

ACT 104

S.B. NO. 2887

A Bill for an Act Relating to Interstate Insurance Compact.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. State insurance regulators across the nation recognize that the financial services industry is changing. Many products sold by life insurers have evolved to become primarily investment products. Consequently, life insurers increasingly face direct competition from products offered by depository institutions and securities firms. Because depository institutions and securities firms are able to sell products nationally, often without any prior regulatory review, they are able to bring these new products to market more quickly and without the added expense of meeting different requirements in different states.

The National Association of Insurance Commissioners and state insurance regulators have worked diligently over the past two years to identify the issues in this area and come up with possible solutions to reflect the new market realities. Regulators now believe there is a way to develop a more efficient review process for

insurance and annuity products—one that will help insurers better compete in the marketplace while maintaining a high level of protection for consumers. Regulators feel that the best way to accomplish this is through the creation of an interstate compact.

The purpose of this Act is to adopt the National Association of Insurance Commissioners' Interstate Insurance Product Regulation Compact. For consumers, there will be high product standards and quicker access to a broader choice of investment products. State insurance regulators will be able to share best practices and use their resources more effectively, and insurers will be able to enjoy a more level playing field in competing with banks and securities firms.

SECTION 2. Chapter 431, Hawaii Revised Statutes, is amended by adding a new article to be appropriately designated and to read as follows:

“ARTICLE
INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

§431: -101 Scope. (a) The interstate insurance product regulation compact is intended to help states join together to establish an interstate compact to regulate designated insurance products. Pursuant to the terms and conditions of this article, the State seeks to join with other states by enacting the interstate insurance product regulation compact, and thus become a member of the interstate insurance product regulation commission.

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

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

§431: -102 Definitions. As used in this article, the following definitions apply:

“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.

“Bylaws” means those bylaws established by the commission for its governance, or for directing or controlling the commission’s actions or conduct.

“Commission” means the interstate insurance product regulation commission established by this compact.

“Commissioner” means the chief insurance regulatory official of a state.

“Compacting state” means any state that has enacted this compact legislation and that has not withdrawn pursuant to section 431: -119, or been terminated pursuant to section 431: -120.

“Insurer” means any entity licensed by a state to issue contracts of insurance for those lines of insurance covered by this article.

“Member” means the person chosen by a compacting state, as its representative to the commission, or the person’s designee.

“Noncompacting state” means any state that is not at the time a compacting state.

“Operating procedures” means procedures adopted by the commission implementing a rule, uniform standard, or a provision of this compact.

“Product” means 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.

“Rule” means a statement of general or particular applicability and future effect adopted by the commission, including a uniform standard developed pursuant to section 431: -112 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.

“State” means any state, district, or territory of the United States of America.

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

“Uniform standard” means a standard adopted by the commission for a product line, pursuant to section 431: -112 of this 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.

§431: -103 Establishment of the commission and venue. (a) The compacting states hereby create and establish a joint public entity known as the interstate insurance product regulation commission. Pursuant to section 431: -112, the commission may 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 that the commission be the exclusive entity for receipt and review of insurance product filings. Nothing herein shall prohibit any insurer from filing its product in any state wherein the insurer is licensed to conduct the business of insurance, and any such filing shall be subject to the laws of the state where filed.

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

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

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

§431: -104 Powers of the commission. The commission may:

- (1) Adopt rules pursuant to section 431: -112, which shall have the force and effect of law and shall be binding in the compacting states to the extent and in the manner provided in this article;
- (2) Exercise its rulemaking authority and establish reasonable uniform standards for products covered under the compact, and advertisements related thereto, which shall have the force and effect of law and shall be binding in the compacting states, but only for such products filed with the commission; provided that a compacting state may opt out of such uniform standard pursuant to section 431: -112, to the extent and in the manner provided in this article; provided further that any uniform standard established by the commission for long-term care insurance products may provide the same or greater protections for consumers as, but shall not provide less than, those protections set forth in the National Association of Insurance Commissioners long-term care insurance model act and long-term care insurance model regulation, respectively, adopted as of 2001. The commission shall consider whether any subsequent amendments to the National Association of Insurance Commissioners long-term care insurance model act or the long-term care insurance model regulation adopted by the National Association of Insurance Commissioners require amending of the uniform standards established by the commission for long-term care insurance products;
- (3) Receive and review in an expeditious manner products filed with the commission, and rate filings for disability income and long-term care insurance products, and give approval of those products and rate filings that satisfy the applicable uniform standard, where such approval shall have the force and effect of law and be binding on the compacting states to the extent and in the manner provided in the compact;
- (4) Receive and review in an expeditious manner advertisement relating to long-term care insurance products for which uniform standards have been adopted by the commission, and give approval to all advertisement that satisfies the applicable uniform standard. For any product covered under this compact, other than long-term care insurance products, the commission may require an insurer to submit all or any part of its advertisement with respect to that product for review or approval prior to use, if the commission determines that the nature of the product is such that an advertisement of the product could have the capacity or tendency to mislead the public. The actions of the commission as provided in this section shall have the force and effect of law and shall be binding on the compacting states to the extent and in the manner provided in the compact;
- (5) Exercise its rulemaking authority and designate products and advertisements that may be subject to a self-certification process without the need for prior approval by the commission;
- (6) Adopt operating procedures pursuant to section 431: -112, which shall be binding on the compacting states to the extent and in the manner provided in this article;
- (7) Bring and prosecute legal proceedings or actions in its name as the commission; provided that the standing of any state insurance department to sue or be sued under applicable law shall not be affected;
- (8) Issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence;
- (9) Establish and maintain offices;
- (10) Purchase and maintain insurance and bonds;

- (11) Borrow, accept, or contract for services of personnel, including but not limited to employees of a compacting state;
- (12) Hire employees, professionals, or specialists, and elect or appoint officers, determine their qualifications, fix their compensation, define their duties, and give them appropriate authority to carry out the purposes of the compact, and 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 any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and receive, use, and dispose of the same; provided that at all times the commission shall strive to avoid any appearance of impropriety;
- (14) Lease, purchase, and accept appropriate gifts or donations of, or otherwise to own, hold, improve, or use, any property, real, personal, or mixed; provided that at all times the commission shall strive to avoid any appearance of impropriety;
- (15) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed;
- (16) Remit filing fees to compacting states as may be set forth in the bylaws, rules, or operating procedures;
- (17) Enforce compliance by compacting states with rules, uniform standards, operating procedures, and bylaws;
- (18) Provide for dispute resolution among compacting states;
- (19) Advise compacting states on issues relating to insurers domiciled or doing business in noncompacting jurisdictions, consistent with the purposes of this compact;
- (20) Provide advice and training to those personnel in state insurance departments responsible for product review, and be a resource for state insurance departments;
- (21) Establish a budget and make expenditures;
- (22) Borrow money;
- (23) Appoint committees, including advisory committees comprised of members, state insurance regulators, state legislators or their representatives, insurance industry and consumer representatives, and such other interested persons as may be designated in the bylaws;
- (24) Provide and receive information from, and cooperate with law enforcement agencies;
- (25) Adopt and use a corporate seal; and
- (26) Perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with state regulation of the business of insurance.

§431: -105 Appointment to commission. The governor, with the advice and consent of the senate, shall appoint the member of the commission that represents the State.

§431: -106 Membership; voting; bylaws. (a) Each compacting state shall have and be limited to one member. Each member shall be qualified to serve in such capacity under or pursuant to the applicable law of the compacting state. Any member may be removed or suspended from office as provided by the law of the state from which the member is appointed. Any vacancy occurring in the commission shall be filled in accordance with the laws of the compacting state wherein such vacancy exists. Nothing herein shall be construed to affect the manner in which a

compacting state determines the election or appointment and qualification of its own commissioner.

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

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

- (1) Establishing the fiscal year of the commission;
- (2) Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the management committee;
- (3) Providing reasonable standards and procedures for the establishment and meetings of other committees, and governing any general or specific delegation of any authority or function of the commission;
- (4) Providing reasonable procedures for calling and conducting meetings of the commission that consist of a majority of commission members, ensuring reasonable advance notice of each such meeting, and providing for the right of citizens to attend each such meeting with enumerated exceptions designed to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including trade secrets. The commission may meet in camera only after a majority of the entire membership votes to close a meeting in toto or in part. As soon as practicable, the commission shall make public a copy of the vote to close the meeting revealing the vote of each member with no proxy votes allowed, and votes taken during such meeting;
- (5) Establishing the titles, duties, and authority, and reasonable procedures for the election, of the officers of the commission;
- (6) Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws shall exclusively govern the personnel policies and programs of the commission;
- (7) Adopting a code of ethics to address permissible and prohibited activities of commission members and employees; and
- (8) 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 of all of its debts and obligations.

(d) The commission shall publish its bylaws in a convenient form and file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the compacting states.

§431: -107 Management committee; officers and personnel. (a) A management committee comprising no more than fourteen members shall be established as follows:

- (1) One member from each of the six compacting states with the largest premium volume for individual and group annuities, life, disability income, and long-term care insurance products, determined from the records of the National Association of Insurance Commissioners for the prior year;
- (2) Four members from compacting states with at least two per cent 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 two per cent of the market, based on the premium volume described above, with one selected from each of the four zone regions of the National Association of Insurance Commissioners as provided in the bylaws.

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

- (1) Managing the affairs of the commission in a manner consistent with the bylaws and purposes of the commission;
- (2) Establishing and overseeing an organizational structure within, and appropriate procedures for, the commission to provide for the creation of uniform standards and other rules, subject to approval by the full commission, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing, and the review of elections made by a compacting state to opt out of a uniform standard; provided that a uniform standard shall not be submitted to the compacting states for adoption unless approved by two-thirds of the members of the management committee;
- (3) Overseeing the offices of the commission; and
- (4) Planning, implementing, and coordinating communications and activities with other state, federal, and local government organizations to advance the goals of the commission.

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

(d) The management committee, subject to the approval of the commission, may 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.

§431: -108 Legislative and advisory committees. (a) A legislative committee comprising state legislators or their designees shall be established to monitor the operations of, and make recommendations to, the commission including the management committee; provided that the manner of selection and term of any legislative committee member shall be as set forth in the bylaws. Prior to the adoption by the commission of any uniform standard, revision to the bylaws, annual budget, or other significant matter as may be provided in the bylaws, the management committee shall consult with and report to the legislative committee.

(b) The commission shall establish two advisory committees, one of which shall be comprised of consumer representatives independent of the insurance industry, and the other, of insurance industry representatives.

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

§431: -109 Corporate records of the commission. The commission shall maintain its corporate books and records in accordance with the bylaws.

§431: -110 Qualified immunity; defense; indemnification. (a) The members, officers, executive director, employees, and representatives of the commission shall be immune from suit and liability, either personally or in their official

capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error, or omission that occurred or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities; provided that nothing in this subsection shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or wilful and wanton misconduct of any such person.

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

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

§431: -111 Meetings and acts of the commission. (a) The commission shall meet and take such actions as are consistent with the provisions of this compact and the bylaws.

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

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

§431: -112 Rules and operating procedures; rulemaking functions of the commission and rejection of uniform standards. (a) The commission shall adopt reasonable rules, including uniform standards, and operating procedures to effectively and efficiently achieve the purposes of this compact. Notwithstanding the foregoing, in the event the commission exercises its rulemaking authority in a manner that is beyond the scope of the purposes of this article or the powers granted hereunder, such action by the commission shall be invalid and have no force and effect.

(b) Rules and operating procedures shall 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 operations of the commission. Before the commission adopts a uniform standard, the commission shall give written notice to the relevant state legislative committees in each compacting state responsible for insurance issues of its intention to adopt the uniform standard. In adopting a uniform standard, the commission shall consider fully all submitted materials and issue a concise explanation of its decision.

(c) A uniform standard shall become effective ninety days after its adoption by the commission or such later date as the commission may determine; provided

that a compacting state may “opt out” of a uniform standard as provided in this article. “Opt out” shall be defined as any action by a compacting state to decline to adopt or participate in an adopted uniform standard. All other rules and operating procedures, and amendments thereto, shall become effective as of the date specified in each rule, operating procedure, or amendment.

(d) A compacting state may opt out of a uniform standard, either by legislation or by rule adopted by the insurance commissioner. If a compacting state elects to opt out of a uniform standard by rule, it shall:

- (1) Give written notice to the commission no later than ten business days after the later of the adoption of the uniform standard or the state becoming a compacting state; and
- (2) Find that the uniform standard does not provide reasonable protections to the citizens of the state, given the conditions in the state. The commissioner shall make specific findings of fact and conclusions of law, based on a preponderance of the evidence, detailing the conditions in the state 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 shall consider and balance the following factors and find that the conditions in the state and needs of the citizens of the state outweigh:
 - (A) The intent of the legislature to participate in, and reap the benefits of, an interstate agreement to establish national uniform consumer protections for the products subject to this Act; and
 - (B) The presumption that a uniform standard adopted by the commission provides reasonable protections to consumers of the relevant product.

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

(e) 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 opt out regulation becomes effective.

Once the opt out of a uniform standard by a compacting state becomes effective as provided under the laws of that state, the uniform standard shall have no further force and effect in that state unless and until the legislation or regulation implementing the opt out is repealed or otherwise becomes ineffective under the laws of the state. If a compacting state opts out of a uniform standard after the uniform standard has been made effective in that state, the opt out shall have the same prospective effect as provided under section 431: -119 for withdrawals.

(f) If a compacting state has formally initiated the process of opting out of a uniform standard by regulation, and while the regulatory opt out is pending, the compacting state may petition the commission, at least fifteen days before the effective date of the uniform standard, to stay the effectiveness of the uniform standard in that state. The commission may grant a stay if it determines the regulatory opt out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the commission, the stay or extension thereof may postpone the effective date by up to ninety days, unless affirmatively

extended by the commission; provided that a stay may not be permitted to 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 compacting state from opting out. A stay may be terminated by the commission upon notice that the rulemaking process has been terminated.

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

§431: -113 Commission records and enforcement. (a) The commission shall adopt rules establishing conditions and procedures for public inspection and copying of its information and official records, except information and records involving the privacy of individuals and insurers' trade secrets. The commission may adopt additional rules under which it may make available to federal and state agencies, including law enforcement agencies, records and information otherwise exempt from disclosure, and may enter into agreements with such agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

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

(c) The commission shall monitor compacting states for compliance with duly adopted bylaws, rules, including uniform standards, and operating procedures. The commission shall notify such noncomplying compacting state in writing of its noncompliance with commission bylaws, rules, or operating procedures. If the noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state shall be deemed to be in default as set forth in section 431: -120.

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

- (1) With respect to the commissioner's market regulation of a product or advertisement that is approved or certified to the commission, the content of the product or advertisement 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; 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 to the commission, the commission, or an authorized commission officer or employee, shall authorize the action; provided that 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.

§431: -114 Dispute resolution. The commission, upon the request of a member, shall attempt to resolve any disputes or other issues that are subject to this compact and that may arise between two or more compacting states, or between compacting states and noncompacting states, and shall adopt an operating procedure providing for resolution of such disputes.

§431: -115 Product filing and approval. (a) Insurers and third-party filers seeking to have a product approved by the commission shall file such product with, and pay applicable filing fees to, the commission. Nothing in this article shall be construed to restrict or otherwise prevent an insurer from filing its product in any state wherein such insurer is licensed to conduct the business of insurance, and such filing shall be subject to the laws of the state where filed.

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

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

§431: -116 Review of commission decisions regarding product filings.

(a) Not later than thirty days after the commission has given notice that it has disapproved a product or advertisement filed with the commission, the insurer or third party filer whose filing was disapproved may appeal the determination to a review panel appointed by the commission. The commission shall adopt rules to establish procedures for appointing the review panel and provide for notice and hearing. An allegation that the commission, in disapproving a product or advertisement filed with the commission, acted arbitrarily, capriciously, or in a manner that is an abuse of discretion or otherwise not in accordance with the law, shall be subject to judicial review in accordance with section 431: -103.

(b) The commission may monitor, review, and reconsider products and advertisement subsequent to their filing or approval upon a finding that the product or advertisement 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 this section.

§431: -117 Finance. (a) The commission shall pay or provide for the payment of the reasonable expenses of its establishment and organization. To fund the cost of its initial operations, the commission may accept contributions and other forms of funding from the National Association of Insurance Commissioners, com-

pacting 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.

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

(c) The commission's budget for a fiscal year shall not be approved until it has been subject to notice and comment as set forth in rules adopted in accordance with section 431: -112.

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

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

(f) The commission shall keep complete and accurate accounts of all its internal receipts (including grants and donations) and disbursements of all funds under its control. The internal financial accounts of the commission shall be subject to the accounting procedures established under its bylaws. The financial accounts and reports, including the system of internal controls and procedures of the commission shall be audited annually by an independent certified public accountant. Upon the determination of the commission, but no less frequently than every three years, the review of such independent auditor shall include a management and performance audit of the commission. The commission shall make an annual report to the governor and legislature of the compacting states, which shall include a report of such independent audit. The commission's internal accounts shall not be confidential and such materials may be shared with the commissioner of any compacting state upon request; provided that 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, shall remain confidential.

(g) No compacting state shall 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.

§431: -118 Compacting states; effective date; amendment. (a) Any state is eligible to become a compacting state.

(b) The compact shall become effective and binding upon legislative enactment of the compact into law by two compacting states; provided the commission shall become effective for purposes of adopting uniform standards for reviewing and giving approval or disapproval of products filed with the commission that satisfy the applicable uniform standards only after twenty-six states are compacting states or, alternatively, the compact is enacted by states representing greater than forty per cent of the premium volume for life insurance, annuity, disability income, and long-term care insurance products, based on records of the National Association of Insurance Commissioners for the prior year. Thereafter, it shall become effective and binding as to any other compacting state upon enactment of the compact into law by that state.

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

§431: -119 Withdrawal. (a) Once effective, the compact shall continue in force and remain binding upon each and every compacting state; provided that a

compacting state may withdraw from the compact ("withdrawing state") by enacting a statute specifically repealing the statute that enacted the compact into law.

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

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

(d) The commission shall notify the other compacting states of the withdrawing state's intent to withdraw within ten days of its receipt thereof.

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

(f) Reinstatement following withdrawal of any compacting state shall occur upon the effective date of the withdrawing state's reenactment of the compact.

§431: -120 Default. (a) If the commission determines that any compacting state has at any time defaulted ("defaulting state") in the performance of any of its obligations or responsibilities under this compact, the bylaws or duly adopted rules or operating procedures, then, after notice and hearing as set forth in the bylaws, all rights, privileges, and benefits conferred by this compact on such defaulting party shall be suspended from the effective date of default as fixed by the commission. The grounds for default include but are not limited to failure of a compacting state to perform such obligations or responsibilities, and any other grounds designated in commission rules. The commission shall immediately notify the defaulting state in writing of the defaulting state's suspension pending a cure of the default. The commission shall stipulate the conditions and the time period within which the defaulting state must cure its default. If the defaulting state fails to cure the default within the time period specified by the commission, the defaulting state shall be terminated from the compact and all rights, privileges, and benefits conferred by this compact shall be terminated from the effective date of termination.

(b) Product approvals by the commission or product self-certifications, or any other advertisement in connection with the product, that are in force on the effective date of termination shall remain in force in the defaulting state in the same manner as if the defaulting state had withdrawn voluntarily pursuant to section 431: -119(a).

(c) Reinstatement following termination of any compacting state requires a reenactment of the compact by the state seeking reinstatement.

§431: -121 Dissolution of compact. (a) The compact dissolves effective upon the date of the withdrawal or default of the compacting state that reduces membership in the compact to one compacting state.

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

§431: -122 Severability and construction. (a) The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision is deemed unenforceable, the remaining provisions of the compact shall be enforceable.

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

§431: -123 Other laws. (a) Nothing herein prevents the enforcement of any other law of a compacting state except as provided in subsection (b).

(b) For any product approved by 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 that 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:

- (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.

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

§431: -124 Binding effect of the compact. (a) All lawful actions of the commission, including all rules and operating procedures adopted by the commission, are binding upon the compacting states.

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

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

(d) If 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 such provision upon the commission shall be ineffective as to such compacting state, and such obligations, duties, powers, or jurisdiction shall remain in the compacting state and shall be exercised by the agency thereof to which such obligations, duties, powers, or jurisdiction are delegated by law in effect at the time this compact becomes effective."

SECTION 3. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to part II of article 2 to be appropriately designated and to read as follows:

“§431:2- Standards for commissioner. When reviewing a uniform standard, the commissioner shall consider the following standards in determining whether to opt out of a uniform standard:

- (1) Whether the public interest is being served or protected;

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- (2) Whether the reasonable expectations of the consumer will be met;
- (3) Whether the uniform standard is or will require a reasonably clear, plain English communication to the consumer;
- (4) Whether the consumer will be protected in a typical transaction where the consumer may have less power, information, or understanding of the meaning or consequences of the transaction, or any part thereof, than the insurer or producer;
- (5) The long-term effects of the uniform standard;
- (6) The possible effects of the uniform standard on the financial condition of insurers;
- (7) Confidentiality requirements in state or federal law;
- (8) State and federal constitutional issues;
- (9) The impact of the uniform standard on any provision of the insurance code or any state or federal law;
- (10) The uniform standard's particular impact in the State and any conditions unique to the State; and
- (11) The integration of the uniform standard with state or federal law and any possible conflicts with such laws."

SECTION 4. New statutory material is underscored.¹

SECTION 5. This Act shall take effect on January 1, 2005.

(Approved June 3, 2004.)

Note

1. Edited pursuant to HRS §23G-16.5.