



**S.B. 268\***

126th General Assembly

(As Reported by S. Insurance, Commerce, and Labor)

**Sen. Stivers**

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**BILL SUMMARY**

- Binds Ohio to the Interstate Insurance Product Regulation Compact.
- Makes privileged and confidential and exempts from the Public Records Law the work papers of the Superintendent of Insurance concerning a market analysis or investigation of any entity subject to examination by the Superintendent.
- Permits the Superintendent to share confidential and privileged work papers with the Interstate Insurance Product Regulation Commission and permits the Commission to share those papers with regulatory and law enforcement agencies and prosecutors.

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\* *This analysis was prepared before the report of the Senate Insurance, Commerce, and Labor Committee appeared in the Senate Journal. Note that the list of co-sponsors and the legislative history may be incomplete.*

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## CONTENT AND OPERATION

### *Purposes of the Interstate Insurance Product Regulation Compact*

(R.C. 3915.16)

Under the bill, Ohio seeks to join the Interstate Insurance Product Regulation Compact with other states and establish with those states the Interstate Insurance Product Regulation Commission. The Compact is intended to help states join together to establish an interstate compact to regulate designated insurance products.<sup>1</sup> The stated purposes of the Compact are, through means of joint and cooperative action among the compacting states, to (1) promote and protect the interest 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 review insurance products covered under the Compact, and in certain cases, advertisements related to the products, 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 uniform standards, (5) improve coordination of regulatory resources and expertise between state insurance departments regarding setting uniform standards and review of insurance products covered under the Compact, (6) create the Commission, and (7) perform these and other related functions consistent with the state regulation of the business of insurance.

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<sup>1</sup> *Terms defined by the bill are explained below in "Definitions."*

## **Interstate Insurance Product Regulation Commission**

(R.C. 3915.16)

### **Establishment of the Commission and Venue**

Under the Compact, the compacting states form the Interstate Insurance Product Regulation Commission. The Commission has the power to develop uniform standards for product lines, receive and promptly review products filed with the Commission, and approve product filings that satisfy the uniform standards. However, the Compact specifies that the Commission is not the exclusive entity to receive and review product filings. An insurer may file its product in any state the insurer is licensed to conduct business, making the filing subject to the laws of that state.

Under the Compact, the Commission is body corporate and politic and an instrumentality of the compacting states. The Commission solely is responsible for its liabilities except as otherwise provided in the Compact. Judicial proceedings by or against the Commission must be brought exclusively in a court of competent jurisdiction where the Commission's principal office is located. Venue is proper within that court.

### **Powers of the Commission**

The Compact gives the Commission the power to establish uniform standards, which are binding on the compacting states, for products covered under the Compact and advertisements related to those products. However, a compacting state has the right to opt out of any uniform standard. When establishing uniform standards for long-term care insurance products, the Commission may provide the same or greater, but not less than, the consumer protections set forth in the Long-Term Care Insurance Model Act and Long-Term Care Insurance Model Regulation adopted by the National Association of Insurance Commissioners (hereafter "NAIC"). The Commission must consider whether any subsequent amendments to the model act and model regulation require amending the Commission's uniform standards for long-term care insurance products.

Under the Compact, the Commission also has the power to (1) promulgate rules, which are binding on the compacting states to the extent and in the manner provided in the Compact, (2) receive and review in an expeditious manner and approve the following items, if the items satisfy the uniform standards: (a) products filed with the Commission and rate filings for disability income and long-term care insurance products and (b) advertisements relating to long-term care insurance products for which the Commission has adopted uniform standards, (3) for any product covered under the Compact other than long-term care insurance



products, require an insurer to submit all or any part of its advertisement for review and approval prior to use if the Commission determines that the nature of the product is such that an advertisement of the product could have the capacity or tendency to mislead the public, (4) designate products and advertisements that may be subject to a self-certification process without the need for the Commission's prior approval, (5) promulgate operating procedures, which are binding on the compacting states to the extent and in the manner provided in the Compact, (6) bring and prosecute legal proceedings in the Commission's name provided that the standing of any state insurance department to sue or be sued under applicable law is not affected, (7) issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence, (8) establish and maintain offices, (9) purchase and maintain insurance and bonds, (10) borrow, accept, or contract for services of personnel, including, but not limited to, employees of a compacting state, (11) hire employees, professionals, or specialists and elect or appoint officers, and fix their compensation, define their duties, give them appropriate authority to carry out the purposes of the Compact, and determine their qualifications, (12) 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, receive, utilize, and dispose of any and all appropriate donations and grants of money, equipment, supplies, materials, and services provided that the Commission at all times must strive to avoid the appearance of impropriety, (14) sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of real, personal, or both real and personal property, (15) remit filing fees to compacting states as may be set forth in the Commission's bylaws, rules, or operating procedures, (16) enforce compliance by compacting states with the Commission's rules, uniform standards, operating procedures, and bylaws, (17) provide for dispute resolution among compacting states, (18) advise compacting states on issues relating to insurers domiciled or doing business in non-compacting jurisdictions, consistent with the purposes of the Compact, (19) provide advice and training to those personnel in state insurance departments responsible for product review, and to be a resource for state insurance departments, (20) establish a budget and make expenditures, (21) borrow money, (22) appoint committees, including advisory committees comprising members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in the bylaws, (23) provide and receive information from and cooperate with law enforcement agencies, (24) adopt and use a corporate seal, and (25) perform such other functions as may be necessary or appropriate to achieve the purposes of the Compact consistent with the state regulation of the business of insurance.

## Organization of the Commission

Membership, voting, and bylaws. Under the Compact, each compacting state will have only one member, who must be qualified to serve as a member pursuant to the laws of the member's state. Any member may be removed or suspended from office and any vacancy in the Commission must be filled according to the laws of the member's compacting state. The above membership requirements must not be construed to affect the manner in which a compacting state determines the election or appointment and qualification of its own Commissioner.

Under the Compact, each member is entitled to one vote and has an opportunity to participate in the governance of the Commission in accordance with the Commission's bylaws. Notwithstanding any provision to the contrary, no Commission action with respect to promulgating a uniform standard will be effective unless two-thirds of the members vote in favor of the action. The Commission must, by a majority of the members, prescribe bylaws to govern the Commission's conduct as may be necessary or appropriate to carry out the purposes, and exercise the powers, of the Compact, including, but not limited to, (1) establishing the fiscal year of the Commission, (2) providing reasonable procedures for appointing and electing members, as well as holding meetings, of the Management Committee, described below, (3) providing reasonable standards and procedures (a) for the establishment and meetings of other committees and (b) governing any general or specific delegation of any authority or function of the Commission, (4) establishing the titles, duties and authority, and reasonable procedures for electing Commission officers, (5) providing reasonable standards and procedures for establishing the Commission's personnel policies and programs, which exclusively must govern the personnel policies and programs of the Commission notwithstanding any civil service or other similar laws of any compacting state, (6) promulgating a code of ethics to address permissible and prohibited activities of Commission members and employees, and (7) providing a mechanism for winding up the operations of the Commission and the equitable disposition of any surplus funds that may exist after the termination of the Compact after the payment or reserving, or both, of all of its debts and obligations.

The Compact also requires the Commission's bylaws to provide reasonable procedures for calling and conducting Commission meetings that consist of 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 private session only after a majority of the entire membership votes to totally close a meeting or in part. As soon as practicable, the Commission must make public (1) a copy of the vote to close the meeting

revealing the vote of each member with no proxy votes allowed and (2) votes taken during that meeting.

Under the Compact, the Commission must publish its bylaws in a convenient form and file a copy of the bylaws and any amendments made to the bylaws with the appropriate State agency or officer in each of the compacting states.

**Management Committee.** The Compact creates a Management Committee that must consist of all of the following members: (1) one member from each of the six compacting states with the largest premium volume for individual and group annuities, life, disability income, and long-term care insurance products, determined from the records of the NAIC for the prior year, (2) four members from those compacting states with at least 2% of the market, based on the premium volume described above, other than the six compacting states with the largest premium volume, selected on a rotating basis as provided in the bylaws, and (3) four members from those compacting states with less than 2% of the market, based on the premium volume described above, with one member selected from each of the four zone regions of the NAIC as provided in the bylaws.

Under the Compact, the Committee has the authority and duties that may be set forth in the bylaws, including, but not limited to, (1) managing the affairs of the Commission in a manner consistent with the bylaws and purposes of the Commission, (2) establishing and overseeing an organizational structure within, and appropriate procedures for, the Commission to provide for (a) the creation of uniform standards and other rules provided that a uniform standard is not submitted to the compacting states for adoption unless approved by two-thirds of the members of the Committee, (b) receipt and review of product filings, (c) administrative and technical support functions, (d) review of decisions regarding the disapproval of a product filing, and (e) review of elections made by a compacting state to opt out of a uniform standard, (3) overseeing the Commission's offices, and (4) planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations in order to advance the goals of the Commission.

Under the Compact, the Commission must elect annually officers from the Committee, with each officer having authority and duties as may be specified in the bylaws. The 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 the Commission may deem appropriate. The executive director must serve as secretary to the Commission, but must not be a Commission member. The executive director must hire and supervise other staff as the Commission may authorize.

**Legislative and advisory committees.** The Compact creates a legislative committee comprising state legislators or their designees to monitor the operations of, and make recommendations to, the Commission, including the Management Committee. The manner of selection and term of any legislative committee member must be as set forth in the bylaws. Prior to the Commission's adopting any uniform standard revision to the bylaws, annual budget, or other significant matter as may be provided in the bylaws, the Management Committee must consult with and report to the legislative committee.

Under the Compact, the Commission shall establish two advisory committees. One committee must comprise consumer representatives independent of the insurance industry and the other must comprise insurance industry representatives. The Commission may establish additional advisory committees as its bylaws may provide for the carrying out of the Commission's functions.

**Corporate records.** The Compact requires the Commission to maintain its corporate books and records in accordance with the bylaws.

**Qualified immunity, defense, and indemnification.** Under the Compact, the members, officers, executive director, employees, and representatives of the Commission are immune from suit and liability, either personally or in their official capacity. The Commission is required, for the above persons, to defend and indemnify and hold harmless for the amount of any settlement or judgment obtained in a civil suit. However, the immunity, defense, and indemnification described above applies only to a claim for damage to or loss of property, personal injury, or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities. This immunity, defense, and indemnification does not apply to an actual or alleged act, error, or omission that resulted from intentional or willful and wanton misconduct of one of the above persons. While the Compact requires the Commission to defend the above persons, the Compact permits the person to retain the person's own counsel.

### **Meetings and acts of the Commission**

(R.C. 3915.16)

The Compact requires the Commission to meet and take actions that are consistent with the provisions of the Compact and bylaws. Each Commission member has the right to vote on behalf of the member's compacting state and participate in the Commission's business and affairs. A member must vote in person or by other means as provided in the bylaws. The bylaws may provide for members' participation in meetings by telephone or other means of





communication. The Commission must meet at least once during each calendar year, with additional meetings held as set forth in the bylaws.

**Rules and operating procedures of the Commission**

(R.C. 3915.16)

The Compact requires the Commission to promulgate rules, including uniform standards, and operating procedures to effectively and efficiently achieve the purposes of the Compact. If the Commission promulgates rules beyond the scope of the purposes of the Compact, then the Commission's action will be invalid and have no force and effect.

Under the Compact, rules and operating procedures must be made pursuant to a rulemaking process that conforms to the Model State Administrative Procedure Act of 1981 as amended, as may be appropriate to the Commission's operations. Before the Commission adopts a uniform standard, the Commission must give written notice of the Commission's intention to adopt the uniform standard to the relevant state legislative committee or committees in each compacting state responsible for insurance issues. The Commission, in adopting a uniform standard, must consider fully all submitted materials and issue a concise explanation of its decision.

Under the Compact, a uniform standard becomes effective 90 days after the Commission promulgates it or a later date that the Commission may determine. All other rules and operating procedures, and amendments to those rules and operating procedures, become effective as of the date specified in each rule, operating procedure, or amendment.

The Compact permits a compacting state to opt out of a uniform standard either by legislation or regulation promulgated by the insurance department under the state's Administrative Procedure Act. If a compacting state elects to opt out of a uniform standard by regulation, it must (1) give the Commission written notice no later than ten business days after the uniform standard is promulgated, 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 of insurance of the state that is electing to opt out must make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state that 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 (1) the intent of the legislature to participate in, and the benefits of, an interstate agreement to establish national uniform consumer protections for the products subject to the Compact and (2) the



presumption that a uniform standard adopted by the Commission provides reasonable protections to consumers of the relevant product.

Under the Compact, a compacting state may, at the time the state enacts the Compact, prospectively opt out of all uniform standards involving long-term care insurance products providing for such opt out in the enacted Compact. Such an opt out is not treated as a material variance in the offer or acceptance of any state to participate in this Compact, is effective at the time the state enacts the Compact, and applies to all existing uniform standards involving long-term care insurance products and standards the Commission subsequently promulgates. "Opt out" means any action by a compacting state to decline to adopt or participate in a promulgated uniform standard.

If a compacting state elects to opt out of a uniform standard, the uniform standard remains applicable in the state electing to opt out until the time the opt out legislation is enacted into law or the regulation opting out becomes effective. Once a compacting state's opt out becomes effective as provided under the laws of that state, the uniform standard will have no further force and effect in that state unless the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the laws of the state. If a compacting state opts out of a uniform standard after the uniform standard has been made effective in that state, the opt out shall have the same prospective effect as a withdrawal, described below in "Withdrawal."

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 state may petition the Commission, at least 15 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 the Commission grants or extends a stay, the stay or extension may postpone the effective date of the uniform standard by up to 90 days, unless affirmatively extended by the Commission. A stay may not remain in effect for more than one year unless the compacting state can show extraordinary circumstances that warrant a continuance of the stay, including, but not limited to, the existence of a legal challenge that prevents the state from opting out. The Commission may terminate a stay upon notice that the rulemaking process has been terminated.

Not later than 30 days after the Commission promulgates a rule or operating procedure, any person may file a petition for judicial review of the rule or operating procedure. However, the filing of such 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 must give deference to the actions of the Commission consistent with applicable

law and cannot find the rule or operating procedure to be unlawful if the rule or operating procedure represents a reasonable exercise of the Commission's authority.

### **Commission records**

(R.C. 3915.16)

The Compact requires the Commission to promulgate rules establishing conditions and procedures for public inspection and copying of its information and official records, except for information and records involving the privacy of individuals and insurers' trade secrets. The Commission may promulgate additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

The Compact specifies that, except as to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure do not relieve any compacting state commissioner of the duty to disclose any relevant records, data, or information to the Commission. However, the compacting state commissioner's disclosure to the Commission will not waive or otherwise affect any confidentiality requirement. Except as otherwise expressly provided in the Compact, the Commission is not subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data, and information in the Commission's possession. The Commission's confidential information must remain confidential after the information is provided to any Commissioner.

### **Enforcement**

(R.C. 3915.16)

Under the Compact, the Commission must monitor compacting states for compliance with the Commission's bylaws, rules, including uniform standards, and operating procedures. The Commission must notify any non-complying compacting state in writing of the state's non-compliance with Commission bylaws, rules, or operating procedures. If a non-complying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state shall be deemed to be in default as explained below in "**Default.**"

The Compact requires the commissioner (of insurance) of any state in which an insurer is authorized to do business, or is conducting the business of

insurance, to continue to exercise the commissioner's authority to oversee the market regulation of the activities of the insurer in accordance with the provisions of the state's law. The commissioner's enforcement of compliance with the Compact is governed by both of the following provisions: (1) with respect to the commissioner's market regulation of a product or advertisement that is approved or certified by the Commission, the content of the product or advertisement is not a violation of the provisions, standards, or requirements of the Compact unless the Commission issues a final order at the request of a Commissioner after (a) prior notice to the insurer and (b) an opportunity for hearing before the Commission and (2) 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 by the Commission, the Commission, or an authorized Commission officer or employee, must authorize the action. However, this authorization does not require notice to the insurer, opportunity for hearing, disclosure of requests for authorization, or records of the Commission's action on those requests.

### **Dispute resolution**

(R.C. 3915.16)

The Compact requires the Commission to attempt, upon the request of a member (the Commission), to resolve any disputes or other issues that are subject to the Compact and may arise between two or more compacting states or between compacting states and non-compacting states. The Commission must promulgate an operating procedure providing for resolution of these disputes.

### **Product filing and approval**

(R.C. 3915.16)

Under the Compact, insurers and third-party filers seeking to have the Commission approve a product must file the product with, and pay applicable filing fees to, the Commission. The Compact must not be construed to restrict or otherwise prevent an insurer from filing its product with the insurance department in any state if the insurer is licensed to conduct the business of insurance. If an insurer files its product with a state insurance department, the filing is subject to the laws of the states where the product is filed.

Under the Compact, the Commission must establish appropriate filing and review processes and procedures pursuant to Commission rules and operating procedures. Notwithstanding any provision in the Compact to the contrary, the Commission must promulgate rules to establish conditions and procedures under which the Commission will provide public access to product filing information. In establishing these rules, the Commission must consider the interests of the public

in having access to this information, as well as protection of personal medical and financial information and trade secrets, which may be contained in a product filing or supporting information. Any product the Commission approves may be sold or otherwise issued in those compacting states in which the insurer is legally authorized to do business.

### **Review of Commission decisions regarding filings**

(R.C. 3915.16)

The Compact permits an insurer or third party whose product or advertisement filing the Commission disapproved to appeal the Commission's determination to a review panel appointed by the Commission not later than 30 days after the Commission gives notice of disapproval. The Commission must promulgate rules to establish procedures for appointing these review panels and provide for notice and hearing. An allegation that the Commission, in disapproving a product or advertisement, 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 as explained above in "**Establishment of the Commission and Venue.**"

The Compact gives the Commission 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 described above.

### **Finance**

(R.C. 3915.16)

Under the Compact, the Commission must 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 NAIC, 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 must not be compromised.

The Compact requires the Commission to 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. The Commission's budget for a fiscal year must not be approved until it has been subject to notice and comment as explained above in "**Rules and operating procedures of the Commission.**" The

Commission is exempt from all taxation in and by the compacting states. The Commission must not pledge the credit of any compacting state, except by and with the appropriate legal authority of that compacting state.

The Compact requires the Commission to keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The Commission's internal financial accounts 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 Commission's determination, 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 must make an annual report to the governor and the legislature of the compacting states, which must include a report of the independent audit. The Commission's internal accounts are not confidential and may be shared with the Commissioner of any compacting state upon request. However, any work papers related to any internal or independent audit and any information regarding the privacy of individuals and insurers' proprietary information, including trade secrets, are confidential. No compacting state may have any claim to or ownership of any property held by or vested in the Commission or to any Commission funds held pursuant to the provisions of this Compact.

**Compacting states, effective date, and amendment**

(R.C. 3915.16)

Under the Compact, any state is eligible to become a compacting state. The Compact becomes effective and binding if two compacting states legislatively enact the Compact. If the Compact becomes effective, the Commission becomes effective for purposes of (1) adopting uniform standards for, (2) reviewing, and (3) giving approval or disapproval of, products filed with the Commission that satisfy applicable uniform standards. However, the Commission can become effective only if one of the following occurs: (1) 26 states become compacting states or (2) states representing greater than 40% of the premium volume for life insurance, annuity, disability income, and long-term care insurance products, based on records of the NAIC for the prior year, become compacting states. The Compact becomes effective and binding as to any other compacting state upon the state's enacting the Compact.

Under the Compact, the Commission may propose amendments to the Compact for enactment by the compacting states. No amendment becomes effective and binding upon the Commission and the compacting states until all compacting states enact the amendment into law.



## **Withdrawal, default, and termination**

(R.C. 3915.16)

### **Withdrawal**

The Compact specifies that once the Compact is effective, as explained above, the Compact will continue in force and remain binding upon each compacting state. However, a compacting state may withdraw from the Compact (hereafter "withdrawing state") by enacting a statute that specifically repeals the statute that enacted the Compact into law. The effective date of the withdrawal is the effective date of the repealing statute. However, the withdrawal does not apply to any product filings approved or self-certified, or any advertisement of these products, on the date the repealing statute becomes effective, except by the Commission's and withdrawing state's mutual agreement unless the withdrawing state rescinds the approval as explained below.

The Compact requires the Commissioner of the withdrawing state to immediately notify the Management Committee in writing upon the introduction of legislation to repeal the Compact in the withdrawing state. The Commission must notify the other compacting states of the introduction of such legislation within ten days after the Commission's receipt of notice from the withdrawing state.

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

### **Default**

Under the Compact, if the Commission determines that any compacting state has at any time defaulted (hereafter "defaulting state") in performing any of its obligations or responsibilities under the Compact, the bylaws, rules, or operating procedures, then, after notice and hearing as set forth in the bylaws, all rights, privileges, and benefits conferred by the 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 any other grounds designated in Commission rules. The Commission must immediately notify the defaulting state in writing of the state's suspension pending a cure of the default. The Commission must stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period the Commission specifies, the state is terminated from the Compact and all rights, privileges, and benefits conferred by the Compact are terminated from the effective date of termination.

Under the Compact, the Commission's product approvals or product self-certifications, or any advertisement in connection with the product, that are in force on the effective date of the defaulting state's termination will remain in force in the state in the same manner as if the state had withdrawn voluntarily as explained above in "Withdrawal." In order for a defaulting state to be reinstated following termination, the state must reenact the Compact.

### **Termination**

The Compact specifies that upon the date of the withdrawal or default of a compacting state that reduces membership in the Compact to one compacting state, the Compact dissolves. Upon the Compact's dissolution, (1) the Compact becomes null and void and is of no further force or effect, (2) the business and affairs of the Commission must be wound up, and (3) any surplus funds must be distributed in accordance with the bylaws.

### **Severability and construction**

(R.C. 3915.16)

The Compact stipulates that the provisions of the Compact are severable and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the Compact remain enforceable. The Compact must be liberally construed to effectuate its purposes.

### **Binding effect of Compact and other laws**

(R.C. 3915.16)

### **Other laws**

The Compact specifies that nothing in the Compact prevents enforcing any other law of a compacting state. However, for any product the Commission approved or certified, the rules, uniform standards, and any other Commission requirements constitute the exclusive provisions applicable to the content,



approval, and certification of those products. For advertisement that is subject to the Commission's authority, any rule, uniform standard, or other Commission requirement that governs the content of the advertisement constitutes the exclusive provision that a Commissioner may apply to the content of the advertisement. No Commission action may abrogate or restrict (1) the access of any person to state courts, (2) remedies available under state law related to breach of contract, tort, or other laws not specifically directed to the content of the product, (3) state law relating to the construction of insurance contracts, or (4) the authority of the attorney general of the state, including, but not limited to, maintaining any actions or proceedings as authorized by law.

### **Binding effect of the Compact**

Under the Compact, all lawful Commission actions, including all rules and operating procedures, are binding upon the compacting states. All agreements between the Commission and compacting states are binding in accordance with the terms of the agreements. 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. In the event any provision of the Compact exceeds the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the Commission are ineffective as to that compacting state. If a provision exceeds a compacting state's constitutional limits, those obligations, duties, powers, or jurisdiction remain under the authority of the state and must be exercised by the agency of that state to which those obligations, duties, powers, or jurisdiction are delegated by law in effect at the time the Compact becomes effective.

### **The Superintendent of Insurance's confidential and privileged work papers**

(R.C. 3901.48)

The bill makes confidential, privileged, and not public records the work papers of the Superintendent of Insurance or of any person appointed by the Superintendent resulting from the conduct of a market analysis or investigation of any entity subject to examination by the Superintendent, including, but not limited to, any insurance company, health insuring corporation, fraternal benefit society, or multiple employer welfare arrangement.

Under current law, the Superintendent may share confidential and privileged work papers with certain persons if the recipient agrees and has authority to agree to maintain the confidential or privileged status of the work papers. The bill adds the Interstate Insurance Product Regulation Commission to

the list of entities with whom the Superintendent is permitted to share confidential and privileged work papers.

Under current law, the Superintendent may authorize the NAIC and its affiliates and subsidiaries by agreement to share confidential and privileged work papers with local, state, federal, and international regulatory and law enforcement agencies and with local, state, and federal prosecutors, if the recipient agrees and has the authority to agree to maintain the confidential and privileged status of the work papers. The bill authorizes the Commission to share confidential and privileged work papers in the same manner as existing law.

### **Definitions**

(R.C. 3915.16)

Under the bill, "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.

The bill defines "bylaws" to mean those bylaws established by the Commission for its governance, or for directing or controlling the Commission's actions or conduct.

The bill defines "compacting state" as any state that has enacted the Compact by legislation and has not withdrawn or been terminated pursuant to the Compact.

The bill defines "insurer" to mean any entity licensed by a state to issue contracts of insurance for any of the lines of insurance covered by the Compact.

Under the bill, "member" means the person chosen by a compacting state as its representative to the Commission, or the representative's designee. The Superintendent of Insurance or the Superintendent's designee will serve as the member to the Commission for Ohio.

The bill defines "non-compacting state" to mean any state that is not at the time a compacting state.

Under the bill, "operating procedures" means procedures promulgated by the Commission implementing a rule, uniform standard, or provision of the Compact.

Under the bill, "product" is defined as the form of a policy or contract, 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, for an individual or group annuity, life insurance, disability income, or long-term care insurance product that an insurer is authorized to issue.

The bill defines "rule" to mean a statement of general or particular applicability and future effect promulgated by the Commission, including a uniform standard developed pursuant to the Compact, designed to implement, interpret, or prescribe law or policy or describe the organization, procedure, or practice requirements of the Commission, which have the force and effect of law in the compacting states.

Under the bill, "state" means any state, district, or territory of the United States of America.

Under the bill, "third-party filer" means an entity that submits a product filing to the Commission on behalf of an insurer.

The bill defines "uniform standard" to be a standard adopted by the Commission for a product line, pursuant to the Compact, 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. The form of the product made available to the public must not be unfair, inequitable, or against public policy as determined by the Commission.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>
Introduced	01-31-06
Reported, S. Insurance, Commerce & Labor	---

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