CHAPTER 95

Interstate Insurance Product Regulation Compact

Editor’s Note

2016 Act No. 161, preamble and Section 1, provide as follows:

“Whereas, the South Carolina General Assembly finds that it enacted the Interstate Insurance Product Regulation Compact in Act 339 of 2008, effective January 1, 2009, for the purposes of regulating certain designated insurance products and advertisement of those products uniformly among the states that are compact members and to authorize this State to join the compact; and

“Whereas, the South Carolina General Assembly finds that the Interstate Insurance Product Regulation Compact proved very successful and was very beneficial to this State; and

“Whereas, the South Carolina General Assembly finds that the Interstate Insurance Product Regulation Compact proved very successful and was very beneficial to this State; and

“Whereas, the South Carolina General Assembly finds that the provisions of Act 339 of 2008 expired on June 1, 2014, pursuant to the provisions of Section 6 of the act, but now should be reenacted retroactive to this expiration date in light of the success and benefits of the compact. Now, therefore,

“Be it enacted by the General Assembly of the State of South Carolina:

“Certain expired provisions reenacted, retroactive application

“SECTION 1. The Interstate Insurance Product Regulation Compact, as established by Section 2, Act 339 of 2008, and contained in Chapter 95, Title 38, and related provisions contained in Sections 1, 3, and 5, Act 339 of 2008, all are reenacted as provided in Act 339 of 2008, retroactive to June 1, 2014, when the act expired. The reporting requirements of Section 4, and the expiration provision of Section 6, Act 339 of 2008, are not reenacted.”

**SECTION 38‑95‑10.** Short title.

This chapter may be cited as the “Interstate Insurance Product Regulation Compact”.

HISTORY: 2008 Act No. 339, Section 2, eff January 1, 2009; Reenacted by 2016 Act No. 161 (H.4662), Section 1, eff June 1, 2014.

Editor’s Note

2008 Act No. 339, Sections 1, 3, 4, and 6, provide as follows:

“SECTION 1. The purposes of the Interstate Insurance Product Regulation Compact are, through means of joint and cooperative action among the compacting states to:

“(1) promote and protect the interests of consumers of individual and group annuity, life insurance, disability income, and long‑term care insurance products;

“(2) develop uniform standards for insurance products covered under the compact;

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

“(4) give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard;

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

“(6) create the Interstate Insurance Product Regulation Commission; and

“(7) perform these and other related functions consistent with the state regulation of the business of insurance.”

“SECTION 3. (A)(1) Nothing in this chapter prevents the enforcement of any other law of a compacting state, except as provided in subsection (B) of this section.

“(2) For a product approved or certified to the commission, the rules, uniform standards, and other requirements of the commission constitute the exclusive provisions applicable to the content, approval, and certification of these 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, constitutes the exclusive provision that a commissioner may apply to the content of the advertisement. Notwithstanding another provision of law, action taken by the commission does not abrogate or restrict:

“(a) the access of a person to state courts;

“(b) remedies available pursuant to state law related to breach of contract, tort, or other laws not specifically directed to the content of the product;

“(c) state law relating to the construction of insurance contracts; or

“(d) the authority of the attorney general of the state including, but not limited to, maintaining an action or proceeding, as authorized by law.

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

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

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

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

“(4) If a provision of this compact exceeds the constitutional limits imposed on the legislature of a compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the commission are ineffective as to that compacting state, and those obligations, duties, powers, or jurisdiction remain in the compacting state and must be exercised by the agency which those obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective.”

“SECTION 4. No later than October 1, 2013, the director shall submit a report to the General Assembly on the effectiveness of the state’s participation in the compact. The report shall include consideration of any issues deemed relevant by the director to the state’s participation in the compact and shall include recommended legislative proposals related to the compact. The report also shall include the director’s recommendation to the General Assembly as to whether the state’s continued participation in the compact is in the best interest of the citizens of this State. Based on the director’s recommendations outlined in the report, the General Assembly shall determine whether to extend this act beyond June 1, 2014.”

“SECTION 6. This act becomes effective January 1, 2009, and expires June 1, 2014, unless extended by the General Assembly.”

2016 Act No. 161, Section 1, provides as follows:

“SECTION 1. The Interstate Insurance Product Regulation Compact, as established by Section 2, Act 339 of 2008, and contained in Chapter 95, Title 38, and related provisions contained in Sections 1, 3, and 5, Act 339 of 2008, all are reenacted as provided in Act 339 of 2008, retroactive to June 1, 2014, when the act expired. The reporting requirements of Section 4, and the expiration provision of Section 6, Act 339 of 2008, are not reenacted.”

**SECTION 38‑95‑20.** Definitions.

For purposes of this chapter:

(1) “Advertisement” means a 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” mean those bylaws established by the commission for its governance, or for directing or controlling the commission’s actions or conduct.

(3) “Compacting state” means a state that has enacted this compact legislation and which has not withdrawn pursuant to Section 38‑95‑140(A), or been terminated pursuant to Section 38‑95‑140(B).

(4) “Commission” means the “Interstate Insurance Product Regulation Commission” established by this compact.

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

(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 an entity licensed by a state to issue contracts of insurance for any of the lines of insurance covered by this chapter.

(8) “Member” means the person chosen by a compacting state as its representative to the commission, or his designee.

(9) “Noncompacting state” means a state that is not at the time a compacting state.

(10) “Operating procedures” mean procedures adopted by the commission implementing a rule, uniform standard, or a provision of this chapter.

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

(12) “Rule” means a statement of general or particular applicability and future effect adopted by the commission, including a uniform standard developed pursuant to Section 38‑95‑70, designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the commission, that has the force and effect of law in the compacting states.

(13) “State” means a 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 Section 38‑95‑70, and includes all of the product requirements in aggregate. Each uniform standard must be construed, whether express or implied, to prohibit the use of any inconsistent, misleading, or ambiguous provisions in a product and the form of the product made available to the public must not be unfair, inequitable, or against public policy as determined by the commission.

HISTORY: 2008 Act No. 339, Section 2, eff January 1, 2009; Reenacted by 2016 Act No. 161 (H.4662), Section 1, eff June 1, 2014.

Editor’s Note

2016 Act No. 161, Section 1, provides as follows:

“SECTION 1. The Interstate Insurance Product Regulation Compact, as established by Section 2, Act 339 of 2008, and contained in Chapter 95, Title 38, and related provisions contained in Sections 1, 3, and 5, Act 339 of 2008, all are reenacted as provided in Act 339 of 2008, retroactive to June 1, 2014, when the act expired. The reporting requirements of Section 4, and the expiration provision of Section 6, Act 339 of 2008, are not reenacted.”

**SECTION 38‑95‑30.** Interstate Insurance Product Regulation Commission established; venue.

(A) The compacting states are created and established as a joint public agency known as the “Interstate Insurance Product Regulation Commission”. Pursuant to Section 38‑95‑40, the commission has the power to develop uniform standards for product lines, receive and provide prompt review of products filed with it, and give approval to those product filings satisfying applicable uniform standards. It is not intended that the commission be the exclusive entity for receipt and review of insurance product filings. This chapter does not prohibit an insurer from filing its product in a state in which the insurer is licensed to conduct the business of insurance, and that filing is subject to the laws of the state where filed.

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

(C) The commission is solely responsible for its liabilities except as otherwise specifically provided by this chapter.

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

HISTORY: 2008 Act No. 339, Section 2, eff January 1, 2009; Reenacted by 2016 Act No. 161 (H.4662), Section 1, eff June 1, 2014.

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“SECTION 1. The Interstate Insurance Product Regulation Compact, as established by Section 2, Act 339 of 2008, and contained in Chapter 95, Title 38, and related provisions contained in Sections 1, 3, and 5, Act 339 of 2008, all are reenacted as provided in Act 339 of 2008, retroactive to June 1, 2014, when the act expired. The reporting requirements of Section 4, and the expiration provision of Section 6, Act 339 of 2008, are not reenacted.”

**SECTION 38‑95‑40.** Powers of commission.

The commission is empowered to:

(1) adopt rules, pursuant to Section 38‑95‑70, which have the force and effect of law and are binding in the compacting states to the extent and in the manner provided by this chapter;

(2) exercise its rule‑making authority and establish reasonable uniform standards for products pursuant to the provisions of this chapter, and advertisement related to them, which have the force and effect of law and are binding in the compacting states, but only for those products filed with the commission, except that a compacting state has the right to opt out of a uniform standard pursuant to Section 38‑95‑70 to the extent and in the manner provided by this chapter, and, except 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 may 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 subsequent amendments to the NAIC Long‑Term Care Insurance Model Act or Long‑Term Care Insurance Model Regulation adopted by the NAIC require amending of the uniform standards established by the commission for long‑term care insurance products;

(3) receive and review in an expeditious manner products filed with the commission and rate filings for disability income and long‑term care insurance products, and give approval of those products and rate filings that satisfy the applicable uniform standard, which approval has the force and effect of law and is binding on the compacting states to the extent and in the manner provided by this chapter;

(4) 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 a product covered under this compact, other than long‑term care insurance products, the commission may require an insurer to submit all or a part of its advertisement with respect to that product for review or approval before use, if the commission determines that the nature of the product is such that an advertisement of the product has the capacity or tendency to mislead the public. The actions of the commission as provided in this section have the force and effect of law and are binding in the compacting states to the extent and in the manner provided by this chapter;

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

(6) adopt operating procedures, pursuant to Section 38‑95‑70, which are binding in the compacting states to the extent and in the manner provided by this chapter;

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

(8) issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence;

(9) establish and maintain offices;

(10) purchase and maintain insurance and bonds;

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

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

(13) accept appropriate donations and grants of money, equipment, supplies, materials, and services, and to receive, utilize, and dispose of the same; except that the commission shall strive to avoid the appearance of impropriety;

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

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

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

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

(18) provide for dispute resolution among compacting states;

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

(20) 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) establish a budget and make expenditures;

(22) borrow money;

(23) appoint committees, including advisory committees composed of members, state insurance regulators, state legislators or their representatives, insurance industry, and consumer representatives, and other interested persons designated in the bylaws;

(24) provide and receive information from, and to cooperate with, law enforcement agencies;

(25) adopt and use a corporate seal; and

(26) perform other functions necessary or appropriate to achieve the purposes of this chapter consistent with the state regulation of the business of insurance.

HISTORY: 2008 Act No. 339, Section 2, eff January 1, 2009; Reenacted by 2016 Act No. 161 (H.4662), Section 1, eff June 1, 2014.

Editor’s Note

2016 Act No. 161, Section 1, provides as follows:

“SECTION 1. The Interstate Insurance Product Regulation Compact, as established by Section 2, Act 339 of 2008, and contained in Chapter 95, Title 38, and related provisions contained in Sections 1, 3, and 5, Act 339 of 2008, all are reenacted as provided in Act 339 of 2008, retroactive to June 1, 2014, when the act expired. The reporting requirements of Section 4, and the expiration provision of Section 6, Act 339 of 2008, are not reenacted.”

**SECTION 38‑95‑50.** Organization; management committee; bylaws; legislative monitoring committee; immunity.

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

(2) Each member is entitled to one vote and has an opportunity to participate in the governance of the commission in accordance with the bylaws. Notwithstanding a provision in this section, an action of the commission with respect to the promulgation of a uniform standard is not effective unless two‑thirds of the members vote in favor of it.

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

(a) establishing the fiscal year of the commission;

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

(c) providing reasonable standards and procedures:

(i) for the establishment and meetings of other committees; and

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

(d) providing reasonable procedures for calling and conducting meetings of the commission requiring a majority of commission members, ensuring reasonable advance notice of each meeting, and providing for the right of citizens to attend each meeting, with enumerated exceptions designed to protect the public’s interest, the privacy of individuals, and insurers’ proprietary information, including trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting en toto or in part. As soon as practicable, the commission shall make public:

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

(ii) votes taken during the meeting;

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

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

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

(h) providing a mechanism for ending the operations of the commission and the equitable disposition of surplus funds that may exist after the termination of the compact after the payment or reserving of all of its debts and obligations, or both.

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

(B)(1) A management committee made up of no more than fourteen members must be established as follows:

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

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

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

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

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

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

(c) overseeing the offices of the commission; and

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

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

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

(C)(1) A legislative committee of state legislators or their designees must be established to monitor the operations of, and make recommendations to, the commission, including the management committee. The manner of selection and term of a legislative committee member must be as set forth in the bylaws. Before the adoption by the commission of a uniform standard, revision to the bylaws, annual budget, or other significant action as may be provided in the bylaws, the management committee shall consult with and report to the legislative committee.

(2) The commission shall establish two advisory committees, one of which is made up of consumer representatives independent of the insurance industry and the other being made up of insurance industry representatives.

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

(D) The commission shall maintain its corporate books and records in accordance with the bylaws.

(E)(1) The members, officers, executive director, employees, and representatives of the commission are immune from suit and liability, either personally or in their official capacity, for a claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of an 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. Nothing in this item may be construed to protect a person from suit or liability, or both, for any damage, loss, injury, or liability caused by the intentional or wilful and wanton misconduct of that person.

(2) The commission shall defend any member, officer, executive director, employee, or representative of the commission in a civil action seeking to impose liability arising out of an 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 that the actual or alleged act, error, or omission did not result from that person’s intentional or wilful and wanton misconduct. Nothing in this item may be construed to prohibit that person from retaining his own counsel.

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

HISTORY: 2008 Act No. 339, Section 2, eff January 1, 2009; Reenacted by 2016 Act No. 161 (H.4662), Section 1, eff June 1, 2014.

Editor’s Note

2016 Act No. 161, Section 1, provides as follows:

“SECTION 1. The Interstate Insurance Product Regulation Compact, as established by Section 2, Act 339 of 2008, and contained in Chapter 95, Title 38, and related provisions contained in Sections 1, 3, and 5, Act 339 of 2008, all are reenacted as provided in Act 339 of 2008, retroactive to June 1, 2014, when the act expired. The reporting requirements of Section 4, and the expiration provision of Section 6, Act 339 of 2008, are not reenacted.”

**SECTION 38‑95‑60.** Meetings and actions of commission.

(A) The commission shall meet and take actions consistent with the provisions of this chapter and the bylaws.

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

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

HISTORY: 2008 Act No. 339, Section 2, eff January 1, 2009; Reenacted by 2016 Act No. 161 (H.4662), Section 1, eff June 1, 2014.

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**SECTION 38‑95‑70.** Rulemaking authority; procedures; opting out of uniform standard; stay of uniform standard; judicial review.

(A) Rulemaking Authority. The commission shall adopt reasonable rules, including uniform standards and operating procedures, to effectively and efficiently achieve the purposes of this chapter. Notwithstanding another provision of law, if the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this chapter, or the powers granted pursuant to the provisions of this chapter, the action by the commission is invalid and has no force and effect.

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

(C) Effective Date and Opt Out of a Uniform Standard. A uniform standard becomes effective ninety days after its adoption by the commission or at a later date as the commission may determine; except that a compacting state may opt out of a uniform standard as provided in this section. “Opt out” is defined as any action by a compacting state to decline to adopt or participate in a uniform standard. All rules and operating procedures, and amendments to them, becomes effective as of the date specified in each rule, operating procedure, or amendment.

(D) Opt Out Procedure. (1) A compacting state may opt out of a uniform standard, either by legislation or regulation duly promulgated by the state’s insurance department under the compacting state’s administrative procedures act. If a compacting state elects to opt out of a uniform standard by regulation, it shall:

(a) give written notice to the commission no later than ten business days after the uniform standard is adopted, or at the time the state becomes a compacting state; and

(b) find that the uniform standard does not provide reasonable protections to the citizens of the state, given the conditions in the state. The commissioner 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 shall consider and balance the following factors and find that the conditions in the state and needs of the citizens of the state outweigh 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 chapter and the presumption that a uniform standard adopted by the commission provides reasonable protections to consumers of the relevant product.

(2) Notwithstanding another provision of law, a compacting state, at the time of the enactment of this chapter, prospectively may opt out of all uniform standards involving long‑term care insurance products by expressly providing for the opt out in the enacted chapter, and the opt out must not be treated as a material variance in the offer or acceptance of a state to participate in this compact. An opt out is effective at the time of enactment of this chapter by the compacting state and applies to all existing uniform standards involving long‑term care insurance products and those subsequently adopted.

(E) Effect of Opt Out. (1) If a compacting state elects to opt out of a uniform standard, the uniform standard remains applicable in the compacting state electing to opt out until the time the opt‑out legislation is enacted into law or the regulation opting out becomes effective.

(2) Once the opt out of a uniform standard by a compacting state becomes effective as provided pursuant to the laws of that state, the uniform standard has no further force and effect in that state unless the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective pursuant to 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 has the same prospective effect as provided by Section 38‑95‑140 for withdrawals.

(F) 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 may postpone the effective date by up to ninety days, unless affirmatively extended by the commission. A stay may not be permitted to remain in effect for more than one year unless the compacting state shows extraordinary circumstances that warrant a continuance of the stay including, but not limited to, the existence of a legal challenge that prevents the compacting state from opting out. A stay may be terminated by the commission upon notice that the rulemaking process has been terminated.

(G) Not later than thirty days after a rule or operating procedure is adopted, a person may file a petition for judicial review of the rule or operating procedure. The filing of a petition does 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 may 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.

HISTORY: 2008 Act No. 339, Section 2, eff January 1, 2009; Reenacted by 2016 Act No. 161 (H.4662), Section 1, eff June 1, 2014.

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**SECTION 38‑95‑80.** Records and information of commission; public inspection and copying; confidentiality or nondisclosure; enforcement.

(A) The commission shall adopt rules establishing conditions and procedures for public inspection and copying of its information and official records, except information and records involving the privacy of individuals and insurers’ trade secrets. The commission may adopt 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 agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

(B) Except as to privileged records, data, and information, the laws of a compacting state pertaining to confidentiality or nondisclosure do not relieve a compacting state commissioner of the duty to disclose relevant records, data, or information to the commission. Disclosure to the commission does not waive or otherwise affect a confidentiality requirement. Except as otherwise expressly provided by this chapter, the commission is not 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 remains confidential after the information is provided to a commissioner.

(C) The commission shall monitor compacting states for compliance with duly adopted bylaws, rules, including uniform standards, and operating procedures. The commission shall notify a 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 is deemed to be in default as provided in Section 38‑95‑140.

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

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

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

HISTORY: 2008 Act No. 339, Section 2, eff January 1, 2009; Reenacted by 2016 Act No. 161 (H.4662), Section 1, eff June 1, 2014.

Editor’s Note

2016 Act No. 161, Section 1, provides as follows:

“SECTION 1. The Interstate Insurance Product Regulation Compact, as established by Section 2, Act 339 of 2008, and contained in Chapter 95, Title 38, and related provisions contained in Sections 1, 3, and 5, Act 339 of 2008, all are reenacted as provided in Act 339 of 2008, retroactive to June 1, 2014, when the act expired. The reporting requirements of Section 4, and the expiration provision of Section 6, Act 339 of 2008, are not reenacted.”

**SECTION 38‑95‑90.** Dispute resolution.

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

HISTORY: 2008 Act No. 339, Section 2, eff January 1, 2009; Reenacted by 2016 Act No. 161 (H.4662), Section 1, eff June 1, 2014.

Editor’s Note

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**SECTION 38‑95‑100.** Product filing and approval.

(A) Insurers and third‑party filers seeking to have a product approved by the commission shall file the product with, and pay applicable filing fees to, the commission. Nothing in this chapter may be construed to restrict or otherwise prevent an insurer from filing its product with the insurance department in a state in which the insurer is licensed to conduct the business of insurance, and the filing is subject to the laws of the states where filed.

(B) The commission shall establish appropriate filing and review processes and procedures pursuant to commission rules and operating procedures. Notwithstanding another provision of law, the commission shall adopt rules to establish conditions and procedures under which the commission shall provide public access to product filing information. In establishing the rules, the commission shall consider the interests of the public in having access to the information, as well as protection of personal medical and financial information and trade secrets, that may be contained in a product filing or supporting information.

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

HISTORY: 2008 Act No. 339, Section 2, eff January 1, 2009; Reenacted by 2016 Act No. 161 (H.4662), Section 1, eff June 1, 2014.

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**SECTION 38‑95‑110.** Appeal to review panel; withdrawal or modification of approval.

(A) 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. 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 Section 38‑95‑30(D).

(B) The commission has 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 subsection (A).

HISTORY: 2008 Act No. 339, Section 2, eff January 1, 2009; Reenacted by 2016 Act No. 161 (H.4662), Section 1, eff June 1, 2014.

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**SECTION 38‑95‑120.** Funding; filing fees; budget; exemption from taxation; pledge of credit of compacting state; accounts; claim by compacting state to or ownership of commission property or funds.

(A) The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the commission may accept contributions and other forms of funding from the National Association of Insurance Commissioners, compacting states, and other sources. Contributions and other forms of funding from other sources must be of such a nature that the independence of the commission concerning the performance of its duties is not compromised.

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

(C) The commission’s budget for a fiscal year is not approved until it has been subject to notice and comment as provided in Section 38‑95‑70.

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

(E) The commission may not pledge the credit of a compacting state, except by and with the appropriate legal authority of that compacting state.

(F) The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the commission are 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 must 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 must include a management and performance audit of the commission. The commission shall make an annual report to the governor and legislature of each of the compacting states, which includes a report of the independent audit. The commission’s internal accounts are not confidential and those materials may be shared with the commissioner of a compacting state upon request. Work papers related to an internal or independent audit and information regarding the privacy of individuals and insurers’ proprietary information, including trade secrets, remain confidential.

(G) A compacting state shall not have a claim to or ownership of property held by or vested in the commission or to commission funds held pursuant to the provisions of this chapter.

HISTORY: 2008 Act No. 339, Section 2, eff January 1, 2009; Reenacted by 2016 Act No. 161 (H.4662), Section 1, eff June 1, 2014.

Editor’s Note

2016 Act No. 161, Section 1, provides as follows:

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**SECTION 38‑95‑130.** Eligibility and procedure for becoming compacting state; effective date and amendment of compact.

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

(B) The compact becomes effective and binding upon legislative enactment of the compact into law by two compacting states, except that the commission becomes 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 NAIC for the previous year. After that time, it becomes effective and binding as to any other compacting state upon enactment of the compact into law by that state.

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

HISTORY: 2008 Act No. 339, Section 2, eff January 1, 2009; Reenacted by 2016 Act No. 161 (H.4662), Section 1, eff June 1, 2014.

Editor’s Note

2016 Act No. 161, Section 1, provides as follows:

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**SECTION 38‑95‑140.** Withdrawal from compact; default; dissolution.

(A)(1) Once effective, the compact continues in force and remains binding upon each compacting state, except that a compacting state may withdraw from the compact (withdrawing state) by enacting a statute specifically repealing the statute that enacted the compact into law.

(2) The effective date of withdrawal is the effective date of the repealing statute. The withdrawal does not apply to a product filing approved or self‑certified, or an advertisement of 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 item (5).

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

(4) The commission shall notify the other compacting states of the introduction of legislation within ten days after its receipt of notice of it.

(5) The withdrawing state is responsible for all obligations, duties, and liabilities incurred through the effective date of withdrawal, including obligations, the performance of which extends 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 before the effective date of withdrawal continues 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 pursuant to state law.

(6) Reinstatement following withdrawal of a compacting state occurs upon the effective date of the withdrawing state reenacting the compact.

(B)(1) If the commission determines that a compacting state has defaulted (defaulting state) in the performance of its obligations or responsibilities under this compact, the bylaws or duly adopted 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 are 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 other grounds designated in commission rules. The commission immediately shall notify the defaulting state in writing of the defaulting state’s suspension pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state shall cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state is terminated from the compact and all rights, privileges, and benefits conferred by this compact are terminated from the effective date of termination.

(2) Product approvals by the commission or product self‑certifications, or an advertisement in connection with the product, which are in force on the effective date of termination remaining in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to subsection (A).

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

(C)(1) The compact dissolves effective upon the date of the withdrawal or default of the compacting state, which reduces membership in the compact to one compacting state.

(2) Upon the dissolution of this compact, the compact is void and is of no further force or effect, and the business and affairs of the commission are concluded and any surplus funds must be distributed in accordance with the bylaws.

HISTORY: 2008 Act No. 339, Section 2, eff January 1, 2009; Reenacted by 2016 Act No. 161 (H.4662), Section 1, eff June 1, 2014.

Editor’s Note

2016 Act No. 161, Section 1, provides as follows:

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**SECTION 38‑95‑150.** Intent to join with other states to establish compact; representative of state designated.

Pursuant to terms and conditions of this chapter, the State of South Carolina seeks to join with other states and establish the Interstate Insurance Product Regulation Compact, and become a member of the Interstate Insurance Product Regulation Commission. The director of the Department of Insurance, or his designee, is designated to serve as the representative of this State.

HISTORY: 2008 Act No. 339, Section 2, eff January 1, 2009; Reenacted by 2016 Act No. 161 (H.4662), Section 1, eff June 1, 2014.

Editor’s Note

2016 Act No. 161, Section 1, provides as follows:

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