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**BILL ANALYSIS**



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Senate Bill 1017 (as introduced 5-14-96)  
 Sponsor: Senator Loren Bennett  
 Committee: Financial Services

Date Completed: 5-15-96

**CONTENT**

The bill would create a new act to enter Michigan into the Interstate Insurance Receivership Compact and create the Interstate Insurance Receivership Commission with all other jurisdictions legally joining in the Compact. The Commission would be responsible for overseeing the administration and operation of receiverships in compacting states, and attempting to resolve disputes subject to the Compact, and would have the authority to act as receiver of any insurer domiciled or doing business in a compacting state upon request of the state's insurance commissioner. The bill specifies that the purpose of the Compact and the powers of the Interstate Insurance Receivership Commission would necessarily be limited in authority, function, and scope to the receivership activities and powers vested in the Insurance Commissioner under Chapter 81 of the Insurance Code. The Compact would not authorize the Interstate Commission or the Insurance Commissioner to expand the activities of the Compact beyond receivership activities.

Purposes of the Compact

The bill specifies that the purposes of the Compact would be to do all of the following, through joint and cooperative action among the compacting states:

- Promote, develop, and facilitate orderly, efficient, cost-effective, and uniform insurer receiverships laws and operations.
- Coordinate interaction between insurer receivership and guaranty fund operations.
- Create the Interstate Insurance Receivership Commission.

- Perform these and other related functions as consistent with the state regulation of the business of insurance pursuant to the McCarran-Ferguson Act.

(The bill would define "receivership" as any liquidation, rehabilitation, conservation, or ancillary receivership proceeding as the context required.)

Interstate Insurance Receivership Commission

Establishment and Venue. The compacting states would create and establish an entity known as the "Interstate Insurance Receivership Commission". The Interstate Commission would be a body corporate of each compacting state and a not-for-profit entity, separate and distinct from the compacting states. The Interstate Commission would be solely responsible for its liabilities, except as otherwise provided in the Compact.

Except as otherwise specifically provided in state or Federal law in the jurisdiction in which the Interstate Commission's principal office was located or in which the Interstate Commission was acting as a receiver, venue would be proper, and judicial proceedings by or against the Interstate Commission would have to be brought, in a court of competent jurisdiction where the Interstate Commission's principal office was located.

Powers of the Interstate Commission. The Interstate Commission would have the power to promulgate rules that would have the force and effect of statutory law and would be binding in the compacting states, to the extent and in the manner provided in the Compact. The Interstate Commission also could promulgate operating procedures that would be binding in the compacting states, to the extent and in the manner provided in the Compact. The Interstate

Commission could delegate its operating authority or functions, although its rule-making authority under the Compact could not be delegated.

The Interstate Commission could oversee, supervise, and coordinate the activities of receivers in compacting states. The Interstate Commission also could act as receiver of insurers organized under the laws of, engaged in, or doing insurance business in a compacting state, upon the request of the that state's Insurance Commissioner when grounds for receivership by the Interstate Commission existed under the Compact. In addition, the Interstate Commission could act as a deputy receiver of insurers organized under the laws of, engaged in, or doing insurance business in a noncompacting state, in accordance with the Compact. Further, the Interstate Commission could act as an ancillary receiver, in a compacting state, of an insurer domiciled in a noncompacting state.

The Interstate Commission could bring or prosecute legal proceedings or actions in its own name, or in the name of the Commission acting as receiver. It also could bring or prosecute legal proceedings or actions on behalf of an estate or an estate's policyholders and creditors, provided that any guaranty association's standing to sue or be sued under applicable law would not be affected. The Interstate Commission also could issue subpoenas requiring the attendance and testimony of witnesses and production of evidence. ("Guaranty association" would mean an insurance guaranty fund or association or similar entity created in statute in a compacting state, other than a receivership, to pay or assume, in whole or in part, the contractual claim obligations of insolvent insurers.)

The Interstate Commission could establish and maintain offices; purchase and maintain insurance and bonds; and borrow, accept, or contract for services of personnel, including, but not limited to, members and their staff. It could elect or appoint officers, attorneys, employees, or agents and fix their compensation, define their duties, and determine their qualifications. The Interstate Commission could establish personnel policies and programs relating to, among other things, conflicts of interest, rates of compensation, and qualifications of personnel.

The Interstate Commission could accept any and all donations and grants of money, equipment, supplies, materials, and services, and receive, use, and dispose of them. It could lease, purchase, accept gifts or donations of, or otherwise own, hold, improve, or use any property,

real, personal, or mixed. The Interstate Commission also could sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property, real, personal, or mixed.

The Interstate Commission could enforce compliance with Commission rules, operating procedures, and bylaws, and provide for dispute resolution among compacting states and receivers. The Interstate Commission also could provide and receive information relating to receiverships and guaranty associations, and cooperate with law enforcement agencies.

The Interstate Commission could represent and advise compacting states on issues relating to insurers domiciled or doing business in noncompacting jurisdictions, consistent with the Compact's purposes. It also could provide advice and training to receivership personnel of compacting states, and be a resource for compacting states by maintaining a reference library of relevant materials.

The Interstate Commission could establish a budget, make expenditures, borrow money, and adopt and use a corporate seal. It could appoint committees, including, but not limited to, an industry advisory committee and an executive committee of members.

The Interstate Commission also could perform other functions necessary or appropriate to achieve the purposes of the Compact, as consistent with the state regulation of the business of insurance pursuant to the McCarran-Ferguson Act.

#### Organization of the Interstate Commission

Membership, Voting, and Bylaws. Each compacting state would have and be limited to one member of the Interstate Commission. ("Member" would mean the Insurance Commissioner of a compacting state or his or her designee, who would have to be a person officially connected with the Commissioner and wholly or principally employed by the Commissioner.) Each Commission member would have to be qualified to serve in that capacity under the applicable law of the compacting state. Each compacting state would retain the discretionary right to determine the due election or appointment and qualification of its own Commissioner, and to fill all vacancies of its members.

Each Commission member would be entitled to one vote. The Interstate Commission, by a majority of the members, would have to prescribe

bylaws to govern its conduct, as necessary or appropriate to carry out the purposes of the Compact, including, but not limited to, all of the following:

- Establishing the Interstate Commission's fiscal year.
- Providing reasonable standards and procedures for the establishment of committees and governing any general or specific delegation of any authority or function of the Commission.
- Providing reasonable procedures for calling and conducting meetings of the Interstate Commission, and ensuring reasonable notice of each meeting.
- Establishing the titles and responsibilities of the Commission's officers.
- Providing reasonable standards and procedures for the establishment of the Commission's personnel policies and programs. Notwithstanding any civil service or other similar laws of any compacting state, the bylaws would exclusively govern the Commission's personnel policies and programs.
- Providing a mechanism for winding up the Commission's operations and the equitable return of any surplus funds that existed after the termination of the Compact, after the payment and/or reserving of all its debts and obligations.

Officers and Personnel. The Interstate Commission, by a majority of the members, would have to elect annually from among its members a chairperson and vice chairperson, each of whom would have the authorities and duties specified in the bylaws. The chairperson or, in his or her absence or disability, a member designated in accordance with the bylaws, would have to preside at all Commission meetings. The elected officers would serve without compensation or remuneration from the Commission. Subject to the availability of budgeted funds, however, the officers would have to be reimbursed for any actual and necessary costs and expenses incurred by them in the performance of their duties and responsibilities as Commission officers.

The Interstate Commission could, by a majority of its members, appoint or retain an executive director for a period, upon terms and conditions, and for compensation that the Commission considered appropriate. The executive director would have to serve as secretary to the Commission, but could not be a member of the Commission. The executive director would have

to hire and supervise other staff, as authorized by the Commission.

Corporate Records. The Interstate Commission would have to maintain its corporate books and records in accordance with its bylaws.

Qualified Immunity, Defense, and Indemnification. The Interstate Commission's members, officers, executive director, and employees would be immune from suit and liability, either personally or in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused or arising out of any actual or alleged act, error, or omission that occurred, or that the person had a reasonable basis for believing occurred, within the scope of Commission employment duties, or responsibilities. Nothing in this provision could be construed to protect any person from suit and/or liability for any damage, loss, injury, or liability caused by intentional or willful and wanton misconduct or to protect the Commission acting as a receiver under the Compact.

The Interstate Commission would have to defend any Commissioner of a compacting state, or his or her representatives or employees, or the Commission's representatives or employees, in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of Commission employment, duties, or responsibilities, or that the defendant had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing.

The Interstate Commission would have to indemnify and hold the Commissioner of a compacting state, or his or her representatives or employees, or the Commission's representatives or employees, harmless in the amount of any settlement or judgment obtained and 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 had a reasonable basis for believing occurred within the scope of Commission employment, duties, or responsibilities, provided that the actual or alleged act, error, or omission did not result from gross negligence or intentional wrongdoing.

The cost and expenses of defense and indemnification of the Interstate Commission

acting as receiver of an estate would have to be paid as administrative expenses from the assets of that estate, unless the cost and expenses were covered by insurance maintained by the Commission.

#### Meetings and Acts of the Interstate Commission

The Interstate Commission would have to meet and take actions that were consistent with the Compact. Except as otherwise provided in the Compact, and unless a greater percentage were required by the Commission's bylaws, in order to constitute an act of the Commission, the act would have to have been taken at a meeting of the Commission and received an affirmative vote of a majority of the members.

Each Commission member would have the right and power to cast a vote to which his or her compacting state was entitled, and to participate in the Interstate Commission's business and affairs. A member would have to vote in person and could not delegate his or her vote to another member. The bylaws could provide, however, for members' participation in meetings by telephone or other means of telecommunication.

The Interstate Commission would have to meet at least once during each calendar year. The chairperson could call additional meetings at any time and, upon the request of a majority of the members, would have to call additional meetings.

The Interstate Commission's rules would have to establish conditions and procedures under which the Commission would have to make its information and official records available to the public for inspection or copying. The Commission could exempt from disclosure any information or official records to the extent they would adversely affect personal privacy rights or proprietary interests. In promulgating those rules, the Commission could consider any special circumstances pertaining to insurer insolvencies, but would have to be guided by the principles embodied in state and Federal freedom of information laws. The Commission could promulgate additional rules under which it could make available to law enforcement agencies records and information otherwise exempt from disclosure, and could enter into agreements with law enforcement agencies to receive or exchange information or records subject to nondisclosure and confidentiality provisions.

Public notice would have to be given of all meetings and all meetings would have to be open to the public, except as set forth in the

Commission's rules or as otherwise provided by the Compact. The Interstate Commission would have to promulgate rules consistent with the principles contained in the Federal Government in Sunshine Act. The Commission and any of its committees could close a meeting to the public if it determined by a two-thirds vote that an open meeting would be likely to:

- Relate solely to the Commission's internal personnel practices and procedures.
- Disclose matters specifically exempted from disclosure by statute.
- Disclose trade secrets or commercial or financial information that was privileged or confidential.
- Involve accusing any person of a crime, or formally censuring any person.
- Disclose information of a personal nature, if disclosure would constitute a clearly unwarranted invasion of personal privacy.
- Disclose investigatory records compiled for law enforcement purposes.
- Disclose information contained in or related to examination, operation, or condition reports prepared by, or on behalf of or for the use of, the Commission with respect to a regulated entity for the purpose of regulation or supervision of that entity.
- Disclose information whose premature disclosure would significantly endanger the stability of a regulated entity.
- Specifically relate to the Commission's issuance of a subpoena, or its participation in a civil action or proceeding.

For every meeting that the Commission closed, the Commission's chief legal officer would have to certify publicly that, in his or her opinion, the meeting could be closed to the public, and would have to reference each relevant exemptive provision.

The Commission would have to keep minutes, which would have to describe fully and clearly all matters discussed in any meeting and provide a full and accurate summary of any actions taken, and the reasons for those actions, including a description of each of the views expressed on any item and the record of any roll call votes. All documents considered in connection with any action would have to be identified in those minutes.

#### Rule-Making Functions of the Commission

The Interstate Commission would have to promulgate rules and operating procedures in order to achieve the Compact's purposes

effectively and efficiently. The Commission could not promulgate rules either directly relating to the guaranty association, including but not limited to, rules governing coverage, funding, or assessment mechanisms or altering the statutory priorities for distributing assets out of an estate. Rule-making would occur pursuant to the criteria set forth in the Compact and the rules and operating procedures adopted pursuant to the Compact. Rule-making substantially would have to conform to the principles of the Federal Administrative Procedure Act and the Federal Advisory Committee Act.

Other than the adoption of rules necessary for the Commission's orderly operation, the first rule to be considered by the Commission would have to be uniform provisions governing insurer receiverships, including, but not limited to, provisions requiring compacting states to implement, execute, and administer in a fair, just, effective, and efficient manner rules and operating procedures relating to receiverships. Within three years of the adoption of the compact by two or more states, the Commission would have to promulgate these uniform provisions through the rule-making process. These uniform provisions would become law in all of the compacting states upon legislative enactment in a majority of the compacting states.

All rules and amendments would become binding as of the date specified in each rule or amendment. If a compacting state expressly rejected a rule or amendment through legislative enactment as of the expiration of the second full calendar year after the rule was promulgated, the rule or amendment would have no further force and effect in the rejecting compacting state. If a majority of compacting states rejected a rule, that rule would have no further force and effect in any compacting state.

When prescribing a rule or operating procedure, the Interstate Commission would have to do all of the following:

- Effect publication of the proposed rule-making, stating with particularity the text of the proposed rule or operating procedure and the reason for the proposal.
- Allow persons to submit written data, facts, opinions, and arguments, which would be made publicly available.
- Provide an opportunity for an informal hearing.
- Promulgate a final rule or operating procedure and its effective date, if appropriate, based on the rule-making record.

Within 60 days after a rule or operating procedure was promulgated, any interested person could file a petition in a court of competent jurisdiction where the Commission's principal office was located, for judicial review of the rule or operating procedure. If the court found that the Commission's action was not supported by substantial evidence in the rule-making record, the court would have to hold the rule unlawful and set it aside.

#### Oversight and Dispute Resolution

Oversight. The Interstate Commission would have to oversee the administration and operations of receiverships in compacting states, as well as monitor receiverships being administered in noncompacting states that could significantly affect compacting states. To aid in its monitoring, oversight, and coordination responsibilities, the Commission would have to establish operating procedures requiring each member to submit an initial report to the Commission upon a finding or other official action by the compacting state that grounds existed for receivership of an insurer doing business in more than one state. Thereafter, reports would have to be submitted periodically and as otherwise required pursuant to the Commission's operating procedures. The Commission would be entitled to receive notice of, and would have standing to appear in, compacting states' receiverships. Each member also would have to submit an initial report of the status of an insurer within a reasonable time after the initiation of a receivership.

The Commission would have to promulgate operating procedures requiring receivers to submit to the Commission periodic written reports and additional information and documentation as the Commission reasonably requested. Each compacting state's receivers would have to establish the capability to obtain and provide all records, data, and information required by the Commission in accordance with its operating procedures.

Except as to privileged records, data, and information, the laws of any compacting state pertaining to confidentiality or nondisclosure could not relieve any compacting state Commissioner of the responsibility to disclose any relevant records, data, or information to the Commission. Disclosure to the Commission could not be considered to waive or otherwise affect any confidentiality requirement. The Commission would be subject to the compacting state's laws pertaining to confidentiality and nondisclosure with respect to all records, data, and information in its possession.

The courts and executive agencies in each compacting state would have to enforce the Compact and take all actions necessary and appropriate to effectuate the Compact's purposes and intent. In any receivership or other judicial or administrative proceeding, in a compacting state and pertaining to the subject matter of the Compact, that could affect the Commission's powers, responsibilities, or actions, the Commission would be entitled to receive all service of process and would have standing to intervene in the receivership or proceeding for all purposes.

The Commission would have to analyze and correlate records, data, information, and reports received from receivers and guaranty associations, and make recommendation for improving their performance to the compacting states. The Commission would have to include summary information and data regarding its oversight functions in its annual report.

Dispute Resolution. The Interstate Commission would have to attempt, upon a member's request, to resolve any disputes or other issues that were subject to the Compact and that could arise among compacting states and noncompacting states. Compacting states would have to report to the Commission on issues or activities of concern to them, and cooperate with and support the Commission in the discharge of its duties and responsibilities.

The Commission would have to promulgate an operating procedure providing for binding dispute resolution for disputes among receivers, and facilitate voluntary dispute resolution for disputes among guaranty associations and receivers.

#### Receivership Functions

Upon the request of a compacting state's insurance commissioner, or as otherwise provided in the Compact, the Interstate Commission would have authority to act as receiver of any insurer domiciled, engaged in, or doing business in a compacting state. The Commission, as receiver, would have all powers and duties pursuant to the receivership laws of the domiciliary state. The Commission would have to maintain accounts of receipts and disbursements of the estates consistent with the accounting practices and procedures set forth in the bylaws. The Commission would have to cause an annual audit of each estate for which it acted as receiver, to be conducted by an independent certified public accountant. The costs and expenses of the audit would have to be paid as administrative expenses

from the estate's assets. The Commission could not cause an annual audit to be conducted of any estate that lacked sufficient assets to conduct an audit. The Commission, as receiver, would be authorized to delegate its receivership duties and functions and to effectuate that delegation through contracts with others.

The Commission would have to act as receiver of any insurer domiciled or doing business in a compacting state in the event that the member acting as receiver in that state failed to comply with duly-adopted commission rules or operating procedures. The Commission would have to notify the member in writing of his or her noncompliance with Commission rules or operating procedures. If the member acting as receiver failed to remedy the noncompliance within 10 days after receiving the notification, the Commission could petition the supervising court before which the receivership was pending for an order substituting and appointing the Commission as receiver of the estate.

The Commission could not act as receiver of an estate that appeared to lack sufficient assets to fund the receivership, unless the compacting state made provisions for the payment of the estate's administrative expenses to the Commission's satisfaction.

The Commission could act as deputy receiver for any insurer domiciled or doing business in a noncompacting state in accordance with the state's laws, upon request of that noncompacting state's commissioner and approval of the Commission.

With respect to receiverships pending in a compacting state on the effective date of the Compact's enactment, the Commission could act as receiver of an insurer upon the request of the compacting state's member and approval of the Commission, and the Commission would have to oversee, monitor, and coordinate the activities of all receiverships pending in that compacting state, regardless of whether the Commission acted as receiver of estates in the compacting state.

#### Finance

The Interstate Commission would have to pay or provide for the payment of the reasonable expenses of its establishment and organization. Except as otherwise provided in the Compact or by act of the Commission, the costs and expenses of each compacting state would be the sole and exclusive responsibility of the respective compacting states. The Commission could pay or

provide for actual and necessary costs and expenses for attendance of its members at official meetings of the Commission or its designated committees.

The Commission would have to levy on and collect an annual assessment from each compacting state and each insurer authorized to do business in a compacting state, and writing direct insurance, to cover the cost of the internal operations and activities of the Commission and its staff in a total amount sufficient to cover the Commission's annual budget. The aggregate annual assessment amount would have to be allocated 75% to insurers, and 25% to compacting states.

The insurers' portion would have to be allocated to each insurer by the percentage derived from a fraction, the numerator of which would be the gross direct written premium received on that insurer's business in all compacting states and the denominator of which would be the gross direct written premium received by all insurers on business in all compacting states. The compacting states' portion would be allocated to each compacting state by the percentage derived from a fraction, the numerator of which would be the gross direct written premium received by all insurers on business in that compacting state and the denominator would be the gross direct written premium received on all insurers on business in all compacting states. Each compacting state's portion would have to be funded as designated by that state's legislature. In no event could an insurer's assessment be less than \$50 or more than \$25,000; affiliated insurers' combined assessments could not exceed \$50,000. Upon an insurer's request, the Commission could exempt or defer the assessment of any insurer, if the assessment would cause the insurer's financial impairment.

The assessments could not be used to pay any costs or expenses incurred by the Commission and its staff, acting as receiver of estates. Those costs and expenses would be payable from the assets of the estates as provided by law, except as otherwise provided in the Compact.

Each insurer authorized to do business in a compacting state would have to pay timely assessments to the Commission. Failure to pay such assessments would not be grounds for the revocation, suspension, or denial of an insurer's authority to do business, but would subject the insurer to suit by the Commission for recovery of any assessment due, attorneys' fees, and costs, together with interest from the date the assessment was due at a rate of 10% annually,

and to civil forfeiture in an amount to be determined by the insurance commissioner of the compacting states in which the insurer received the greatest premium in the year before the first year for which the insurer was delinquent in payment of assessments.

The Commission would have to be reimbursed in the following manner for the costs and expenses incurred in acting as receiver of estates to the extent that an insurer's assets were insufficient for the effective administration of its estate:

- If the insurer were domiciled in a compacting state, the estate would have to be closed unless the compacting state made provision for reimbursing the Commission.
- If the insurer were unauthorized to do business in a compacting state or if the insurer were domiciled in a noncompacting state and subject to ancillary receivership, the Commission and the state would have to make provision for reimbursing the Commission before it became the insurer's receiver.

To fund the cost of the Commission's initial operations until its first annual budget was adopted and related assessments were made, contributions from compacting states and others could be accepted and a one-time assessment on insurers doing a direct insurance business in the compacting states could be made, not to exceed \$450 per insurer.

The Commission's adopted budget for a fiscal year could not be approved until it was subject to notice and comment as set forth in the Compact. The budget would determine the amount of the annual assessment. The Commission could accumulate a net worth of up to 30% of its then annual cost of operation, to provide for contingencies and events not contemplated. These accumulated funds would have to be held separately and could not be used for any other purpose. The budget could include a provision for a contribution to the Commission's net worth.

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

The Commission would have to keep complete and accurate accounts of all its internal receipts, including grants and donations, and disbursement

of all funds, other than receivership assets, under its control. The Commission's internal financial accounts would be subject to the accounting procedures established under its bylaws. The financial accounts and reports, including the system of internal controls and procedures of the Commission, would have to be audited annually by an independent certified public accountant. Upon the Commission's determination, but not less than every three years, the review of an independent auditor would have to include a management and performance audit of the Commission. The report of the independent audit would have to be made available to the public and included in and become part of the Commission's annual report to the governors and legislatures of the compacting states. The Commission's internal accounts, any workpapers related to any internal audit, and any workpapers related to the independent audit would be confidential. Those materials would have to be made available in compliance with the order of a court of competent jurisdiction; pursuant to reasonable rules promulgated by the Commission; and to any insurance commissioner, governor of a compacting state, or his or her duly authorized representative.

No compacting state would have any claim to or ownership of any property held by or vested in the Commission or the Commission acting as receiver, or to any other Commission funds held pursuant to the Compact.

#### Compacting States, Effective Date, and Amendment

Any state would be eligible to become a compacting state. The Compact would become effective and binding upon legislative enactment of the Compact by two compacting states. From that point, it would become effective and binding as to any other compacting state upon enactment of the Compact by that State.

Amendments to the Compact could be proposed by the Commission, for enactment by the compacting states. No amendment could become effective and binding upon the Commission and the compacting states unless and until it was enacted into law by unanimous consent of the compacting states.

#### Withdrawal, Default, and Termination

Withdrawal. Once effective, the Compact would continue in force and remain binding upon each and every compacting state. A compacting state could withdraw from the Compact, however, by enacting a statute specifically repealing the statute

that enacted the Compact into law. The effective date of a withdrawal would be the effective date of the repeal. The repeal could not apply to any receiverships, for the which the Commission was acting as receiver, pending on the date of the repeal, except by mutual agreement of the Commission and the withdrawing state.

A withdrawing state immediately would have to notify the chairperson of the Commission in writing, upon the introduction of legislation repealing the Compact. The Commission would have to notify the other compacting states of the withdrawing state's intent to withdraw, within 60 days after receiving notification from the withdrawing state.

A withdrawing state would be responsible for all assessments, obligations, and liabilities incurred through the effective date of withdrawal, including any obligations whose performance extended beyond the effective date of withdrawal, except to the extent those obligation were released or relinquished by mutual agreement of the Commission and the withdrawing state. A withdrawing state would be responsible for the costs and expenses of its estates subject to the Compact, pending on the date of repeal. The Commission and the other estates subject to the Compact would not bear any costs and expenses related to the withdrawing state's estates, unless otherwise mutually agreed upon between the Commission and the withdrawing state.

Reinstatement following withdrawal of any compacting state would occur upon the withdrawing state's reenactment of the Compact or upon a later date determined by the Commission.

Default. If the Commission determined that any compacting state had at any time defaulted in the performance of its obligations or responsibilities under the compact or the bylaws and duly promulgated rules, all rights, privileges and benefits conferred by the Compact and any agreements entered into under the Compact would be suspended from the effective date of default, as fixed by the Commission. The grounds for default would include, but would not be limited to, failure of a compacting state to perform its obligations or responsibilities and any other grounds designated in Commission rules. The Commission immediately would have to notify the defaulting state in writing of its suspension pending a cure of the default. The Commission would have to specify the condition and the time period within which the defaulting stat would have to cure its default. If the defaulting state failed to cure the default within the time period specified by the

Commission, the defaulting state would have to be terminated from the Compact, upon an affirmative vote of a majority of the compacting states, and all rights, privileges, and benefits conferred by the Compact would be terminated from the effective date of termination.

Within 60 days of the effective date of termination of a defaulting state, the Commission would have to notify the governor and the majority and minority leaders of the defaulting state's legislature of the termination. The termination of a defaulting state would apply to all receiverships, for which the Commission was acting as receiver, pending on the effective date of termination, except by mutual agreement of the Commission and the defaulting state.

A defaulting state would be responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, and would be responsible for the costs and expenses relating to its estates, subject to the Compact, pending on the date of termination. The Commission and the other estates subject to the Compact would not bear any costs relating to the defaulting state's estates, unless otherwise mutually agreed upon between the Commission and the defaulting state.

Reinstatement following termination of any compacting state would require both a reenactment of the Compact by the defaulting state and the approval of the Commission, pursuant to the rules.

Dissolution of Compact. The Compact would dissolve on the date of the withdrawal or default of the compacting state that reduced membership in the Compact to one compacting state. Upon dissolution of the Compact, the Compact would become null and void and be of no further force or effect. The business and affairs of the Commission would be wound up and any surplus funds would have to be distributed in accordance with the bylaws.

#### Severability and Construction

The provisions of the Compact would be severable, and if any phrase, clause, sentence, or provision were deemed unenforceable, the remaining provisions would continue to be enforceable. The provisions of the Compact would have to be liberally construed to effectuate its purposes.

#### Binding Effect and Other Laws

Nothing in the Compact would prevent the enforcement of any other law of a compacting state that was not inconsistent with the Compact. All compacting states' laws conflicting with the Compact would be suspended to the extent of the conflict.

All lawful actions of the Commission, including all rules and operating procedures promulgated by the Commission, would be binding on the compacting states. All agreements between the Commission and the compacting states would be binding, in accordance with their terms.

Upon the request of a party to a conflict over a meaning or interpretation of Commission actions, and upon a majority vote of the compacting states, the Commission could issue advisory opinions regarding the meaning or interpretation.

If any provision of the Compact exceeded the constitutional limits imposed on the legislature of any compacting state, the obligations, duties, powers, or jurisdiction sought to be conferred by that provision upon the Commission would be ineffective and the obligations, duties, powers, or jurisdiction would remain in the compacting state and would be exercised by the agency of that state to which the obligations, duties, powers, or jurisdiction were delegated by law in effect when the Compact became effective.

Legislative Analyst: P. Affholter

#### FISCAL IMPACT

This bill would allow the Insurance Commissioner to enter into a compact with other states and to set up the Interstate Insurance Receivership Commission. This Commission would promulgate rules for the member states and act in an advisory capacity for such issues as supervision, receivership, and liquidation of insolvent insurance companies. This bill could reduce the administrative costs for the Insurance Bureau by implementing a set of uniform rules that would be followed by the members, thereby streamlining the responsibilities of the Bureau. This bill also would reduce litigation costs for the Bureau as the members would promulgate rules relating to the liquidation of insolvent companies and the disbursement of their assets, eliminating the need for states to reach a payment agreement through settlements.

It is difficult to determine the exact amount of savings these changes would generate as the implementation of these rules would occur over time.

Fiscal Analyst: M. Barsch

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.