a prospective blanket opt-out of all future Uniform Standards? The sovereign decision to opt out of a specific Uniform Standard is normally subject to the condition stated in Article VII of the Compact Statute that the Commissioner find the Uniform Standard does not provide reasonable protections to the citizens of the state.

The Model Compact effects a limited delegation of authority, carefully prescribed and subject to reasonable safeguards and strong member oversight, to the joint public agency established as the Commission. The Florida Compact Statute reflects that Florida is willing to enact the Compact Statute in large part but unable or unwilling to cede authority to the Commission to the same extent as other Compacting States.

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EXAMPLE 2 – Prospective Opt-out of new Uniform Standards FL. Stat. § 626.9934(2)

Notwithstanding subsections (3), (4), (5), and (6) of Article VII of the Interstate Insurance Product Regulation Compact as adopted by this act, this state prospectively opts out of any new uniform standard, or amendments to existing uniform standards, adopted by the Interstate Insurance Product Regulation Commission, after March 1, 2013, if such amendments substantially alter or add to existing uniform standards adopted by this state pursuant to subsection (1), until such time as this state enacts legislation to adopt new uniform standards or amendments to existing standards adopted by the commission after March 1, 2013.

ANALYSIS: This added provision is in direct contradiction to several provisions of the Model Compact including the ones expressly cited in this new provision.

The Model Compact carefully prescribes the method for Compacting States to exercise their right to opt out of a Uniform Standard.¹ Keeping in mind that a Uniform Standard is defined in the Model Compact as a “standard adopted by the Commission for a Product Line, pursuant to Article VII of this Compact”, Article VII of the Model Compact provides that a Compacting State may opt out of a Uniform Standard by legislation or regulation. With respect to opting out of a Uniform Standard by regulation, Article VII of the Model Compact outlines steps for exercising this method of opting out.

This added provision gives Florida a different or new method with regard to participating in new or substantially-altered Uniform Standards by allowing it to opt in (rather than opt out) of these Uniform Standards through legislation. This new provision gives Florida a mechanism whereby if it chooses not to participate in a Uniform Standard, it would not be required to opt out or take further action. Such an approach puts Florida in the unique position of influencing the outcome without committing to be bound by it. Further, Uniform Standards that are new or substantially altered after March 1, 2013 appear not to be subject to Article VII of the Model Compact reserving to Florida the right to judge within a separate legislative process whether to participate in such Uniform Standards.

This section creates uncertainty about the specific Uniform Standards that are subject to this provision. For instance, the Commission is currently considering amendments to several Uniform Standards originally adopted in 2008 and 2009 under the five-year rulemaking review process. While most of these amendments are clarifications, it is unclear who would decide if these amended Uniform

¹ The Model Compact provides for the ability of a Compacting State to opt out of a uniform standard by legislation or regulation and sets forth the procedures for exercising these rights to opt out. Five states (Arizona, Hawaii, Montana, Nevada, and New Jersey) exercised their right to opt out of long-term care uniform standards (one of these states, Nevada, removed its legislative opt out in 2013) in their enabling legislation. Indiana exercised its right to opt out of long-term care uniform standards by regulation. Montana also opted out by legislation of the individual disability income uniform standards.

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Standards are effective in Florida or if they no longer apply under this new provision because “such amendments substantially alter or add to existing uniform standards.”

It should be noted that FL. Stat. § 626.9933 is a permissible prospective opt-out of long-term care uniform standards. The Model Compact Article VII (4) explicitly provides a Compacting State may “prospectively opt out of all Uniform Standards involving long-term care insurance products by expressly providing such opt out in the enacted Compact, and such an opt out shall not be treated as a material variance in the offer of acceptance of any State to participate in this Compact.” This Model Compact provision, which Florida expressly provided for in the Florida Compact Statute, is further support that prospectively opting out of Uniform Standards could be considered a material variance in the acceptance of the offer to participate in the Compact. For this reason, the drafters of the Model Compact explicitly addressed the prospective opt-out of long-term care Uniform Standards.

EXAMPLE 3 – Opt-out of specific provisions within Uniform Standards FL. Stat. § 626.9934(4)

In addition to the uniform standards and amendments to uniform standards that the state opts out of pursuant to subsection (2), pursuant to subsections (4) and (5) of Article VII of the Interstate Insurance Product Regulation Compact, this state opts out of the following uniform standards adopted by the Interstate Insurance Product Regulation Commission:

- (a) The 10-day period for the unconditional refund of premiums, plus any fees or charges under s. 626.99, Florida Statutes.*
- (b) Underwriting criteria limiting the amount, extent, or kind of life insurance based on past or future travel in a manner that is inconsistent with s. 626.954(1)(dd), Florida Statutes, as implemented by the Office of Insurance Regulation.*
- (c) Any other uniform standard that conflicts with statutes or rules of this state providing consumer protections for products covered by the compact.*

ANALYSIS: This added provision is in direct contradiction to several provisions of the Model Compact with respect to the process for adopting and opting out of Uniform Standards and for the applicability of Uniform Standards as the exclusive provisions applicable to the content of Commission-approved products.

This new provision does not identify specific Uniform Standards that are subject to

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the opt out provision.² Under the Model Compact, a Compacting State has a sovereign right to opt out by legislation of an adopted Uniform Standard.³ Further, the definition of Uniform Standard states that it “shall include all of the Product requirements in aggregate.” The three items set forth in this added provision are not specific Uniform Standards or Product lines. The first two provisions relate to one of many requirements across several Uniform Standards. For instance, 26 Uniform Standards across the Product lines for individual life insurance and annuities contain a Right to Examine provision presumably referenced in subsection (a) above.

Further, the catch-all section (c) above provides that Florida opts out of any adopted Uniform Standard “that conflicts with statutes or rules of this state providing consumer protections for products covered by the compact.” This provision causes significant confusion and uncertainty as to which, if any, specific Uniform Standards are affected and “opted-out of.” Further, the Florida Compact Statute does not specify who makes this decision which causes uncertainty, and possible liability, for the Commission.

This provision gives Florida an alternative mechanism for opting out of Uniform Standards contrary to the opt-out rights specified in Article VII of the Model Compact. This provision also appears to undermine the binding effect of the Compact and Uniform Standards as agreed to by the Compacting States pursuant to Article XVI of the Model Compact which provides that “[f]or any Product approved or certified to the Commission, the Rules, Uniform Standards and any other requirements of the Commission shall constitute the exclusive provisions applicable to the content, approval and certification of such Products.”

This new provision in the Florida Compact Statute essentially caveats this Model Compact provision to Uniform Standards that do not conflict with Florida statutes or rules. In other words, Florida not only rejects the exclusive nature of the Uniform Standards but the basic premise of the Compact and Uniform Standards to promote and achieve uniformity through the IIPRC as a collective legal mechanism.

EXAMPLE 4 – Explicitly applies specific provisions of Florida law to Compact-approved products FL. Stat. §626.9934(5)

The exclusivity provision of paragraph [1(b)] of Article XVI of the Interstate Insurance Product Regulation Compact applies only to those uniform standards adopted by the Interstate Insurance Product Regulation Commission in accordance with the terms of the compact and does not apply to those standards that this state has opted out of pursuant to this act or the compact. In addition, the exclusivity provision does not limit or render inapplicable standards adopted by this state in the absence of a standard

² A Compacting State may, at the time of enactment, opt out of already-adopted uniform standards or product lines. For example, Montana opted out of the individual disability income insurance product line, which was in effect at the time of Montana’s enactment.

³ The definition of Uniform Standard in the Model Compact is based on its adoption by the Commission.

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adopted by the commission. Notwithstanding paragraph [1(b)] of Article XVI of the compact, standards adopted by this state continue to apply to the content, approval, and certification of products in this state, including, but not limited to:

- (a) The prohibition against a surrender or deferred sales charge of more than 10 percent pursuant to s. 627.4554, Florida Statutes.*
- (b) Notification to an applicant of the right to designate a secondary addressee at the time of application under s. 627.4555, Florida Statutes.*
- (c) Notification of secondary addressees at least 21 days before the impending lapse of a policy under s. 627.45555, Florida Statutes.*
- (d) The inclusion of a clear statement pursuant to s. 627.803, Florida Statutes, that the benefits, values, or premiums under a variable annuity are indeterminate and may vary.*
- (e) Interest on surrender proceeds pursuant to s. 627.482, Florida Statutes.*

ANALYSIS: This added provision is in direct contradiction to several provisions of the Model Compact with respect to the process for adopting and opting out of Uniform Standards and for the applicability of Uniform Standards as the exclusive provisions applicable to the content of Commission-approved products. Items (a), (d) and (e) directly conflict with existing provisions of the Uniform Standards.

Similar to the analysis for Example 3 above, this new provision explicitly rejects the binding effect of the Compact and Uniform Standards as agreed to by the Compacting States pursuant to Article XVI of the Model Compact. As a practical effect, it applies certain Florida laws to the content and approval of Commission-approved products. Similar to Example 3, it is difficult to ascertain whether these reservations of state law would pertain to one or more specific Uniform Standard. For instance, the Core Standards for Individual Deferred Non-Variable Annuity Contracts contains provisions require surrender or deferred sales charges to reduce down to zero by age 70 or 10 years, whichever is later.⁴ While this provision is likely equivalent in many respects to Florida's prohibition against a surrender or deferred sales charge of more than 10 percent pursuant to s. 627.4554, Florida Statutes, the Commission is not applying Florida's law but the Uniform Standards when it reviews and approved Products submitted for approval.

This new provision causes a high degree of confusion and shifts the burden of applying Florida law to the Commission. In addition, it has the potential to make one state's laws applicable to the other Compacting states if Commission-approved products are required to comply with Florida state law regarding certain content requirements.

⁴ This requirement is higher than the requirement in the majority of Compacting States and was chosen at the request of a Compacting State in order to protect seniors purchasing annuities at older ages.

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Finally, this new provision also calls into question the applicability of Article X § 3 of the Model Compact which states “[a]ny 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.” Under Examples 3 and 4, Florida signifies, in essence, it wants to join the Compact as long as Florida’s statutes and rules continue to apply to the content and approval of products in Florida, even products approved by the Commission.

The foregoing analysis of the Florida Compact Statute is limited to the examples noted. The Florida Compact Statute contains several other variations from the Model Compact, affecting provisions such as public access to records and immunity, which were not analyzed for purposes of this opinion. The Regulatory Counsel Committee finds the foregoing examples alone sufficient to change the meaning and common purpose of the relevant Model Compact provisions.

CONCLUSION

Based on this analysis, the Regulatory Counsel Committee recommends that the Commission recognize that the acceptance of the offer to join the Interstate Insurance Product Regulation Compact and participate in the Interstate Insurance Product Regulation Commission is through the enactment of the Model Compact. The Committee further recommends that the Commission find that the Florida Compact Statute contains several material variances from the Model Compact and because of these material variances, the Florida Compact Statute does not constitute an acceptance.

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INTERSTATE INSURANCE PRODUCT REGULATION COMPACT REDLINED WITH MODIFICATIONS FROM FLORIDA LAW 2013-140

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Article I. Purposes

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

1. To promote and protect the interest of consumers of individual and group annuity, life insurance, disability income and long-term care insurance products;
2. To develop uniform standards for insurance products covered under the Compact;
3. To establish a central clearinghouse to receive and provide prompt review of insurance products covered under the Compact and, in certain cases, advertisements related thereto, submitted by insurers authorized to do business in one or more Compacting States;
4. To give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard;
5. To improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the Compact;
6. To create the Interstate Insurance Product Regulation Commission; and
7. To perform these and such other related functions as may be consistent with the state regulation of the business of insurance.

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Article II. Definitions

For purposes of this Compact:

1. “Advertisement” means any material designed to create public interest in a Product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy, as more specifically defined in the Rules and Operating Procedures of the Commission **adopted as of March 1, 2013, and subsequent amendments thereto if the methodology remains substantially consistent.**
2. “Bylaws” mean those bylaws established by the Commission **as of March 1, 2013,** for its governance, or for directing or controlling the Commission’s actions or conduct.
3. “Compacting State” means any State which has enacted this Compact legislation and which has not withdrawn pursuant to Article XIV, Section 1, or been terminated pursuant to Article XIV, Section 2.
4. “Commission” means the “Interstate Insurance Product Regulation Commission” established by this Compact.
5. “Commissioner” means the chief insurance regulatory official of a State including, but not limited to commissioner, superintendent, director or administrator. **For purposes of this compact, the Commissioner of Insurance Regulation is the chief insurance regulatory official of this state.**
6. “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.
7. “Insurer” means any entity licensed by a State to issue contracts of insurance for any of the lines of insurance covered by this Act.
8. “Member” means the person chosen by a Compacting State as its representative to the Commission, or his or her designee.
9. “Non-compacting State” means any State which is not at the time a Compacting State.
10. **“Office” means the Office of Insurance Regulation of the Financial Services Commission.**
11. “Operating Procedures” mean procedures promulgated by the Commission **as of March 1, 2013, and subsequent amendments thereto if the methodology remains substantially consistent,** implementing a Rule, Uniform Standard or a provision of this Compact.
12. “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.
12. “Rule” means a statement of general or particular applicability and future effect promulgated by the Commission **as of March 1, 2013, and subsequent**

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amendments thereto if the methodology remains substantially consistent, including a Uniform Standard developed pursuant to Article VII of this Compact, 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.

13. “State” means any state, district or territory of the United States of America.
14. “Third-Party Filer” means an entity that submits a Product filing to the Commission on behalf of an Insurer.
15. “Uniform Standard” means a standard adopted by the Commission **as of March 1, 2013, and subsequent amendments thereto if the methodology remains substantially consistent**, for a Product line, pursuant to Article VII of this Compact, 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.

Drafting Note: Although consideration was given to including in the model legislation definitions for “life insurance,” “annuity,” “disability income insurance” and “long-term care insurance,” it was determined that such definitions would be more appropriately addressed through the Commission’s rule-making process. Not all of the states currently have definitions for “life insurance” or “annuity.” Additionally, the evolutionary nature of these products in the marketplace raises issues as to whether statutory definitions would be sufficiently broad enough to address future contingencies, and it would be difficult for compacting states to amend the compact if modifications are required. It is recognized that product standards will only apply to specific products, and the interstate commission would be able to define those products at the time it develops the standards through its rulemaking process.

Examples of product definitions that could be developed through the rulemaking process include the following: “Life Insurance” is insurance primarily for the purpose of coverage on human lives, including incidental benefits, as may be determined by the Compact Commission. “Annuity” is a contract the primary purpose of which is to obligate an insurer to make periodic payments, including incidental benefits, as may be determined by the Compact Commission. “Disability Income Insurance” is insurance primarily for the purpose of coverage that provides payments when an insured is disabled or unable to work because of illness, disease, or injury, including incidental benefits, as may be determined by the Compact Commission. “Long-Term Care Insurance” is insurance primarily for the purpose of providing coverage when the insured is unable to perform specified activities of daily living or related functions, or have a cognitive impairment, including incidental benefits, as may be determined by the Compact Commission.

Article III. Establishment of the Commission and Venue

1. The Compacting States hereby create and establish a joint public agency known as the “Interstate Insurance Product Regulation Commission.” Pursuant to Article IV, the Commission will have the power to develop Uniform Standards for Product lines, receive and provide prompt review of Products filed therewith, and give approval to those Product filings satisfying applicable Uniform Standards; *provided*, it is not intended for the Commission to be the exclusive entity for receipt and review of insurance product filings. Nothing herein shall prohibit any Insurer from filing its product in any State wherein the Insurer is licensed to conduct the business of insurance; and any such filing shall be subject to the laws of the State where filed.
2. The Commission is a body corporate and politic, and an instrumentality of the Compacting States.
3. The Commission is solely responsible for its liabilities except as otherwise specifically provided in this Compact.

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4. 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.
5. **The commission is a not-for-profit entity, separate and distinct from the individual compacting states.**

Article IV. Powers of the Commission

The Commission shall have the following powers:

1. To promulgate Rules, pursuant to Article VII of this Compact, 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 Compact;
2. To exercise its rule-making authority and establish reasonable Uniform Standards for Products covered under the Compact, and Advertisement related thereto, which shall have the force and effect of law and shall be binding in the Compacting States, but only for those Products filed with the Commission, *provided*, that a Compacting State shall have the right to opt out of such Uniform Standard pursuant to Article VII, to the extent and in the manner provided in this Compact, 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' 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 of 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, and rate filings for disability income and long-term care insurance Products, and give approval of those Products and rate filings that satisfy the applicable Uniform Standard, where such approval shall have the force and effect of law and be binding on the Compacting States to the extent and in the manner provided in the Compact;
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 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 the Compact;

Drafting Note: With respect to Advertisement, it is recommended that the Commission develop and adopt Uniform Standards for Advertisement regarding Products covered under the Compact. With the exception of long-term care insurance products, the Commission would generally not receive and approve any Advertisement.

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5. To exercise its rule-making authority and designate Products and Advertisement that may be subject to a self-certification process without the need for prior approval by the Commission.
6. To promulgate Operating Procedures, pursuant to Article VII of this Compact, which shall be 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 its 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, but not limited to, employees of a Compacting State. **Any action under this subsection concerning employees of this state may only be taken upon the express written consent of the state;**
12. To hire employees, professionals or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the Compact, and determine their qualifications; and to establish the Commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation and qualifications of personnel;
13. To accept any and all appropriate donations and grants of money, equipment, supplies, materials and services, and to receive, utilize and dispose of the same; *provided* that at all times the Commission shall strive to avoid any appearance of impropriety;
14. To lease, purchase, accept appropriate gifts or donations of, or otherwise to own, hold, improve or use, any property, real, personal or mixed; *provided* that at all times the Commission shall strive to avoid any appearance of impropriety;
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;

Drafting Note: It is recognized that the Commission must have authority to enforce compliance by Compacting States with the Bylaws, Rules or Operating Procedures of the Commission.

18. To provide for dispute resolution among Compacting States;

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19. To advise Compacting States on issues relating to Insurers domiciled or doing business in Non-compacting 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 **provided that this power does not, in any manner obligate the financial resources of the State of Florida;**
23. To appoint committees, including advisory committees comprising Members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such 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; and
26. To perform such other functions as may be necessary or appropriate to achieve the purposes of this Compact consistent with the state regulation of the business of insurance.

Article V. Organization of the Commission

1. Membership, Voting and Bylaws

- a. **(1)** Each Compacting State shall have and be limited to one Member. Each Member shall be qualified to serve in that capacity pursuant to applicable law of the Compacting State. Any Member may be removed or suspended from office as provided by the law of the State from which he or she 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. **However, the commissioner may designate a person to represent this state on the commission, as necessary to fulfill the duties of being a member of the commission.**

(2) The Commissioner of insurance Regulation is hereby designated to serve as the representative of this state on the commission. However, the commissioner may designate a person to represent this state on the commission, as necessary, to fulfill the duties of being a member of the commission.

Drafting Note: The Compact allows each Compacting State to select the person who will represent the State in making policy and administrative decisions of the Compact. Ordinarily, it is presumed the member will be the insurance commissioner who is otherwise responsible for such decisions within the State and is supported by the professional staff of the insurance department. The Compact allows for exceptions if the State electing to join the Compact feels a different selection is merited.

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- b. 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 (2/3) of the Members vote in favor thereof.
- c. The Commission shall, by a majority of the Members, prescribe Bylaws to govern its conduct as may be necessary or appropriate to carry out the purposes, and exercise the powers, of the Compact, including, but not limited to:
 - i. Establishing the fiscal year of the Commission;
 - ii. Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the Management Committee;
 - iii. Providing reasonable standards and procedures: (i) for the establishment and meetings of other committees, and (ii) governing any general or specific delegation of any authority or function of the Commission;
 - iv. Providing reasonable procedures for calling and conducting meetings of the Commission that consists of a majority of Commission members, ensuring reasonable advance notice of each such meeting and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including trade secrets. The Commission may meet in camera only after a majority of the entire membership votes to close a meeting *en toto* or in part. **The commissioner of this state, or the commissioner's designee, may attend, or otherwise participate in, a meeting or executive session that is closed in total or in part to the extent such attendance or participation is consistent with Florida law.** As soon as practicable, the Commission must make public (i) a copy of the vote to close the meeting revealing the vote of each Member with no proxy votes allowed, and (ii) votes taken during such meeting. **All notices of commission meetings, including instructions for public participation, provided to the office, the commissioner, or the commissioner's designee shall be published in the Florida Administrative Register.**
 - v. Establishing the titles, duties and authority and reasonable procedures for the election of the officers of the Commission.
 - vi. 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;

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- vii. Promulgating a code of ethics to address permissible and prohibited activities of commission members and employees. **This code does not supersede or otherwise limit the obligations and duties of this state's commissioner or the commissioner's designee under ethics laws or rules of the State of Florida. To the extent there is any inconsistency between the standards imposed by this code and the standards imposed under this state's ethics laws or rules, the commissioner or the commissioner's designee must adhere to the stricter standard of conduct.**
- viii. 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/or reserving of all of its debts and obligations.
- d. 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.

2. Management Committee, Officers and Personnel

- a. A Management Committee comprising no more than fourteen (14) members shall be established as follows:
 - i. 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;
 - ii. Four (4) members from those Compacting States with at least two percent (2%) of the market based on the premium volume described above, other than the six (6) Compacting States with the largest premium volume, selected on a rotating basis as provided in the Bylaws; and
 - iii. Four (4) members from those Compacting States with less than two percent (2%) of the market, based on the premium volume described above, with one (1) selected from each of the four (4) zone regions of the NAIC as provided in the Bylaws.

Drafting Note: In developing the composition of the Management Committee, consideration was given to the role of Compacting States in governance and operational issues. It is desirable to achieve a proper balance on the Management Committee between the Compacting States based on premium volume and geographical diversity. Accordingly, factors such as a Compacting State's premium volume for annuity, individual and group life insurance, disability income, and long-term care insurance products, as well as geographical representation using the zone regions of the NAIC were utilized. There are certain advantages to having Compacting States with large premium markets play a significant role on the Management Committee. It is also recognized that Compacting States with smaller premium volume may raise issues with respect to the overall balancing of interests of members on the Management Committee.

Additional Note: The concept of serving on a "rotating basis" involves giving each Compacting State in the group the opportunity to serve the same number of terms on the Management Committee before any other Compacting State in the group serves an additional term. For example, those members representing Compacting States in the group shall each serve one term on the Management Committee before any such State serves a second term.

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

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- i. Managing the affairs of the Commission in a manner consistent with the Bylaws and purposes of the Commission;
 - ii. Establishing and overseeing an organizational structure within, and appropriate procedures for, the Commission to provide for the creation of Uniform Standards and other Rules, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a Compacting State to opt out of a Uniform Standard; *provided* that a Uniform Standard shall not be submitted to the Compacting States for adoption unless approved by two-thirds (2/3) of the members of the Management Committee;
 - iii. Overseeing the offices of the Commission; and
 - iv. Planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the Commission.
- c. The Commission shall elect annually officers from the Management Committee, with each having such 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 such period, upon such terms and conditions and for such compensation as the Commission may deem appropriate. The executive director shall serve as secretary to the Commission, but shall not be a Member of the Commission. The executive director shall hire and supervise such other staff as may be authorized by the Commission.
3. Legislative and Advisory Committees
 - a. A legislative committee comprising state legislators or their designees 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.
 - b. The Commission shall establish two (2) advisory committees, one of which shall comprise consumer representatives independent of the insurance industry, and the other comprising insurance industry representatives.
 - c. The Commission may establish additional advisory committees as its Bylaws may provide for the carrying out of its functions.

Drafting Note: It is anticipated that the number and manner of selecting members of these committees will be addressed in the Bylaws. Additionally, consideration will be given to the creation of other advisory committees depending on the needs of the Commission

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4. Corporate Records of the Commission

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

5. Qualified Immunity, Defense and Indemnification

- a. 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; *provided*, that nothing in this paragraph shall be construed to protect any such person from suit and/or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of that person.
- b. **The liability of the members, officers, executive director, employees, and representatives of the commission, acting within the scope of their employment or duties for acts, errors, or omissions occurring within this state, may not exceed the limits of liability set forth under the constitution and laws of this state for state officials, employees, and agents. The commission is an instrumentality of the state for the purposes of any such action. This subsection does not protect such persons from suit or liability for damage, loss, injury, or liability caused by a criminal act or the intentional or willful and wanton misconduct of such person.**
- c. The Commission shall defend any Member, officer, executive director, employee or representative of the Commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities; *provided*, that nothing herein shall be construed to prohibit that person from retaining his or her own counsel; and *provided further*, that the actual or alleged act, error or omission did not result from that person's intentional or willful and wanton misconduct.
- d. The Commission shall indemnify and hold harmless any Member, officer, executive director, employee or representative of the Commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error or omission that occurred within the scope of Commission employment, duties or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of Commission employment, duties or responsibilities, *provided*, that the actual or alleged act, error or omission did not result from the intentional or willful and wanton misconduct of that person.

Article VI. Meetings and Acts of the Commission

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1. The Commission shall meet and take such actions as are consistent with the provisions of this Compact and the Bylaws.
2. Each Member of the Commission shall have the right and power to cast a vote to which that Compacting State is entitled and to participate in the business and affairs of the Commission. A Member shall vote in person or by such other means as provided in the Bylaws. The Bylaws may provide for Members' participation in meetings by telephone or other means of communication.
3. The Commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the Bylaws.

Article VII. Rules and Operating Procedures: Rulemaking Functions of the Commission and Opting Out of Uniform Standards

1. **Rulemaking Authority.** The Commission shall promulgate reasonable Rules, including Uniform Standards, and Operating Procedures in order to effectively and efficiently achieve the purposes of this Compact. Notwithstanding the foregoing, in the event the Commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this Act, or the powers granted hereunder, then such an action by the Commission shall be invalid and have no force and effect.
2. **Rulemaking Procedure.** Rules and Operating Procedures shall be made pursuant to a rulemaking process that conforms to the Model State Administrative Procedure Act of 1981 as amended, as may be appropriate to the operations of the Commission. Before the Commission adopts a Uniform Standard, the Commission shall give written notice to the relevant state legislative committee(s) 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.
3. **Effective Date and Opt Out of a Uniform Standard.** A Uniform Standard shall become effective ninety (90) days after its promulgation by the Commission or such later date as the Commission may determine; *provided, however*, that a Compacting State may opt out of a Uniform Standard as provided in this Article. "Opt out" shall be defined as 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.
4. **Opt Out Procedure.** A Compacting State may opt out of a Uniform Standard, either by legislation or regulation duly promulgated by the Insurance Department under the Compacting State's Administrative Procedure Act. If a Compacting State elects to opt out of a Uniform Standard by regulation, it must (a) give written notice to the Commission no later than ten (10) business days after the Uniform Standard is promulgated, or at the time the State becomes a Compacting State and (b) find that the Uniform Standard does not provide reasonable protections to the citizens of the State, given the conditions in the State. The Commissioner **of a compacting state other than this state** shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the State which warrant a departure from the Uniform Standard and determining that the Uniform Standard would not reasonably protect the citizens of the State. The Commissioner must consider and balance the following factors and find that the conditions in the State and needs of the citizens of the State outweigh: (i) the intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national

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uniform consumer protections for the Products subject to this Act; and (ii) the presumption that a Uniform Standard adopted by the Commission provides reasonable protections to consumers of the relevant Product.

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

Drafting Note: States joining the Compact are encouraged to refrain from using this so-called “front end” opt out for long-term care insurance products. It is recognized that there are many important factors which support the development of Uniform Standards for long-term care insurance products, including: the mobile nature of the population in this country and the need for greater uniformity among the States regarding product standards for long-term care insurance products; the assertion that long-term care insurance products serve as a retirement security product that competes with other products offered by financial institutions; and long-term care insurance products are used in connection with life insurance and annuity products and therefore should also be eligible for consideration of appropriate Uniform Standards.

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

Once the opt out of a Uniform Standard by a Compacting State becomes effective as provided under the laws of that State, the Uniform Standard shall have no further force and effect in that State unless and until the legislation or regulation implementing the opt out is repealed or 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 under Article XIV for withdrawals.

6. *Stay of Uniform Standard.* If a Compacting State has formally initiated the process of opting out of a Uniform Standard by regulation, and while the regulatory opt out is pending, the Compacting State may petition the Commission, at least fifteen (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 the regulatory opt out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the Commission, the stay or extension thereof may postpone the effective date by up to ninety (90) days, unless affirmatively extended by the Commission; *provided*, a stay may not be permitted to remain in effect for more than one (1) 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.
7. Not later than thirty (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; *provided*, that the filing of such a petition shall not stay or otherwise prevent the Rule or Operating Procedure from becoming effective unless the court finds that the petitioner has a substantial likelihood of success. The court shall give deference to the actions of the Commission consistent with applicable law and shall not find the

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Rule or Operating Procedure to be unlawful if the Rule or Operating Procedure represents a reasonable exercise of the Commission's authority.

Article VIII. Commission Records and Enforcement

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

Drafting Note: The Commission will generally develop rules establishing conditions and procedures for making information available to the public. However, the reference in this section to the confidential treatment of insurer information is limited to trade secrets. Article X provides for the development of rules by the Commission to address the manner in which the public will be given access to product filing information, which is recognized as proprietary information of insurers.

2. Except as to privileged records, data and information, the laws of any Compacting State pertaining to confidentiality or nondisclosure shall not relieve any Compacting State Commissioner of the duty to disclose any relevant records, data or information to the Commission; *provided*, that disclosure to the Commission shall not be deemed to waive or otherwise affect any confidentiality requirement; *and further provided*, that, 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 such information is provided to any Commissioner; **however, all requests from the public to inspect or copy records, data, or information of the commission, wherever received, by and in the possession of the office, commissioner, or the commissioner's designee shall be subject to chapter 119, Florida Statutes.**
3. 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 set forth in Article XIV.
4. The Commissioner of any State in which an Insurer is authorized to do business, or is conducting the business of insurance, shall continue to exercise his or her authority to oversee the market regulation of the activities of the Insurer in accordance with the provisions of the State's law. The Commissioner's enforcement of compliance with the Compact is governed by the following provisions:
 - a. 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.

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- b. Before a Commissioner may bring an action for violation of any provision, standard or requirement of the Compact relating to the content of an Advertisement not approved or certified to the Commission, the Commission, or an authorized Commission officer or employee, must authorize the action. However, authorization pursuant to this 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.

Drafting Note: It is not intended for the Compact to preempt a Compacting State's regulatory authority to enforce State law pertaining to the manner in which the Products approved by the Commission are marketed, sold and administered in a Compacting State.

Article IX. Dispute Resolution

The Commission shall attempt, upon the request of a Member, to resolve any disputes or other issues that are subject to this Compact and which may arise between two or more Compacting States, or between Compacting States and Non-compacting States, and the Commission shall promulgate an Operating Procedure providing for resolution of such disputes.

Article X. Product Filing and Approval

1. 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 such filing shall be subject to the laws of the States where filed.
2. The Commission shall establish appropriate filing and review processes and procedures pursuant to Commission Rules and Operating Procedures. Notwithstanding any provision herein to the contrary, the Commission shall promulgate Rules to establish conditions and procedures under which the Commission will provide public access to Product filing information. In establishing such Rules, the Commission shall consider the interests of the public in having access to such information, as well as protection of personal medical and financial information and trade secrets, that may be contained in a Product filing or supporting information.
3. 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.

Article XI. Review of Commission Decisions Regarding Filings

1. 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 promulgate Rules to establish procedures for appointing such review panels and provide for notice and hearing. An allegation that the Commission, in disapproving a Product or Advertisement filed with the Commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with Article III, Section 4.

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2. The Commission shall have authority to 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. Where appropriate, the Commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in Section 1 above.

Article XII. Finance

1. The Commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the Commission may accept contributions and other forms of funding from the National Association of Insurance Commissioners, Compacting States and other sources. Contributions and other forms of funding from other sources shall be of such a nature that the independence of the Commission concerning the performance of its duties shall not be compromised.
2. 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.
3. 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 Article VII of this Compact.
4. The Commission shall be exempt from all taxation in and by the Compacting States.
5. The Commission shall not pledge the credit of any Compacting State, except by and with the appropriate legal authority of that Compacting State.
6. 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 (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, which shall include a report of the independent audit. The Commission's internal accounts shall not be confidential and such materials may be shared with the Commissioner of any Compacting State upon request *provided, however*, 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.
7. 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 Compact.

Article XIII. Compacting States, Effective Date and Amendment

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

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2. The Compact shall become effective and binding upon legislative enactment of the Compact into law by two Compacting States; *provided*, 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 shall become effective and binding as to any other Compacting State upon enactment of the Compact into law by that State.
3. Amendments to the Compact may be proposed by the Commission for enactment by the Compacting States. No amendment shall become effective and binding upon the Commission and the Compacting States unless and until all Compacting States enact the amendment into law.

Article XIV. Withdrawal, Default and Termination

1. Withdrawal
 - a. Once effective, the Compact shall continue in force and remain binding upon each and every Compacting State; *provided*, that a Compacting State may withdraw from the Compact (“Withdrawing State”) by enacting a statute specifically repealing the statute which enacted the Compact into law.
 - b. The effective date of withdrawal is the effective date of the repealing statute. However, the withdrawal shall not apply to any product filings approved or self-certified, or any Advertisement of such products, on the date the repealing statute becomes effective, except by mutual agreement of the Commission and the Withdrawing State unless the approval is rescinded by the Withdrawing State as provided in Paragraph e of this section.
 - 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 such legislation within ten (10) days after its receipt of notice thereof.
 - 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 mutual agreement of the Commission and the Withdrawing State. The Commission’s approval of Products and Advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the Withdrawing State, unless formally rescinded by the Withdrawing State in the same manner as provided by the laws of the Withdrawing State for the prospective disapproval of products or advertisement previously approved under state law.
 - f. Reinstatement following withdrawal of any Compacting State shall occur upon the effective date of the Withdrawing State reenacting the Compact.

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2. Default

- a. If the Commission determines that any Compacting State has at any time defaulted (“Defaulting State”) in the performance of any of its obligations or responsibilities under this Compact, the Bylaws or duly promulgated Rules or Operating Procedures, then, after notice and hearing as set forth in the Bylaws, all rights, privileges and benefits conferred by this Compact on the Defaulting State shall be suspended from the effective date of default as fixed by the Commission. The grounds for default include, but are not limited to, failure of a Compacting State to perform its obligations or responsibilities, and any other grounds designated in Commission Rules. The Commission shall immediately notify the Defaulting State in writing of the Defaulting State’s suspension pending a cure of the default. The Commission shall stipulate the conditions and the time period within which the Defaulting State must cure its default. If the Defaulting State fails to cure the default within the time period specified by the Commission, the Defaulting State shall be terminated from the Compact and all rights, privileges and benefits conferred by this Compact shall be terminated from the effective date of termination.
- b. Product approvals by the Commission or product self-certifications, or any Advertisement in connection with such product, that are in force on the effective date of termination shall remain in force in the Defaulting State in the same manner as if the Defaulting State had withdrawn voluntarily pursuant to Section 1 of this article.
- c. Reinstatement following termination of any Compacting State requires a reenactment of the Compact.

3. Dissolution of Compact

- a. The Compact dissolves effective upon the date of the withdrawal or default of the Compacting State which reduces membership in the Compact to one Compacting State.
- b. Upon the dissolution of this Compact, the Compact becomes null and void and shall be of no further force or effect, and the business and affairs of the Commission shall be wound up and any surplus funds shall be distributed in accordance with the Bylaws.

Article XV. Severability and Construction

1. The provisions of this Compact shall be severable; and if any phrase, clause, sentence or provision is deemed unenforceable, the remaining provisions of the Compact shall be enforceable.
2. The provisions of this Compact shall be liberally construed to effectuate its purposes.

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Article XVI. Binding Effect of Compact and Other Laws

1. Other Laws

- a. Nothing herein prevents the enforcement of any other law of a Compacting State, except as provided in Paragraph b of this section.
- b. For any Product approved or certified to the Commission, the Rules, Uniform Standards and any other requirements of the Commission shall constitute the exclusive provisions applicable to the content, approval and certification of such Products. For 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: (i) the access of any person to state courts; (ii) remedies available under state law related to breach of contract, tort, or other laws not specifically directed to the content of the Product; (iii) state law relating to the construction of insurance contracts; or (iv) the authority of the attorney general of the state, including but not limited to maintaining any actions or proceedings, as authorized by law.

Drafting Note: In those states where a state official other than the attorney general enforces general consumer protection laws, the title of the official should be inserted into the model act in place of the attorney general. It is not intended for the Compact to empower the Commission with authority beyond what has been traditionally given to state insurance regulators. For example, the Compact is not intended to affect the application, if any, of a state's general consumer fraud statutes, deceptive or unfair trade practices act or claims handling laws or the enforcement of such laws by the state attorney general or other appropriate official. Additionally, nothing in the interstate compact legislation is designed to alter the current rules of construction in a state, such as the rule that any ambiguity will be construed against the drafter of the policy.

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

2. Binding Effect of this Compact

- a. All lawful actions of the Commission, including all Rules and Operating Procedures promulgated by the Commission, are binding upon the Compacting States.
- b. All agreements between the Commission and the Compacting States are binding in accordance with their terms.
- 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.

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- d. In the event any provision of this 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 this Compact becomes effective.

3. Opt out from long-term care products standards. Pursuant to Article VII of the Interstate Insurance Product Regulation Compact, adopted by this act, this state prospectively opts out of all uniform standards adopted by the Interstate Insurance Product Regulation Commission involving long-term care insurance products, and such opt out may not be treated as a material variance in the offer or acceptance of this state to participate in the compact.

4. Effective date of compact standards; opt out procedures; state law exemptions; legislative notice

(1) Except as provided in section 3 of this act and this section, all uniform standards adopted by the Interstate Insurance Product Regulation Commission as of March 1, 2013, are adopted by this state.

(2) Notwithstanding subsections (3), (4), (5), and (6) of Article VII of the Interstate Insurance Product Regulation Compact as adopted by this act, this state prospectively opts out of any new uniform standard, or amendments to existing uniform standards, adopted by the Interstate Insurance Product Regulation Commission, after March 1, 2013, if such amendments substantially alter or add to existing uniform standards adopted by this state pursuant to subsection (1), until such time as this state enacts legislation to adopt new uniform standards or amendments to existing standards adopted by the commission after March 1, 2013.

(3) The authority under Article VII of the Interstate Insurance Product Regulation Compact to opt out of a uniform standard includes an order issued under chapter 120, Florida Statutes, the Administrative Procedure Act.

(4) In addition to the uniform standards and amendments to uniform standards that the state opts out of pursuant to subsection (2), pursuant to subsections (4) and (5) of Article VII of the Interstate Insurance Product Regulation Compact, this state opts out of the following uniform standards adopted by the Intestate Insurance Product Regulation Commission:

- (d) The 10-day period for the unconditional refund of premiums, plus any fees or charges under s. 626.99, Florida Statutes.**
- (e) Underwriting criteria limiting the amount, extent, or kind of life insurance based on past or future travel in a manner that is inconsistent with s. 626.954(1)(dd), Florida Statutes, as implemented by the Office of Insurance Regulation.**
- (f) Any other uniform standard that conflicts with statutes or rules of this state providing consumer protections for products covered by the compact.**

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- (5) The exclusivity provision of paragraph [1(b)] of Article XVI of the Interstate Insurance Product Regulation Compact applies only to those uniform standards adopted by the Interstate Insurance Product Regulation Commission in accordance with the terms of the compact and does not apply to those standards that this state has opted out of pursuant to this act or the compact. In addition, the exclusivity provision does not limit or render inapplicable standards adopted by this state in the absence of a standard adopted by the commission. Notwithstanding paragraph [1(b)] of Article XVI of the compact, standards adopted by this state continue to apply to the content, approval, and certification of products in this state, including, but not limited to:
 - (f) The prohibition against a surrender or deferred sales charge of more than 10 percent pursuant to s. 627.4554, Florida Statutes.
 - (g) Notification to an applicant of the right to designate a secondary addressee at the time of application under s. 627.4555, Florida Statutes.
 - (h) Notification of secondary addressees at least 21 days before the impending lapse of a policy under s. 627.45555, Florida Statutes.
 - (i) The inclusion of a clear statement pursuant to s. 627.803, Florida Statutes, that the benefits, values, or premiums under a variable annuity are indeterminate and may vary.
 - (j) Interest on surrender proceeds pursuant to s. 627.482, Florida Statutes.
 - (6) After enactment of this section, if the Interstate Insurance Product Regulation Commission adopts any new uniform standard or amendment to the existing uniform standard as specified in subsection (2), the Office of Insurance Regulation shall immediately notify the Legislature of such new standard or amendment.
5. Notwithstanding subsection (4) of Article XII of the Interstate Insurance Product Regulation Compact, the Interstate Insurance Product Regulation Commission is subject to:
- (1) State unemployment or reemployment taxes imposed pursuant to chapter 443, Florida Statutes, in compliance with the Federal Unemployment Tax Act, for any person employed by the commission who perform services for it within this state.
 - (2) Taxation on any commission business or activity conducted or performed in this state.
6. Access to records
- (1) Notwithstanding subsections (1) and (1) of Article VIII, subsection (2) of Article X, and subsection (6) of Article XII of the Interstate Insurance Product Regulation Compact, a request by a resident of this state for public inspection and copying of information, data, or official records that includes:

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- (a) An insurer's trade secrets shall be referred to the commissioner who shall respond to the request, with the cooperation and assistance of the commission, in accordance with s. 624.4213, Florida Statutes; or
 - (b) Matters of privacy of individuals shall be referred to the commissioner who shall respond to the request, with the cooperation and assistance of the commission, in accordance with s. 119.07(1), Florida Statutes.
- (3) This act does not abrogate the right of a person to access information consistent with the State Constitution and laws of this state.
7. The Financial Services Commission may adopt rules to administer this act.
8. Effective upon this act becoming a law, notwithstanding Article XV of the Interstate Insurance Product Regulation Compact, if any part of section 3 or section 4 [Article XVI] of this act is invalidated by the courts, such ruling renders the entire act invalid.
9. Effective upon this act becoming a law, the Office of Insurance Regulation shall prepare a report that examines the extent to which the Interstate Insurance Product Regulation Compact and the uniform standards adopted thereunder, provide consumer protections equivalent to those under state law and the Administrative Procedure Act for annuity, life insurance, disability income, and long-term care insurance products. The office shall submit the report to the President of the Senate, the Speaker of the House of Representatives, and the Financial Services Commission by January 1, 2014.
10. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon this act becoming a law. This act shall take effect July 1, 2014.