

CHAPTER 91

INSURANCE — MISCELLANEOUS PROVISIONS

H.F. 647

AN ACT relating to insurance, including various filing and information privacy requirements throughout the insurance code, calculation of assessments by the Iowa individual health benefit reinsurance association, payment of certain insurance fees, certain self-funded insurance plans by school corporations or political subdivisions, designation of the commissioner of insurance as process agent for various entities conducting insurance business in this state, notification provisions relating to the effective date of cancellation of insurance, beneficial stock ownership filings, funding agreements, creating an insurable interest in active or retired employee lives for the benefit of an employer, providing for an interstate insurance product regulation compact, and providing for retroactive applicability and an effective date.

Be It Enacted by the General Assembly of the State of Iowa:

DIVISION I

Section 1. Section 29A.43, Code 2003, is amended to read as follows:

29A.43 DISCRIMINATION PROHIBITED — LEAVE OF ABSENCE — CONTINUATION OF HEALTH COVERAGE.

1. A person shall not discriminate against any officer or enlisted person of the national guard or organized reserves of the armed forces of the United States because of that membership. An employer, or agent of an employer, shall not discharge a person from employment because of being an officer or enlisted person of the military forces of the state, or hinder or prevent the officer or enlisted person from performing any military service the person is called upon to perform by proper authority. A member of the national guard or organized reserves of the armed forces of the United States ordered to temporary duty, as defined in section 29A.1, subsection 1, 3, or 11, for any purpose is entitled to a leave of absence during the period of the duty or service, from the member's private employment, other than employment of a temporary nature, and upon completion of the duty or service the employer shall restore the person to the position held prior to the leave of absence, or employ the person in a similar position. However, the person shall give evidence to the employer of satisfactory completion of the training or duty, and that the person is still qualified to perform the duties of the position. The period of absence shall be construed as an absence with leave, and shall in no way affect the employee's rights to vacation, sick leave, bonus, or other employment benefits relating to the employee's particular employment. A person violating a provision of this section is guilty of a simple misdemeanor.

2. An officer or enlisted person of the national guard or organized reserves of the armed forces of the United States who is insured as a dependent under a group policy for accident or health insurance as a full-time student less than twenty-five years of age, whose coverage under the group policy would otherwise terminate while the officer or enlisted person was on a leave of absence during a period of temporary duty or service, as defined for members of the national guard in section 29A.1, subsection 1, 3, or 11, or as a member of the organized reserves called to active duty from a reserve component status, shall be considered to have been continuously insured under the group policy for the purpose of returning to the insured dependent status as a full-time student who is less than twenty-five years of age. This subsection does not apply to coverage of an injury suffered or a disease contracted by a member of the national guard or organized reserves of the armed forces of the United States in the line of duty.

Sec. 2. Section 505.8, subsection 6, Code 2003, is amended to read as follows:

6. a. Notwithstanding chapter 22, the commissioner shall keep confidential both informa-

tion obtained in the course of an investigation and information submitted to the insurance division pursuant to chapters 514J and 515D.

b. The commissioner shall adopt rules protecting the privacy of information held by an insurer or an agent consistent with the federal Gramm-Leach-Bliley Act, Pub. L. No. 106-102.

c. However, notwithstanding paragraphs “a” and “b”, if the commissioner determines that it is necessary or appropriate in the public interest or for the protection of the public, the commissioner may share information with other regulatory authorities or governmental agencies or may publish information concerning a violation of this chapter or a rule or order under this chapter. Such information may be redacted so that personally identifiable information is not made available.

d. The commissioner may adopt rules protecting the privacy of information submitted to the insurance division consistent with this section.

Sec. 3. NEW SECTION. 505.24 SALE OF POLICY TERM INFORMATION BY CONSUMER REPORTING AGENCY.

1. For purposes of this section, unless the context otherwise requires, “consumer reporting agency” means any person that for monetary fees, dues, or on a cooperative nonprofit basis regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties and that uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

2. A consumer reporting agency shall not provide or sell data or lists that include any information that in whole or in part was submitted in conjunction with an insurance inquiry about a consumer’s credit information or a request for a credit report or insurance score. Information submitted in conjunction with an insurance inquiry about a consumer includes, but is not limited to, the expiration dates of an insurance policy or any other information that may identify time periods during which a consumer’s insurance may expire and the terms and conditions of the consumer’s insurance coverage.

3. The restrictions provided in subsection 2 do not apply to data or lists supplied by a consumer reporting agency to an insurance producer from whom information was received, the insurer on whose behalf such producer acted, or such insurer’s affiliates or holding companies.

4. This section shall not be construed to restrict any insurer from being able to obtain a claims history report or a motor vehicle report.

Sec. 4. Section 507A.4, subsection 9, Code 2003, is amended by adding the following new paragraph:

NEW PARAGRAPH. e. When not otherwise provided, a foreign or domestic multiple employee¹ welfare arrangement doing business in this state shall pay to the commissioner of insurance the fees as required in section 511.24.

Sec. 5. Section 507B.3, Code 2003, is amended to read as follows:

507B.3 UNFAIR COMPETITION OR UNFAIR AND DECEPTIVE ACTS OR PRACTICES PROHIBITED.

1. A person shall not engage in this state in any trade practice which is defined in this chapter as, or determined pursuant to section 507B.6 to be, an unfair method of competition, or an unfair or deceptive act or practice in the business of insurance. The issuance of a qualified charitable gift annuity as provided in chapter 508F does not constitute a trade practice in violation of this chapter.

2. The commissioner shall have power to examine and investigate into the affairs of every person engaged in the business of insurance in this state in order to determine whether such person has been or is engaged in any unfair method of competition or in any unfair or deceptive act or practice prohibited by this section. The commissioner shall keep confidential the infor-

¹ See 2003 Iowa Acts, First Extraordinary Session, chapter 2, §39 herein

mation submitted to the insurance division, or obtained by the insurance division in the course of an investigation pursuant to section 505.8, subsection 6.

Sec. 6. Section 508.11, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The president or vice president and secretary or actuary, or a majority of the directors of each company organized under this chapter, shall annually, by on or before the first day of March, prepare under oath and file in the office of the commissioner of insurance or a deputy designated by the commissioner a statement of its affairs for the year terminating on the thirty-first day of December preceding, showing:

Sec. 7. Section 508.31A, Code 2003, is amended to read as follows:

508.31A FUNDING AGREEMENTS.

1. A life insurance company organized under this chapter may issue funding agreements. The issuance of a funding agreement under this section is deemed to be doing insurance business. For purposes of this section, "funding agreement" means an agreement for an insurer to accept and accumulate funds and to make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies of the person to whom the funding agreement is issued. A funding agreement does not constitute life insurance, an annuity, or other insurance authorized by section 508.29, and does not constitute a security as defined in section 502.102.

2. a. Funding agreements may be issued to the following:

(1) A person authorized by a state or foreign country to engage in an insurance business or a subsidiary of such business.

(2) A person for the purpose of funding any of the following:

(a) Benefits under an employee benefit plan as defined in the federal Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001 et seq., maintained in the United States or in a foreign country.

(b) Activities of an organization exempt from taxation pursuant to section 501c of the Internal Revenue Code, or any similar organization in any foreign country.

(c) A program of the United States government, another state government or political subdivision of such state, or of a foreign country, or any agency or instrumentality of any such government, political subdivision, or foreign country.

(d) An agreement providing for periodic payments in satisfaction of a claim.

(e) A program of an institution which has assets in excess of twenty-five million dollars.

(3) A person other than a natural person that has assets of at least twenty-five million dollars.

(4) A person other than a natural person for the purpose of providing collateral security for securities issued by such person and² registered with the federal securities and exchange commission.

b. A funding agreement issued pursuant to³ subparagraph (1), (2), or (3) shall be for a total amount of not less than one million dollars.

c. An amount under a funding agreement shall not be guaranteed or credited except upon reasonable assumptions as to investment income and expenses and on a basis equitable to all holders of funding agreements of a given class. Such funding agreements shall not provide for payments to ~~or~~ by the insurer based on mortality or morbidity contingencies.

d. Amounts paid to the insurer pursuant to a funding agreement, and proceeds applied under optional modes of settlement, may be allocated by the insurer to one or more separate accounts pursuant to section 508A.1.

3. A funding agreement is a class 2 claim under section 507C.42, subsection 2.

4. The commissioner may adopt rules to implement funding agreements.

Sec. 8. Section 508.38, subsection 2, unnumbered paragraph 1, Code 2003, is amended by striking the unnumbered paragraph and inserting in lieu thereof the following:

In the case of contracts issued on or after the operative date of this section as defined in

² See 2003 Iowa Acts, First Extraordinary Session, chapter 2, §28 herein

³ See chapter 179, §75 herein

subsection 11, no contract of annuity, except as stated in subsection 1, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions that in the opinion of the commissioner are at least as favorable to the contract holder, upon cessation of payment of considerations under the contract:

Sec. 9. Section 508.38, subsection 2, paragraphs a and b, Code 2003, are amended by striking the paragraphs and inserting in lieu thereof the following:

a. That upon cessation of payment of considerations under a contract or upon the written request of the contract owner, the company shall grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in subsections 4, 5, 6, 7, and 9.

b. If a contract provides for a lump sum settlement at maturity, or at any other time, that upon surrender of the contract at or prior to the commencement of any annuity payments, the company shall pay in lieu of a paid-up annuity benefit a cash surrender benefit of such amount as is specified in subsections 4, 5, 7, and 9. The company may reserve the right to defer the payment of such cash surrender benefit for a period not to exceed six months after demand therefore with surrender of the contract after making written request and receiving written approval of the commissioner. The request shall address the necessity and equitability to all policyholders of the deferral.

Sec. 10. Section 508.38, subsections 3 and 11, Code 2003, are amended by striking the subsections and inserting in lieu thereof the following:

3. The minimum values as specified in subsections 4, 5, 6, 7, and 9 of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum nonforfeiture amounts as defined in this section.

a. The minimum nonforfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at rates of interest as indicated in paragraph "b" of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of all of the following:

(1) Any prior withdrawals from or partial surrenders of the contract accumulated at rates of interest as indicated in paragraph "b".

(2) An annual contract charge of fifty dollars, accumulated at rates of interest as indicated in paragraph "b".

(3) The amount of any indebtedness to the company on the contract, including interest due and accrued.

The net considerations for a given contract year used to define the minimum nonforfeiture amount shall be an amount equal to eighty-seven and one-half percent of the gross considerations credited to the contract during the contract year.

b. The interest rate used in determining minimum nonforfeiture amounts shall be an annual rate of interest determined as the lesser of three percent per annum and all of the following, which shall be specified in the contract if the interest rate will be reset:

(1) The five-year constant maturity treasury rate reported by the federal reserve as of a date, or average over a period, rounded to the nearest one-twentieth of one percent, specified in the contract no longer than fifteen months prior to the contract issue date or redetermination date under subparagraph (4).

(2) The result of subparagraph (1) shall be reduced by one hundred twenty-five basis points.

(3) The resulting interest guarantee shall not be less than one percent.

(4) The interest rate shall apply for an initial period and may be redetermined for additional periods. The redetermination date, basis, and period, if any, shall be stated in the contract. The basis is the date or average over a specified period that produces the value of the five-year constant maturity treasury rate to be used at each redetermination date.

During the period or term that a contract provides substantive participation in an equity indexed benefit, it may increase the reduction described in subparagraph (2), by up to an additional one hundred basis points to reflect the value of the equity index benefit. The present value at the contract issue date and at each redetermination date thereafter of the additional

reduction shall not exceed the market value of the benefit. The commissioner may require a demonstration that the present value of the reduction does not exceed the market value of the benefit. Lacking such a demonstration that is acceptable to the commissioner, the commissioner may disallow or limit the additional reduction.

The commissioner may adopt rules to implement the provisions of subparagraph (4), and to provide for further adjustments to the calculation of minimum nonforfeiture amounts for contracts that provide substantive participation in an equity index benefit and for other contracts that the commissioner determines adjustments are justified.

11. After the effective date of this Act, a company may elect either to apply the provisions of this section as it existed prior to the effective date of this Act or to apply the provisions of this section as enacted by this Act to annuity contracts on a contract form-by-form basis before the second anniversary of the effective date of this Act. In all other instances, this section shall become operative with respect to annuity contracts issued by the company two years after the effective date of this Act.

Sec. 11. Section 509.19, subsection 1, paragraphs a and c, Code 2003, are amended to read as follows:

a. A person issuing a policy or contract providing group health benefit coverages to a group of fifty-one or more eligible employees as defined in chapter 513B shall provide to the policyholder, contract holder, or sponsor of the group health benefit plan, upon request, annually, but not more than three months prior to the policy renewal date, the total amount of actual claims identified as paid or incurred and paid, and the total amount of premiums by line of coverage. If premiums are not billed for each line of coverage, it is not necessary to artificially separate premiums for each line of coverage and will be acceptable to supply total premiums for the period.

c. The information required by paragraph "a" shall be provided by the carrier separately for the current policy year to date and for the prior policy year two separate years, either policy years or rolling twelve-month periods.

Sec. 12. Section 509A.15, subsection 4, Code 2003, is amended by striking the subsection and inserting in lieu thereof the following:

4. One or more political subdivisions of the state or one or more school corporations maintaining self-insured plans with yearly claims that do not exceed one percent of each entity's general fund budget shall be exempt from the requirements of this section where the plan insures employees for all or part of a deductible, coinsurance payments, drug costs, short-term disability benefits, vision benefits, or dental benefits.

The yearly claim amount shall be determined annually on the policy renewal date, or an alternative date established by rule, by a plan administrator or political subdivision or school corporation employee to be designated by the plan administrator. The exemption shall not apply for the year following a year in which yearly claims are determined to exceed one percent of the political subdivision's or school corporation's general fund budget.

Sec. 13. Section 510A.2, subsections 3, 4, and 5, Code 2003, are amended to read as follows:

3. "Controlled insurer" means a licensed insurer ~~which~~ that is controlled, directly or indirectly, by a an insurance producer.

4. "Controlling producer" means ~~a~~ an insurance producer who, directly or indirectly, controls an insurer.

5. "Independent casualty actuary" means a casualty actuary who is a member of the American academy of actuaries and who is not an employee, principal, the direct or indirect owner of, affiliated with, or in any way controlled by the insurer or insurance producer.

Sec. 14. Section 510A.2, Code 2003, is amended by adding the following new subsection:

NEW SUBSECTION. 5A. "Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate insurance.

Sec. 15. Section 510A.2, subsection 7, Code 2003, is amended by striking the subsection.

Sec. 16. Section 510A.4, subsection 1, paragraph b, subparagraph (2), Code 2003, is amended to read as follows:

(2) The controlled insurer, except for insurance business written through a residual market facility, accepts insurance business only from the controlling producer, a producer controlled by the controlled insurer, or a an insurance producer that is a subsidiary of the controlled insurer.

Sec. 17. Section 510A.4, subsection 2, paragraph g, Code 2003, is amended to read as follows:

g. The controlled insurer shall provide the controlling producer with its underwriting standards, rules, and procedures manuals setting forth the rates to be charged, and the conditions for the acceptance or rejection of risks. The controlling producer shall adhere to the standards, rules, procedures, rates, and conditions. The standards, rules, procedures, rates, and conditions shall be the same as those applicable to comparable business placed with the controlled insurer by a an insurance producer other than the controlling producer.

Sec. 18. Section 510A.4, subsection 4, Code 2003, is amended to read as follows:

4. REPORTING REQUIREMENTS.

a. In addition to any other required loss reserve certification, the controlled insurer shall annually, on April 1 of each year, file with the commissioner an opinion of an independent casualty actuary, or another independent loss reserve specialist acceptable to the commissioner, reporting loss ratios for each line of business written and attesting to the adequacy of loss reserves established for losses incurred and outstanding as of year-end on business placed by the insurance producer, including incurred but not reported losses.

b. The controlled insurer shall annually report to the commissioner the amount of commissions paid to the insurance producer, the percentage such amount represents of the net premiums written, and comparable amounts and percentage paid to noncontrolling producers for placements of the same kinds of insurance.

Sec. 19. Section 510A.5, Code 2003, is amended to read as follows:

510A.5 DISCLOSURE.

The insurance producer, prior to the effective date of the policy, shall deliver written notice to the prospective insured disclosing the relationship between the insurance producer and the controlled insurer; except that, if the business is placed through a subproducer who is not a controlling producer, the controlling producer shall retain in the producer's records a signed commitment from the subproducer that the subproducer is aware of the relationship between the insurer and the insurance producer and that the subproducer has notified or will notify the insured.

Sec. 20. Section 511.8, subsection 20, Code 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. "Venture capital fund" includes an equity interest in the Iowa fund of funds as defined in section 15E.62.

Sec. 21. Section 511.27, Code 2003, is amended to read as follows:

511.27 COMMISSIONER AS PROCESS AGENT.

Every life insurance company and association ~~organized under the laws of another state or country~~ shall, before receiving a certificate to do business in this state or any renewal thereof ~~of a certificate to do business in this state~~, file in the office of the commissioner of insurance a power of attorney and an agreement in writing that thereafter service of notice or process of any kind may be made on the commissioner, ~~and when so made that~~ shall be as valid, binding, and effective for all purposes as if served upon the company according to the laws of this

or any other state, and waiving all claim or right of error by reason of such acknowledgment of service due to the filing of the power of attorney and the agreement regarding service of notice or process.

Sec. 22. NEW SECTION. 511.40 EMPLOYER — INSURABLE INTEREST.

1. As used in this section, “employees” includes officers, managers, and directors of an employer, and the shareholders, partners, members, proprietors, or other owners of the employer.

2. An employer and a trust established by the employer for the benefit of the employer or for the benefit of the employer’s active or retired employees has an insurable interest in each of the lives of the employer’s active or retired employees and may insure their lives on an individual or group basis.

3. The amount of coverage on the lives of nonmanagement or nonkey employees shall be reasonably related to the benefit provided to the employees.

4. On and after July 1, 2003, an employer or trust shall obtain the written consent of each employee being insured by an employer and trust pursuant to this section before insuring the employee’s life. The consent shall include an acknowledgment by the employee that the employer or trust may maintain the life insurance after the employee is no longer employed by the employer. An employer shall not retaliate in any manner against an employee who refuses to consent.

Sec. 23. Section 512B.33, Code 2003, is amended to read as follows:

512B.33 SERVICE OF PROCESS.

1. ~~A foreign or alien society authorized to do business in this state shall appoint in writing file in the office of the commissioner to be its true and lawful a power of attorney upon whom all lawful and an agreement in writing that service of process in any action or proceeding against it shall be served, and shall agree in the written consent to process that any lawful process against it which is the society may be served on the commissioner and shall be of the same legal force and validity as if served upon the society, and that the authority shall continue in force so long as any liability remains outstanding in this state. Copies of the appointment power of attorney, certified by the commissioner, shall be deemed sufficient evidence of the appointment and shall be admitted in evidence with the same force and effect as the original may be admitted.~~

2. Service of process shall only be made upon the commissioner, or if absent, upon the person in charge of the commissioner’s office. Service shall be made in duplicate ~~triplicate~~ and shall constitute sufficient service upon the society. When legal process against a society is served upon the commissioner, the commissioner shall ~~forthwith~~ promptly forward one of the duplicate copies by registered mail, prepaid, directed to the secretary or corresponding officer of the society. ~~Service shall not require a~~ A society shall not be required to file its answer, pleading, or defense in less than thirty days from the date of mailing the copy of the service to a society. Legal process shall not be served upon a society except in the manner provided in this section.

Sec. 24. Section 513C.7, subsection 4, paragraph b, Code 2003, is amended to read as follows:

b. A carrier or an organized delivery system shall waive any time period applicable to a pre-existing condition exclusion or limitation period with respect to particular services in an individual health benefit plan for the period of time an individual was previously covered by qualifying previous coverage that provided benefits with respect to such services, provided that the qualifying previous coverage was continuous to a date not more than sixty-three days prior to the effective date of the new coverage. For purposes of this section, periods of coverage under medical assistance provided pursuant to chapter 249A or 5141, or Medicare coverage provided pursuant to Title XVIII of the federal Social Security Act shall not be counted with respect to the sixty-three day requirement.

Sec. 25. Section 513C.10, subsection 1, paragraph a, Code 2003, is amended to read as follows:

a. All persons that provide health benefit plans in this state including insurers providing accident and sickness insurance under chapter 509, 514, or 514A, whether on an individual or group basis; fraternal benefit societies providing hospital, medical, or nursing benefits under chapter 512B; and health maintenance organizations, organized delivery systems, and all other entities providing health insurance or health benefits subject to state insurance regulation shall be members of the association.

Sec. 26. Section 513C.10, subsection 6, Code 2003, is amended to read as follows:

6. The assessable loss plus necessary operating expenses for the association, plus any additional expenses as provided by law, shall be assessed by the association to all members in proportion to their respective shares of total health insurance premiums or payments for subscriber contracts received in Iowa during the second preceding calendar year, or with paid losses in the year, coinciding with or ending during the calendar year, or on any other equitable basis as provided in the plan of operation. In sharing losses, the association may abate or defer any part of the assessment of a member, if, in the opinion of the board, payment of the assessment would endanger the ability of the member to fulfill its contractual obligations. The association may also provide for an initial or interim assessment against the members of the association to meet the operating expenses of the association until the next calendar year is completed. For purposes of this subsection, "total health insurance premiums" and "payments for subscriber contracts" include, without limitation, premiums or other amounts paid to or received by a member for individual and group health plan care coverage provided under any chapter of the Code or Acts, and "paid losses" includes, without limitation, claims paid by a member operating on a self-funded basis for individual and group health plan care coverage provided under any chapter of the Code or Acts. For purposes of calculating and conducting the assessment, the association shall have the express authority to require members to report on an annual basis each member's total health insurance premiums and payments for subscriber contracts and paid losses. A member is liable for its share of the assessment calculated in accordance with this section regardless of whether it participates in the individual insurance market.

Sec. 27. NEW SECTION. 514.2A SERVICE OF PROCESS.

A nonprofit health service corporation authorized to do business in this state shall file in the office of the commissioner a power of attorney and an agreement in writing that service of process in any action or proceeding against the corporation may be served on the commissioner and shall be of the same legal force and validity as if served upon the corporation, and that the authority shall continue in force so long as any liability remains outstanding in this state. Copies of the power of attorney, certified by the commissioner, shall be deemed sufficient evidence of the appointment and shall be admitted in evidence with the same force and effect as the original.

Sec. 28. Section 514B.3, subsection 10, Code 2003, is amended to read as follows:

10. A power of attorney executed by any applicant ~~who is not domiciled in this state~~ appointing the commissioner, the commissioner's successors in office, and deputies ~~as the true and lawful attorney of the applicant for this state upon whom all lawful~~ to receive process in any legal action or proceeding against the health maintenance organization on a cause of action arising in this state ~~may be served~~.

Sec. 29. Section 514B.12, unnumbered paragraph 1, Code 2003, is amended to read as follows:

A health maintenance organization shall annually on or before the first day of March file with the commissioner or a depository designated by the commissioner a report verified by at least two of its principal officers and covering the preceding calendar year. The report shall be on forms prescribed by the commissioner and shall include:

Sec. 30. Section 514B.33, Code 2003, is amended by adding the following new subsection:
NEW SUBSECTION. 1A. When not otherwise provided, a foreign or domestic limited service organization doing business in this state shall pay the commissioner the fees as required in section 511.24.

Sec. 31. Section 514J.7, subsection 8, Code 2003, is amended to read as follows:

8. The confidentiality of any medical records submitted shall be maintained pursuant to applicable state and federal laws. Other than the sharing of information required by this chapter and the rules adopted pursuant to this chapter, the commissioner shall keep confidential the information obtained in the external review process pursuant to section 505.8, subsection 6.

Sec. 32. Section 514J.10, Code 2003, is amended to read as follows:

514J.10 REPORTING.

~~Each carrier and organized delivery system shall file~~ The commissioner shall prepare an annual report with the commissioner containing all of the following:

1. The number of external reviews requested.
 2. The number of the external reviews certified by the commissioner.
 3. The number of coverage decisions which were upheld by an independent review entity.
- The commissioner shall prepare a the report by January 31 of each year.

Sec. 33. Section 514J.13, Code 2003, is amended to read as follows:

514J.13 EFFECT OF EXTERNAL REVIEW DECISION.

1. The review decision by the independent review entity conducting the review is binding upon the carrier or organized delivery system. The external review process shall not be considered a contested case under chapter 17A, the Iowa administrative procedure Act.

2. The enrollee or the enrollee's treating health care provider acting on behalf of the enrollee may appeal the review decision by the independent review entity conducting the review by filing a petition for judicial review either in Polk county district court or in the district court in the county in which the enrollee resides. The petition for judicial review must be filed within fifteen business days after the issuance of the review decision. The petition shall name the enrollee or the enrollee's treating health care provider as the petitioner. The respondent shall be the carrier or the organized delivery system. The petition shall not name the independent review entity as a party. The commissioner shall not be named as a respondent unless the petitioner alleges action or inaction by the commissioner under the standards articulated in section 17A.19, subsection 10. Allegations against the commissioner under section 17A.19, subsection 10, must be stated with particularity. The commissioner may, upon motion, intervene in the judicial review proceeding. The findings of fact by the independent review entity conducting the review are conclusive and binding on appeal.

3. The carrier or organized delivery system shall follow and comply with the review decision of the independent review entity conducting the review, or the decision of the court on appeal. The carrier or organized delivery system and the enrollee's treating health care provider shall not be subject to any penalties, sanctions, or award of damages for following and complying in good faith with the review decision of the independent review entity conducting the review or decision of the court on appeal.

4. The enrollee or the enrollee's treating health care provider may bring an action in Polk county district court or in the district court in the county in which the enrollee resides to enforce the review decision of the independent review entity conducting the review or the decision of the court on appeal.

Sec. 34. Section 515.35, subsection 4, paragraph m, Code 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. "Venture capital fund" includes an equity interest in the Iowa fund of funds as defined in section 15E.62.

Sec. 35. Section 515.63, unnumbered paragraph 1, Code 2003, is amended to read as follows:

The president or the vice president and secretary of each company organized or authorized to do business in the state shall annually on or before the first day of March of each year prepare under oath and file with the commissioner of insurance or a depository designated by the commissioner a full, true, and complete statement of the condition of such company on the last day of the preceding year, which shall exhibit the following items and facts:

Sec. 36. Section 515.73, Code 2003, is amended to read as follows:
515.73 COMMISSIONER AS PROCESS AGENT.

Any foreign company desiring to transact the business of insurance under this chapter, ~~by an agent or agents in the state,~~ shall file with the commissioner of insurance a power of attorney and a signed written instrument, ~~duly signed and sealed,~~ authorizing such the commissioner to acknowledge accept service of notice or process ~~for and in~~ on behalf of such company ~~in this state, and consenting that service of notice or process may be made upon the said commissioner, and when so made that shall be taken and held as valid as if served upon the company according to the laws of this or any other state, and waiving all claim, or right, of error, by reason of such acknowledgment of service due to the filing of the power of attorney and the agreement regarding service of notice or process.~~

Sec. 37. Section 515.92, Code 2003, is amended to read as follows:
515.92 STATEMENT OF CAPITAL AND SURPLUS.

1. Every advertisement or public announcement, and every sign, circular, or card issued or published by a foreign company transacting the business of casualty insurance in the state, or by an officer, agent, or representative thereof, that purports to disclose the company's financial standing, shall exhibit the capital actually paid in cash, and the amount of net surplus of assets over all its liabilities actually held and available for the payment of losses by fire and for the protection of holders of fire policies, and shall also exhibit the amount of net surplus of assets over all liabilities in the United States actually available for the payment of losses by fire and held in the United States for the protection of holders of fire policies in the United States, including in such liabilities the fund reserved for reinsurance of outstanding risks, ~~and the same.~~ The amounts stated for capital and net surplus shall correspond with the latest verified statement made by the company or association to the commissioner of insurance.

2. The company shall not write, place, or cause to be written or placed, a policy or contract for insurance upon property situated or located in this state except through ~~its resident agent or agents~~ a licensed producer authorized to do business in this state.

Sec. 38. Section 515.133, Code 2003, is amended to read as follows:
515.133 EXAMINATION OF OFFICERS AND EMPLOYEES.

1. The commissioner of insurance is authorized to ~~summon before the commissioner, issue a subpoena~~ for examination under oath, any officer, agent, or employee of any such company suspected of violating any of the provisions of section 515.131, ~~and, on.~~

2. Upon the filing of a written, verified complaint to with the commissioner ~~in writing~~ by two or more residents of this state ~~charging such alleging that a~~ company ~~under oath upon their knowledge or belief with violating the provisions of said has violated~~ section 515.131, the commissioner shall ~~summon~~ issue a subpoena for examination under oath to any officer, agent, or employee of said the company ~~before the commissioner for examination under oath.~~

Sec. 39. Section 515.134, Code 2003, is amended to read as follows:
515.134 REVOCATION OF AUTHORITY.

If upon ~~such~~ examination, and that of any other witness produced and examined, the commissioner ~~shall determine~~ determines that ~~such a~~ company ~~is guilty of a violation of any of the provisions of has violated~~ section 515.131, or if any such officer, agent, or employee after being ~~duly summoned shall fail~~ fails to appear or submit to examination after receiving a subpoena,

the commissioner shall ~~forthwith~~ promptly issue an order revoking the authority of such the company to transact business within this state, and ~~if the company~~ shall not thereafter be permitted to do the business of fire insurance in this state ~~at any time within for~~ one year ~~therefrom~~.

Sec. 40. Section 515B.2, subsection 2, Code 2003, is amended to read as follows:

2. "Claimant" means an insured making a first party claim or any person instituting a liability claim against the insured of an insolvent insurer. "Claimant" does not include a person who is an affiliate of an insolvent insurer.

Sec. 41. Section 515B.8, subsection 1, Code 2003, is amended to read as follows:

1. Any person recovering under this chapter shall be deemed to have assigned the person's rights under the policy to the association to the extent of the person's recovery from the association. Every insured or claimant seeking the protection of this chapter shall co-operate with the association to the same extent as such person would have been required to co-operate with the insolvent insurer. The association shall have no cause of action against the insured of the insolvent insurer for any sums it has paid out except causes of action the insolvent insurer would have had if the sums had been paid by the insolvent insurer.

Sec. 42. Section 515B.9, subsection 1, Code 2003, is amended by striking the subsection and inserting in lieu thereof the following:

1. Any person having a claim under an insurance policy, and the claim under such other policy alleges the same damages or arises from the same facts, injury, or loss that gives rise to a covered claim against the association, shall be required to first exhaust all coverage provided by that policy, whether such coverage is on a primary, excess, or pro rata basis and any obligation of the association shall not be considered other insurance.

Any amount payable on a covered claim shall be reduced by the full applicable limits of such other insurance policy and the association shall receive full credit for such limits or where there are no applicable limits, the claim shall be reduced by the total recovery.

a. A policy providing liability coverage to a person who may be jointly and severally liable with, or a joint tortfeasor with, the person covered under the policy of the insolvent insurer shall be first exhausted before any claim is made against the association and the association shall receive credit for the same as provided above.

b. For purposes of this section, an insurance policy means a policy issued by an insurance company, whether or not a member insurer, which policy insures any of the types of risks insured by an insurance company authorized to write insurance under chapter 515, 516A, or 520, or comparable statutes of another state, except those types of risks set forth in chapters 508 and 514.

Sec. 43. Section 515B.16, Code 2003, is amended to read as follows:

515B.16 ACTIONS AGAINST THE ASSOCIATION.

Any action against the association shall be brought against the association in the association's own name. The Polk county district court shall have exclusive jurisdiction and venue of such actions. Service of the original notice in actions against the association may be made on any officer of the association or upon the commissioner of insurance on behalf of the association. The commissioner shall promptly transmit any notice so served upon the commissioner to the association. Any action against the association shall be commenced within three years after the date of the order of liquidation.

Sec. 44. Section 515D.5, subsection 1, unnumbered paragraph 1, Code 2003, is amended to read as follows:

Notwithstanding the provisions of sections 515.80 through 515.81A, a notice of cancellation of a policy shall not be effective unless mailed or delivered by the insurer to the named insured at least ~~twenty~~ thirty days prior to the effective date of cancellation, or, where the cancellation

is for nonpayment of premium notwithstanding the provisions of sections 515.80 and 515.81A at least ten days prior to the date of cancellation. A post office department certificate of mailing to the named insured at the address shown in the policy shall be proof of receipt of such mailing. Unless the reason accompanies the notice of cancellation, the notice shall state that, upon written request of the named insured, mailed or delivered to the insurer not less than fifteen days prior to the date of cancellation, the insurer will state the reason for cancellation, together with notification of the right to a hearing before the commissioner within fifteen days as provided in this chapter.

Sec. 45. Section 515D.10, Code 2003, is amended to read as follows:
515D.10 HEARING BEFORE COMMISSIONER.

Any named insured who has received a statement of reason for cancellation, or of reason for an insurer's intent not to renew a policy, may, within fifteen days of the receipt or delivery of a statement of reason, request a hearing before the commissioner of insurance. The purpose of this hearing shall be limited to establishing the existence of the proof or evidence used by the insurer in its reason for cancellation or intent not to renew. The burden of proof of the reason for cancellation or intent not to renew shall be upon the insurer. Other than the sharing of information required by this chapter and the rules adopted pursuant to the provisions of this chapter, the commissioner shall keep confidential the information obtained from the insured or in the hearing process, pursuant to section 505.8, subsection 6. The commissioner of insurance shall adopt rules for carrying out the provisions of this section.

Sec. 46. Section 515E.3, Code 2003, is amended by adding the following new unnumbered paragraph:

NEW UNNUMBERED PARAGRAPH. A risk retention group organized in this state shall file in the office of the commissioner a power of attorney and an agreement in writing that service of process in any action or proceeding against the society may be served on the commissioner and shall be of the same legal force and validity as if served upon the society, and that the authority shall continue in force so long as any liability remains outstanding in this state. Copies of the power of attorney, certified by the commissioner, shall be deemed sufficient evidence of the appointment and shall be admitted in evidence with the same force and effect as the original.

Sec. 47. Section 518.23, subsection 2, paragraph a, Code 2003, is amended to read as follows:

a. Except as provided in paragraph "b", notice of cancellation is not effective unless mailed or delivered by the association to the named insured at least ~~twenty~~ thirty days before the effective date of cancellation.

Sec. 48. Section 518A.29, subsection 2, paragraph a, Code 2003, is amended to read as follows:

a. Except as provided in paragraph "b", notice of cancellation is not effective unless mailed or delivered by the association to the named insured at least ~~twenty~~ thirty days before the effective date of cancellation.

Sec. 49. Section 521C.3, subsection 4, paragraph b, Code 2003, is amended to read as follows:

b. ~~If the applicant for a A~~ reinsurance intermediary license is a nonresident, such applicant, as a condition precedent to receiving or holding a license, shall designate the commissioner as agent for service of process, and also shall furnish the commissioner with the name and address of a resident of this state upon whom notices or orders of the commissioner or process affecting such nonresident reinsurance intermediary may be served. The licensee shall promptly notify the commissioner in writing of a change of the designated agent for service of process, and the change becomes effective upon acknowledgment by the commissioner.

Sec. 50. Section 523.7, Code 2003, is amended to read as follows:

523.7 STATEMENT OF STOCK OWNERSHIP FILED WITH COMMISSIONER.

1. Every person who is directly or indirectly the beneficial owner of more than ten percent of any class of any equity security of a domestic stock insurance company, or who is a director or an officer of such company, shall file in the office of the commissioner of insurance ~~within ten days after the person becomes such beneficial owner, director or officer~~ as prescribed by rule a statement, in ~~such a~~ form as the commissioner may prescribe, of the amount of all equity securities of ~~such the~~ company of which the person is the beneficial owner, ~~and within ten days after the close of each calendar month thereafter~~

2. ~~Within the time frame prescribed by rule, if there has been a change in such the ownership during such month a time period prescribed by rule, a person who is directly or indirectly the beneficial owner of more than ten percent of any class of any equity security of a domestic stock insurance company, or who is a director or an officer of such company, shall file in the office of the commissioner a statement, in such a form as the commissioner may prescribe, indicating the person's ownership at the close of the calendar month time period prescribed by rule and such any changes in the person's ownership as have occurred during such calendar month the time period prescribed by rule.~~

Sec. 51. Sections 511.30, 515.78, and 518A.43, Code 2003, are repealed.

Sec. 52. INDIVIDUAL HEALTH INSURANCE TASK FORCE. The insurance division of the department of commerce shall establish an individual health insurance task force. The individual health insurance task force shall conduct a study to review the individual health insurance market reform under chapter 513C and the Iowa comprehensive health insurance association under chapter 514E. The study shall include review of the following:

1. The premium rating system for the guaranteed basic and standard plans regulated under chapter 513C and the comprehensive health insurance plans under chapter 514E.

2. The availability of and qualifications for coverage under the guaranteed basic and standard plans regulated under chapter 513C and the comprehensive health insurance plans under chapter 514E.

3. The cost-sharing and assessment mechanisms under sections 513C.10 and 514E.2.

4. Any other matters as agreed upon by the task force which affect the individual health insurance market.

The commissioner of insurance shall select the members of the task force which shall include representatives from the Iowa comprehensive health insurance association, the public employee governing bodies subject to chapter 509A, and other health insurance-related parties or experts as deemed appropriate by the commissioner.

The commissioner shall submit a report from the task force to the general assembly on or before January 15, 2004, regarding the task force's findings and recommendations including proposed legislation concerning individual health insurance.

Sec. 53. EFFECTIVE DATE AND RETROACTIVE APPLICABILITY. This section and the sections of this Act amending sections 513C.10, subsection 1, paragraph "a", and subsection 6, being deemed of immediate importance, take effect upon enactment, and apply retroactively to July 1, 1995.

DIVISION II

Sec. 54. NEW SECTION. 505A.1 INTERSTATE INSURANCE PRODUCT REGULATION COMPACT.

The interstate insurance product regulation compact is hereby entered into and enacted into law with all jurisdictions legally joining therein, in the form substantially as follows:

ARTICLE I — PURPOSES

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

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

ARTICLE II — DEFINITIONS

For purposes of this compact, unless the context otherwise requires:

1. "Advertisement" means any material designed to create public interest in a product, or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy, as more specifically defined in the rules and operating procedures of the commission.
2. "Bylaws" means those bylaws established by the commission for its governance, or for directing or controlling the commission's actions or conduct.
3. "Commission" means the interstate insurance product regulation commission established by this compact.
4. "Commissioner" means the chief insurance regulatory official of a state including, but not limited to, commissioner, superintendent, director, or administrator.
5. "Compacting state" means any state that has enacted this compact legislation and that has not withdrawn pursuant to article XIV, section 1, or been terminated pursuant to article XIV, section 2.
6. "Domiciliary state" means the state in which an insurer is incorporated or organized, or, in the case of an alien insurer, its state of entry.
7. "Insurer" means any entity licensed by a state to issue contracts of insurance for any of the lines of insurance covered by this compact.
8. "Member" means the person chosen by a compacting state as its representative to the commission, or the person's designee.
9. "Noncompacting state" means any state which is not at the time a compacting state.
10. "Operating procedures" means procedures promulgated by the commission implementing a rule, uniform standard, or a provision of this compact.
11. "Product" means the form of a policy or contract, including any application, endorsement, or related form which is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income, or long-term care insurance product that an insurer is authorized to issue.
12. "Rule" means a statement of general or particular applicability and future effect promulgated by the commission, 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 shall have the force and effect of law in the compacting states.
13. "State" means any state, district, or territory of the United States of America.

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

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

ARTICLE III — ESTABLISHMENT OF THE COMMISSION AND VENUE

1. The compacting states hereby create and establish an entity 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 therewith, and give approval to those product filings satisfying applicable uniform standards, provided it is not intended for the commission to be the exclusive entity for receipt and review of insurance product filings. Nothing herein shall prohibit any insurer from filing its product in any state wherein the insurer is licensed to conduct the business of insurance, and any such filing shall be subject to the laws of the state where filed.

2. The commission is a body corporate comprising each compacting state.

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

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

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

ARTICLE IV — POWERS OF THE COMMISSION

The commission shall have the following powers:

1. To promulgate rules, pursuant to article VII, which shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in this compact.

2. To exercise its rulemaking authority and establish reasonable uniform standards for products covered under this compact, and advertisement related thereto, which shall have the force and effect of law and shall be binding in the compacting states, but only for those products filed with the commission, provided that a compacting state shall have the right to opt out of such uniform standard pursuant to article VII, to the extent and in the manner provided in this compact, and, provided further, that any uniform standard established by the commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the national association of insurance commissioners' long-term care insurance model act and long-term care insurance model regulation, respectively, adopted as of 2001. The commission shall consider whether any subsequent amendments to the long-term care insurance model act or long-term care insurance model regulation adopted by the national association of insurance commissioners require amending of the uniform standards established by the commission for long-term care insurance products.

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

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

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

6. To promulgate operating procedures, pursuant to article VII, which shall be binding in the compacting states to the extent and in the manner provided in this compact.

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

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

9. To establish and maintain offices.

10. To purchase and maintain insurance and bonds.

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

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

13. To accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same, provided that at all times the commission shall strive to avoid any appearance of impropriety.

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

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

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

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

18. To provide for dispute resolution among compacting states.

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

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

21. To establish a budget and make expenditures.

22. To borrow money.

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

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

25. To adopt and use a corporate seal.

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

ARTICLE V — ORGANIZATION OF THE COMMISSION

1. MEMBERSHIP, VOTING, AND BYLAWS.

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

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

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

- (1) Establishing the fiscal year of the commission.
- (2) Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the management committee.
- (3) Providing reasonable standards and procedures:
 - (a) For the establishment of other committees.
 - (b) Governing any general or specific delegation of any authority or function of the commission.
- (4) Providing reasonable procedures for calling and conducting meetings of the commission, and ensuring reasonable notice of each such meeting.
- (5) Establishing the titles, duties, and authority, and reasonable procedures for the election of the officers of the commission.
- (6) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the commission.
- (7) Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that may exist after the termination of this compact after the payment or reserving of all of its debts and obligations.

2. MANAGEMENT COMMITTEE, OFFICERS, AND PERSONNEL.

a. A management committee comprising no more than fourteen members shall be established as follows:

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

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

(3) Four members from those compacting states with less than two percent of the market, based on the premium volume described⁴ subparagraph (1), with one selected from each of the four zone regions of the national association of insurance commissioners as provided in the bylaws.

b. The management committee shall have such authority and duties as may be set forth in the bylaws, including but not limited to:

⁴ See chapter 179, §74 herein

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

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

(3) Overseeing the offices of the commission.

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

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

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

3. LEGISLATIVE AND ADVISORY COMMITTEES.

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

b. The commission shall establish two advisory committees, one of which shall comprise consumer representatives independent of the insurance industry, and the other comprising insurance industry representatives.

c. The commission may establish additional advisory committees as its bylaws may provide for the carrying out of its functions.

4. CORPORATE RECORDS OF THE COMMISSION. The commission shall maintain its corporate books and records in accordance with the bylaws.

5. QUALIFIED IMMUNITY, DEFENSE, AND INDEMNIFICATION.

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

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

c. The commission shall indemnify and hold harmless any member, officer, executive direc-

tor, employee, or representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from the intentional or willful and wanton misconduct of that person.

ARTICLE VI — MEETINGS AND ACTS OF THE COMMISSION

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

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

3. The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in the bylaws.

ARTICLE VII — RULES AND OPERATING PROCEDURES — RULEMAKING FUNCTIONS OF THE COMMISSION AND OPTING OUT OF UNIFORM STANDARDS

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

2. **RULEMAKING PROCEDURE.** Rules and operating procedures shall be made pursuant to a rulemaking process that conforms to the model state administrative procedure act, as may be appropriate to the operations of the commission. Before the commission adopts a uniform standard, the commission shall give written notice to the relevant state legislative committee or committees in each compacting state responsible for insurance issues of its intention to adopt the uniform standard.

3. **EFFECTIVE DATE AND OPT OUT OF A UNIFORM STANDARD.** A uniform standard shall become effective ninety days after its promulgation by the commission or such later date as the commission may determine, provided, however, that a compacting state may opt out of a uniform standard as provided in this article. "Opt out" means any action by a compacting state to decline to adopt or participate in a promulgated uniform standard. All other rules and operating procedures, and amendments thereto, shall become effective as of the date specified in each rule, operating procedure, or amendment.

4. **OPT-OUT PROCEDURE.** A compacting state may opt out of a uniform standard, either by legislation or regulation duly promulgated by the insurance department under the compacting state's administrative procedure act. If a compacting state elects to opt out of a uniform standard by regulation, it must do all of the following:

a. Give written notice to the commission no later than ten business days after the uniform standard is promulgated, or at the time the state becomes a compacting state.

b. Find that the uniform standard does not provide reasonable protections to the citizens of the state, given the conditions in the state.

The commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state which warrant a departure from the uniform standard and determining that the uniform standard would not reasonably protect the citizens of the state. The commissioner must consider and balance the following

factors and find that the conditions in the state and needs of the citizens of the state outweigh both of the following:

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

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

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

5. EFFECT OF OPT OUT. If a compacting state elects to opt out of a uniform standard, the uniform standard shall remain applicable in the compacting state electing to opt out until such time the opt-out legislation is enacted into law or the regulation opting out becomes effective.

Once the opt out of a uniform standard by a compacting state becomes effective, as provided under the laws of that state, the uniform standard shall have no further force and effect in that state unless and until the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the laws of the state. If a compacting state opts out of a uniform standard after the uniform standard has been made effective in that state, the opt out shall have the same prospective effect as provided under article XIV for withdrawals.

ARTICLE VIII — COMMISSION RECORDS AND ENFORCEMENT

1. The commission shall promulgate rules to establish conditions and procedures under which the commission shall make its information and official records available to the public for inspection or copying. The commission may promulgate additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records, and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

2. Except as to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure shall not relieve any compacting state commissioner of the duty to disclose any relevant records, data, or information to the commission, provided that disclosure to the commission shall not be deemed to waive or otherwise affect any confidentiality requirement, and further provided that, except as otherwise expressly provided in this compact, the commission shall not be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in its possession. Confidential information of the commission shall remain confidential after such information is provided to any commissioner.

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

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

a. With respect to the commissioner's market regulation of a product or advertisement that is approved or certified to the commission, no activity of an insurer shall constitute a violation

of the provisions, standards, or requirements of this 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 this compact relating to the use of an advertisement not approved or certified to the commission, the commissioner, or an authorized commission officer or employee, must authorize the action. However, authorization pursuant to this paragraph does not require notice to the insurer, opportunity for hearing, or disclosure of requests for authorization or records of the commission's action on such requests.

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

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

ARTICLE IX — DISPUTE RESOLUTION

The commission shall attempt, upon the request of a member, to resolve any disputes or other issues which are subject to this compact and which 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 such disputes.

ARTICLE X — PRODUCT FILING AND APPROVAL

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

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

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

ARTICLE XI — REVIEW OF COMMISSION DECISIONS
REGARDING FILINGS

1. Not later than thirty days after the commission has given notice of a disapproved product or advertisement filed with the commission, the insurer or third-party filer whose filing was disapproved may appeal the determination to a review panel appointed by the commission. The commission shall adopt rules to establish procedures for appointing such review panels and provide for notice and hearing. The decision of the review panel shall be the final action of the commission and not subject to review by any court. Notwithstanding the foregoing, an allegation that the commission, in disapproving a product or advertisement filed with the commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with article III, section 5.

2. The commission shall have authority to monitor, review, and reconsider products and advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant uniform standard. Where appropriate, the commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in section 1.

ARTICLE XII — FINANCE

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

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

3. The commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in article VII.

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

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

6. The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports, including the system of internal controls and procedures of the commission, shall be audited annually by an independent certified public accountant. Upon the determination of the commission, but no less frequently than every three years, the review of the independent auditor shall include a management and performance audit of the commission. The commission shall make an annual report to the governor and legislature of the compacting states, which shall include a report of the independent audit. The commission's internal accounts, any work papers related to any internal audit, and any work papers related to the independent audit, shall be confidential, provided that such materials may be shared with the commissioner of any compacting state and shall remain confidential pursuant to article VII.

7. A compacting state shall not have any claim to or ownership of any property held by or vested in the commission or to any commission funds held pursuant to the provisions of this compact.

ARTICLE XIII — COMPACTING STATES,
EFFECTIVE DATE, AND AMENDMENT

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

2. This compact shall become effective and binding upon legislative enactment of this compact into law by two compacting states, provided the commission shall become effective for purposes of adopting uniform standards for reviewing, and giving approval or disapproval of, products filed with the commission that satisfy applicable uniform standards only after twenty-six states are compacting states or, alternatively, by states representing greater than forty percent of the premium volume for life insurance, annuity, disability income, and long-term care insurance products, based on records of the national association of insurance commissioners for the prior year. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of this compact into law by that state.

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

ARTICLE XIV — WITHDRAWAL, DEFAULT, AND TERMINATION

1. WITHDRAWAL.

a. Once effective, this compact shall continue in force and remain binding upon each and every compacting state, provided that a compacting state may withdraw from this compact by enacting a statute specifically repealing the statute which enacted the compact into law.

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

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

d. The commission shall notify the other compacting states of the introduction of such legislation within ten days after its receipt of notice.

e. The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal, including any obligations, the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state. The commission’s approval of products and advertisement prior to the effective date of withdrawal shall continue to be effective and be given full force and effect in the withdrawing state, unless formally rescinded by the withdrawing state in the same manner as provided by the laws of the withdrawing state for the prospective disapproval of products or advertisement previously approved under state law.

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

2. DEFAULT.

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

b. Product approvals by the commission or product self-certifications, or any advertisement in connection with such product, that are in force on the effective date of termination shall remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to section 1.

c. Reinstatement following termination of any compacting state requires a reenactment of this compact.

3. DISSOLUTION OF COMPACT.

a. This compact dissolves effective upon the date of the withdrawal or default of the compacting state which reduces membership in this compact to one compacting state.

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

ARTICLE XV — SEVERABILITY AND CONSTRUCTION

1. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of this compact shall be enforceable.

2. The provisions of this compact shall be liberally construed to effectuate its purposes.

ARTICLE XVI — BINDING EFFECT OF COMPACT AND OTHER LAWS

1. OTHER LAWS.

a. Nothing herein prevents the enforcement of any other law of a compacting state, except as provided in paragraph “b”.

b. For any product approved or certified to the commission, the rules, uniform standards, and any other requirements of the commission shall constitute the exclusive provisions applicable to the content, approval, and certification of such products. For advertisement that is subject to the commission’s authority, any rule, uniform standard, or other requirement of the commission which governs the content of the advertisement shall constitute the exclusive provision that a commissioner may apply to the content of the advertisement. Notwithstanding the foregoing, action taken by the commission shall not abrogate or restrict:

(1) The access of any person, including the attorney general, to state courts.

(2) Remedies available under state law related to breach of contract, tort, general consumer protection laws, or general consumer protection regulations that apply to the sale or advertisement of the product or other laws not specifically directed to the content of the product.

(3) State law relating to the construction of insurance contracts.

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

2. BINDING EFFECT OF THIS COMPACT.

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

b. All agreements between the commission and the compacting states are binding in accordance with 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 shall be ineffective as to that compacting state, and those obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which those obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.