

MAINE STATE LEGISLATURE

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LAWS
OF THE
STATE OF MAINE

AS PASSED BY THE
ONE HUNDRED AND TWENTY-FIRST LEGISLATURE

FIRST SPECIAL SESSION
August 21, 2003 to August 22, 2003

The General Effective Date For
First Special Session
Non-Emergency Laws Is
November 22, 2003

SECOND REGULAR SESSION
January 7, 2004 to January 30, 2004

The General Effective Date For
Second Regular Session
Non-Emergency Laws Is
April 30, 2004

SECOND SPECIAL SESSION
February 3, 2004 to April 30, 2004

The General Effective Date For
Second Special Session
Non-Emergency Laws Is
July 30, 2004

PUBLISHED BY THE REVISOR OF STATUTES
IN ACCORDANCE WITH MAINE REVISED STATUTES ANNOTATED,
TITLE 3, SECTION 163-A, SUBSECTION 4.

Penmor Lithographers
Lewiston, Maine
2004

All Other	0	2,200
Other Special Revenue		
Funds Total	\$0	\$2,860

Sec. 4. Effective date. That section of this Act that enacts the Maine Revised Statutes, Title 22, chapter 604 takes effect July 1, 2005.

See title page for effective date, unless otherwise indicated.

CHAPTER 680

S.P. 630 - L.D. 1698

An Act To Join the Interstate Insurance Product Regulation Compact

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 24-A MRSA c. 28 is enacted to read:

CHAPTER 28

INTERSTATE INSURANCE PRODUCT REGULATION COMPACT

§2471. Short title -- Article 1

This chapter may be known and cited as "the Interstate Insurance Product Regulation Compact."

§2472. Interstate Insurance Product Regulation Compact established; purposes

1. Compact established. Pursuant to terms and conditions of this chapter, the State seeks to join with other states and establish the Interstate Insurance Product Regulation Compact, referred to in this chapter as "the compact," and thus become a member of the Interstate Insurance Product Regulation Commission. The superintendent is designated to serve as the representative of this State to the commission.

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

A. To promote and protect the interest of consumers of individual and group annuity, life, disability income and long-term care insurance products;

B. To develop uniform standards for insurance products covered under the compact;

C. 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;

D. To give appropriate regulatory approval to those product filings and advertisements satisfying the applicable uniform standard;

E. 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;

F. To create the Interstate Insurance Product Regulation Commission; and

G. To perform these and such other related functions as may be consistent with the state regulation of the business of insurance.

§2473. Definitions -- Article 2

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Advertisement. "Advertisement" means any material designed to create public interest in a product or induce the public to purchase, increase, modify, reinstate, borrow on, surrender, replace or retain a policy, as more specifically defined in the rules and operating procedures of the commission.

2. Bylaws. "Bylaws" means the bylaws established by the commission for its governance or for directing or controlling the commission's actions or conduct.

3. Compacting state. "Compacting state" means a state that has enacted the compact and that has not withdrawn pursuant to section 2485, subsection 1 or been terminated pursuant to section 2485, subsection 2.

4. Commission. "Commission" means the Interstate Insurance Product Regulation Commission established by the compact.

5. Commissioner. "Commissioner" means the chief insurance regulatory official of a compacting state, including, but not limited to, commissioner, superintendent, director or administrator.

6. Domiciliary state. "Domiciliary state" means the state in which an insurer is incorporated or organized or, in the case of an alien insurer, its state of entry.

7. Insurer. "Insurer" means an entity licensed by a state to issue contracts of insurance for any of the lines of insurance covered by the compact.

8. Management committee. "Management committee" means the management committee established under section 2476, subsection 5.

9. Member. "Member" means the person chosen by a compacting state as its representative to the commission, or the member's designee.

10. Noncompacting state. "Noncompacting state" means a state that is not a compacting state.

11. Operating procedures. "Operating procedures" means procedures adopted by the commission implementing a rule, uniform standard or provision of the compact.

12. Product. "Product" means the form of a policy or contract, including an 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.

13. Rule. "Rule" means a statement of general or particular applicability and future effect adopted by the commission, including a uniform standard developed pursuant to section 2478, designed to implement, interpret or prescribe law or policy or describing the organization, procedure or practice requirements of the commission, that has the force and effect of law in the compacting states.

14. State. "State" means any state, district or territory of the United States of America.

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

16. Uniform standard. "Uniform standard" means a standard adopted by the commission for a product line, pursuant to section 2478, and includes all of the product requirements in aggregate. Each uniform standard must be construed, whether the prohibition is 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 is not unfair, inequitable or against public policy as determined by the commission.

§2474. Establishment of commission; venue -- Article 3

1. Commission created. The compacting states hereby create and establish a joint public agency known as the Interstate Insurance Product Regulation Commission. The commission has the power to develop uniform standards for product lines, receive and provide prompt review of products filed and give approval to those product filings satisfying applicable uniform standards. It is not intended that the commission be the exclusive entity for receipt and review of insurance product filings in the State. This subsection does not prohibit an insurer from filing its product in a state where the insurer is licensed to conduct the business of insurance, and any such filing is subject to the laws of the state where filed.

2. Body corporate. The commission is a body corporate and politic and an instrumentality of the compacting states.

3. Responsible for liabilities. The commission is solely responsible for its liabilities except as otherwise specifically provided in the compact.

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

§2475. Powers of the commission -- Article 4

The commission has the power:

1. Promulgate rules. To promulgate rules, pursuant to section 2478, that have the force of law and are binding in the compacting states to the extent and in the manner provided in the compact;

2. Uniform standards. To exercise its rule-making authority and establish reasonable uniform standards for products and advertisements, which have the force of law and are binding in the compacting states, but only for those products filed with the commission. A compacting state has the right to opt out of the uniform standard pursuant to section 2478 to the extent and in the manner provided in the compact. A uniform standard established by the commission for long-term care insurance products may provide either the same or greater protections for consumers as, but may not provide less than, those protections set forth in the National Association of Insurance Commissioners' Long-term Care Insurance Model Act and Long-term Care Insurance Model Regulation, adopted by the National Association of Insurance Commissioners 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 Long-term Care Insurance Model Regulation adopted as of 2001 by the National Association of Insurance Commissioners require the amendment of the uniform standards established by the commission for long-term care insurance products;

3. Products; receive and review. To receive and review in an expeditious manner products filed with the commission and rate filings for disability income and long-term care insurance products and to give approval of those products and rate filings that satisfy the applicable uniform standard. Approval by the commission has the force of law and is binding on the compacting states to the extent and in the manner provided in the compact;

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

5. Self-certification process. To exercise its rule-making 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. Operating procedures. To promulgate operating procedures pursuant to section 2478 that are binding in the compacting states to the extent and in the manner provided in the compact;

7. Legal proceedings. To bring and prosecute legal proceedings or actions in its name as the commission. The standing of a state insurance department to sue or be sued under applicable law is not affected by this subsection;

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

9. Establish and maintain offices. To establish and maintain offices;

10. Insurance; bonds. To purchase and maintain insurance and bonds;

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

12. Employees; professionals; specialists. To hire employees, professionals or specialists and elect or appoint officers and to fix their compensation, define their duties and give them appropriate authority to carry out the purposes of the compact and determine their qualifications. To establish the commission's personnel policies and programs relating to, but not limited to conflicts of interest, rates of compensation and qualifications of personnel;

13. Accept donations. To accept any and all appropriate donations and grants of money, equipment, supplies, materials and services and to receive, utilize and dispose of the same, striving to avoid any appearance of impropriety;

14. Hold property. To lease, purchase, accept appropriate gifts or donations of or otherwise to own, hold, improve or use any property, real, personal or mixed, striving at all times to avoid any appearance of impropriety;

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

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

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

18. Provide for dispute resolution. To provide for dispute resolution among compacting states;

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

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

21. Establish budget. To establish a budget and make expenditures;

22. Borrow money. To borrow money;

23. Appoint committees. To appoint committees, including advisory committees of members, state insurance regulators, state legislators or their representatives, insurance industry and consumer represen-

tatives and any other interested persons as may be designated in the bylaws;

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

25. Corporate seal. To adopt and use a corporate seal; and

26. Perform other functions. To perform functions other than those set out explicitly in this section as necessary or appropriate to achieve the purposes of the compact consistent with the state regulation of the business of insurance.

§2476. Organization of the commission -- Article 5

1. Membership. Each compacting state has one member. Each member must be qualified to serve in that capacity pursuant to applicable law of the compacting state. A member may be removed or suspended from office as provided by the law of the state from which the member is appointed. A vacancy occurring in the commission must be filled in accordance with the laws of the compacting state where the vacancy exists. This subsection may not be construed to affect the manner in which a compacting state determines the election or appointment and qualification of its own commissioner.

2. One vote. Each member is entitled to one vote and has an opportunity to participate in the governance of the commission in accordance with the bylaws. Notwithstanding any provision of the compact to the contrary, action of the commission with respect to the promulgation of a uniform standard does not take effect unless 2/3 of the members vote in favor of the uniform standard.

3. Bylaws. The commission shall, by a majority of the members, adopt 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:

A. Establishing the fiscal year of the commission;

B. Providing reasonable procedures for appointing and electing members, as well as holding meetings, of the management committee established under subsection 5;

C. Providing reasonable standards and procedures;

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

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

D. Providing reasonable procedures for calling and conducting meetings of the commission 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 camera only after a majority of the entire membership votes to close a meeting in whole 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 the meeting;

E. Establishing the titles, duties, authority and reasonable procedures for the election of the officers of the commission;

F. Providing reasonable standards and procedures for the establishment of the personnel policies and programs of the commission. Notwithstanding any civil service or similar laws of any compacting state, the bylaws exclusively govern the personnel policies and programs of the commission;

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

H. Providing a mechanism for winding up the operations of the commission and the equitable disposition of any surplus funds that might exist after the termination of the compact after the payment or reserving of all of its debts and obligations.

4. File bylaws with compacting states. The commission shall publish its bylaws in a convenient form and file a copy of the bylaws and a copy of any amendment to the bylaws with the appropriate agency or officer in each of the compacting states.

5. Management committee. The commission shall establish a management committee.

A. The management committee consists of no more than 14 members as follows:

(1) One member from each of the 6 compacting states with the largest premium volume for individual and group annuities and life, disability income and long-term care insurance products, determined from

the records of the National Association of Insurance Commissioners for the prior year;

(2) Four members from those compacting states with at least 2% of the market based on the premium volume described in subparagraph (1) other than the 6 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 in subparagraph (1) with one selected from each of the 4 zone regions of the National Association of Insurance Commissioners as provided in the bylaws.

B. The management committee has 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, receipt and review of product filings, administrative and technical support functions, review of decisions regarding the disapproval of a product filing and review of elections made by a compacting state to opt out of a uniform standard. A uniform standard may not be submitted to the compacting states for adoption unless approved by 2/3 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 in order to advance the goals of the commission.

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

D. The management committee may, subject to the approval of the commission, appoint or retain an executive director for such period, upon such terms and conditions and for such compensation as the commission determines appropriate. The

executive director shall serve as secretary to the commission, but may not be a member of the commission. The executive director shall hire and supervise such other staff as may be authorized by the commission.

6. Legislative committee. A legislative committee of state legislators or their designees is established 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 is set by 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.

7. Advisory committees. The commission shall establish 2 advisory committees, one composed of consumer representatives independent of the insurance industry and the other composed of insurance industry representatives.

8. Additional advisory committees. The commission may establish advisory committees in addition to those described in subsection 7 as its bylaws may provide for the carrying out of its functions.

9. Corporate records of the commission. The commission shall maintain its corporate books and records in accordance with the bylaws.

10. Qualified immunity, defense and indemnification. The members, officers, executive director, employees and representatives of the commission are immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or 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. Nothing in this subsection may be construed to protect any person from suit or liability for any damage, loss, injury or liability caused by the intentional or willful and wanton misconduct of that person.

11. Defend. The commission shall defend any member, officer, executive director, employee or representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error or omission that occurred within the scope of commission employment, duties or responsibilities, or that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties or responsibilities, as long as the actual or alleged act, error or omission did not result from that person's

intentional or willful and wanton misconduct. Nothing in this subsection may be construed to prohibit that person from retaining counsel.

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

§2477. Meetings; acts of commission -- Article 6

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

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

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

§2478. Rules and operating procedures, rule-making functions of the commission and opting out of uniform standards -- Article 7

1. Rule-making authority. The commission shall promulgate reasonable rules, including uniform standards and operating procedures, in order to effectively and efficiently achieve the purposes of this compact. Notwithstanding this subsection, in the event the commission exercises its rule-making authority in a manner that is beyond the scope of the purposes of this chapter or the powers granted under this chapter, then such an action by the commission is invalid and has no effect.

2. Rule-making procedure. Rules and operating procedures must be made pursuant to a rule-making 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 committee in each compacting state responsible for insurance issues of its intention to adopt the uniform standard. The commission in adopting a uniform standard shall consider fully all submitted materials and issue a concise explanation of its decision.

3. Effective date and opting out of uniform standard. A uniform standard becomes effective 90 days after its promulgation by the commission or such later date as the commission may determine. A compacting state may opt out of a uniform standard as provided in subsection 4. "Opt out" means any action by a compacting state to decline to adopt or participate in a promulgated uniform standard. All other rules and operating procedures, and amendments thereto, become effective as of the date specified in each rule, operating procedure or amendment.

4. Procedure for opting out. A compacting state may opt out of a uniform standard either by legislation or regulation duly promulgated by the insurance department under the compacting state's administrative procedure act. If a compacting state elects to opt out of a uniform standard by regulation, it must give written notice to the commission no later than 10 business days after the uniform standard is promulgated, or at the time the state becomes a compacting state, and must 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 must 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 the benefits of, an interstate agreement to establish national uniform consumer protections for the products subject to this chapter; and

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

Notwithstanding this subsection, 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 an option in the enacted compact, and opting out may not be treated as a material variance in the offer or acceptance of any state to participate in this compact. Opting out is effective at the time of enactment of this compact by the compacting state and applies to all existing

uniform standards involving long-term care insurance products and those subsequently promulgated.

5. Effect of opting out. If a compacting state elects to opt out of a uniform standard, the uniform standard remains applicable in the compacting state electing to opt out until such time as the legislation opting out is enacted into law or the regulation opting out becomes effective.

Once the opting out of a uniform standard by a compacting state becomes effective as provided under the laws of that state, the uniform standard has no further force and effect in that state unless and until the legislation or regulation implementing the opting 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 opting out has the same prospective effect as provided under section 2485 for withdrawals.

6. Stay of uniform standard. If a compacting state has formally initiated the process of opting out of a uniform standard by regulation, and while the regulatory opting out is pending, the compacting 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 opting out is being pursued in a reasonable manner and there is a likelihood of success. If a stay is granted or extended by the commission, the stay or extension may postpone the effective date by up to 90 days, unless the stay is affirmatively extended by the commission. 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 rule-making process has been terminated.

7. Petition for judicial review of rule or operating procedure. Not later than 30 days after a rule or operating procedure is promulgated, any person may file a petition for judicial review of the rule or operating procedure. 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 shall give deference to the actions of the commission consistent with applicable law and may not find the rule or operating procedure to be unlawful if the rule or operating procedure represents a reasonable exercise of the commission's authority.

§2479. Commission records and enforcement -- Article 8

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

2. Laws pertaining to confidentiality or non-disclosure. 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. Disclosure to the commission may not be considered to waive or otherwise affect any confidentiality requirement. Except as otherwise expressly provided in this chapter, the commission is not subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to records, data and information in its possession. Confidential information of the commission remains confidential after such information is provided to any commissioner.

3. Compliance. The commission shall monitor compacting states for compliance with duly adopted bylaws, rules, including uniform standards, and operating procedures. The commission shall notify any noncomplying compacting state in writing of its noncompliance with commission bylaws, rules or operating procedures. If a noncomplying compacting state fails to remedy its noncompliance within the time specified in the notice of noncompliance, the compacting state is in default as set forth in section 2485.

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

A. With respect to the commissioner's market regulation of a product or advertisement that is approved by or certified to the commission, the content of the product or advertisement does not constitute a violation of the provisions, standards

or requirements of the compact except upon a final order of the commission issued at the request of a commissioner after prior notice to the insurer and an opportunity for hearing before the commission.

B. Before a commissioner may bring an action for violation of any provision, standard or requirement of the compact relating to the content of an advertisement not approved by or certified to the commission, the commission, or an authorized commission officer or employee, must authorize the action. However, authorization pursuant to this paragraph does not require notice to the insurer, opportunity for hearing or disclosure of requests for authorization or records of the commission's action on such requests.

§2480. Dispute resolution -- Article 9

The commission shall attempt, upon the request of a member, to resolve any disputes or other issues that are subject to this compact and that may arise between 2 or more compacting states, or between compacting states and noncompacting states, and the commission shall promulgate an operating procedure providing for resolution of such disputes.

§2481. Product filing and approval -- Article 10

1. Filing of product with commission. Insurers and 3rd-party filers seeking to have a product approved by the commission shall file the product with, and pay applicable filing fees to, the commission. Nothing in this chapter may be construed to restrict or otherwise prevent an insurer from filing its product with the insurance department in any state where the insurer is licensed to conduct the business of insurance, and such filing is subject to the laws of the states where filed.

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

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

§2482. Review of commission decisions regarding filings -- Article 11

1. Appeal to review panel appointed by commission. Not later than 30 days after the commission has given notice of a disapproved product or advertisement filed with the commission, the insurer or 3rd-party filer whose filing was disapproved may appeal the determination to a review panel appointed by the commission. The commission shall promulgate rules to establish procedures for appointing a 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 is subject to judicial review in accordance with section 2474, subsection 5.

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

§2483. Finance -- Article 12

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

2. Commission shall collect filing fee. The commission shall collect a filing fee from each insurer and 3rd-party filer filing a product with the commission to cover the cost of the operations and activities of the commission and its staff in a total amount sufficient to cover the commission's annual budget.

3. Notice and comment for budget approval. The commission's budget for a fiscal year may not be approved until it has been subject to notice and comment as set forth in section 2478.

4. Commission exempt from taxation. The commission is exempt from all taxation in and by the compacting states.

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

6. Commission to keep complete and accurate accounts. The commission shall keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursements of all funds under its control. The internal financial accounts of the commission are subject to the accounting procedures established under its bylaws. The financial accounts and reports, including the system of internal controls and procedures of the commission, must be audited annually by an independent certified public accountant. Upon the determination of the commission, but no less frequently than every 3 years, the review of the independent auditor must include a management and performance audit of the commission. The commission shall make an annual report to the governor and legislature of each compacting state, which must include a report of the independent audit. The commission's internal accounts are not confidential and such materials may be shared with the commissioner of any compacting state upon request, except 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, must remain confidential.

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

§2484. Compacting states, effective date and amendment -- Article 13

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

2. Effective dates for compact and commission. The compact becomes effective and binding upon legislative enactment by 2 compacting states. The commission becomes effective for purposes of adopting uniform standards for, reviewing and giving approval or disapproval of products filed with the commission only after 26 states are compacting states or, alternatively, after states representing more than 40% 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, are compacting states. Thereafter, it becomes

effective and binding as to any other compacting state upon enactment of the compact into law by that state.

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

§2485. Withdrawal, default and termination -- Article 14

1. Withdrawal. The following provisions govern withdrawal from the compact.

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

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

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

D. The commission shall notify the other compacting states of the introduction of such legislation within 10 days after it receives notice under paragraph C.

E. The withdrawing state is responsible for all obligations, duties and liabilities incurred through the effective date of withdrawal, including any obligations the performance of which extend beyond the effective date of withdrawal, except to the extent those obligations may have been released or relinquished by mutual agreement of the commission and the withdrawing state. The commission's approval of products and advertisements prior to the effective date of withdrawal continues to be effective and must 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 advertisements previously approved under state law.

F. Reinstatement following withdrawal of any compacting state occurs upon the effective date of the withdrawing state's reenacting the compact.

2. Default. The following provisions govern default.

A. If the commission determines that a compacting state has defaulted in the performance of any of its obligations or responsibilities under this compact, the bylaws or duly promulgated rules or operating procedures, then, after notice and hearing as set forth in the bylaws, all rights, privileges and benefits conferred by this compact on the defaulting state 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 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 must be terminated from the compact and all rights, privileges and benefits conferred by this compact are terminated from the effective date of termination.

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

C. Reinstatement following termination of a compacting state requires a reenactment of the compact.

3. Dissolution of compact. The following provisions govern the dissolution of the compact.

A. The compact dissolves 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 becomes void and is of no further effect, and the business and affairs of the commission must be wound up and any surplus funds must be distributed in accordance with the bylaws.

§2486. Construction -- Article 15

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

§2487. Binding effect of compact and other laws -- Article 16

1. Laws of compacting state. Nothing in this chapter prevents the enforcement of any laws of a compacting state other than this compact, except as provided in subsection 2.

2. Exclusive provisions. For any product approved by or certified to the commission, the rules, uniform standards and any other requirements of the commission constitute the exclusive provisions applicable to the content, approval and certification of that product. For an 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 constitutes the exclusive provision that a commissioner may apply to the content of the advertisement. Notwithstanding this subsection, an action taken by the commission may not abrogate or restrict:

A. The access of any person to state courts;

B. Remedies available under state law related to breach of contract, tort or other laws not specifically directed to the content of the product;

C. State law relating to the construction of insurance contracts; or

D. The authority of the attorney general of the state, including, but not limited to, maintaining any actions or proceedings, as authorized by law.

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

4. Binding effect of compact. The compact is binding as follows.

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

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

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

D. In the event any provision of this compact exceeds the constitutional limits imposed on the legislature of a compacting state, the obligation, duty, power or jurisdiction sought to be conferred by that provision upon the commission is ineffective as to that compacting state, and that obligation, duty, power or jurisdiction remains in the compacting state and must be exercised by the agency thereof to which that obligation, duty, power or jurisdiction is delegated by law in effect at the time this compact becomes effective.

Sec. 2. Legislative intent. The text and numbering of the Interstate Insurance Product Regulation Compact have been changed to conform to the Maine statutory conventions. The changes are technical in nature, and it is the intent of the Legislature that this Act be interpreted as substantively the same as the original compact.

See title page for effective date.

CHAPTER 681

S.P. 427 - L.D. 1325

An Act To Encourage and Support Maine Small Businesses

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 1 MRSA §535, sub-§3, as enacted by PL 1997, c. 713, §1, is amended to read:

3. Powers. The network manager may:

A. Negotiate and enter into contracts for professional consulting, research and other services; ~~and~~

B. To the extent permitted by the service level agreement between the network manager and the data custodian, have access to confidential information if it is necessary to carry out the duties of the network manager or the purposes of InforME. The network manager is subject to the same limitations and penalties as a data custodian concerning the use and disclosure of confidential information-; ~~and~~

C. Designate a town, city or municipality as an "InforME Goldstar Community" if the network manager believes that town, city or municipality provides exemplary on-line services for persons seeking to establish businesses in the State, including but not limited to on-line application and submission of forms by persons seeking licensure and live on-line assistance during normal

business hours for questions concerning the establishment of a business.

Sec. 2. 5 MRSA §56, sub-§1, as enacted by PL 2001, c. 96, §1, is amended to read:

1. Membership. The board consists of 5 members who are owners, operators or officers of businesses operating in the State. The members, at least 3 of whom must represent businesses with fewer than 50 employees, are appointed by the Governor. In selecting the members of the board, the Governor shall make every effort to ensure that different regions of the State are represented. Prior to making final appointments of members to the board, the Governor or the Governor's designee shall present the appointments to the joint standing committee of the Legislature having jurisdiction over business, research and economic development matters. No member of the board may be an officer or employee of State Government.

Sec. 3. 5 MRSA §13031, sub-§2, as enacted by PL 1989, c. 875, Pt. L, §§2 and 4, is amended to read:

2. Commission. "Commission" means the Maine Small Business and Entrepreneurship Commission.

Sec. 4. 5 MRSA §13032, as amended by PL 2001, c. 142, §1, is further amended to read:

§13032. Maine Small Business and Entrepreneurship Commission established

The Maine Small Business and Entrepreneurship Commission is established as an independent commission within the department to evaluate and coordinate small business and entrepreneurial programs, contract with the administrative unit and exercise other powers and responsibilities as provided in this chapter.

Sec. 5. 5 MRSA §13033, as amended by PL 2001, c. 142, §2, is further amended to read:

§13033. Membership

The commission consists of 7 10 members: the Chief Executive Officer of the Finance Authority of Maine; the Commissioner of Economic and Community Development; the House and Senate chairs of the joint standing committee of the Legislature having jurisdiction over business, research and economic development matters, who are ex officio, nonvoting members; the chair of the Small Business Development Centers Advisory Council; the District Director of the United States Small Business Administration's Maine District Office; and a designee from the administrative unit and 3 public members with