

SB 431 5

FILED

2004 APR -2 P 4: 01

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE  
Regular Session, 2004

**ENROLLED**

*Committee Substitute for Committee Substitute for*  
SENATE BILL NO. 431

(By Senator Minard )

PASSED March 12, 2004

In Effect *ninety days from* **Passage**

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COMMITTEE SUBSTITUTE

FOR

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FOR

## Senate Bill No. 431

(SENATOR MINARD, *original sponsor*)

[Passed March 12, 2004; in effect ninety days from passage.]

AN ACT to amend the code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-47-1, §33-47-2, §33-47-3, §33-47-4, §33-47-5, §33-47-6, §33-47-7, §33-47-8, §33-47-9, §33-47-10, §33-47-11, §33-47-12, §33-47-13, §33-47-14, §33-47-15, §33-47-16 and §33-47-17, all relating to the establishment and operation of an interstate compact for the review and approval of certain lines of insurance products; setting forth the purposes for establishing the compact; protecting the interests of consumers and promoting uniform standards for insurance products; setting forth definitions; establishing the interstate insurance product regulation commission which has the power to develop uniform standards for product lines, to receive and approve those product filings and to be an instrumentality of the compacting states; setting forth the powers of the interstate

insurance product regulation commission to promulgate rules, establish reasonable uniform standards for product filings, review products filed with the commission, review advertisement relating to long-term care insurance, exercise its rule-making authority, bring legal actions, issue subpoenas, undertake activities relating to the administration of the commission and appoint committees; setting forth provisions relating to organization of the commission; memberships and voting rights of states and participation in the governance of the commission; creation and content of bylaws of the commission; setting forth provisions relating to meetings and acts of the commission; establishing rule-making authority of the commission; exempting rules promulgated by the commission from the provisions of chapter twenty-nine-a of this code; allowing states to opt out of rules promulgated by the commission; setting forth provisions relating to the maintenance and disclosure of commission records; commission's power to monitor states' compliance with the compact, but preserving to states the ability to regulate the market conduct of insurers; setting forth provisions relating to resolution of disputes between compacting states and noncompacting states; setting forth requirements for filing products with the commission; setting forth appeal rights of insurers following disapproval of filings; setting forth provisions relating to the mechanism for funding the operations of the commission, including the collection of filing fees; setting forth the circumstances under which the compact will become effective and requiring twenty-six states or states representing forty percent of premium volume for the effected insurance lines to adopt the compact before the commission may adopt uniform standards and approve filings; setting forth the procedures for states to withdraw from the compact and circumstances under which a state will be determined to be in default of the compact; provisions relating to severability; requiring the insurance commissioner to file in the state register rules or uniform standards adopted by the commission and which have become effective in this state; and provisions relating to the binding effect of the compact.

*Be it enacted by the Legislature of West Virginia:*

That the code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §33-47-1, §33-47-2, §33-47-3, §33-47-4, §33-47-5, §33-47-6, §33-47-7, §33-47-8, §33-47-9, §33-47-10, §33-47-11, §33-47-12, §33-47-13, §33-47-14, §33-47-15, §33-47-16 and §33-47-17, all to read as follows:

**ARTICLE 47. INTERSTATE INSURANCE PRODUCT REGULATION COMPACT.**

**§33-47-1. Purposes.**

1 Pursuant to terms and conditions of this article, the state  
2 of West Virginia seeks to join with other states and  
3 establish the interstate insurance product regulation  
4 compact and thus become a member of the interstate  
5 insurance product regulation commission. The insurance  
6 commissioner is hereby designated to serve as the repre-  
7 sentative of this state to the commission.

8 The purposes of this compact are, through means of joint  
9 and cooperative action among the compacting states:

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

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

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

20 (4) To give appropriate regulatory approval to those  
21 product filings and advertisements satisfying the applica-  
22 ble uniform standard;

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

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

29 (7) To perform these and such other related functions as  
30 may be consistent with the state regulation of the business  
31 of insurance.

**§33-47-2. Definitions.**

1 For purposes of this compact:

2 (a) "Advertisement" means any material designed to  
3 create public interest in a product, or induce the public to  
4 purchase, increase, modify, reinstate, borrow on, surren-  
5 der, replace or retain a policy as more specifically defined  
6 in the rules and operating procedures of the commission.

7 (b) "Bylaws" mean those bylaws established by the  
8 commission for its governance or for directing or control-  
9 ling the commission's actions or conduct.

10 (c) "Compacting state" means any state which has  
11 enacted this compact legislation and which has not  
12 withdrawn pursuant to subsection (a), section fourteen of  
13 this article or been terminated pursuant to subsection (b)  
14 of said section.

15 (d) "Commission" means the "interstate insurance  
16 product regulation commission" established by this  
17 compact.

18 (e) "Commissioner" means the insurance commissioner  
19 of the state of West Virginia.

20 (f) "Domiciliary state" means the state in which an  
21 insurer is incorporated or organized; or, in the case of an  
22 alien insurer, its state of entry.

23 (g) "Insurer" means any entity licensed by a state to  
24 issue contracts of insurance for any of the lines of insur-  
25 ance covered by this article.

26 (h) "Member" means the person chosen by a compacting  
27 state as its representative to the commission or his or her  
28 designee.

29 (i) "Noncompacting state" means any state which is not  
30 at the time a compacting state.

31 (j) "Operating procedures" mean procedures promul-  
32 gated by the commission implementing a rule, uniform  
33 standard or a provision of this compact.

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

41 (l) "Rule" means a statement of general or particular  
42 applicability and future effect promulgated by the com-  
43 mission, including a uniform standard developed pursuant  
44 to section seven of this article, designed to implement,  
45 interpret or prescribe law or policy or describing the  
46 organization, procedure or practice requirements of the  
47 commission, which shall have the force and effect of law  
48 in the compacting states.

49 (m) "State" means any state, district or territory of the  
50 United States of America.

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

53 (o) "Uniform standard" means a standard adopted by the  
54 commission for a product line, pursuant to section seven of  
55 this article and shall include all of the product require-  
56 ments in aggregate: *Provided*, That each uniform standard

57 shall be construed, whether express or implied, to prohibit  
58 the use of any inconsistent, misleading or ambiguous  
59 provisions in a product and the form of the product made  
60 available to the public shall not be unfair, inequitable or  
61 against public policy as determined by the commission.

**§33-47-3. Establishment of the commission and venue.**

1 (a) The compacting states hereby create and establish a  
2 joint public agency known as the “interstate insurance  
3 product regulation commission”. Pursuant to section four  
4 of this article, the commission will have the power to  
5 develop uniform standards for product lines, receive and  
6 provide prompt review of products filed therewith and  
7 give approval to those product filings satisfying applicable  
8 uniform standards: *Provided*, That it is not intended for  
9 the commission to be the exclusive entity for receipt and  
10 review of insurance product filings. Nothing herein shall  
11 prohibit any insurer from filing its product in any state  
12 wherein the insurer is licensed to conduct the business of  
13 insurance; and any such filing shall be subject to the laws  
14 of the state where filed.

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

17 (c) The commission is solely responsible for its liabilities  
18 except as otherwise specifically provided in this article.

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

**§33-47-4. Powers of the commission.**

1 The commission shall have the following powers:

2 (a) To promulgate rules, pursuant to section seven of this  
3 article, which shall have the force and effect of law and  
4 shall be binding in the compacting states to the extent and  
5 in the manner provided in this article;

6 (b) To exercise its rule-making authority and establish  
7 reasonable uniform standards for products covered under  
8 the compact, and advertisement related thereto, which  
9 shall have the force and effect of law and shall be binding  
10 in the compacting states, but only for those products filed  
11 with the commission: *Provided*, That a compacting state  
12 shall have the right to opt out of any uniform standard  
13 pursuant to section seven of this article, to the extent and  
14 in the manner provided in this article: *Provided, however*,  
15 That any uniform standard established by the commission  
16 for long-term care insurance products may provide the  
17 same or greater protections for consumers as, but shall not  
18 provide less than, those protections set forth in the na-  
19 tional association of insurance commissioners' long-term  
20 care insurance model act and long-term care insurance  
21 model regulation, respectively, adopted as of two thousand  
22 one. The commission shall consider whether any subse-  
23 quent amendments to the national association of insurance  
24 commissioners' long-term care insurance model act or the  
25 long-term care insurance model regulation adopted by the  
26 national association of insurance commissioners require  
27 the commissioner to amend the uniform standards estab-  
28 lished by the commission for long-term care insurance  
29 products;

30 (c) To receive and review in an expeditious manner  
31 products filed with the commission and rate filings for  
32 disability income and long-term care insurance products  
33 and give approval of those products and rate filings that  
34 satisfy the applicable uniform standard, where such  
35 approval shall have the force and effect of law and be  
36 binding on the compacting states to the extent and in the  
37 manner provided in the compact;

38 (d) To receive and review in an expeditious manner  
39 advertisement relating to long-term care insurance  
40 products for which uniform standards have been adopted  
41 by the commission, and give approval to all advertisement  
42 that satisfies the applicable uniform standard. For any  
43 product covered under this compact, other than long-term



44 care insurance products, the commission shall have the  
45 authority to require an insurer to submit all or any part of  
46 its advertisement with respect to that product for review  
47 or approval prior to use, if the commission determines that  
48 the nature of the product is such that an advertisement of  
49 the product could have the capacity or tendency to mislead  
50 the public. The actions of the commission as provided in  
51 this subsection shall have the force and effect of law and  
52 shall be binding in the compacting states to the extent and  
53 in the manner provided in the compact;

54 (e) To exercise its rule-making authority and designate  
55 products and advertisement that may be subject to a  
56 self-certification process without the need for prior  
57 approval by the commission;

58 (f) To promulgate operating procedures, pursuant to  
59 section seven of this article, which shall be binding in the  
60 compacting states to the extent and in the manner pro-  
61 vided in this article;

62 (g) To bring and prosecute legal proceedings or actions  
63 in its name as the commission: *Provided*, That the stand-  
64 ing of any state insurance department to sue or be sued  
65 under applicable law shall not be affected;

66 (h) To issue subpoenas requiring the attendance and  
67 testimony of witnesses and the production of evidence;

68 (i) To establish and maintain offices;

69 (j) To purchase and maintain insurance and bonds;

70 (k) To borrow, accept or contract for services of person-  
71 nel, including, but not limited to, employees of a compact-  
72 ing state;

73 (l) To hire employees, professionals or specialists and  
74 elect or appoint officers and to fix their compensation,  
75 define their duties and give them appropriate authority to  
76 carry out the purposes of the compact and determine their  
77 qualifications; and to establish the commission's personnel

78 policies and programs relating to, among other things,  
79 conflicts of interest, rates of compensation and qualifica-  
80 tions of personnel;

81 (m) To accept any and all appropriate donations and  
82 grants of money, equipment, supplies, materials and  
83 services and to receive, utilize and dispose of the same:  
84 *Provided*, That at all times the commission shall strive to  
85 avoid any appearance of impropriety;

86 (n) To lease, purchase, accept appropriate gifts or  
87 donations of, or otherwise to own, hold, improve or use,  
88 any property, real, personal or mixed: *Provided*, That at  
89 all times the commission shall strive to avoid any appear-  
90 ance of impropriety;

91 (o) To sell, convey, mortgage, pledge, lease, exchange,  
92 abandon or otherwise dispose of any property, real,  
93 personal or mixed;

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

96 (q) To enforce compliance by compacting states with  
97 rules, uniform standards, operating procedures and  
98 bylaws;

99 (r) To provide for dispute resolution among compacting  
100 states;

101 (s) To advise compacting states on issues relating to  
102 insurers domiciled or doing business in noncompacting  
103 jurisdictions, consistent with the purposes of this compact;

104 (t) To provide advice and training to those personnel in  
105 state insurance departments responsible for product  
106 review and to be a resource for state insurance depart-  
107 ments;

108 (u) To establish a budget and make expenditures;

109 (v) To borrow money;

110 (w) To appoint committees, including advisory commit-  
111 tees comprising members, state insurance regulators, state  
112 legislators or their representatives, insurance industry and  
113 consumer representatives and any other interested persons  
114 as may be designated in the bylaws;

115 (x) To provide and receive information from, and to  
116 cooperate with, law-enforcement agencies;

117 (y) To adopt and use a corporate seal; and

118 (z) To perform such other functions as may be necessary  
119 or appropriate to achieve the purposes of this compact  
120 consistent with the state regulation of the business of  
121 insurance.

**§33-47-5. Organization of the commission.**

1 (a) Membership, voting and bylaws of the commission  
2 shall be as follows:

3 (1) Each compacting state shall have and be limited to  
4 one member. Each member shall be qualified to serve in  
5 that capacity pursuant to applicable law of the compact-  
6 ing state. Any member may be removed or suspended from  
7 office as provided by the law of the state from which he or  
8 she is appointed. Any vacancy occurring in the commis-  
9 sion shall be filled in accordance with the laws of the  
10 compacting state wherein the vacancy exists. Nothing  
11 herein may be construed to affect the manner in which a  
12 compacting state determines the election or appointment  
13 and qualification of its own commissioner.

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

21 (3) The commission shall, by a majority of the members,  
22 prescribe bylaws to govern its conduct as may be necessary

23 or appropriate to carry out the purposes, and exercise the  
24 powers, of the compact, including, but not limited to:

25 (A) Establishing the fiscal year of the commission;

26 (B) Providing reasonable procedures for appointing and  
27 electing members, as well as holding meetings, of the  
28 management committee;

29 (C) Providing reasonable standards and procedures for  
30 the establishment and meetings of other committees, and  
31 providing standards and procedures governing any general  
32 or specific delegation of any authority or function of the  
33 commission;

34 (D) Providing reasonable procedures for calling and  
35 conducting meetings of the commission that consist of a  
36 majority of commission members, ensuring reasonable  
37 advance notice of each such meeting and providing for the  
38 right of citizens to attend each such meeting with enumer-  
39 ated exceptions designed to protect the public's interest,  
40 the privacy of individuals, and insurers' proprietary  
41 information, including trade secrets. The commission may  
42 meet in camera only after a majority of the entire member-  
43 ship votes to close a meeting *en toto* or in part. As soon as  
44 practicable, the commission must make public a copy of  
45 the vote to close the meeting revealing the vote of each  
46 member with no proxy votes allowed, and the votes taken  
47 during such meeting;

48 (E) Establishing the titles, duties and authority and  
49 reasonable procedures for the election of the officers of the  
50 commission;

51 (F) Providing reasonable standards and procedures for  
52 the establishment of the personnel policies and programs  
53 of the commission. Notwithstanding any civil service or  
54 other similar laws of any compacting state, the bylaws  
55 shall exclusively govern the personnel policies and pro-  
56 grams of the commission;

57 (G) Promulgating a code of ethics to address permissible  
58 and prohibited activities of commission members and  
59 employees; and

60 (H) Providing a mechanism for winding up the opera-  
61 tions of the commission and the equitable disposition of  
62 any surplus funds that may exist after the termination of  
63 the compact after the payment and reserving of all of its  
64 debts and obligations.

65 (4) The commission shall publish its bylaws in a conve-  
66 nient form and file a copy thereof and a copy of any  
67 amendment thereto, with the appropriate agency or officer  
68 in each of the compacting states.

69 (b) Management committee, officers and personnel.

70 (1) A Management committee comprising no more than  
71 fourteen members shall be established as follows:

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

77 (B) Four members from those compacting states with at  
78 least two percent of the market based on the premium  
79 volume described above, other than the six compacting  
80 states with the largest premium volume, selected on a  
81 rotating basis as provided in the bylaws; and

82 (C) Four members from those compacting states with less  
83 than two percent of the market, based on the premium  
84 volume described above, with one selected from each of  
85 the four zone regions of the NAIC as provided in the  
86 bylaws.

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

90 (A) Managing the affairs of the commission in a manner  
91 consistent with the bylaws and purposes of the commis-  
92 sion;

93 (B) Establishing and overseeing an organizational  
94 structure within, and appropriate procedures for, the  
95 commission to provide for the creation of uniform stan-  
96 dards and other rules, receipt and review of product  
97 filings, administrative and technical support functions,  
98 review of decisions regarding the disapproval of a product  
99 filing, and the review of elections made by a compacting  
100 state to opt out of a uniform standard: *Provided*, That a  
101 uniform standard shall not be submitted to the compacting  
102 states for adoption unless approved by two thirds of the  
103 members of the management committee;

104 (C) Overseeing the offices of the commission; and

105 (D) Planning, implementing and coordinating communi-  
106 cations and activities with other state, federal and local  
107 government organizations in order to advance the goals of  
108 the commission.

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

112 (4) The management committee may, subject to the  
113 approval of the commission, appoint or retain an executive  
114 director for such period, upon such terms and conditions  
115 and for such compensation as the commission may deem  
116 appropriate. The executive director shall serve as secre-  
117 tary to the commission, but shall not be a member of the  
118 commission. The executive director shall hire and super-  
119 vise such other staff as may be authorized by the commis-  
120 sion.

121 (c) Legislative and advisory committees.

122 (1) A legislative committee comprising state legislators  
123 or their designees shall be established to monitor the  
124 operations of, and make recommendations to, the commis-

125 sion, including the management committee: *Provided,*  
126 That the manner of selection and term of any legislative  
127 committee member shall be as set forth in the bylaws.  
128 Prior to the adoption by the commission of any uniform  
129 standard, revision to the bylaws, annual budget or other  
130 significant matter as may be provided in the bylaws, the  
131 management committee shall consult with and report to  
132 the legislative committee.

133 (2) The commission shall establish two advisory commit-  
134 tees, one of which shall comprise consumer representatives  
135 independent of the insurance industry, and the other  
136 comprising insurance industry representatives.

137 (3) The commission may establish additional advisory  
138 committees as its bylaws may provide for the carrying out  
139 of its functions.

140 (d) Corporate records of the commission.

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

143 (e) Qualified immunity, defense and indemnification.

144 (1) The members, officers, executive director, employees  
145 and representatives of the commission shall be immune  
146 from suit and liability, either personally or in their official  
147 capacity, for any claim for damage to or loss of property or  
148 personal injury or other civil liability caused by or arising  
149 out of any actual or alleged act, error or omission that  
150 occurred, or that the person against whom the claim is  
151 made had a reasonable basis for believing occurred within  
152 the scope of commission employment, duties or responsi-  
153 bilities: *Provided,* That nothing in this subdivision shall  
154 be construed to protect any such person from suit or  
155 liability for any damage, loss, injury or liability caused by  
156 the intentional or willful and wanton misconduct of that  
157 person.

158 (2) The commission shall defend any member, officer,  
159 executive director, employee or representative of the

160 commission in any civil action seeking to impose liability  
161 arising out of any actual or alleged act, error or omission  
162 that occurred within the scope of commission employment,  
163 duties or responsibilities, or that the person against whom  
164 the claim is made had a reasonable basis for believing  
165 occurred within the scope of commission employment,  
166 duties or responsibilities: *Provided*, That nothing herein  
167 shall be construed to prohibit that person from retaining  
168 his or her own counsel: *Provided, however*, That the  
169 actual or alleged act, error or omission did not result from  
170 that person's intentional or willful and wanton miscon-  
171 duct.

172 (3) The commission shall indemnify and hold harmless  
173 any member, officer, executive director, employee or  
174 representative of the commission for the amount of any  
175 settlement or judgment obtained against that person  
176 arising out of any actual or alleged act, error or omission  
177 that occurred within the scope of commission employment,  
178 duties or responsibilities or that such person had a reason-  
179 able basis for believing occurred within the scope of  
180 commission employment, duties or responsibilities:  
181 *Provided*, That the actual or alleged act, error or omission  
182 did not result from the intentional or willful and wanton  
183 misconduct of that person.

**§33-47-6. Meetings and acts of the commission.**

1 (a) The commission shall meet and take such actions as  
2 are consistent with the provisions of this compact and the  
3 bylaws.

4 (b) Each member of the commission shall have the right  
5 and power to cast a vote to which that compacting state is  
6 entitled and to participate in the business and affairs of  
7 the commission. A member shall vote in person or by such  
8 other means as provided in the bylaws. The bylaws may  
9 provide for members' participation in meetings by tele-  
10 phone or other means of communication.



11 (c) The commission shall meet at least once during each  
12 calendar year. Additional meetings shall be held as set  
13 forth in the bylaws.

**§33-47-7. Rules and operating procedures: rule-making functions of the commission and opting out of uniform standards.**

1 (a) *Rule-making authority.* – The commission shall  
2 promulgate reasonable rules, including uniform standards,  
3 and operating procedures in order to effectively and  
4 efficiently achieve the purposes of this compact. Notwith-  
5 standing the foregoing, in the event the commission  
6 exercises its rule-making authority in a manner that is  
7 beyond the scope of the purposes of this article, or the  
8 powers granted hereunder, then such an action by the  
9 commission shall be invalid and have no force and effect.

10 (b) *Rule-making procedure.* – Rules and operating  
11 procedures shall be made pursuant to a rule-making  
12 process that conforms to the model state administrative  
13 procedure act of 1981, as amended, as may be appropriate  
14 to the operations of the commission. Before the commis-  
15 sion adopts a uniform standard, the commission shall give  
16 written notice to the relevant state legislative committee  
17 or committees in each compacting state responsible for  
18 insurance issues of its intention to adopt the uniform  
19 standard. The commission in adopting a uniform standard  
20 shall consider fully all submitted materials and issue a  
21 concise explanation of its decision. Notwithstanding any  
22 provision of this code to the contrary, the commission is  
23 authorized to promulgate rules in the manner set forth in  
24 this section. Rules promulgated by the commission  
25 pursuant to this section are not subject to the provisions of  
26 article three, chapter twenty-nine-a of this code and will  
27 become effective pursuant to the procedures set forth in  
28 this section notwithstanding any provisions of article  
29 three, chapter twenty-nine-a of this code to the contrary.

30 (c) *Effective date and opt out of a uniform standard.* – A  
31 uniform standard shall become effective ninety (90) days

32 after its promulgation by the commission or such later  
33 date as the commission may determine: *Provided*, That a  
34 compacting state may opt out of a uniform standard as  
35 provided in this section. "Opt out" is defined as any  
36 action by a compacting state to decline to adopt or partici-  
37 pate in a promulgated uniform standard. All other rules  
38 and operating procedures, and amendments thereto, shall  
39 become effective as of the date specified in each rule,  
40 operating procedure or amendment.

41 (d) *Opt out procedure.* – A compacting state may opt out  
42 of a uniform standard, either by legislation or regulation  
43 duly promulgated by the insurance department under the  
44 compacting state's administrative procedure act. If a  
45 compacting state elects to opt out of a uniform standard  
46 by regulation, it must: (a) Give written notice to the  
47 commission no later than ten business days after the  
48 uniform standard is promulgated, or at the time the state  
49 becomes a compacting state; and (b) find that the uniform  
50 standard does not provide reasonable protections to the  
51 citizens of the state, given the conditions in the state. The  
52 commissioner shall make specific findings of fact and  
53 conclusions of law, based on a preponderance of the  
54 evidence, detailing the conditions in the state which  
55 warrant a departure from the uniform standard and  
56 determining that the uniform standard would not reason-  
57 ably protect the citizens of the state. The commissioner  
58 must consider and balance the following factors and find  
59 that the conditions in the state and needs of the citizens of  
60 the state outweigh: (i) The intent of the Legislature to  
61 participate in, and the benefits of, an interstate agreement  
62 to establish national uniform consumer protections for the  
63 products subject to this article; and (ii) the presumption  
64 that a uniform standard adopted by the commission  
65 provides reasonable protections to consumers of the  
66 relevant product.

67 Notwithstanding the foregoing, a compacting state may,  
68 at the time of its enactment of this compact, prospectively  
69 opt out of all uniform standards involving long-term care

70 insurance products by expressly providing for such opt out  
71 in the enacted compact, and such an opt out shall not be  
72 treated as a material variance in the offer or acceptance of  
73 any state to participate in this compact. Such an opt out  
74 shall be effective at the time of enactment of this compact  
75 by the compacting state and shall apply to all existing  
76 uniform standards involving long-term care insurance  
77 products and those subsequently promulgated.

78 (e) *Effect of opt out.* – If a compacting state elects to opt  
79 out of a uniform standard, the uniform standard shall  
80 remain applicable in the compacting state electing to opt  
81 out until such time as the opt out legislation is enacted  
82 into law or the regulation opting out becomes effective.

83 Once the opt out of a uniform standard by a compacting  
84 state becomes effective as provided under the laws of that  
85 state, the uniform standard shall have no further force and  
86 effect in that state unless and until the legislation or  
87 regulation implementing the opt out is repealed or other-  
88 wise becomes ineffective under the laws of the state. If a  
89 compacting state opts out of a uniform standard after the  
90 uniform standard has been made effective in that state, the  
91 opt out shall have the same prospective effect as provided  
92 under section fourteen of this article for withdrawals.

93 (f) *Stay of uniform standard.* – If a compacting state has  
94 formally initiated the process of opting out of a uniform  
95 standard by regulation, and while the regulatory opt out  
96 is pending, the compacting state may petition the commis-  
97 sion, at least fifteen days before the effective date of the  
98 uniform standard, to stay the effectiveness of the uniform  
99 standard in that state. The commission may grant a stay  
100 if it determines the regulatory opt out is being pursued in  
101 a reasonable manner and there is a likelihood of success.  
102 If a stay is granted or extended by the commission, the  
103 stay or extension thereof may postpone the effective date  
104 by up to ninety days, unless affirmatively extended by the  
105 commission: *Provided*, That a stay may not be permitted  
106 to remain in effect for more than one year unless the

107 compacting state can show extraordinary circumstances  
108 which warrant a continuance of the stay, including, but  
109 not limited to, the existence of a legal challenge which  
110 prevents the compacting state from opting out. A stay  
111 may be terminated by the commission upon notice that the  
112 rule-making process has been terminated.

113 (g) Not later than thirty days after a rule or operating  
114 procedure is promulgated, any person may file a petition  
115 for judicial review of the rule or operating procedure:  
116 *Provided*, That the filing of such a petition shall not stay  
117 or otherwise prevent the rule or operating procedure from  
118 becoming effective unless the court finds that the peti-  
119 tioner has a substantial likelihood of success. The court  
120 shall give deference to the actions of the commission  
121 consistent with applicable law and shall not find the rule  
122 or operating procedure to be unlawful if the rule or  
123 operating procedure represents a reasonable exercise of  
124 the commission's authority.

**§33-47-8. Commission records and enforcement.**

1 (a) The commission shall promulgate rules establishing  
2 conditions and procedures for public inspection and  
3 copying of its information and official records, except such  
4 information and records involving the privacy of individu-  
5 als and insurers' trade secrets. The commission may  
6 promulgate additional rules under which it may make  
7 available to federal and state agencies, including law-  
8 enforcement agencies, records and information otherwise  
9 exempt from disclosure, and may enter into agreements  
10 with such agencies to receive or exchange information or  
11 records subject to nondisclosure and confidentiality  
12 provisions.

13 (b) Except as to privileged records, data and informa-  
14 tion, the laws of any compacting state pertaining to  
15 confidentiality or nondisclosure shall not relieve any  
16 compacting state commissioner of the duty to disclose any  
17 relevant records, data or information to the commission:

18 *Provided*, That disclosure to the commission shall not be  
19 deemed to waive or otherwise affect any confidentiality  
20 requirement: *Provided, however*, That, except as otherwise  
21 expressly provided in this article, the commission shall not  
22 be subject to the compacting state's laws pertaining to  
23 confidentiality and nondisclosure with respect to records,  
24 data and information in its possession. Confidential  
25 information of the commission shall remain confidential  
26 after such information is provided to any commissioner.

27 (c) The commission shall monitor compacting states for  
28 compliance with duly adopted bylaws, rules, including  
29 uniform standards, and operating procedures. The com-  
30 mission shall notify any noncomplying compacting state in  
31 writing of its noncompliance with commission bylaws,  
32 rules or operating procedures. If a noncomplying com-  
33 pacting state fails to remedy its noncompliance within the  
34 time specified in the notice of noncompliance, the com-  
35 pacting state shall be deemed to be in default as set forth  
36 in section fourteen of this article.

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

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

52 (2) Before a commissioner may bring an action for  
53 violation of any provision, standard or requirement of the

54 compact relating to the content of an advertisement not  
55 approved or certified to the commission, the commission,  
56 or an authorized commission officer or employee, must  
57 authorize the action. However, authorization pursuant to  
58 this subdivision does not require notice to the insurer,  
59 opportunity for hearing or disclosure of requests for  
60 authorization or records of the commission's action on  
61 such requests.

**§33-47-9. Dispute resolution.**

1 The commission shall attempt, upon the request of a  
2 member, to resolve any disputes or other issues that are  
3 subject to this compact and which may arise between two  
4 or more compacting states, or between compacting states  
5 and noncompacting states, and the commission shall  
6 promulgate an operating procedure providing for resolu-  
7 tion of such disputes.

**§33-47-10. Product filing and approval.**

1 (a) Insurers and third-party filers seeking to have a  
2 product approved by the commission shall file the product  
3 with, and pay applicable filing fees to, the commission.  
4 Nothing in this article shall be construed to restrict or  
5 otherwise prevent an insurer from filing its product with  
6 the insurance department in any state wherein the insurer  
7 is licensed to conduct the business of insurance, and such  
8 filing shall be subject to the laws of the states where filed.

9 (b) The commission shall establish appropriate filing and  
10 review processes and procedures pursuant to commission  
11 rules and operating procedures. Notwithstanding any  
12 provision herein to the contrary, the commission shall  
13 promulgate rules to establish conditions and procedures  
14 under which the commission will provide public access to  
15 product filing information. In establishing such rules, the  
16 commission shall consider the interests of the public in  
17 having access to such information, as well as protection of  
18 personal medical and financial information and trade

19 secrets, that may be contained in a product filing or  
20 supporting information.

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

**§33-47-11. Review of commission decisions regarding filings.**

1 (a) Not later than thirty days after the commission has  
2 given notice of a disapproved product or advertisement  
3 filed with the commission, the insurer or third-party filer  
4 whose filing was disapproved may appeal the determina-  
5 tion to a review panel appointed by the commission. The  
6 commission shall promulgate rules to establish procedures  
7 for appointing such review panels and provide for notice  
8 and hearing. An allegation that the commission, in  
9 disapproving a product or advertisement filed with the  
10 commission, acted arbitrarily, capriciously, or in a manner  
11 that is an abuse of discretion or otherwise not in accor-  
12 dance with the law, is subject to judicial review in accor-  
13 dance with subsection (d), section three of this article.

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

**§33-47-12. Finance.**

1 (a) The commission shall pay or provide for the payment  
2 of the reasonable expenses of its establishment and  
3 organization. To fund the cost of its initial operations, the  
4 commission may accept contributions and other forms of  
5 funding from the national association of insurance com-  
6 missioners, compacting states and other sources. Contri-  
7 butions and other forms of funding from other sources

8 shall be of such a nature that the independence of the  
9 commission concerning the performance of its duties shall  
10 not be compromised.

11 (b) The commission shall collect a filing fee from each  
12 insurer and third party filer filing a product with the  
13 commission to cover the cost of the operations and activi-  
14 ties of the commission and its staff in a total amount  
15 sufficient to cover the commission's annual budget.

16 (c) The commission's budget for a fiscal year shall not be  
17 approved until it has been subject to notice and comment  
18 as set forth in section seven of this article.

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

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

24 (f) The commission shall keep complete and accurate  
25 accounts of all its internal receipts, including grants and  
26 donations, and disbursements of all funds under its  
27 control. The internal financial accounts of the commission  
28 shall be subject to the accounting procedures established  
29 under its bylaws. The financial accounts and reports  
30 including the system of internal controls and procedures  
31 of the commission shall be audited annually by an inde-  
32 pendent certified public accountant. Upon the determina-  
33 tion of the commission, but no less frequently than every  
34 three years, the review of the independent auditor shall  
35 include a management and performance audit of the  
36 commission. The commission shall make an annual report  
37 to the governor and Legislature of the compacting states,  
38 which shall include a report of the independent audit. The  
39 commission's internal accounts shall not be confidential  
40 and such materials may be shared with the commissioner  
41 of any compacting state upon request: *Provided*, That any  
42 work papers related to any internal or independent audit  
43 and any information regarding the privacy of individuals



44 and insurers' proprietary information, including trade  
45 secrets, shall remain confidential.

46 (g) No compacting state shall have any claim to or  
47 ownership of any property held by or vested in the com-  
48 mission or to any commission funds held pursuant to the  
49 provisions of this compact.

**§33-47-13. Compacting states, effective date and amendment.**

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

2 (b) The compact shall become effective and binding upon  
3 legislative enactment of the compact into law by two  
4 compacting states: *Provided*, That the commission shall  
5 become effective for purposes of adopting uniform stan-  
6 dards for, reviewing and giving approval or disapproval of,  
7 products filed with the commission that satisfy applicable  
8 uniform standards only after twenty-six states are com-  
9 pacting states or, alternatively, by states representing  
10 greater than forty percent of the premium volume for life  
11 insurance, annuity, disability income and long-term care  
12 insurance products, based on records of the national  
13 association of insurance commissioners for the prior year.  
14 Thereafter, it shall become effective and binding as to any  
15 other compacting state upon enactment of the compact  
16 into law by that state.

17 (c) Amendments to the compact may be proposed by the  
18 commission for enactment by the compacting states. No  
19 amendment shall become effective and binding upon the  
20 commission and the compacting states unless and until all  
21 compacting states enact the amendment into law.

**§33-47-14. Withdrawal, default and termination.**

1 (a) Withdrawal.

2 (1) Once effective, the compact shall continue in force  
3 and remain binding upon each and every compacting state:  
4 *Provided*, That a compacting state may withdraw from the

5 compact by enacting a statute specifically repealing the  
6 statute which enacted the compact into law.

7 (2) The effective date of withdrawal is the effective date  
8 of the repealing statute. However, the withdrawal shall  
9 not apply to any product filings approved or self-certified,  
10 or any advertisement of such products, on the date the  
11 repealing statute becomes effective, except by mutual  
12 agreement of the commission and the withdrawing state  
13 unless the approval is rescinded by the withdrawing state  
14 as provided in subdivision (5) of this subsection.

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

19 (4) The commission shall notify the other compacting  
20 states of the introduction of such legislation within ten  
21 days after its receipt of notice thereof.

22 (5) The withdrawing state is responsible for all obliga-  
23 tions, duties and liabilities incurred through the effective  
24 date of withdrawal, including any obligations, the perfor-  
25 mance of which extend beyond the effective date of  
26 withdrawal, except to the extent those obligations may  
27 have been released or relinquished by mutual agreement  
28 of the commission and the withdrawing state. The commis-  
29 sion's approval of products and advertisement prior to the  
30 effective date of withdrawal shall continue to be effective  
31 and be given full force and effect in the withdrawing state,  
32 unless formally rescinded by the withdrawing state in the  
33 same manner as provided by the laws of the withdrawing  
34 state for the prospective disapproval of products or  
35 advertisement previously approved under state law.

36 (6) Reinstatement following withdrawal of any compact-  
37 ing state shall occur upon the effective date of the with-  
38 drawing state reenacting the compact.

39 (b) *Default.* –

40 (1) If the commission determines that any compacting  
41 state has at any time defaulted in the performance of any  
42 of its obligations or responsibilities under this compact,  
43 the bylaws or duly promulgated rules or operating proce-  
44 dures, then, after notice and hearing as set forth in the  
45 bylaws, all rights, privileges and benefits conferred by this  
46 compact on the defaulting state shall be suspended from  
47 the effective date of default as fixed by the commission.  
48 The grounds for default include, but are not limited to,  
49 failure of a compacting state to perform its obligations or  
50 responsibilities, and any other grounds designated in  
51 commission rules. The commission shall immediately  
52 notify the defaulting state in writing of the defaulting  
53 state's suspension pending a cure of the default. The  
54 commission shall stipulate the conditions and the time  
55 period within which the defaulting state must cure its  
56 default. If the defaulting state fails to cure the default  
57 within the time period specified by the commission, the  
58 defaulting state shall be terminated from the compact and  
59 all rights, privileges and benefits conferred by this com-  
60 pact shall be terminated from the effective date of termi-  
61 nation.

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

68 (3) Reinstatement following termination of any compact-  
69 ing state requires a reenactment of the compact.

70 (c) Dissolution of compact.

71 (1) The compact dissolves effective upon the date of the  
72 withdrawal or default of the compacting state which  
73 reduces membership in the compact to one compacting  
74 state.

75 (2) Upon the dissolution of this compact, the compact  
76 becomes null and void and shall be of no further force or  
77 effect, and the business and affairs of the commission shall  
78 be wound up and any surplus funds shall be distributed in  
79 accordance with the bylaws.

**§33-47-15. Severability and construction.**

1 (a) The provisions of this compact shall be severable; and  
2 if any phrase, clause, sentence or provision is deemed  
3 unenforceable, the remaining provisions of the compact  
4 shall be enforceable.

5 (b) The provisions of this compact shall be liberally  
6 construed to effectuate its purposes.

**§33-47-16. Binding effect of compact and other laws.**

1 (a) Other laws.

2 (1) Nothing herein prevents the enforcement of any other  
3 law of a compacting state, except as provided in subdivi-  
4 sion (2) of this subsection.

5 (2) For any product approved or certified to the commis-  
6 sion, the rules, uniform standards and any other require-  
7 ments of the commission shall constitute the exclusive  
8 provisions applicable to the content, approval and certifi-  
9 cation of such products. For advertisements that are  
10 subject to the commission's authority, any rule, uniform  
11 standard or other requirement of the commission which  
12 governs the content of the advertisements shall constitute  
13 the exclusive provision that a commissioner may apply to  
14 the content of the advertisement. Notwithstanding the  
15 foregoing, no action taken by the commission shall abro-  
16 gate or restrict: (i) The access of any person to state  
17 courts; (ii) remedies available under state law related to  
18 breach of contract, tort or other laws not specifically  
19 directed to the content of the product; (iii) state law  
20 relating to the construction of insurance contracts; or (iv)  
21 the authority of the attorney general of the state, includ-

22 ing, but not limited to, maintaining any actions or pro-  
23 ceedings, as authorized by law.

24 (3) All insurance products filed with individual states  
25 shall be subject to the laws of those states.

26 (b) *Binding effect of this compact.* –

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

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

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

38 (4) In the event any provision of this compact exceeds the  
39 constitutional limits imposed on the legislature of any  
40 compacting state, the obligations, duties, powers or  
41 jurisdiction sought to be conferred by that provision upon  
42 the commission shall be ineffective as to that compacting  
43 state and those obligations, duties, powers or jurisdiction  
44 shall remain in the compacting state and shall be exercised  
45 by the agency thereof to which those obligations, duties,  
46 powers or jurisdiction are delegated by law in effect at the  
47 time this compact becomes effective.

**§33-47-17. Filing of rules by the insurance commissioner.**

1 The insurance commissioner shall, pursuant to the  
2 provisions of section four, article three, chapter twenty-  
3 nine-a of this code, file in the state register any rules or  
4 uniform standards which have been adopted by the  
5 commission and have become effective in this state.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*Ann [Signature]*  
.....  
Chairman Senate Committee

*Greg Butcher*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Daniel E. [Signature]*  
.....  
Clerk of the Senate

*Bryce M. [Signature]*  
.....  
Clerk of the House of Delegates

*Carl R. [Signature]*  
.....  
President of the Senate

*Robert [Signature]*  
.....  
Speaker House of Delegates

The within is approved this the 2nd  
Day of April....., 2004.

*Bob [Signature]*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

DATE 3/22/04  
TIME 9:04 am