

As Introduced

**126th General Assembly
Regular Session
2005-2006**

S. B. No. 268

Senators Stivers, Schuler, Mumper

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A B I L L

To amend section 3901.48 and to enact section 3915.16 1
of the Revised Code to adopt the Interstate 2
Insurance Product Regulation Compact. 3

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That section 3901.48 be amended and section 4
3915.16 of the Revised Code be enacted to read as follows: 5

Sec. 3901.48. (A) The original work papers of a certified 6
public accountant performing an audit of an insurance company or 7
health insuring corporation doing business in this state that is 8
required by rule or by any section of the Revised Code to file an 9
audited financial report with the superintendent of insurance 10
shall remain the property of the certified public accountant. Any 11
copies of these work papers voluntarily given to the 12
superintendent shall be the property of the superintendent. The 13
original work papers or any copies of them, whether in possession 14
of the certified public accountant or the department of insurance, 15
are confidential and privileged and are not a public record as 16
defined in section 149.43 of the Revised Code. The original work 17
papers and any copies of them are not subject to subpoena and 18
shall not be made public by the superintendent or any other 19
person. 20

(B) The work papers of the superintendent or of the person 21
appointed by the superintendent, resulting from the conduct of an 22
examination made pursuant to section 3901.07 of the Revised Code 23
or from the conduct of a financial analysis of any entity subject 24
to examination by the superintendent, including but not limited to 25
any insurance company, health insuring corporation, fraternal 26
benefit society, or multiple employer welfare arrangement, are 27
confidential and privileged and are not a public record as defined 28
in section 149.43 of the Revised Code. The original work papers 29
and any copies of them are not subject to subpoena and shall not 30
be made public by the superintendent or any other person. 31

(C) The work papers of the superintendent or of any person 32
appointed by the superintendent, resulting from the conduct of a 33
performance regulation examination made pursuant to authority 34
granted under section 3901.011 of the Revised Code or from the 35
conduct of a market analysis or investigation of any entity 36
subject to examination by the superintendent, including, but not 37
limited to, any insurance company, health insuring corporation, 38
fraternal benefit society, or multiple employer welfare 39
arrangement, are confidential and privileged and are not a public 40
record as defined in section 149.43 of the Revised Code. The 41
original work papers and any copies of them are not subject to 42
subpoena and shall not be made public by the superintendent or any 43
other person. 44

(D) Notwithstanding divisions (A), (B), and (C) of this 45
section, the superintendent may do either of the following: 46

(1) Share work papers that are the subject of this section 47
with the chief deputy rehabilitator, the chief deputy liquidator, 48
other deputy rehabilitators and liquidators, and any other person 49
employed by, or acting on behalf of, the superintendent pursuant 50
to Chapter 3901. or 3903. of the Revised Code, with other local, 51
state, federal, and international regulatory and law enforcement 52

agencies, with local, state, and federal prosecutors, ~~and~~ with the
national association of insurance commissioners and its affiliates
and subsidiaries, and with the interstate insurance product
regulation commission described in section 3915.16 of the Revised
Code, provided that the recipient agrees to maintain the
confidential or privileged status of the confidential or
privileged work paper and has authority to do so;

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(2) Disclose work papers that are the subject of this section
in the furtherance of any regulatory or legal action brought by or
on behalf of the superintendent or the state, resulting from the
exercise of the superintendent's official duties.

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(E) Notwithstanding divisions (A), (B), (C), and (D) of this
section, the superintendent may authorize the national association
of insurance commissioners and its affiliates and subsidiaries or
the interstate insurance product regulation commission described
in section 3915.16 of the Revised Code by agreement to share
confidential or privileged work papers received pursuant to
division (D)(1) of this section with local, state, federal, and
international regulatory and law enforcement agencies and with
local, state, and federal prosecutors, provided that the recipient
agrees to maintain the confidential or privileged status of the
confidential or privileged work paper and has authority to do so.

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(F) Notwithstanding divisions (A), (B), (C), and (D) of this
section, the chief deputy rehabilitator, the chief deputy
liquidator, and other deputy rehabilitators and liquidators may
disclose work papers that are the subject of this section in the
furtherance of any regulatory or legal action brought by or on
behalf of the superintendent, the rehabilitator, the liquidator,
or the state resulting from the exercise of the superintendent's
official duties in any capacity.

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(G) Nothing in this section shall prohibit the superintendent

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from receiving work papers in accordance with section 3901.045 of 84
the Revised Code. 85

(H) The superintendent may enter into agreements governing 86
the sharing and use of work papers consistent with the 87
requirements of this section. 88

(I)(1) No waiver of any applicable privilege or claim of 89
confidentiality in the work papers, or copies thereof, that are 90
the subject of this section shall occur as a result of sharing or 91
receiving work papers as authorized in divisions (D)(1), (E), and 92
(G) of this section. 93

(2) The disclosure of work papers in connection with a 94
regulatory or legal action pursuant to divisions (D)(2) and (F) of 95
this section does not prohibit an insurer or any other person from 96
taking steps to limit the dissemination of the work papers to 97
persons not involved in or the subject of the regulatory or legal 98
action on the basis of any recognized privilege arising under any 99
other section of the Revised Code or the common law. 100

Sec. 3915.16. The "Interstate Insurance Product Regulation 101
Compact" is intended to help states join together to establish an 102
interstate compact to regulate designated insurance products. 103
Pursuant to terms and conditions of this section, the state of 104
Ohio seeks to join with other states and establish the interstate 105
insurance product regulation commission, and thus become a member 106
of the interstate insurance product regulation commission. 107

The "Interstate Insurance Product Regulation Compact" is 108
hereby enacted into law and entered into with all other states 109
which have legally joined in the compact: 110

"Interstate Insurance Product Regulation Compact" 111

Article I. Purposes 112

The purposes of this Compact are, through means of joint and 113

<u>cooperative action among the Compacting States:</u>	114
<u>1. To promote and protect the interest of consumers of individual and group annuity, life insurance, disability income and long-term care insurance products;</u>	115 116 117
<u>2. To develop uniform standards for insurance products covered under the Compact;</u>	118 119
<u>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;</u>	120 121 122 123 124
<u>4. To give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard;</u>	125 126 127
<u>5. To improve coordination of regulatory resources and expertise between state insurance departments regarding the setting of uniform standards and review of insurance products covered under the Compact;</u>	128 129 130 131
<u>6. To create the Interstate Insurance Product Regulation Commission; and</u>	132 133
<u>7. To perform these and such other related functions as may be consistent with the state regulation of the business of insurance.</u>	134 135 136
<u>Article II. Definitions</u>	137
<u>For purposes of this Compact:</u>	138
<u>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.</u>	139 140 141 142 143

2. "Bylaws" means those bylaws established by the Commission for its governance, or for directing or controlling the Commission's actions or conduct. 144
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3. "Compacting State" means any State which has enacted this Compact legislation and which has not withdrawn pursuant to Article XIV, Section 1, or been terminated pursuant to Article XIV, Section 2. 147
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4. "Commission" means the "Interstate Insurance Product Regulation Commission" established by this Compact. 151
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5. "Commissioner" means the chief insurance regulatory official of a State including, but not limited to commissioner, superintendent, director or administrator. 153
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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. 156
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7. "Insurer" means any entity licensed by a State to issue contracts of insurance for any of the lines of insurance covered by this Act. 159
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8. "Member" means the person chosen by a Compacting State as its representative to the Commission, or his or her designee. The superintendent of insurance or the superintendent's designee shall serve as the member to the Commission for the state of Ohio. 162
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9. "Non-compacting State" means any State which is not at the time a Compacting State. 166
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10. "Operating Procedures" means procedures promulgated by the Commission implementing a Rule, Uniform Standard or a provision of this Compact. 168
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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 171
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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. 174
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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 of this Compact, designed to implement, interpret, or prescribe law or policy or describing the organization, procedure, or practice requirements of the Commission, which shall have the force and effect of law in the Compacting States. 177
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13. "State" means any state, district or territory of the United States of America. 184
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14. "Third-Party Filer" means an entity that submits a Product filing to the Commission on behalf of an Insurer. 186
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15. "Uniform Standard" means a standard adopted by the Commission for a Product line, pursuant to Article VII of the Compact, and shall include all of the Product requirements in aggregate; provided, that each Uniform Standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading or ambiguous provisions in a Product and the form of the Product made available to the public shall not be unfair, inequitable, or against public policy as determined by the Commission. 188
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Article III. Establishment of the Commission and Venue 197

1. The Compacting States hereby create and establish a joint public agency known as the "Interstate Insurance Product Regulation Commission." Pursuant to Article IV, the Commission will have the power to develop Uniform Standards for Product lines, receive and provide prompt review of Products filed therewith, and give approval to those Product filings satisfying applicable Uniform Standards; provided, it is not intended for the 198
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Commission to be the exclusive entity for receipt and review of 205
insurance product filings. Nothing herein shall prohibit any 206
Insurer from filing its product in any State wherein the Insurer 207
is licensed to conduct the business of insurance; and any such 208
filing shall be subject to the laws of the State where filed. 209

2. The Commission is a body corporate and politic, and an 210
instrumentality of the Compacting States. 211

3. The Commission is solely responsible for its liabilities 212
except as otherwise specifically provided in this Compact. 213

4. Venue is proper and judicial proceedings by or against the 214
Commission shall be brought solely and exclusively in a Court of 215
competent jurisdiction where the principal office of the 216
Commission is located. 217

Article IV. Powers of the Commission 218

The Commission shall have the following powers: 219

1. To promulgate Rules, pursuant to Article VII of this 220
Compact, which shall have the force and effect of law and shall be 221
binding in the Compacting States to the extent and in the manner 222
provided in this Compact; 223

2. To exercise its rule-making authority and establish 224
reasonable Uniform Standards for Products covered under the 225
Compact, and Advertisement related thereto, which shall have the 226
force and effect of law and shall be binding in the Compacting 227
States, but only for those Products filed with the Commission, 228
provided, that a Compacting State shall have the right to opt out 229
of such Uniform Standard pursuant to Article VII, to the extent 230
and in the manner provided in this Compact, and, provided further, 231
that any Uniform Standard established by the Commission for 232
long-term care insurance products may provide the same or greater 233
protections for consumers as, but shall not provide less than, 234
those protections set forth in the National Association of 235

Insurance Commissioners' Long-term Care Insurance Model Act and 236
Long-Term Care Insurance Model Regulation, respectively, adopted 237
as of 2001. The Commission shall consider whether any subsequent 238
amendments to the NAIC Long-Term Care Insurance Model Act or 239
Long-Term Care Insurance Model Regulation adopted by the NAIC 240
require amending of the Uniform Standards established by the 241
Commission for long-term care insurance products; 242

3. To receive and review in an expeditious manner Products 243
filed with the Commission, and rate filings for disability income 244
and long-term care insurance Products, and give approval of those 245
Products and rate filings that satisfy the applicable Uniform 246
Standard, where such approval shall have the force and effect of 247
law and be binding on the Compacting States to the extent and in 248
the manner provided in the Compact; 249

4. To receive and review in an expeditious manner 250
Advertisement relating to long-term care insurance products for 251
which Uniform Standards have been adopted by the Commission and 252
give approval to all Advertisement that satisfies the applicable 253
Uniform Standard. For any product covered under this Compact, 254
other than long-term care insurance products, the Commission shall 255
have the authority to require an insurer to submit all or any part 256
of its Advertisement with respect to that product for review or 257
approval prior to use, if the Commission determines that the 258
nature of the product is such that an Advertisement of the product 259
could have the capacity or tendency to mislead the public. The 260
actions of the Commission as provided in this section shall have 261
the force and effect of law and shall be binding in the Compacting 262
States to the extent and in the manner provided in the Compact; 263

5. To exercise its rule-making authority and designate 264
Products and Advertisement that may be subject to a 265
self-certification process without the need for prior approval by 266
the Commission; 267

<u>6. To promulgate Operating Procedures, pursuant to Article VII of this Compact, which shall be binding in the Compacting States to the extent and in the manner provided in this Compact;</u>	268
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<u>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;</u>	271
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<u>8. To issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence;</u>	275
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<u>9. To establish and maintain offices;</u>	277
<u>10. To purchase and maintain insurance and bonds;</u>	278
<u>11. To borrow, accept or contract for services of personnel, including, but not limited to, employees of a Compacting State;</u>	279
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<u>12. To hire employees, professionals or specialists, and elect or appoint officers, and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the Compact, and determine their qualifications; and to establish the Commission's personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation and qualifications of personnel;</u>	281
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<u>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;</u>	288
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<u>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;</u>	293
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<u>15. To sell, convey, mortgage, pledge, lease, exchange,</u>	297

<u>abandon or otherwise dispose of any property, real, personal or</u>	298
<u>mixed;</u>	299
<u>16. To remit filing fees to Compacting States as may be set</u>	300
<u>forth in the Bylaws, Rules or Operating Procedures;</u>	301
<u>17. To enforce compliance by Compacting States with Rules,</u>	302
<u>Uniform Standards, Operating Procedures and Bylaws;</u>	303
<u>18. To provide for dispute resolution among Compacting</u>	304
<u>States;</u>	305
<u>19. To advise Compacting States on issues relating to</u>	306
<u>Insurers domiciled or doing business in Non-compacting</u>	307
<u>jurisdictions, consistent with the purposes of this Compact;</u>	308
<u>20. To provide advice and training to those personnel in</u>	309
<u>state insurance departments responsible for product review, and to</u>	310
<u>be a resource for state insurance departments;</u>	311
<u>21. To establish a budget and make expenditures;</u>	312
<u>22. To borrow money;</u>	313
<u>23. To appoint committees, including advisory committees</u>	314
<u>comprising members, state insurance regulators, state legislators</u>	315
<u>or their representatives, insurance industry and consumer</u>	316
<u>representatives, and such other interested persons as may be</u>	317
<u>designated in the Bylaws;</u>	318
<u>24. To provide and receive information from, and to cooperate</u>	319
<u>with law enforcement agencies;</u>	320
<u>25. To adopt and use a corporate seal; and</u>	321
<u>26. To perform such other functions as may be necessary or</u>	322
<u>appropriate to achieve the purposes of this Compact consistent</u>	323
<u>with the state regulation of the business of insurance.</u>	324
<u>Article V. Organization of the Commission</u>	325
<u>1. Membership, Voting and Bylaws</u>	326

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 he or she shall be appointed. Any vacancy occurring in the Commission shall be filled in accordance with the laws of the Compacting State wherein the vacancy exists. Nothing herein shall be construed to affect the manner in which a Compacting State determines the election or appointment and qualification of its own Commissioner. 327
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b. Each member shall be entitled to one vote and shall have an opportunity to participate in the governance of the Commission in accordance with the Bylaws. Notwithstanding any provision herein to the contrary, no action of the Commission with respect to the promulgation of a Uniform Standard shall be effective unless two-thirds (2/3) of the members vote in favor thereof. 337
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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: 343
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i. Establishing the fiscal year of the Commission; 347

ii. Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the Management Committee; 348
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iii. Providing reasonable standards and procedures: (i) for the establishment and meetings of other committees, and (ii) governing any general or specific delegation of any authority or function of the Commission; 351
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iv. Providing reasonable procedures for calling and conducting meetings of the Commission that consists of a majority of Commission members, ensuring reasonable advance notice of each 355
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such meeting and providing for the right of citizens to attend 358
each such meeting with enumerated exceptions designed to protect 359
the public's interest, the privacy of individuals, and insurers' 360
proprietary information, including trade secrets. The Commission 361
may meet in camera only after a majority of the entire membership 362
votes to close a meeting en toto or in part. As soon as 363
practicable, the Commission must make public (i) a copy of the 364
vote to close the meeting revealing the vote of each member with 365
no proxy votes allowed, and (ii) votes taken during such meeting; 366

v. Establishing the titles, duties and authority and 367
reasonable procedures for the election of the officers of the 368
Commission; 369

vi. Providing reasonable standards and procedures for the 370
establishment of the personnel policies and programs of the 371
Commission. Notwithstanding any civil service or other similar 372
laws of any Compacting State the Bylaws shall exclusively govern 373
the personnel policies and programs of the Commission; 374

vii. Promulgating a code of ethics to address permissible and 375
prohibited activities of commission members and employees; and 376

viii. Providing a mechanism for winding up the operations of 377
the Commission and the equitable disposition of any surplus funds 378
that may exist after the termination of the Compact after the 379
payment and/or reserving of all of its debts and obligations. 380

d. The Commission shall publish its bylaws in a convenient 381
form and file a copy thereof and a copy of any amendments thereto, 382
with the appropriate agency or officer in each of the Compacting 383
States. 384

2. Management Committee, Officers and Personnel 385

a. A Management Committee comprising no more than fourteen 386
(14) members shall be established as follows: 387

<u>i. One (1) member from each of the six (6) Compacting States</u>	388
<u>with the largest premium volume for individual and group</u>	389
<u>annuities, life, disability income and long-term care insurance</u>	390
<u>products, determined from the records of the NAIC for the prior</u>	391
<u>year;</u>	392
<u>ii. Four (4) members from those Compacting States with at</u>	393
<u>least two percent (2%) of the market based on the premium volume</u>	394
<u>described above, other than the six (6) Compacting States with the</u>	395
<u>largest premium volume, selected on a rotating basis as provided</u>	396
<u>in the Bylaws; and</u>	397
<u>iii. Four (4) members from those Compacting States with less</u>	398
<u>than two percent (2%) of the market, based on the premium volume</u>	399
<u>described above, with one (1) selected from each of the four (4)</u>	400
<u>zone regions of the NAIC as provided in the Bylaws.</u>	401
<u>b. The Management Committee shall have such authority and</u>	402
<u>duties as may be set forth in the Bylaws, including but not</u>	403
<u>limited to:</u>	404
<u>i. Managing the affairs of the Commission in a manner</u>	405
<u>consistent with the Bylaws and purposes of the Commission;</u>	406
<u>ii. Establishing and overseeing an organizational structure</u>	407
<u>within, and appropriate procedures for, the Commission to provide</u>	408
<u>for the creation of Uniform Standards and other Rules, receipt and</u>	409
<u>review of product filings, administrative and technical support</u>	410
<u>functions, review of decisions regarding the disapproval of a</u>	411
<u>product filing, and the review of elections made by a Compacting</u>	412
<u>State to opt out of a Uniform Standard; provided that a Uniform</u>	413
<u>Standard shall not be submitted to the Compacting States for</u>	414
<u>adoption unless approved by two-thirds (2/3) of the members of the</u>	415
<u>Management Committee;</u>	416
<u>iii. Overseeing the offices of the Commission; and</u>	417

iv. Planning, implementing, and coordinating communications and activities with other state, federal and local government organizations in order to advance the goals of the Commission. 418
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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. 421
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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. 424
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3. Legislative and Advisory Committees 431

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. 432
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b. The Commission shall establish two (2) advisory committees, one of which shall comprise consumer representatives independent of the insurance industry, and the other comprising insurance industry representatives. 442
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c. The Commission may establish additional advisory committees as its Bylaws may provide for the carrying out of its functions. 446
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4. Corporate Records of the Commission 449

The Commission shall maintain its corporate books and records 450
in accordance with the Bylaws. 451

5. Qualified Immunity, Defense and Indemnification 452

a. The members, officers, executive director, employees and 453
representatives of the Commission shall be immune from suit and 454
liability, either personally or in their official capacity, for 455
any claim for damage to or loss of property or personal injury or 456
other civil liability caused by or arising out of any actual or 457
alleged act, error or omission that occurred, or that the person 458
against whom the claim is made had a reasonable basis for 459
believing occurred within the scope of Commission employment, 460
duties or responsibilities; provided, that nothing in this 461
paragraph shall be construed to protect any such person from suit 462
and/or liability for any damage, loss, injury or liability caused 463
by intentional or willful and wanton misconduct of that person. 464

b. The Commission shall defend any member, officer, executive 465
director, employee or representative of the Commission in any 466
civil action seeking to impose liability arising out of any actual 467
or alleged act, error or omission that occurred within the scope 468
of Commission employment, duties or responsibilities, or that the 469
person against whom the claim is made had a reasonable basis for 470
believing occurred within the scope of Commission employment, 471
duties or responsibilities; provided, that nothing herein shall be 472
construed to prohibit that person from retaining his or her own 473
counsel; and provided further, that the actual or alleged act, 474
error or omission did not result from that person's intentional or 475
willful and wanton misconduct. 476

c. The Commission shall indemnify and hold harmless any 477
member, officer, executive director, employee or representative of 478
the Commission for the amount of any settlement or judgment 479

obtained against that person arising out of any actual or alleged 480
act, error or omission that occurred within the scope of 481
Commission employment, duties or responsibilities, or that such 482
person had a reasonable basis for believing occurred with the 483
scope of Commission employment, duties or responsibilities, 484
provided, that the actual or alleged act, error or omission did 485
not result from the intentional or willful and wanton misconduct 486
of that person. 487

Article VI. Meetings and Acts of the Commission 488

1. The Commission shall meet and take such actions as are 489
consistent with the provisions of this Compact and Bylaws. 490

2. Each member of the Commission shall have the right and 491
power to cast a vote to which that Compacting State is entitled 492
and to participate in the business and affairs of the Commission. 493
A member shall vote in person or by such other means as provided 494
in the Bylaws. The Bylaws may provide for members' participation 495
in meetings by telephone or other means of communication. 496

3. The Commission shall meet at least once during each 497
calendar year. Additional meetings shall be held as set forth in 498
the Bylaws. 499

Article VII. Rules and Operating Procedures: Rulemaking Functions 500
of the Commission and Opting Out of Uniform Standards 501

1. Rulemaking Authority. The Commission shall promulgate 502
reasonable Rules, including Uniform Standards, and Operating 503
Procedures in order to effectively and efficiently achieve the 504
purposes of this Compact. Notwithstanding the foregoing, in the 505
event the Commission exercises its rulemaking authority in a 506
manner that is beyond the scope of the purposes of this Act, or 507
the powers granted hereunder, then such an action by the 508
Commission shall be invalid and have no force and effect. 509

2. Rulemaking Procedure. Rules and Operating Procedures shall 510
be made pursuant to a rulemaking process that conforms to the 511
Model State Administrative Procedure Act of 1981 as amended, as 512
may be appropriate to the operations of the Commission. Before the 513
Commission adopts a Uniform Standard, the Commission shall give 514
written notice to the relevant state legislative committee(s) in 515
each Compacting State responsible for insurance issues of its 516
intention to adopt the Uniform Standard. The Commission in 517
adopting a Uniform Standard shall consider fully all submitted 518
materials and issue a concise explanation of its decision. 519

3. Effective Date and Opt Out of a Uniform Standard. A 520
Uniform Standard shall become effective ninety (90) days after its 521
promulgation by the Commission or such later date as the 522
Commission may determine; provided, however, that a Compacting 523
State may opt out of a Uniform Standard as provided in this 524
Article. "Opt out" shall be defined as any action by a Compacting 525
State to decline to adopt or participate in a promulgated Uniform 526
Standard. All other Rules and Operating Procedures, and amendments 527
thereto, shall become effective as of the date specified in each 528
Rule, Operating Procedure or amendment. 529

4. Opt Out Procedure. A Compacting State may opt out of a 530
Uniform Standard, either by legislation or regulation duly 531
promulgated by the Insurance Department under the Compacting 532
State's Administrative Procedure Act. If a Compacting State elects 533
to opt out of a Uniform Standard by regulation, it must (a) give 534
written notice to the Commission no later than ten (10) business 535
days after the Uniform Standard is promulgated, or at the time the 536
State becomes a Compacting State and (b) find that the Uniform 537
Standard does not provide reasonable protections to the citizens 538
of the State, given the conditions in the State. The Commissioner 539
shall make specific findings of fact and conclusions of law, based 540
on a preponderance of the evidence, detailing the conditions in 541

the State which warrant a departure from the Uniform Standard and
determining that the Uniform Standard would not reasonably protect
the citizens of the State. The Commissioner must consider and
balance the following factors and find that the conditions in the
State and needs of the citizens of the State outweigh: (i) the
intent of the legislature to participate in, and the benefits of,
an interstate agreement to establish national uniform consumer
protections for the Products subject to this Act; and (ii) the
presumption that a Uniform Standard adopted by the Commission
provides reasonable protections to consumers of the relevant
Product.

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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.

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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.

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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

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Standard after the Uniform Standard has been made effective in 574
that State, the opt out shall have the same prospective effect as 575
provided under Article XIV for withdrawals. 576

6. Stay of Uniform Standard. If a Compacting State has 577
formally initiated the process of opting out of a Uniform Standard 578
by regulation, and while the regulatory opt out is pending, the 579
Compacting State may petition the Commission, at least fifteen 580
(15) days before the effective date of the Uniform Standard, to 581
stay the effectiveness of the Uniform Standard in that State. The 582
Commission may grant a stay if it determines the regulatory opt 583
out is being pursued in a reasonable manner and there is a 584
likelihood of success. If a stay is granted or extended by the 585
Commission, the stay or extension thereof may postpone the 586
effective date by up to ninety (90) days, unless affirmatively 587
extended by the Commission; provided, a stay may not be permitted 588
to remain in effect for more than one (1) year unless the 589
Compacting State can show extraordinary circumstances which 590
warrant a continuance of the stay, including, but not limited to, 591
the existence of a legal challenge which prevents the Compacting 592
State from opting out. A stay may be terminated by the Commission 593
upon notice that the rulemaking process has been terminated. 594

7. Not later than thirty (30) days after a Rule or Operating 595
Procedure is promulgated, any person may file a petition for 596
judicial review of the Rule or Operating Procedure; provided, that 597
the filing of such a petition shall not stay or otherwise prevent 598
the Rule or Operating Procedure from becoming effective unless the 599
court finds that the petitioner has a substantial likelihood of 600
success. The court shall give deference to the actions of the 601
Commission consistent with applicable law and shall not find the 602
Rule or Operating Procedure to be unlawful if the Rule or 603
Operating Procedure represents a reasonable exercise of the 604
Commission's authority. 605

Article VIII. Commission Records and Enforcement 606

1. The Commission shall promulgate Rules establishing 607
conditions and procedures for public inspection and copying of its 608
information and official records, except such information and 609
records involving the privacy of individuals and insurers' trade 610
secrets. The Commission may promulgate additional Rules under 611
which it may make available to federal and state agencies, 612
including law enforcement agencies, records and information 613
otherwise exempt from disclosure, and may enter into agreements 614
with such agencies to receive or exchange information or records 615
subject to nondisclosure and confidentiality provisions. 616

2. Except as to privileged records, data and information, the 617
laws of any Compacting State pertaining to confidentiality or 618
nondisclosure shall not relieve any Compacting State Commissioner 619
of the duty to disclose any relevant records, data or information 620
to the Commission; provided, that disclosure to the Commission 621
shall not be deemed to waive or otherwise affect any 622
confidentiality requirement; and further provided, that, except as 623
otherwise expressly provided in this Act, the Commission shall not 624
be subject to the Compacting State's laws pertaining to 625
confidentiality and nondisclosure with respect to records, data 626
and information in its possession. Confidential information of the 627
Commission shall remain confidential after such information is 628
provided to any Commissioner. 629

3. The Commission shall monitor Compacting States for 630
compliance with duly adopted Bylaws, Rules, including Uniform 631
Standards, and Operating Procedures. The Commission shall notify 632
any non-complying Compacting State in writing of its 633
non-compliance with Commission Bylaws, Rules or Operating 634
Procedures. If a non-complying Compacting State fails to remedy 635
its noncompliance within the time specified in the notice of 636
noncompliance, the Compacting State shall be deemed to be in 637

default as set forth in Article XIV.

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4. The Commissioner of any State in which an Insurer is authorized to do business, or is conducting the business of insurance, shall continue to exercise his or her authority to oversee the market regulation of the activities of the Insurer in accordance with the provisions of the State's law. The Commissioner's enforcement of compliance with the Compact is governed by the following provisions:

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a. With respect to the Commissioner's market regulation of a Product or Advertisement that is approved or certified to the Commission, the content of the Product or Advertisement shall not constitute a violation of the provisions, standards or requirements of the Compact except upon a final order of the Commission, issued at the request of a Commissioner after prior notice to the Insurer and an opportunity for hearing before the Commission.

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b. Before a Commissioner may bring an action for violation of any provision, standard or requirement of the Compact relating to the content of an Advertisement not approved or certified to the Commission, the Commission, or an authorized Commission officer or employee, must authorize the action. However, authorization pursuant to this paragraph does not require notice to the Insurer, opportunity for hearing or disclosure of requests for authorization or records of the Commission's action on such requests.

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Article IX. Dispute Resolution

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

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resolution of such disputes. 669

Article X. Product Filing and Approval 670

1. Insurers and Third-Party Filers seeking to have a Product 671
approved by the Commission shall file the Product with, and pay 672
applicable filing fees to, the Commission. Nothing in this Act 673
shall be construed to restrict or otherwise prevent an insurer 674
from filing its Product with the insurance department in any State 675
wherein the insurer is licensed to conduct the business of 676
insurance, and such filing shall be subject to the laws of the 677
States where filed. 678

2. The Commission shall establish appropriate filing and 679
review processes and procedures pursuant to Commission Rules and 680
Operating Procedures. Notwithstanding any provision herein to the 681
contrary, the Commission shall promulgate Rules to establish 682
conditions and procedures under which the Commission will provide 683
public access to Product filing information. In establishing such 684
Rules, the Commission shall consider the interests of the public 685
in having access to such information, as well as protection of 686
personal medical and financial information and trade secrets, that 687
may be contained in a Product filing or supporting information. 688

3. Any Product approved by the Commission may be sold or 689
otherwise issued in those Compacting States for which the Insurer 690
is legally authorized to do business. 691

Article XI. Review of Commission Decisions Regarding Filings 692

1. Not later than thirty (30) days after the Commission has 693
given notice of a disapproved Product or Advertisement filed with 694
the Commission, the Insurer or Third Party Filer whose filing was 695
disapproved may appeal the determination to a review panel 696
appointed by the Commission. The Commission shall promulgate Rules 697
to establish procedures for appointing such review panels and 698
provide for notice and hearing. An allegation that the Commission, 699

in disapproving a Product or Advertisement filed with the Commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, is subject to judicial review in accordance with Article III, Section 4.

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2. The Commission shall have authority to monitor, review and reconsider Products and Advertisement subsequent to their filing or approval upon a finding that the product does not meet the relevant Uniform Standard. Where appropriate, the Commission may withdraw or modify its approval after proper notice and hearing, subject to the appeal process in Section 1 above.

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Article XII. Finance

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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.

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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.

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

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4. The Commission shall be exempt from all taxation in and by the Compacting States.

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5. The Commission shall not pledge the credit of any 731
Compacting State, except by and with the appropriate legal 732
authority of that Compacting State. 733

6. The Commission shall keep complete and accurate accounts 734
of all its internal receipts, including grants and donations, and 735
disbursements of all funds under its control. The internal 736
financial accounts of the Commission shall be subject to the 737
accounting procedures established under its Bylaws. The financial 738
accounts and reports including the system of internal controls and 739
procedures of the Commission shall be audited annually by an 740
independent certified public accountant. Upon the determination of 741
the Commission, but no less frequently than every three (3) years, 742
the review of the independent auditor shall include a management 743
and performance audit of the Commission. The Commission shall make 744
an Annual Report to the Governor and the legislature of the 745
Compacting States, which shall include a report of the independent 746
audit. The Commission's internal accounts shall not be 747
confidential and such materials may be shared with the 748
Commissioner of any Compacting State upon request *provided,* 749
however, that any work papers related to any internal or 750
independent audit and any information regarding the privacy of 751
individuals and insurers' proprietary information, including trade 752
secrets, shall remain confidential. 753

7. No Compacting State shall have any claim to or ownership 754
of any property held by or vested in the Commission or to any 755
Commission funds held pursuant to the provisions of this Compact. 756

Article XIII. Compacting States, Effective Date and Amendment 757

1. Any state is eligible to become a Compacting State. 758

2. The Compact shall become effective and binding upon 759
legislative enactment of the Compact into law by two Compacting 760
States; *provided,* the Commission shall become effective for 761

purposes of adopting Uniform Standards for, reviewing, and giving 762
approval or disapproval of, Products filed with the Commission 763
that satisfy applicable Uniform Standards only after twenty-six 764
(26) States are Compacting States or, alternatively, by States 765
representing greater than forty percent (40%) of the premium 766
volume for life insurance, annuity, disability income and 767
long-term care insurance products, based on records of the NAIC 768
for the prior year. Therefore, it shall become effective and 769
binding as to any other Compacting State upon enactment of the 770
Compact into law by that State. 771

3. Amendments to the Compact may be proposed by the 772
Commission for enactment by the Compacting States. No amendment 773
shall become effective and binding upon the Commission and the 774
Compacting States unless and until all Compacting States enact the 775
amendment into law. 776

Article XIV. Withdrawal, Default and Termination 777

1. Withdrawal 778

a. Once effective, the Compact shall continue in force and 779
remain binding upon each and every Compacting State; provided, 780
that a Compacting State may withdraw from the Compact 781
("Withdrawing State") by enacting a statute specifically repealing 782
the statute which enacted the Compact into law. 783

b. The effective date of withdrawal is the effective date of 784
the repealing statute. However, the withdrawal shall not apply to 785
any product filings approved or self-certified, or any 786
Advertisement of such products, on the date the repealing statute 787
becomes effective, except by mutual agreement of the Commission 788
and the Withdrawing State unless the approval is rescinded by the 789
Withdrawing State as provided in Paragraph e of this section. 790

c. The Commissioner of the Withdrawing State shall 791
immediately notify the Management Committee in writing upon the 792

introduction of legislation repealing this Compact in the 793
Withdrawing State. 794

d. The Commission shall notify the other Compacting States of 795
the introduction of such legislation within ten (10) days after 796
its receipt of notice thereof. 797

e. The Withdrawing State is responsible for all obligations, 798
duties and liabilities incurred through the effective date of 799
withdrawal, including any obligations, the performance of which 800
extend beyond the effective date of withdrawal, except to the 801
extent those obligations may have been released or relinquished by 802
mutual agreement of the Commission and the Withdrawing State. The 803
Commission's approval of Products and Advertisement prior to the 804
effective date of withdrawal shall continue to be effective and be 805
given full force and effect in the Withdrawing State, unless 806
formally rescinded by the Withdrawing State in the same manner as 807
provided by the laws of the Withdrawing State for the prospective 808
disapproval of products or advertisement previously approved under 809
state law. 810

f. Reinstatement following withdrawal of any Compacting State 811
shall occur upon the effective date of the Withdrawing State 812
reenacting the Compact. 813

2. Default 814

a. If the Commission determines that any Compacting State has 815
at any time defaulted ("Defaulting State") in the performance of 816
any of its obligations or responsibilities under this Compact, the 817
Bylaws or duly promulgated Rules or Operating Procedures, then, 818
after notice and hearing as set forth in the Bylaws, all rights, 819
privileges and benefits conferred by this Compact on the 820
Defaulting State shall be suspended from the effective date of 821
default as fixed by the Commission. The grounds for default 822
include, but are not limited to, failure of a Compacting State to 823

perform its obligations or responsibilities, and any other grounds 824
designated in Commission Rules. The Commission shall immediately 825
notify the Defaulting State in writing of the Defaulting State's 826
suspension pending a cure of the default. The Commission shall 827
stipulate the conditions and the time period within which the 828
Defaulting State must cure its default. If the Defaulting State 829
fails to cure the default within the time period specified by the 830
Commission, the Defaulting State shall be terminated from the 831
Compact and all rights, privileges and benefits conferred by this 832
Compact shall be terminated from the effective date of 833
termination. 834

b. Product approvals by the Commission or product 835
self-certifications, or any Advertisement in connection with such 836
product, that are in force on the effective date of termination 837
shall remain in force in the Defaulting State in the same manner 838
as if the Defaulting State had withdrawn voluntarily pursuant to 839
Section 1 of this article. 840

c. Reinstatement following termination of any Compacting 841
State requires a reenactment of the Compact. 842

3. Dissolution of Compact 843

a. The Compact dissolves effective upon the date of the 844
withdrawal or default of the Compacting State which reduces 845
membership in the Compact to one Compacting State. 846

b. Upon the dissolution of this Compact, the Compact becomes 847
null and void and shall be of no further force or effect, and the 848
business and affairs of the Commission shall be wound up and any 849
surplus funds shall be distributed in accordance with the Bylaws. 850

Article XV. Severability and Construction 851

1. The provisions of this Compact shall be severable; and if 852
any phrase, clause, sentence or provision is deemed unenforceable, 853

<u>the remaining provisions of the Compact shall be enforceable.</u>	854
<u>2. The provisions of this Compact shall be liberally construed to effectuate its purposes.</u>	855
<u>Article XVI. Binding Effect of Compact and Other Laws</u>	856
<u>1. Other Laws</u>	857
<u>a. Nothing herein prevents the enforcement of any other law of a Compacting State, except as provided in Paragraph b of this section.</u>	858
<u>b. For any Product approved or certified to the Commission, the Rules, Uniform Standards and any other requirements of the Commission shall constitute the exclusive provisions applicable to the content, approval and certification of such Products. For Advertisement that is subject to the Commission's authority, any Rule, Uniform Standard or other requirement of the Commission which governs the content of the Advertisement shall constitute the exclusive provision that a Commissioner may apply to the content of the Advertisement. Notwithstanding the foregoing, no action taken by the Commission shall abrogate or restrict: (i) the access of any person to state courts; (ii) remedies available under state law related to breach of contract, tort, or other laws not specifically directed to the content of the Product; (iii) state law relating to the construction of insurance contracts; or (iv) the authority of the attorney general of the state, including but not limited to maintaining any actions or proceedings, as authorized by law.</u>	859
<u>c. All insurance products filed with individual States shall be subject to the laws of those States.</u>	860
<u>2. Binding Effect of this Compact</u>	861
<u>a. All lawful actions of the Commission, including all Rules and Operating Procedures promulgated by the Commission, are</u>	862
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binding upon the Compacting States. 884

b. All agreements between the Commission and the Compacting States are binding in accordance with their terms. 885
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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. 887
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d. In the event any provision of this Compact exceeds the constitutional limits imposed on the legislature of any Compacting State, the obligations, duties, powers or jurisdiction sought to be conferred by that provision upon the Commission shall be ineffective as to that Compacting State, and those obligations, duties, powers or jurisdiction shall remain in the Compacting State and shall be exercised by the agency thereof to which those obligations, duties, powers or jurisdiction are delegated by law in effect at the time this Compact becomes effective. 891
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Section 2. That existing section 3901.48 of the Revised Code is hereby repealed. 900
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