

SENATE BILL NO. 28

INTRODUCED BY F. THOMAS

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT ADOPTING THE INTERSTATE INSURANCE PRODUCT REGULATION COMPACT; AUTHORIZING THE STATE AUDITOR AS COMMISSIONER OF INSURANCE TO PARTICIPATE IN THE COMPACT; ENSURING THAT PARTICIPATING STATES PROVIDE A COMMON FRAMEWORK FOR REGULATING DESIGNATED INSURANCE PRODUCTS; LEGISLATIVELY OPTING OUT OF CERTAIN UNIFORM STANDARDS; PROVIDING ~~RULEMAKING AND~~ OPT-OUT AUTHORITY; LIMITING GOVERNMENTAL LIABILITY; AMENDING SECTIONS 33-1-311; AND 33-1-501, ~~AND 33-22-1103~~, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Compact Adopted. The Interstate Insurance Product Regulation Compact is enacted into law and entered into with all jurisdictions legally joining in the compact, in the form substantially as set forth below.

Article I. Purposes

Pursuant to terms and conditions of this compact, the state of Montana seeks to join with other states and establish the Interstate Insurance Product Regulation Compact. Through means of joint and cooperative action among the compacting states, the purposes of this compact are:

- (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, advertisement related to the products, submitted by insurers authorized to do business in one or more compacting states;
- (4) to give appropriate regulatory approval to those product filings and advertisement satisfying the applicable uniform standard;
- (5) to improve coordination of regulatory resources and expertise between state insurance departments

1 regarding the setting of uniform standards and review of insurance products covered under the compact;
2 (6) to create the interstate insurance product regulation commission; and
3 (7) to perform these and other related functions as may be consistent with the state regulation of the
4 business of insurance.

5 Article II. Definitions

6 For purposes of this compact, the following definitions apply:

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

10 (2) "Bylaws" mean those bylaws established by the commission for its governance or for directing or
11 controlling the commission's actions or conduct.

12 (3) "Compacting state" means a state that has enacted this compact legislation and that has not
13 withdrawn pursuant to Article XIV, subsection (1), or been terminated pursuant to Article XIV, subsection (2).

14 (4) "Commission" means the interstate insurance product regulation commission established by this
15 compact.

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

18 (6) "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case
19 of an alien insurer, its state of entry.

20 (7) "Insurer" means any entity licensed by a state to issue contracts of insurance for any of the lines of
21 insurance covered by this compact.

22 (8) "Member" means the person chosen by a compacting state as its representative to the commission
23 or the designee named by the representative to the commission.

24 (9) "Noncompacting state" means a state that is not at the time a compacting state.

25 (10) "Operating procedures" mean procedures promulgated by the commission implementing a rule, a
26 uniform standard, or a provision of this compact.

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

(12) "Rule" means a statement of general or particular applicability and future effect promulgated by the commission, including a uniform standard developed pursuant to Article VII, designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the commission, which has the force 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 for a product line pursuant to Article VII and includes all of the product requirements in aggregate, provided that each uniform standard must 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 may not be unfair, inequitable, or against public policy as determined by the commission.

Article III. Establishment of the Commission and Venue

(1) The compacting states create and establish a joint public agency known as the interstate insurance product regulation commission. Pursuant to Article IV, the commission has the power to develop uniform standards for product lines, receive and provide prompt review of products filed with the commission, and give approval to those product filings satisfying applicable uniform standards. However, it is not intended for the commission to be the exclusive entity for receipt and review of insurance product filings. Nothing in the compact prohibits any insurer from filing its product in any state in which the insurer is licensed to conduct the business of insurance, and any such filing is 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.

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

Article IV. Powers of the Commission

The commission has the following powers:

(1) to promulgate rules, pursuant to Article VII, which have the force of law and are binding in the compacting states to the extent and in the manner provided in this compact;

(2) to exercise its rulemaking authority and establish reasonable uniform standards for products covered

1 under the compact and advertisement related to the products, which have the force of law and are binding in the
2 compacting states, but only for those products filed with the commission, provided that a compacting state has
3 the right to opt out of the uniform standard pursuant to Article VII, to the extent and in the manner provided in this
4 compact, and provided further that any uniform standard established by the commission for long-term care
5 insurance products may provide the same or greater protections for consumers as, but may not provide less than,
6 those protections set forth in the national association of insurance commissioners' Long-Term Care Insurance
7 Model Act and Long-Term Care Insurance Model Regulation, respectively, adopted as of 2001. The commission
8 shall consider whether any subsequent amendments to the national association of insurance commissioners'
9 Long-Term Care Insurance Model Act or Long-Term Care Insurance Model Regulation adopted by the national
10 association of insurance commissioners require amending of the uniform standards established by the
11 commission for long-term care insurance products.

12 (3) to receive and review in an expeditious manner products filed with the commission and rate filings
13 for disability income and long-term care insurance products and to give approval of those products and rate filings
14 that satisfy the applicable uniform standard, where the approval has the force of law and is binding on the
15 compacting states to the extent and in the manner provided in the compact;

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

24 (5) to exercise its rulemaking authority and designate products and advertisement that may be subject
25 to a self-certification process without the need for prior approval by the commission;

26 (6) to promulgate operating procedures pursuant to Article VII that are binding in the compacting states
27 to the extent and in the manner provided in this compact;

28 (7) to bring and prosecute legal proceedings or actions in its name as the commission, provided that the
29 standing of any state insurance department to sue or be sued under applicable law may not be affected;

30 (8) to issue subpoenas requiring the attendance and testimony of witnesses and the production of

1 evidence;

2 (9) to establish and maintain offices;

3 (10) to purchase and maintain insurance and bonds;

4 (11) to borrow, accept, or contract for services of personnel, including but not limited to employees of a
5 compacting state;

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

10 (13) to accept any and all appropriate donations and grants of money, equipment, supplies, materials,
11 and services and to receive, utilize, and dispose of the same, provided that at all times the commission shall strive
12 to avoid any appearance of impropriety;

13 (14) to lease, purchase, or accept appropriate gifts or donations of or otherwise own, hold, improve, or
14 use any property, real, personal, or mixed, provided that at all times the commission shall strive to avoid any
15 appearance of impropriety;

16 (15) to sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property
17 whether real, personal, or mixed;

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

20 (17) to enforce compliance by compacting states with rules, uniform standards, operating procedures,
21 and bylaws;

22 (18) to provide for dispute resolution among compacting states;

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

25 (20) to provide advice and training to those personnel in state insurance departments responsible for
26 product review and to be a resource for state insurance departments;

27 (21) to establish a budget and make expenditures;

28 (22) to borrow money;

29 (23) to appoint committees, including advisory committees comprising members, state insurance
30 regulators, state legislators or their representatives, insurance industry and consumer representatives, and other

1 interested persons as may be designated in the bylaws;
2 (24) to provide and receive information from and to cooperate with law enforcement agencies;
3 (25) to adopt and use a corporate seal; and
4 (26) to perform other functions as may be necessary or appropriate to achieve the purposes of this
5 compact consistent with the state regulation of the business of insurance.

6 Article V. Organization of the Commission

7 (1) Membership, voting, and bylaws.

8 (a) Each compacting state has and is limited to one member. Each member must be qualified to serve
9 in that capacity pursuant to applicable law of the compacting state. Any member may be removed or suspended
10 from office as provided by the law of the state from which the member is appointed. Any vacancy occurring in the
11 commission must be filled in accordance with the laws of the compacting state in which the vacancy exists.
12 Nothing in the compact may be construed to affect the manner in which a compacting state determines the
13 election or appointment and qualification of its own commissioner.

14 (b) Each member is entitled to one vote and must have an opportunity to participate in the governance
15 of the commission in accordance with the bylaws. Notwithstanding any provision in the compact to the contrary,
16 an action of the commission with respect to the promulgation of a uniform standard may not be effective unless
17 two-thirds of the members vote in favor of the standard.

18 (c) The commission shall, by a majority vote of the members, prescribe bylaws to govern its conduct as
19 may be necessary or appropriate to carry out the purposes and exercise the powers of the compact, including
20 but not limited to:

21 (i) establishing the fiscal year of the commission;

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

24 (iii) providing reasonable standards and procedures:

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

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

27 (iv) providing reasonable procedures for calling and conducting meetings of the commission that consist
28 of a majority of commission members, ensuring reasonable advance notice of each meeting, and providing for
29 the right of citizens to attend each meeting with enumerated exceptions designed to protect the public's interest,
30 the privacy of individuals, and insurers' proprietary information, including trade secrets. The commission may

1 meet in camera only after a majority of the entire membership votes to close a meeting in whole or in part. As
2 soon as practicable, the commission shall make public:

3 (A) a copy of the vote to close the meeting revealing the vote of each member with no proxy votes
4 allowed; and

5 (B) votes taken during the meeting.

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

8 (vi) providing reasonable standards and procedures for the establishment of the personnel policies and
9 programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the
10 bylaws must exclusively govern the personnel policies and programs of the commission.

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

13 (viii) providing a mechanism for winding up the operations of the commission and the equitable disposition
14 of any surplus funds that may exist after the termination of the compact after the payment or reserving of all of
15 its debts and obligations.

16 (d) The commission shall publish its bylaws in a convenient form and file a copy of the bylaws and a copy
17 of any amendment to the bylaws with the appropriate agency or officer in each of the compacting states.

18 (2) Management committee, officers, and personnel.

19 (a) A management committee comprising no more than 14 members must be established as follows:

20 (i) one member from each of the six compacting states with the largest premium volume for individual
21 and group annuities, life, disability income, and long-term care insurance products as determined from the records
22 of the national association of insurance commissioners for the prior year;

23 (ii) four members from those compacting states with at least 2% of the market based on the premium
24 volume described in subsection (2)(a)(i), other than the six compacting states with the largest premium volume,
25 selected on a rotating basis as provided in the bylaws; and

26 (iii) four members from those compacting states with less than 2% of the market, based on the premium
27 volume described in subsection (2)(a)(i), with one selected from each of the four zone regions of the national
28 association of insurance commissioners as provided in the bylaws.

29 (b) The management committee has the authority and duties set forth in the bylaws, including but not
30 limited to:

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

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

9 (iii) overseeing the offices of the commission; and

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

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

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

19 (3) Legislative and advisory committees.

20 (a) A legislative committee comprising state legislators or their designees must be established to monitor
21 the operations of and make recommendations to the commission, including the management committee, provided
22 that the manner of selection and term of any legislative committee member must be as set forth in the bylaws.
23 Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget, or other
24 significant matter provided in the bylaws, the management committee shall consult with and report to the
25 legislative committee.

26 (b) The commission shall establish two advisory committees, one comprising consumer representatives
27 independent of the insurance industry and the other comprising insurance industry representatives.

28 (c) The commission may establish additional advisory committees as its bylaws may provide to carry out
29 its functions.

30 (4) Corporate records of the commission. The commission shall maintain its corporate books and records

1 in accordance with the bylaws.

2 (5) Qualified immunity, defense, and indemnification.

3 (a) The members, officers, executive director, employees, and representatives of the commission are
4 immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of
5 property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or
6 omission that occurred or that the person against whom the claim is made had a reasonable basis for believing
7 occurred within the scope of commission employment, duties, or responsibilities, provided that nothing in this
8 subsection (5)(a) may be construed to protect any person from suit or liability for any damage, loss, injury, or
9 liability caused by the intentional or willful and wanton misconduct of that person.

10 (b) The commission shall defend any member, officer, executive director, employee, or representative
11 of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or
12 omission that occurred within the scope of commission employment, duties, or responsibilities or that the person
13 against whom the claim is made had a reasonable basis for believing occurred within the scope of commission
14 employment, duties, or responsibilities, provided that nothing in the compact may be construed to prohibit that
15 person from retaining personal counsel and provided further that the actual or alleged act, error, or omission did
16 not result from that person's intentional or willful and wanton misconduct.

17 (c) The commission shall indemnify and hold harmless any member, officer, executive director,
18 employee, or representative of the commission for the amount of any settlement or judgment obtained against
19 that person arising out of any actual or alleged act, error, or omission that occurred within the scope of
20 commission employment, duties, or responsibilities or that the person had a reasonable basis for believing
21 occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or
22 alleged act, error, or omission did not result from the intentional or willful and wanton misconduct of that person.

23 Article VI. Meetings and Acts of the Commission

24 (1) The commission shall meet and take actions that are consistent with the provisions of this compact
25 and the bylaws.

26 (2) Each member of the commission has the right and power to cast a vote to which that compacting
27 state is entitled and to participate in the business and affairs of the commission. A member shall vote in person
28 or by other means that are provided in the bylaws. The bylaws may provide for members' participation in meetings
29 by telephone or other means of communication.

30 (3) The commission shall meet at least once during each calendar year. Additional meetings must be

1 held as set forth in the bylaws.

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

4 (1) Rulemaking authority. The commission shall promulgate reasonable rules, including uniform
5 standards, and operating procedures to effectively and efficiently achieve the purposes of this compact.
6 Notwithstanding the foregoing, if the commission exercises its rulemaking authority in a manner that is beyond
7 the scope of the purposes of this compact or the powers granted by this compact, then the action by the
8 commission is invalid and has no force.

9 (2) Rulemaking procedure. Rules and operating procedures must be made pursuant to a rulemaking
10 process that conforms to the Model State Administrative Procedures Act of 1981, as amended, as may be
11 appropriate to the operations of the commission. Before the commission adopts a uniform standard, the
12 commission shall give written notice to the relevant state legislative committee or committees in each compacting
13 state responsible for insurance issues of its intention to adopt the uniform standard. In adopting a uniform
14 standard, the commission shall consider fully all submitted materials and issue a concise explanation of its
15 decision.

16 (3) Effective date and opt out of a uniform standard. A uniform standard becomes effective 90 days after
17 its promulgation by the commission or at a later date determined by the commission, provided, however, that a
18 compacting state may opt out of a uniform standard as provided in this article. "Opt out" means any action by a
19 compacting state to decline to adopt or participate in a promulgated uniform standard. All other rules and
20 operating procedures and amendments of the rules and operating procedures become effective as of the date
21 specified in each rule, operating procedure, or amendment.

22 (4) Opt-out procedure.

23 (a) A compacting state may opt out of a uniform standard, either by legislation or regulation promulgated
24 by the insurance department under the compacting state's administrative procedure act. If a compacting state
25 elects to opt out of a uniform standard by regulation, the compacting state shall:

26 (i) give written notice to the commission no later than 10 business days after the uniform standard is
27 promulgated or at the time the state becomes a compacting state; and

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

1 uniform standard and determining that the uniform standard would not reasonably protect the citizens of the state.
2 The commissioner shall consider and balance the following factors and find that the conditions in the state and
3 needs of the citizens of the state outweigh:

4 (A) the intent of the legislature to participate in, and the benefits of, an interstate agreement to establish
5 national uniform consumer protections for the products subject to this compact; and

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

8 (b) Notwithstanding subsection (4)(a), a compacting state may, at the time of its enactment of this
9 compact, prospectively opt out of all uniform standards involving long-term care insurance products by expressly
10 providing for the opt out in the enacted compact, and the opt out may not be treated as a material variance in the
11 offer or acceptance of any state to participate in this compact. The opt out is effective at the time of enactment
12 of this compact by the compacting state and applies to all existing uniform standards involving long-term care
13 insurance products and those subsequently promulgated.

14 (5) Effect of opt out.

15 (a) If a compacting state elects to opt out of a uniform standard, the uniform standard remains applicable
16 in the compacting state electing to opt out until the opt-out legislation is enacted into law or the regulation opting
17 out becomes effective.

18 (b) Once the opt out of a uniform standard by a compacting state becomes effective as provided under
19 the laws of that state, the uniform standard has no further force in that state unless the legislation or regulation
20 implementing the opt out is repealed or otherwise becomes ineffective under the laws of the state. If a compacting
21 state opts out of a uniform standard after the uniform standard has been made effective in that state, the opt out
22 has the same prospective effect as provided under Article XIV for withdrawals.

23 (6) Stay of uniform standard. If a compacting state has formally initiated the process of opting out of a
24 uniform standard by regulation and while the regulatory opt out is pending, the compacting state may petition the
25 commission, at least 15 days before the effective date of the uniform standard, to stay the effectiveness of the
26 uniform standard in that state. The commission may grant a stay if it determines the regulatory opt out is being
27 pursued in a reasonable manner and there is a likelihood of success. If the commission grants or extends a stay,
28 the stay or extension may postpone the effective date by up to 90 days unless affirmatively extended by the
29 commission, provided that a stay may not be permitted to remain in effect for more than 1 year unless the
30 compacting state can show extraordinary circumstances that warrant a continuance of the stay, including but not

1 limited to the existence of a legal challenge that prevents the compacting state from opting out. The commission
2 may terminate a stay upon notice that the rulemaking process has been terminated.

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

9 Article VIII. Commission Records and Enforcement

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

16 (2) Except with regard to privileged records, data, and information, the laws of any compacting state
17 pertaining to confidentiality or nondisclosure may not relieve any compacting state commissioner of the duty to
18 disclose any relevant records, data, or information to the commission, provided that disclosure to the commission
19 may not be considered to waive or otherwise affect any confidentiality requirement and provided further that,
20 except as otherwise expressly provided in this compact, the commission may not be subject to the compacting
21 state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in its
22 possession. Confidential information of the commission must remain confidential after the information is provided
23 to any commissioner.

24 (3) The commission shall monitor compacting states for compliance with duly adopted bylaws, rules,
25 including uniform standards, and operating procedures. The commission shall notify any noncomplying
26 compacting state in writing of its noncompliance with commission bylaws, rules, or operating procedures. If a
27 noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of
28 noncompliance, the compacting state is considered to be in default as set forth in Article XIV.

29 (4) The commissioner of any state in which an insurer is authorized to do business or is conducting the
30 business of insurance shall continue to exercise 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 may 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.

(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 shall authorize the action. However, authorization pursuant to this subsection (4)(b) does not require notice to the insurer, opportunity for hearing, or disclosure of requests for authorization or records of the commission's action on the requests.

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 that may arise between two or more compacting states or between compacting states and noncompacting states, and the commission shall promulgate an operating procedure providing for resolution of the 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 compact may be construed to restrict or otherwise prevent an insurer from filing its product with the insurance department in any state in which the insurer is licensed to conduct the business of insurance, and the filing is 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 in this compact to the contrary, the commission shall promulgate rules to establish conditions and procedures under which the commission shall provide public access to product filing information. In establishing the rules, the commission shall consider the interests of the public in having access to the information, as well as protection of personal medical and financial information and trade secrets, that may be contained in a product filing or supporting information.

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

1 Article XI. Review of Commission Decisions Regarding Filings

2 (1) Not later than 30 days after the commission has given notice of a disapproved product or
3 advertisement filed with the commission, the insurer or third-party filer whose filing was disapproved may appeal
4 the determination to a review panel appointed by the commission. The commission shall promulgate rules to
5 establish procedures for appointing a review panel and provide for notice and hearing. An allegation that the
6 commission, in disapproving a product or advertisement filed with the commission, acted arbitrarily, capriciously,
7 or in a manner that is an abuse of discretion or otherwise not in accordance with the law is subject to judicial
8 review in accordance with Article III, subsection (4).

9 (2) The commission has authority to monitor, review, and reconsider products and advertisement
10 subsequent to their filing or approval upon a finding that the product does not meet the relevant uniform standard.
11 When appropriate, the commission may withdraw or modify its approval after proper notice and hearing subject
12 to the appeal process in subsection (1).

13 Article XII. Finance

14 (1) The commission shall pay or provide for the payment of the reasonable expenses of its establishment
15 and organization. To fund the cost of its initial operations, the commission may accept contributions and other
16 forms of funding from the national association of insurance commissioners, compacting states, and other sources.
17 Contributions and other forms of funding from other sources must be of such a nature that the independence of
18 the commission concerning the performance of its duties may not be compromised.

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

22 (3) The commission's budget for a fiscal year may not be approved until the budget has been subject
23 to notice and comment as set forth in Article VII.

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

25 (5) The commission may not pledge the credit of any compacting state except by and with the
26 appropriate legal authority of that compacting state.

27 (6) The commission shall keep complete and accurate accounts of all its internal receipts, including
28 grants and donations, and disbursements of all funds under its control. The internal financial accounts of the
29 commission are subject to the accounting procedures established under the commission bylaws. The financial
30 accounts and reports, including the system of internal controls and procedures of the commission, must be

1 audited annually by an independent certified public accountant. Upon the determination of the commission, but
2 no less frequently than every 3 years, the review of the independent auditor must include a management and
3 performance audit of the commission. The commission shall make an annual report to the governor and
4 legislature of the compacting states, which must include a report of the independent audit. The commission's
5 internal accounts are not confidential, and the materials may be shared with the commissioner of any compacting
6 state upon request. However, any work papers related to any internal or independent audit and any information
7 regarding the privacy of individuals and insurers' proprietary information, including trade secrets, must remain
8 confidential.

9 (7) No compacting state has any claim to or ownership of any property held by or vested in the
10 commission or to any commission funds held pursuant to the provisions of this compact.

11 Article XIII. Compacting States, Effective Date, and Amendment

12 (1) Any state is eligible to become a compacting state.

13 (2) The compact becomes effective and binding upon legislative enactment of the compact into law by
14 two compacting states; however, the commission becomes effective for purposes of adopting uniform standards
15 for, reviewing, and giving approval or disapproval of products filed with the commission that satisfy applicable
16 uniform standards only after 26 states are compacting states or, alternatively, by states representing greater than
17 40% of the premium volume for life insurance, annuity, disability income, and long-term care insurance products,
18 based on records of the national association of insurance commissioners for the prior year. Thereafter, the
19 compact becomes effective and binding as to any other compacting state upon enactment of the compact into
20 law by the state.

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

24 Article XIV. Withdrawal, Default, and Termination

25 (1) Withdrawal.

26 (a) Once effective, the compact continues in force and remains binding upon each compacting state,
27 provided that a compacting state may withdraw from the compact ("withdrawing state") by enacting a statute
28 specifically repealing the statute that enacted the compact into law.

29 (b) The effective date of withdrawal is the effective date of the repealing statute. The withdrawal may not
30 apply to any product filings approved or self-certified, or any advertisement of those products, on the date the

1 repealing statute becomes effective except by mutual agreement of the commission and the withdrawing state
2 unless the withdrawing state rescinds the approval as provided in subsection (1)(e).

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

5 (d) The commission shall notify the other compacting states of the introduction of the legislation within
6 10 days after its receipt of notice.

7 (e) The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the
8 effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date
9 of withdrawal, except to the extent those obligations may have been released or relinquished by mutual
10 agreement of the commission and the withdrawing state. The commission's approval of products and
11 advertisement prior to the effective date of withdrawal continues to be effective and must be given full force in
12 the withdrawing state unless formally rescinded by the withdrawing state in the same manner as provided by the
13 laws of the withdrawing state for the prospective disapproval of products or advertisement previously approved
14 under state law.

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

17 (2) Default.

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

29 (b) Product approvals by the commission, product self-certifications, or any advertisement in connection
30 with the product that is in force on the effective date of termination remains in force in the defaulting state in the

1 same manner as if the defaulting state had withdrawn voluntarily pursuant to subsection (1) of this article.

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

3 (3) Dissolution of compact.

4 (a) The compact dissolves effective upon the date of the withdrawal or default of the compacting state
5 that reduces membership in the compact to one compacting state.

6 (b) Upon the dissolution of this compact, the compact becomes null and void and is of no further force
7 and the business and affairs of the commission must be wound up and any surplus funds must be distributed in
8 accordance with the bylaws.

9 Article XV. Severability and Construction

10 (1) The provisions of this compact are severable, and if any phrase, clause, sentence, or provision is
11 considered unenforceable, the remaining provisions of the compact are enforceable.

12 (2) The provisions of this compact must be liberally construed to effectuate its purposes.

13 Article XVI. Binding Effect of Compact and Other Laws

14 (1) Other laws.

15 (a) Nothing in this compact prevents the enforcement of any other law of a compacting state, except as
16 provided in subsection (1)(b).

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

23 (i) the access of any person to state courts;

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

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

27 (iv) the authority of the attorney general of the state, including but not limited to maintaining any actions
28 or proceedings, as authorized by law.

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

30 (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.

(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 are ineffective as to that compacting state and those obligations, duties, powers, or jurisdiction remain in the compacting state and must be exercised by the agency of the compacting state to which those obligations, duties, powers, or jurisdictions are delegated by law in effect at the time this compact becomes effective.

ARTICLE XVII. STATE OF MONTANA OPT OUT

IN ACCORDANCE WITH THE PROVISIONS OF ARTICLE VII, SUBSECTION (4)(B), THE STATE OF MONTANA OPTS OUT OF ALL EXISTING AND PROSPECTIVE UNIFORM STANDARDS INVOLVING LONG-TERM CARE INSURANCE PRODUCTS AND ALL EXISTING UNIFORM STANDARDS INVOLVING INDIVIDUAL DISABILITY INCOME INSURANCE PRODUCTS IN ORDER TO PRESERVE THE STATE'S STATUTORY AND CONSTITUTIONAL REQUIREMENTS GOVERNING THESE INSURANCE PRODUCTS.

NEW SECTION. Section 2. Montana compact commissioner -- alternate. The commissioner of insurance provided for in 2-15-1903 or the commissioner's designated alternate shall represent this state on the interstate insurance product regulation commission.

~~NEW SECTION. Section 3. Rulemaking authority.~~ Consistent with the provisions of [section 1], the commissioner may adopt rules to:

~~(1) implement the rules and operating procedures adopted by the commission under [section 1]; and~~
~~(2) bring an action against an insurer, whether or not Montana is the domiciliary state, for violation of any provision, standard, or requirement of the compact.~~

NEW SECTION. Section 3. Opt-out duties, guidelines, remedies. (1) As a participant in the Interstate

Insurance Product Regulation Compact, the commissioner may opt out of any uniform standard that provides a materially lower level of protection for or materially diminishes the rights of Montana policyholders or policy applicants under Montana law.

(2) Using the time periods provided in Title 2, chapter 4, for adopting administrative procedures and prior to notifying the interstate insurance product regulation commission of a decision to opt out, the commissioner shall provide public notice and hold a public hearing to allow for comments on the decision to opt out.

(3) After taking public comment, the commissioner shall notify the interstate insurance product regulation commission, the governor, and the legislative council of the decision to opt out.

(4) A decision of the commissioner to opt out of a uniform standard may be appealed as provided in 33-1-711.

Section 4. Section 33-1-311, MCA, is amended to read:

"33-1-311. General powers and duties. (1) The commissioner shall enforce the applicable provisions of the laws of this state and shall execute the duties imposed on the commissioner by the laws of this state.

(2) The commissioner has the powers and authority expressly conferred upon the commissioner by or reasonably implied from the provisions of the laws of this state.

(3) ~~The~~ Except as otherwise provided in [section 1], the commissioner shall administer the department to ensure that the interests of insurance consumers are protected.

(4) The commissioner may conduct examinations and investigations of insurance matters, in addition to examinations and investigations expressly authorized, as the commissioner considers proper, to determine whether any person has violated any provision of the laws of this state or to secure information useful in the lawful administration of any provision. The cost of additional examinations and investigations must be borne by the state.

(5) The commissioner shall maintain as confidential any information or document received from:

(a) the national association of insurance commissioners; or

(b) another state agency, an insurance department from another state, a federal agency, the interstate insurance product regulation commission, or a foreign government that treats the same information or document as confidential. The commissioner may provide information or documents, including information or documents that are confidential, to another state agency, the national association of insurance commissioners, a state or federal law enforcement agency, a federal agency, the interstate insurance product regulation commission, a foreign government, or an insurance department in another state; if the recipient agrees to maintain the

1 confidentiality of the information or documents.

2 (6) The department is a criminal justice agency as defined in 44-5-103."

3
4 **Section 5.** Section 33-1-501, MCA, is amended to read:

5 **"33-1-501. Filing of forms -- approval -- review of disapproval or withdrawal of approval --**
6 **application.** (1) (a) An insurance policy or annuity contract form, certificate, enrollment form, application form,
7 printed rider or endorsement form, or form of renewal certificate may not be delivered or issued for delivery in
8 Montana unless the form and, for the purposes of disability insurance, an outline of coverage as required by
9 33-22-244 and 33-22-521 have been filed with and approved by the commissioner and, if required, the regulatory
10 official of the state of domicile of the insurer or the interstate insurance product regulation commission provided
11 for in [section 1]. This provision does not apply to surety bonds or policies, riders, endorsements, or forms of
12 unique character designed for and used with relation to insurance upon a particular subject or that relate to the
13 manner of distribution of benefits or to the reservation of rights and benefits under life or disability insurance
14 policies and are used at the request of the individual policyholder, contract holder, or certificate holder. Forms
15 for use in property, marine, other than ocean marine and foreign trade coverages, casualty, and surety insurance
16 coverages may be filed by a rating organization on behalf of its members and subscribers or by a member or
17 subscriber on its own behalf.

18 (b) A filing required by subsection (1)(a) must be submitted by an officer of the insurer with a certification
19 in a form prescribed by the commissioner. The certification must state that to the best of the officer's knowledge
20 and belief, the policy, contract form, certificate, enrollment form, application form, printed rider or endorsement
21 form, or form of renewal certificate complies with the applicable provisions of Title 33.

22 (c) The approval of an insurance policy or annuity contract form, certificate, enrollment form, application
23 form, or other related insurance form by the state of domicile or the interstate insurance product regulation
24 commission may be waived by the commissioner if the commissioner considers the requirements of subsection
25 (1)(a) unnecessary for the protection of Montana insurance consumers. If the requirement is waived, an insurer
26 shall notify the commissioner in writing within 10 days of disapproval, denial, or withdrawal of approval of a form
27 by the state of domicile or the interstate insurance product regulation commission.

28 (2) (a) The filing must be made not less than 60 days before delivery and must be delivered by hand or
29 sent by certified mail with a return receipt requested. The commissioner's office shall mark a filing with the date
30 of receipt by the commissioner's office.

(b) (i) If after 60 days from the date of receipt by the commissioner's office the commissioner has not approved or disapproved the form by a notice pursuant to the provisions in subsection (4), the form is considered approved for all purposes, subject to subsection (2)(c).

(ii) The running of the 60-day period is tolled for a period commencing on the date that the commissioner notifies the insurer of problems or questions and requests additional information from the insurer concerning a form filed pursuant to subsection (1)(a) and ending on the date that the insurer submits its response to the commissioner.

(iii) For purposes of tolling the 60-day period as provided in subsection (2)(b)(ii), the commissioner's request notification may be made electronically.

(c) In a letter separate from the original filing and delivered by hand or sent by certified mail with return receipt requested, the insurer shall notify the commissioner, at least 10 days before the use of the form in the market, that the insurer believes that:

(i) the form has been or will be considered approved; and

(ii) the insurer will begin marketing the form in Montana.

(d) The commissioner's office shall mark a letter received pursuant to subsection (2)(c) with the date of receipt by the commissioner's office.

(3) Approval of a form by the commissioner constitutes a waiver of any unexpired portion of the waiting period.

(4) The commissioner may at any time, after notice and for cause shown, withdraw any approval. Notice by the commissioner disapproving a form or withdrawing a previous approval must state the grounds for disapproval or withdrawal in sufficient detail to inform the insurer of the specific reason or reasons for and the legal authority supporting the disapproval or withdrawal of approval in whole or in part. The disapproval or withdrawal of approval does not take effect unless it is issued after the commissioner has reviewed the form and provided notice to the person who filed the form pursuant to 33-1-314 and this subsection.

(5) After the date of the insurer's receipt of notice of disapproval or withdrawal of approval by the commissioner, the insurer may not deliver the form or issue the form for delivery in Montana.

(6) The insurer may request a hearing, as provided for in 33-1-701, for unresolved disputes regarding a disapproval or a withdrawal of approval.

(7) The commissioner may exempt from the requirements of this section, for so long as the commissioner considers proper, an insurance document, form, or type of document or form to which, in the commissioner's

1 opinion, this section may not practicably be applied or the filing and approval of which are not desirable or
2 necessary for the protection of the public.

3 (8) This section applies to a form used by a domestic insurer for delivery in a jurisdiction outside Montana
4 if the insurance supervisory official of the jurisdiction informs the commissioner that the form is not subject to
5 approval or disapproval by the official and upon the commissioner's order requiring the form to be submitted to
6 the commissioner for the purpose. The same standards apply to these forms as apply to forms for domestic use.

7 (9) Section 33-1-502 and this section do not apply to:

8 (a) reinsurance;

9 (b) policies or contracts not issued for delivery in Montana or delivered in Montana, except as provided
10 in subsection (8);

11 (c) ocean marine and foreign trade insurances.

12 (10) Except as provided in chapter 21, group certificates that are delivered or issued for delivery in
13 Montana for group insurance policies effectuated and delivered outside Montana but covering persons resident
14 in Montana must be filed with the commissioner upon request. The certificates must meet the minimum provisions
15 mandated by Montana if Montana law prevails over conflicting provisions of other state law."
16

17 ~~Section 7. Section 33-22-1103, MCA, is amended to read:~~

18 ~~"33-22-1103. Compliance required -- exception. (1) A Except as provided in subsection (2), a policy~~
19 ~~may not be advertised, marketed, or offered in this state as long-term care insurance or nursing home insurance~~
20 ~~unless it the policy complies with this part.~~

21 ~~(2) A policy for long-term care insurance that is approved by the interstate insurance product regulation~~
22 ~~commission provided for in [section 1] is exempt from compliance with this part."~~

23
24 NEW SECTION. **Section 6. Codification instruction.** [Sections 1 through 4 3] are intended to be
25 codified as an integral part of Title 33, and the provisions of Title 33 apply to [sections 1 through 4 3].

26
27 NEW SECTION. **Section 7. Two-thirds vote required.** Because [section 1] limits governmental liability,
28 Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of
29 the legislature for passage.
30

2 - END -