IA

104TH CONGRESS

2D SESSION H. J. RES. 189 Granting the consent of Congress to the Interstate Insurance Receivership Compact.
IN THE HOUSE OF REPRESENTATIVES

SEPTEMBER 4, 1996 Mr. MOORHEAD introduced the following joint resolution; which was referred
to the Committee on the Judiciary

JOINT RESOLUTION Granting the consent of Congress to the Interstate Insurance Receivership Compact.

1 Resolved by the Senate and House of Representatives 2 of the United States of America in Congress assembled,

3 SECTION 1. CONGRESSIONAL CONSENT.

4 The consent of Congress is given to the Interstate
5 Insurance Receivership Compact among the States of

6 California, Illinois, Michigan, Nebraska, New Hampshire, 7 and Wisconsin. In addition, consent is given to any other

8 State to enter into this compact. The compact reads sub-
9 stantially as follows:

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1 ‘‘INTERSTATE INSURANCE RECEIVERSHIP
2 COMPACT
3 ‘‘ARTICLE I. PURPOSES

4 ‘‘The purposes of this Compact are, through means
5 of joint and cooperative action among the Compacting

6 States:
7 ‘‘1. To promote, develop and facilitate orderly,

8 efficient, cost effective and uniform Insurer Receiv-
9 ership laws and operations;

10 ‘‘2. To coordinate interaction between Insurer
11 Receivership and Guaranty Association operations;
12 ‘‘3. To create the Interstate Insurance Receiv-

13 ership Commission; and
14 ‘‘4. To perform these and such other related
15 functions as may be consistent with the State regu-

16 lation of the business of insurance pursuant to the
17 McCarran-Ferguson Act.
18 ‘‘ARTICLE II. DEFINITIONS

19 ‘‘For the purposes of this Compact:
20 ‘‘1. ‘By-laws’ means those by-laws prescribed by

21 the Commission for its governance, or for directing
22 or controlling the Commission’s actions or conduct.

23 ‘‘2. ‘Compacting State’ means any State which
24 has enacted enabling legislation for this Compact.

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1 ‘‘3. ‘Commission’ means the ‘Interstate Insur-
2 ance Receivership Commission’ established by this

3 Compact.

4 ‘‘4. ‘Commissioner’ means the chief insurance

5 regulatory official of a State.

6 ‘‘5. ‘Deputy Receiver’ means any person ap-
7 pointed or retained by a Receiver and who is the Re-

8 ceiver’s duly authorized representative for admin-
9 istering one or more Estates.
10 ‘‘6. ‘Domiciliary State’ means the State in

11 which an Insurer is incorporated or organized; or, in
12 the case of an alien Insurer, its State of entry; or
13 in the case of an unauthorized Insurer not incor-

14 porated, organized, or entered in any State, a State

15 where the Insurer is engaged in or doing business.
16 ‘‘7. ‘Estate’ means the assets and liabilities of
17 any Insurer in Receivership.

18 ‘‘8. ‘Guaranty Association’ means an insurance
19 guaranty fund or association or any similar entity
20 now or hereafter created by statute in a Compacting

21 State, other than a Receivership, to pay or assume,
22 in whole or in part, the contractual claim obligations
23 of insolvent Insurers.

24 ‘‘9. ‘Insurer’ means any person or entity that

25 has done, purports to do, is doing or is licensed to

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1 do any insurance or reinsurance business, or is or
2 has been subject to the authority of, or to liquida-

3 tion, rehabilitation, supervision, conservation or an-
4 cillary receivership by, any Commissioner.

5 ‘‘DRAFTING NOTE: It is intended that the definition
6 of ‘Insurer’ be construed broadly to enable the Commis-
7 sion to place into receivership in accordance with applica-

8 ble State insurance receivership laws any person or entity 9 engaged in insurance business without a license, certificate

10 of authority or other required authorization to conduct
11 such business in a Compacting State.
12 ‘‘10. ‘Member’ means the Commissioner of a

13 Compacting State or his or her designee, who shall
14 be a person officially connected with the Commis-

15 sioner and who is wholly or principally employed by
16 said Commissioner.
17 ‘‘11. ‘Non-compacting State’ means any State

18 which has not enacted enabling legislation for this
19 Compact.
20 ‘‘12. ‘Operating Procedures’ means those proce-

21 dures promulgated by the Commission implementing
22 a Rule, an existing law in a Compacting State, or

23 a provision of this Compact.
24 ‘‘13. ‘Publication’ means the act of publishing
25 in the official State publication in a Compacting

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1 State or in such other publication as may be estab-
2 lished by the Commission.

3 ‘‘14. ‘Receiver’ means receiver, liquidator,
4 rehabilitator, conservator or ancillary receiver as the

5 context requires.
6 ‘‘15. ‘Receivership’ means any liquidation, reha-
7 bilitation, conservation or ancillary receivership pro-

8 ceeding as the context requires.
9 ‘‘16. ‘Rules’ means acts of the Commission,

10 duly promulgated pursuant to Article VII of this
11 Compact, substantially affecting interested parties in
12 addition to the Commission, which shall have the

13 force and effect of law in the Compacting States.
14 ‘‘17. ‘State’ means any State, district or terri-
15 tory of the United States of America.

16 ‘‘ARTICLE III. ESTABLISHMENT OF THE COMMISSION
17 AND VENUE

18 ‘‘1. The Compacting States hereby create and estab-
19 lish an entity known as the ‘Interstate Insurance Receiver-20 ship Commission.’

21 ‘‘2. The Commission is a body corporate of each Com-
22 pacting State.

23 ‘‘3. The Commission is a not-for-profit entity, sepa-
24 rate and distinct from the Compacting States.

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1 ‘‘4. The Commission is solely responsible for its liabil-
2 ities except as otherwise provided in this Compact.

3 ‘‘5. Except as otherwise specifically provided in State
4 or Federal law in the jurisdiction where the Commission’s 5 principal office is located or where the Commission is act-

6 ing as Receiver, venue is proper, and judicial proceedings
7 by or against the Commission shall be brought in a court

8 of competent jurisdiction where the Commission’s prin-9 cipal office is located.

10 ‘‘ARTICLE IV. POWERS OF THE COMMISSION
11 ‘‘The Commission shall have the following powers:
12 ‘‘1. To promulgate Rules which shall have the

13 force and effect of statutory law and shall be binding
14 in the Compacting States to the extent and in the
15 manner provided in this Compact;

16 ‘‘2. To promulgate Operating Procedures which
17 shall be binding in the Compacting States to the ex-

18 tent and in the manner provided in this Compact;
19 ‘‘3. To oversee, supervise and coordinate the ac-
20 tivities of Receivers in Compacting States;

21 ‘‘4. To act as Receiver of Insurers organized
22 under the laws of, engaged in or doing the business

23 of insurance in, a Compacting State upon the re-
24 quest of the Commissioner of such State or when

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1 grounds for Receivership by the Commission exist
2 under Article IX of this Compact;

3 ‘‘5. To act as Deputy Receiver of Insurers orga-
4 nized under the laws of, engaged in or doing the
5 business of insurance in, a Non-compacting State in

6 accordance with Article IX of this Compact;
7 ‘‘6. To act as ancillary Receiver in a Compact-

8 ing State of an Insurer domiciled in a Non-compact-
9 ing State;

10 ‘‘7. To monitor the activities and functions of
11 Guaranty Associations in the Compacting States;
12 ‘‘8. To delegate its operating authority or func-

13 tions; provided, that its rulemaking authority under
14 Article VII of this Compact shall not be delegated;
15 ‘‘9. To bring or prosecute legal proceedings or

16 actions in its name as the Commission, or in the
17 name of the Commission acting as Receiver;

18 ‘‘10. To bring or prosecute legal proceedings or
19 actions as Receiver on behalf of an Estate or its pol-
20 icyholders and creditors; provided, that any Guar-

21 anty Association’s standing to sue or be sued under
22 applicable law shall not be affected;

23 ‘‘11. To issue subpoenas requiring the attend-
24 ance and testimony of witnesses and the production

25 of evidence;

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1 ‘‘12. To establish and maintain offices;
2 ‘‘13. To purchase and maintain insurance and

3 bonds;
4 ‘‘14. To borrow, accept or contract for services

5 of personnel, including, but not limited to, Members
6 and their staff;
7 ‘‘15. To elect or appoint such officers, attor-

8 neys, employees or agents, and to fix their com-
9 pensation, define their duties and determine their
10 qualifications; and to establish the Commission’s

11 personnel policies and programs relating to, among
12 other things, conflicts of interest, rates of compensa-

13 tion and qualifications of personnel;
14 ‘‘16. To accept any and all donations and

15 grants of money, equipment, supplies, materials and
16 services, and to receive, utilize and dispose of the
17 same;

18 ‘‘17. To lease, purchase, accept gifts or dona-
19 tions of, or otherwise to own, hold, improve or use,

20 any property, real, personal or mixed;
21 ‘‘18. To sell, convey, mortgage, pledge, lease,
22 exchange, abandon or otherwise dispose of any prop-

23 erty, real, personal or mixed;
24 ‘‘19. To enforce compliance with Commission
25 Rules, Operating Procedures and By-laws;

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1 ‘‘20. To provide for dispute resolution among
2 Compacting States and Receivers;

3 ‘‘21. To represent and advise Compacting
4 States on issues relating to Insurers domiciled or

5 doing business in Non-compacting jurisdictions, con-
6 sistent with the purposes of this Compact;
7 ‘‘22. To provide advice and training to Receiv-

8 ership personnel of Compacting States, and to be a
9 resource for Compacting States by maintaining a

10 reference library of relevant materials;
11 ‘‘23. To establish a budget and make expendi-
12 tures;

13 ‘‘24. To borrow money;
14 ‘‘25. To appoint committees including, but not

15 limited to, an industry advisory committee and an
16 executive committee of Members;
17 ‘‘26. To provide and receive information relat-

18 ing to Receiverships and Guaranty Associations, and
19 to cooperate with law enforcement agencies;
20 ‘‘27. To adopt and use a corporate seal; and

21 ‘‘28. To perform such other functions as may
22 be necessary or appropriate to achieve the purposes

23 of this Compact as may be consistent with the State
24 regulation of the business of insurance pursuant to
25 the McCarran-Ferguson Act.

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1 ‘‘ARTICLE V. ORGANIZATION OF THE COMMISSION
2 ‘‘SECTION A. MEMBERSHIP, VOTING AND BY-LAWS

3 ‘‘1. Each Compacting State shall have and be limited
4 to one Member. Each Member shall be qualified to serve

5 in such capacity under or pursuant to the applicable law
6 of the Compacting State. Each Compacting State retains
7 the discretionary right to determine the due election or

8 appointment and qualification of its own Commissioner,

9 and to fill all vacancies of its Member.
10 ‘‘2. Each Member shall be entitled to one vote.
11 ‘‘3. The Commission shall, by a majority of the Mem-
12 bers, prescribe By-laws to govern its conduct as may be

13 necessary or appropriate to carry out the purposes of the 14 Compact, including, but not limited to:
15 ‘‘a. establishing the fiscal year of the Commis-

16 sion;
17 ‘‘b. providing reasonable standards and proce-

18 dures: (i) for the establishment of committees, and
19 (ii) governing any general or specific delegation of
20 any authority or function of the Commission;

21 ‘‘c. providing reasonable procedures for calling
22 and conducting meetings of the Commission, and en-

23 suring reasonable notice of each such meeting;
24 ‘‘d. establishing the titles and responsibilities of
25 the officers of the Commission;

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1 ‘‘e. providing reasonable standards and proce-
2 dures for the establishment of the personnel policies

3 and programs of the Commission. Notwithstanding
4 any civil service or other similar laws of any Com-
5 pacting State, the By-laws shall exclusively govern

6 the personnel policies and programs of the Commis-
7 sion; and

8 ‘‘f. providing a mechanism for winding up the
9 operations of the Commission and the equitable re-

10 turn of any surplus funds that may exist after the
11 dissolution of the Compact after the payment and/
12 or reserving of all of its debts and obligations.
13 ‘‘SECTION B. OFFICERS AND PERSONNEL

14 ‘‘1. The Commission shall, by a majority of the Mem-

15 bers, elect annually from among its members a chair-
16 person and a vice chairperson, each of whom shall have
17 such authorities and duties as may be specified in the By-

18 laws. The chairperson or, in his or her absence or disabil-19 ity, a Member designated in accordance with the By-laws, 20 shall preside at all meetings of the Commission. The offi-

21 cers so elected shall serve without compensation or remu-
22 neration from the Commission; provided that, subject to

23 the availability of budgeted funds, the officers shall be re-24 imbursed for any actual and necessary costs and expenses

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1 incurred by them in the performance of their duties and
2 responsibilities as officers of the Commission.

3 ‘‘2. The Commission may, by a majority of the Mem-
4 bers, appoint or retain an executive director for such pe-

5 riod, upon such terms and conditions and for such com-
6 pensation as the Commission may deem appropriate. The
7 executive director shall serve as secretary to the Commis-

8 sion, but shall not be a Member of the Commission. The 9 executive director shall hire and supervise such other staff
10 as may be authorized by the Commission.

11 ‘‘SECTION C. CORPORATE RECORDS OF THE COMMISSION
12 ‘‘The Commission shall maintain its corporate books

13 and records in accordance with the By-laws.
14 ‘‘SECTION D. QUALIFIED IMMUNITY, DEFENSE AND

15 INDEMNIFICATION

16 ‘‘1. The Members, officers, executive director and em-
17 ployees of the Commission shall be immune from suit and

18 liability, either personally or in their official capacity, for 19 any claim for damage to or loss of property or personal

20 injury or other civil liability caused or arising out of or
21 relating to any actual or alleged act, error or omission that
22 occurred, or that such person had a reasonable basis for

23 believing occurred within the scope of Commission employ-24 ment, duties or responsibilities; provided, that nothing in

25 this paragraph shall be construed to protect any such per-

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1 son from suit and/or liability for any damage, loss, injury
2 or liability caused by the intentional or willful and wanton

3 misconduct of any such person, or to protect the Commis-4 sion acting as Receiver under Article IX of this Compact. 5 ‘‘2. The Commission shall defend any Commissioner

6 of a Compacting State, or his or her representatives or
7 employees, or the Commission’s representatives or employ-

8 ees, in any civil action seeking to impose liability, arising 9 out of or relating to any actual or alleged act, error or
10 omission that occurred within the scope of Commission

11 employment, duties or responsibilities, or that such person
12 had a reasonable basis for believing occurred within the

13 scope of Commission employment, duties or responsibil-14 ities; provided, that the actual or alleged act, error or

15 omission did not result from gross negligence or inten-
16 tional wrongdoing on the part of such person.
17 ‘‘3. The Commission shall indemnify and hold the

18 Commissioner of a Compacting State, or his or her rep-19 resentatives or employees, or the Commission’s represent-

20 atives or employees, harmless in the amount of any settle-
21 ment or judgment obtained against such person arising
22 out of or relating to any actual or alleged act, error or

23 omission that occurred within the scope of Commission 24 employment, duties or responsibilities, or that such person

25 had a reasonable basis for believing occurred within the

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1 scope of Commission employment, duties or responsibil-
2 ities; provided, that the actual or alleged act, error or

3 omission did not result from gross negligence or inten-4 tional wrongdoing on the part of such person.
5 ‘‘4. The costs and expenses of defense and indem-

6 nification of the Commission acting as Receiver of an Es-
7 tate shall be paid as administrative expenses from the as-

8 sets of that Estate unless such costs and expenses are cov-9 ered by insurance maintained by the Commission.

10 ‘‘ARTICLE VI. MEETINGS AND ACTS OF THE
11 COMMISSION
12 ‘‘1. The Commission shall meet and take such actions

13 as are consistent with the provisions of this Compact.
14 ‘‘2. Except as otherwise provided in this Compact and

15 unless a greater percentage is required by the By-laws,
16 in order to constitute an act of the Commission, such act
17 shall have been taken at a meeting of the Commission and

18 shall have received an affirmative vote of a majority of

19 the Members.
20 ‘‘3. Each Member of the Commission shall have the
21 right and power to cast a vote to which that Compacting
22 State is entitled and to participate in the business and

23 affairs of the Commission. A Member shall vote in person 24 and shall not delegate his or her vote to another Member. 25 The By-laws may provide for Members’ participation in

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1 meetings by telephone or other means of telecommuni-
2 cation.

3 ‘‘4. The Commission shall meet at least once during 4 each calendar year. The chairperson of the Commission

5 may call additional meetings at any time and, upon the
6 request of a majority of the Members, shall call additional
7 meetings.
8 ‘‘5. The Commission’s Rules shall establish condi-

9 tions and procedures under which the Commission shall

10 make its information and official records available to the

11 public for inspection or copying. The Commission may ex-
12 empt from disclosure any information or official records

13 to the extent disclosure would adversely affect personal 14 privacy rights or proprietary interests. In promulgating
15 such Rules, the Commission may consider any special cir-

16 cumstances pertaining to Insurer insolvencies, but shall be
17 guided by the principles embodied in State and Federal

18 freedom of information laws. The Commission may pro-19 mulgate additional Rules under which it may make avail-

20 able to law enforcement agencies records and information
21 otherwise exempt from disclosure, and may enter into
22 agreements with law enforcement agencies to receive or

23 exchange information or records subject to nondisclosure 24 and confidentiality provisions.

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1 ‘‘6. Public notice shall be given of all meetings and
2 all meetings shall be open to the public, except as set forth

3 in the Rules or as otherwise provided in this Compact. 4 The Commission shall promulgate Rules consistent with 5 the principles contained in the ‘Government in Sunshine

6 Act,’ 5 U.S.C. Section 552b, as may be amended. The
7 Commission and any of its committees may close a meet-

8 ing to the public where it determines by two-thirds vote 9 that an open meeting would be likely to:
10 ‘‘a. relate solely to the Commission’s internal

11 personnel practices and procedures;
12 ‘‘b. disclose matters specifically exempted from

13 disclosure by statute;

14 ‘‘c. disclose trade secrets or commercial or fi-
15 nancial information which is privileged or confiden-
16 tial;
17 ‘‘d. involve accusing any person of a crime, or

18 formally censuring any person;
19 ‘‘e. disclose information of a personal nature

20 where disclosure would constitute a clearly unwar-
21 ranted invasion of personal privacy;
22 ‘‘f. disclose investigatory records compiled for

23 law enforcement purposes;
24 ‘‘g. disclose information contained in or related

25 to examination, operating or condition reports pre-

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1 pared by, on behalf or for the use of, the Commis-
2 sion with respect to a regulated entity for the pur-

3 pose of regulation or supervision of such entity;
4 ‘‘h. disclose information, the premature disclo-

5 sure of which would significantly endanger the sta-
6 bility of a regulated entity;
7 ‘‘i. specifically relate to the Commission’s issu-

8 ance of a subpoena, or its participation in a civil ac-
9 tion or proceeding.
10 ‘‘7. For every meeting closed pursuant to this provi-

11 sion, the Commission’s chief legal officer shall publicly cer-
12 tify that, in his or her opinion, the meeting may be closed

13 to the public, and shall reference each relevant exemptive 14 provision. The Commission shall keep minutes which shall

15 fully and clearly describe all matters discussed in any
16 meeting and shall provide a full and accurate summary
17 of any actions taken, and the reasons therefor, including

18 a description of each of the views expressed on any item 19 and the record of any rollcall vote (reflected in the vote 20 of each Member on the question). All documents consid-

21 ered in connection with any action shall be identified in
22 such minutes.

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1 ‘‘ARTICLE VII. RULEMAKING FUNCTIONS OF THE
2 COMMISSION

3 ‘‘1. The Commission shall promulgate Rules and Op-
4 erating Procedures in order to effectively and efficiently
5 achieve the purposes of this Compact; provided, that the

6 Commission shall not promulgate any Rules: (i) directly
7 relating to Guaranty Associations, including, but not lim-

8 ited to, Rules governing coverage, funding, or assessment
9 mechanisms; or (ii) (except pursuant to Rules promul-
10 gated under Article VII(3) of this Compact) altering the

11 statutory priorities for distributing assets out of an Es-
12 tate.

13 ‘‘DRAFTING NOTE: The general intent is not to regu-
14 late, restrict, or otherwise affect the operations of Guar-
15 anty Associations. Any Commission Rules that would ma-

16 terially affect Guaranty Associations will be promulgated
17 under Article VII(3) of the Compact.

18 ‘‘2. Rulemaking shall occur pursuant to the criteria
19 set forth in this Article and the Rules and Operating Pro-
20 cedures promulgated pursuant thereto. Such rulemaking

21 shall substantially conform to the principles of the Federal
22 Administrative Procedure Act, 5 U.S.C.S. Section 551 et

23 seq., and the Federal Advisory Committee Act, 5 U.S.C.S.
24 app. 2, Section 1 et seq., as may be amended.

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1 ‘‘3. Other than the promulgation of such Rules as
2 are necessary for the orderly operation of the Commission,

3 the first Rule to be considered by the Commission shall 4 be uniform provisions governing Insurer Receiverships in-
5 cluding, but not limited to, provisions requiring Compact-

6 ing States to implement, execute, and administer in a fair,
7 just, effective and efficient manner Rules and Operating

8 Procedures relating to Receiverships. The Commission 9 shall within three years of the adoption of this Compact
10 by two or more States, promulgate such uniform provi-

11 sions through the rulemaking process. Such uniform provi-
12 sions shall become law in all of the Compacting States

13 upon legislative enactment in a majority of the Compact-14 ing States.
15 ‘‘4. All Rules and amendments shall become binding

16 as of the date specified in each Rule or amendment; pro-
17 vided, that if a Compacting State expressly rejects such

18 Rule or amendment through legislative enactment as of 19 the expiration of the second full calendar year after such

20 Rule is promulgated, such Rule or amendment shall have
21 no further force or effect in the rejecting Compacting
22 State. If a majority of Compacting States reject a Rule,

23 then such Rule shall have no further force or effect in any 24 Compacting State.

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1 ‘‘5. When promulgating a Rule or Operating Proce-
2 dure, the Commission shall: (a) effect Publication of the

3 proposed rulemaking, stating with particularity the text 4 of the Rule or Operating Procedure which is proposed and
5 the reason for the proposed Rule or Operating Procedure;

6 (b) allow persons to submit written data, facts, opinions
7 and arguments, which information the Commission shall

8 make publicly available; (c) provide an opportunity for an 9 informal hearing; and (d) promulgate a final Rule or Op-

10 erating Procedure and its effective date, if appropriate,
11 based on the rulemaking record.
12 ‘‘6. Not later than sixty days after a Rule or Operat-

13 ing Procedure is promulgated, any interested person may 14 file a petition in a court of competent jurisdiction where
15 the Commission’s principal office is located for judicial re-

16 view of such Rule or Operating Procedure. If the court
17 finds that the Commission’s action is not supported by

18 substantial evidence in the rulemaking record, the court

19 shall hold the Rule unlawful and set it aside.
20 ‘‘ARTICLE VIII. OVERSIGHT AND DISPUTE RESOLUTION
21 BY THE COMMISSION
22 ‘‘SECTION A. OVERSIGHT
23 ‘‘1. The Commission shall oversee the administration

24 and operations of Receiverships in Compacting States, and

25 shall monitor Receiverships being administered in Non-

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1 compacting States which may significantly affect Com-
2 pacting States.

3 ‘‘2. To aid its monitoring, oversight and coordination
4 responsibilities, the Commission shall establish Operating

5 Procedures requiring each Member to submit written re-
6 ports to the Commission as follows:
7 ‘‘a. An initial report to the Commission upon a

8 finding or other official action by the Compacting
9 State that grounds exist for Receivership of an In-
10 surer doing business in more than one State. There-

11 after, reports shall be submitted periodically and as
12 otherwise required pursuant to the Commission’s

13 Operating Procedures. The Commission shall be en-
14 titled to receive notice of, and shall have standing to
15 appear in, Compacting States’ Receiverships; and

16 ‘‘b. An initial report of the status of an Insurer
17 within a reasonable time after the initiation of a Re-

18 ceivership.
19 ‘‘3. The Commission shall promulgate Operating Pro-
20 cedures requiring Receivers to submit to the Commission

21 periodic written reports and such additional information
22 and documentation as the Commission may reasonably re-

23 quest. Each Compacting State’s Receivers shall establish 24 the capability to obtain and provide all records, data and

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1 information required by the Commission in accordance
2 with the Commission’s Operating Procedures.

3 ‘‘4. Except as to privileged records, data and infor-4 mation, the laws of any Compacting State pertaining to
5 confidentiality or nondisclosure shall not relieve any Com-

6 pacting State Commissioner of the responsibility to dis-
7 close any relevant records, data or information to the

8 Commission; provided, that disclosure to the Commission 9 shall not be deemed to waive or otherwise affect any con-

10 fidentiality requirement; and further provided, that the
11 Commission shall be subject to the Compacting State’s
12 laws pertaining to confidentiality and nondisclosure with

13 respect to all such records, data and information in its 14 possession.
15 ‘‘5. The courts and executive agencies in each Com-

16 pacting State shall enforce this Compact and shall take
17 all actions necessary and appropriate to effectuate the

18 Compact’s purposes and intent. In any Receivership or 19 other judicial or administrative proceeding in a Compact-
20 ing State pertaining to the subject matter of this Compact

21 which may affect the powers, responsibilities or actions of
22 the Commission, the Commission shall be entitled to re-

23 ceive all service of process in any such proceeding, and 24 shall have standing to intervene in the Receivership or pro-

25 ceeding for all purposes.

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1 ‘‘6. The Commission shall analyze and correlate
2 records, data, information and reports received from Re-

3 ceivers and Guaranty Associations, and shall make rec-4 ommendations for improving their performance to the
5 Compacting States. The Commission shall include sum-

6 mary information and data regarding its oversight func-
7 tions in its annual report.
8 ‘‘SECTION B. DISPUTE RESOLUTION

9 ‘‘1. The Commission shall attempt, upon the request

10 of a Member, to resolve any disputes or other issues which
11 are subject to this Compact and which may arise among
12 Compacting States and Non-compacting States.

13 ‘‘2. The Compacting States shall report to the Com-
14 mission on issues or activities of concern to them, and co-
15 operate with and support the Commission in the discharge

16 of its duties and responsibilities.
17 ‘‘3. The Commission shall promulgate an Operating

18 Procedure providing for binding dispute resolution for dis-19 putes among Receivers.
20 ‘‘4. The Commission shall facilitate voluntary dispute

21 resolution for disputes among Guaranty Associations and
22 Receivers.

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1 ‘‘ARTICLE IX. RECEIVERSHIP FUNCTIONS OF THE
2 COMMISSION

3 ‘‘1. The Commission has authority to act as Receiver
4 of any Insurer domiciled, engaged in or doing business in 5 a Compacting State upon the request of the Commissioner

6 of such Compacting State, or as otherwise provided in this
7 Compact.
8 ‘‘a. The Commission as Receiver shall have all

9 powers and duties pursuant to the Receivership laws
10 of the Domiciliary State.

11 ‘‘b. The Commission shall maintain accounts of
12 receipts and disbursements of the Estates for which

13 it is acting as Receiver, consistent with the account-
14 ing practices and procedures set forth in the By-

15 laws.

16 ‘‘c. The Commission shall cause an annual
17 audit of each Estate for which it is acting as Re-

18 ceiver to be conducted by an independent certified
19 public accountant. The costs and expenses of such

20 audit shall be paid as administrative expenses from
21 the assets of the Estate. The Commission shall not
22 cause an annual audit to be conducted of any Estate
23 which lacks sufficient assets to conduct such audit.
24 ‘‘d. The Commission as Receiver is authorized
25 to delegate its Receivership duties and functions,

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1 and to effectuate such delegation through contracts
2 with others.

3 ‘‘2. The Commission shall act as Receiver of any In-
4 surer domiciled or doing business in a Compacting State

5 in the event that the Member acting as Receiver in that
6 Compacting State fails to comply with duly promulgated
7 Commission Rules or Operating Procedures. The Commis-

8 sion shall notify such Member in writing of his or her non-9 compliance with Commission Rules or Operating Proce-

10 dures. If the Member acting as Receiver fails to remedy
11 such noncompliance within ten days after receipt of such
12 notification, the Commission may petition the supervising

13 court before which such Receivership is pending for an 14 order substituting and appointing the Commission as Re-

15 ceiver of the Estate.

16 ‘‘3. The Commission shall not act as Receiver of an
17 Estate which appears to lack sufficient assets to fund such

18 Receivership unless the Compacting State makes provi-19 sions for the payment of the Estate’s administrative ex-
20 penses satisfactory to the Commission.

21 ‘‘4. The Commission may act as Deputy Receiver for
22 any Insurer domiciled or doing business in a Non-com-

23 pacting State in accordance with such State’s laws, upon 24 request of that Non-compacting State’s Commissioner and
25 approval of the Commission.

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1 ‘‘5. With respect to Receiverships pending in a Com-
2 pacting State on the effective date of the enactment of

3 this Compact by the Compacting State:
4 ‘‘a. the Commission may act as Receiver of an
5 Insurer upon the request of that Compacting State’s

6 Member and approval of the Commission; and
7 ‘‘b. the Commission shall oversee, monitor and

8 coordinate the activities of all Receiverships pending
9 in that Compacting State regardless whether the
10 Commission is acting as Receiver of Estates in such

11 State.
12 ‘‘ARTICLE X. FINANCE

13 ‘‘1. The Commission shall pay or provide for the pay-
14 ment of the reasonable expenses of its establishment and

15 organization.
16 ‘‘2. Except as otherwise provided in this Compact or
17 by act of the Commission, the costs and expenses of each

18 Compacting State shall be the sole and exclusive respon-19 sibility of the respective Compacting State. The Commis-

20 sion may pay or provide for actual and necessary costs
21 and expenses for attendance of its Members at official
22 meetings of the Commission or its designated committees.

23 ‘‘3. The Commission shall levy on and collect an an-
24 nual assessment from each Compacting State and each In-
25 surer authorized to do business in a Compacting State,

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1 and writing direct insurance, to cover the cost of the inter-
2 nal operations and activities of the Commission and its
3 staff in a total amount sufficient to cover the Commis-

4 sion’s annual budget.
5 ‘‘a. The aggregate annual assessment amount

6 shall be allocated seventy-five percent to Insurers,
7 hereinafter referred to as the ‘Insurers’ Portion,’

8 and twenty-five percent to Compacting States, here-
9 inafter referred to as the ‘Compacting States’ Por-

10 tion.’ The Insurers’ Portion shall be allocated to
11 each Insurer by the percentage derived from a frac-
12 tion, the numerator of which shall be the gross di-

13 rect written premium received on that Insurer’s
14 business in all Compacting States and the denomina-

15 tor of which shall be the gross direct written pre-
16 mium received by all Insurers on business in all
17 Compacting States. The Compacting States’ Portion

18 shall be allocated to each Compacting State by the
19 percentage derived from a fraction, the numerator of

20 which shall be the gross direct written premium re-
21 ceived by all Insurers on business in that Compact-
22 ing State and the denominator shall be the gross di-

23 rect written premium received on all Insurers on
24 business in all Compacting States. Each Compacting
25 State’s Portion shall be funded as designated by

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1 that State’s legislature. In no event shall an Insur-
2 er’s assessment be less than $50 or more than

3 $25,000; provided, that affiliated Insurers’ combined
4 assessments shall not exceed $50,000. Upon the re-
5 quest of an Insurer, the Commission may exempt or

6 defer the assessment of any Insurer, if such assess-
7 ment would cause the Insurer’s financial impair-
8 ment.

9 ‘‘b. These assessments shall not be used to pay
10 any costs or expenses incurred by the Commission

11 and its staff acting as Receiver of Estates. Such
12 costs and expenses shall be paid as administrative

13 expenses from the assets of the Estates as provided
14 by law, except as otherwise provided in this Com-

15 pact.
16 ‘‘c. Each Insurer authorized to do business in
17 a Compacting State shall timely pay assessments to

18 the Commission. Failure to pay such assessments
19 shall not be grounds for the revocation, suspension
20 or denial of an Insurer’s authority to do business,

21 but shall subject the Insurer to suit by the Commis-
22 sion for recovery of any assessment due, attorneys’

23 fees and costs, together with interest from the date
24 the assessment is due at a rate of 10 percent per

25 annum, and to civil forfeiture in an amount to be

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1 determined by the Commissioner of that Compacting
2 State in which the Insurer received the greatest pre-

3 mium in the year next preceding the first year for
4 which the Insurer shall be delinquent in payment of

5 assessments.

6 ‘‘4. The Commission shall be reimbursed in the fol-
7 lowing manner for the costs and expenses incurred by the

8 Commission and its staff acting as Receiver of Estates to 9 the extent that an Insurer’s assets may be insufficient for

10 the effective administration of its Estate:

11 ‘‘a. if the Insurer is domiciled in a Compacting
12 State, the Estate shall be closed unless that Com-

13 pacting State makes provisions for reimbursing the
14 Commission; and

15 ‘‘b. if the Insurer is unauthorized to do busi-
16 ness in a Compacting State or if the Insurer is dom-
17 iciled in a Non-compacting State and subject to an-

18 cillary receivership, then the Commission and such
19 State shall make provisions for reimbursing the
20 Commission prior to the Commission becoming Re-

21 ceiver of such Insurer.
22 ‘‘5. To fund the cost of the initial operations of the

23 Commission until its first annual budget is adopted and 24 related assessments have been made, contributions from 25 Compacting States and others may be accepted and a one

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1 time assessment on Insurers doing a direct insurance busi-
2 ness in the Compacting States may be made not to exceed

3 $450 per Insurer.
4 ‘‘6. The Commission’s adopted budget for a fiscal

5 year shall not be approved until it has been subject to no-
6 tice and comment as set forth in Article VII of this Com-
7 pact. The budget shall determine the amount of the an-

8 nual assessment. The Commission may accumulate a net 9 worth not to exceed thirty percent of its then annual cost

10 of operation to provide for contingencies and events not
11 contemplated. These accumulated funds shall be held sep-
12 arately and shall not be used for any other purpose. The

13 Commission’s budget may include a provision for a con-

14 tribution to the Commission’s net worth.

15 ‘‘7. The Commission shall be exempt from all tax-

16 ation in and by the Compacting States.
17 ‘‘8. The Commission shall not pledge the credit of any

18 Compacting State, except by and with the appropriate 19 legal authority of that Compacting State.
20 ‘‘9. The Commission shall keep complete and accu-

21 rate accounts of all its internal receipts (including grants
22 and donations) and disbursements of all funds, other than

23 Receivership assets, under its control. The internal finan-24 cial accounts of the Commission shall be subject to the

25 accounting procedures established under its By-laws. The

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1 financial accounts and reports including the system of in-
2 ternal controls and procedures of the Commission shall be

3 audited annually by an independent certified public ac-4 countant. Upon the determination of the Commission, but

5 no less frequently than every three years, the review of
6 such independent auditor shall include a management and
7 performance audit of the Commission. The report of such

8 independent audit shall be made available to the public 9 and shall be included in and become part of the annual
10 report of the Commission to the Governors and legisla-

11 tures of the Compacting States. The Commission’s inter-
12 nal accounts, any workpapers related to any internal audit

13 and any workpapers related to the independent audit, shall 14 be confidential; provided, that such materials shall be
15 made available: (i) in compliance with the order of any

16 court of competent jurisdiction; (ii) pursuant to such rea-
17 sonable Rules as the Commission shall promulgate; and

18 (iii) to any Commissioner, Governor of a Compacting 19 State, or their duly authorized representatives.
20 ‘‘10. No Compacting State shall have any claim to

21 or ownership of any property held by or vested in the Com-
22 mission or the Commission acting as Receiver or to any

23 other Commission funds held pursuant to the provisions 24 of this Compact.

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1 ‘‘ARTICLE XI. COMPACTING STATES, EFFECTIVE DATE
2 AND AMENDMENT

3 ‘‘1. Any State is eligible to become a Compacting

4 State.

5 ‘‘2. The Compact shall become effective and binding

6 upon legislative enactment of the Compact into law by two
7 Compacting States. Thereafter, it shall become effective

8 and binding as to any other Compacting State upon enact-9 ment of the Compact into law by that State.
10 ‘‘3. Amendments to the Compact may be proposed

11 by the Commission for enactment by the Compacting
12 States. No amendment shall become effective and binding

13 upon the Commission and the Compacting States unless 14 and until it is enacted into law by unanimous consent of
15 the Compacting States.

16 ‘‘ARTICLE XII. WITHDRAWAL, DEFAULT AND
17 TERMINATION
18 ‘‘SECTION A. WITHDRAWAL

19 ‘‘1. Once effective, the Compact shall continue in
20 force and remain binding upon each and every Compacting

21 State; provided, that a Compacting State may withdraw
22 from the Compact (‘Withdrawing State’) by enacting a

23 statute specifically repealing the statute which enacted the 24 Compact into law.

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1 ‘‘2. The effective date of withdrawal is the effective
2 date of the repeal; provided, that the repeal shall not apply

3 to any Receiverships, for which the Commission is acting 4 as Receiver, pending on the date of the repeal except by
5 mutual agreement of the Commission and the Withdraw-

6 ing State.
7 ‘‘3. The Withdrawing State shall immediately notify

8 the Chairperson of the Commission in writing upon the 9 introduction of legislation repealing this Compact in the
10 Withdrawing State.

11 ‘‘4. The Commission shall notify the other Compact-
12 ing States of the Withdrawing State’s intent to withdraw

13 within sixty days of its receipt thereof.
14 ‘‘5. The Withdrawing State is responsible for all as-

15 sessments, obligations and liabilities incurred through the
16 effective date of withdrawal, including any obligations, the
17 performance of which extend beyond the effective date of

18 withdrawal, except to the extent those obligations may 19 have been released or relinquished by mutual agreement
20 of the Commission and the Withdrawing State. Notwith-

21 standing the foregoing, the Withdrawing State is respon-
22 sible for the costs and expenses of its Estates subject to

23 this Compact pending on the date of repeal; the Commis-24 sion and the other Estates subject to this Compact shall

25 not bear any costs and expenses related to the Withdraw-

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1 ing State’s Estates unless otherwise mutually agreed upon
2 between the Commission and the Withdrawing State.

3 ‘‘6. Reinstatement following withdrawal of any Com-
4 pacting State shall occur upon the Withdrawing State re-
5 enacting the Compact or upon such later date as deter-

6 mined by the Commission.
7 ‘‘SECTION B. DEFAULT

8 ‘‘1. If the Commission determines that any Compact-
9 ing State has at any time defaulted (‘Defaulting State’)

10 in the performance of any of its obligations or responsibil-
11 ities under this Compact, the By-laws or duly promulgated
12 Rules, all rights, privileges and benefits conferred by this

13 Compact and any agreements entered into pursuant to
14 this Compact shall be suspended from the effective date
15 of default as fixed by the Commission. The grounds for

16 default include, but are not limited to, failure of a Com-
17 pacting State to perform such obligations or responsibil-

18 ities and any other grounds designated in Commission
19 Rules. The Commission shall immediately notify the De-
20 faulting State in writing of the Defaulting State’s suspen-

21 sion pending a cure of the default. The Commission shall
22 stipulate the conditions and the time period within which

23 the Defaulting State must cure its default. If the Default-
24 ing State fails to cure the default within the time period
25 specified by the Commission, the Defaulting State shall

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1 be terminated from the Compact upon an affirmative vote
2 of a majority of the Compacting States and all rights,

3 privileges and benefits conferred by this Compact shall be

4 terminated from the effective date of termination.

5 ‘‘2. Within sixty days of the effective date of termi-

6 nation of a Defaulting State, the Commission shall notify
7 the Governor and the Majority and Minority Leaders of

8 the Defaulting State’s legislature of such termination.
9 ‘‘3. The termination of a Defaulting State shall apply
10 to all Receiverships, for which the Commission is acting

11 as Receiver, pending on the effective date of termination
12 except by mutual agreement of the Commission and the

13 Defaulting State.
14 ‘‘4. The Defaulting State is responsible for all assess-

15 ments, obligations and liabilities incurred through the ef-
16 fective date of termination, and is responsible for the costs
17 and expenses relating to its Estates subject to this Com-

18 pact pending on the date of the termination. The Commis-19 sion and the other Estates subject to this Compact shall

20 not bear any costs or expenses relating to the Defaulting
21 State’s Estates unless otherwise mutually agreed upon be-
22 tween the Commission and the Defaulting State.

23 ‘‘5. Reinstatement following termination of any Com-
24 pacting State requires both a reenactment of the Compact

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1 by the Defaulting State and the approval of the Commis-
2 sion pursuant to the Rules.
3 ‘‘SECTION C. DISSOLUTION OF COMPACT

4 ‘‘1. The Compact dissolves effective upon the date of
5 the withdrawal or the termination by default of the Com-

6 pacting State which reduces membership in the Compact
7 to one Compacting State.

8 ‘‘2. Upon the dissolution of this Compact, the Com-
9 pact becomes null and void and shall be of no further force
10 or effect, and the business and affairs of the Commission

11 shall be wound up and any surplus funds shall be distrib-
12 uted in accordance with the By-laws.
13 ‘‘ARTICLE XIII. SEVERABILITY AND CONSTRUCTION

14 ‘‘1. The provisions of this Compact shall be severable,

15 and if any phrase, clause, sentence or provision is deemed
16 unenforceable, the remaining provisions of the Compact
17 shall be enforceable.

18 ‘‘2. The provisions of this Compact shall be liberally
19 construed to effectuate its purposes.

20 ‘‘ARTICLE XIV. BINDING EFFECT OF COMPACT AND
21 OTHER LAWS
22 ‘‘SECTION A. OTHER LAWS

23 ‘‘1. Nothing herein prevents the enforcement of any
24 other law of a Compacting State that is not inconsistent
25 with this Compact.

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1 ‘‘2. All Compacting States’ laws conflicting with this
2 Compact are superseded to the extent of the conflict.
3 ‘‘SECTION B. BINDING EFFECT OF THIS COMPACT

4 ‘‘1. All lawful actions of the Commission, including
5 all Rules and Operating Procedures promulgated by the

6 Commission, are binding upon the Compacting States.
7 ‘‘2. All agreements between the Commission and the

8 Compacting States are binding in accordance with their

9 terms.

10 ‘‘3. Upon the request of a party to a conflict over

11 meaning or interpretation of Commission actions, and
12 upon a majority vote of the Compacting States, the Com-

13 mission may issue advisory opinions regarding such mean-14 ing or interpretation.
15 ‘‘4. In the event any provision of this Compact ex-

16 ceeds the constitutional limits imposed on the legislature
17 of any Compacting State, the obligations, duties, powers

18 or jurisdiction sought to be conferred by such provision 19 upon the Commission shall be ineffective and such obliga-

20 tions, duties, powers or jurisdiction shall remain in the
21 Compacting State and shall be exercised by the agency
22 thereof to which such obligations, duties, powers or juris-

23 diction are delegated by law in effect at the time this Com-24 pact becomes effective.’’.

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1 SEC. 2. RIGHT TO ALTER, AMEND, OR REPEAL.

2 The right to alter, amend, or repeal this joint resolu-
3 tion is hereby expressly reserved. The consent granted by

4 this joint resolution shall not be construed as impairing
5 or in any manner affecting any right or jurisdiction of the
6 United States in and over the subject of the compact.
7 SEC. 3. SEVERABILITY.

8 If any part or application of this compact, or legisla-

9 tion enabling the compact, is held invalid, the remainder
10 of the compact or its application to other situations or per-
11 sons shall not be affected.
12 SEC. 4. INCONSISTENCY OF LANGUAGE.

13 The validity of this compact shall not be affected by

14 any insubstantial difference in its form or language as
15 adopted by the various States.

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