



# SENATE BILL No. 1017

May 14, 1996, Introduced by Senator BENNETT and referred to the Committee on Financial Services.

A bill entering into the interstate insurance receivership compact; and for related purposes.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

1       Sec. 1. The interstate insurance receivership compact is  
2 enacted into law and entered into with all other jurisdictions  
3 legally joining in the compact, in the form substantially as  
4 follows:

5                   INTERSTATE INSURANCE RECEIVERSHIP COMPACT

6                               ARTICLE 1. PURPOSES

7       The purposes of the compact are, through means of joint and  
8 cooperative action among the compacting states:

9       1. To promote, develop, and facilitate orderly, efficient,  
10 cost effective and uniform insurer receiverships laws and  
11 operations.

1           2. To coordinate interaction between insurer receivership  
2 and guaranty fund operations.

3           3. To create the interstate insurance receivership  
4 commission.

5           4. To perform these and such other related functions as may  
6 be consistent with the state regulation of the business of insur-  
7 ance pursuant to the McCarran-Ferguson Act.

8                           ARTICLE II. DEFINITIONS

9           For the purposes of this compact:

10          1. "Bylaws" means those bylaws established by the commis-  
11 sion for its governance, or for directing or controlling the  
12 commission's actions or conduct.

13          2. "Compacting state" means any state which has enacted the  
14 enabling legislation for this compact.

15          3. "Commission" means the "interstate insurance receiver-  
16 ship commission" established by this compact.

17          4. "Commissioner" means the chief insurance regulatory  
18 official of a state.

19          5. "Deputy receiver" means any person appointed or retained  
20 by a receiver and who is the receiver's duly authorized represen-  
21 tative for administering 1 or more estates.

22          6. "Domiciliary state" means the state in which an insurer  
23 is incorporated or organized; or, in the case of an alien insur-  
24 er, its state of entry; or in the case of an unauthorized insurer  
25 not incorporated, organized, or entered in any state, a state  
26 where the insurer is engaged in or doing business.

1       7. "Estate" means the assets and liabilities of any insurer  
2 in receivership.

3       8. "Guaranty association" means an insurance guaranty fund  
4 or association or any similar entity now or hereafter created by  
5 statute in a compacting state, other than a receivership, to pay  
6 or assume, in whole or in part, the contractual claim obligations  
7 of insolvent insurers.

8       9. "Insurer" means any person who has done, purports to do,  
9 is doing or is licensed to do any insurance or reinsurance busi-  
10 ness, or is or has been subject to the authority of, or to liqui-  
11 dation, rehabilitation, supervision, conservation, or ancillary  
12 receivership by, any commissioner.

13       10. "Member" means the commissioner of a compacting state  
14 or his or her designee, who shall be a person officially con-  
15 nected with the commissioner and who is wholly or principally  
16 employed by said commissioner.

17       11. "Non-compacting state" means any state which has not  
18 enacted the enabling legislation for this compact.

19       12. "Operating procedures" means procedures promulgated by  
20 the commission implementing a rule, an existing law in a compact-  
21 ing state, or a provision of this compact.

22       13. "Publication" means the act of publishing in the offi-  
23 cial state publication in a compacting state or in such other  
24 publication as may be established by the commission.

25       14. "Receiver" means receiver, liquidator, rehabilitator,  
26 conservator, or ancillary receiver as the context requires.

1       15. "Receivership" means any liquidation, rehabilitation,  
2 conservation, or ancillary receivership proceeding as the context  
3 requires.

4       16. "Rules" means acts of the commission, duly promulgated  
5 pursuant to article VII of this compact, substantially affecting  
6 interested parties in addition to the commission, which shall  
7 have the force and effect of law in the compacting states.

8       17. "State" means any state, district, or territory of the  
9 United States of America.

10       ARTICLE III. ESTABLISHMENT OF THE COMMISSION AND VENUE

11       1. The compacting states hereby create and establish an  
12 entity known as the "interstate insurance receivership  
13 commission."

14       2. The commission is a body corporate of each compacting  
15 state.

16       3. The commission is a not-for-profit entity, separate and  
17 distinct from the compacting states.

18       4. The commission is solely responsible for its liabilities  
19 except as otherwise provided in this compact.

20       5. Except as otherwise specifically provided in state or  
21 federal law in the jurisdiction where the commission's principal  
22 office is located or where the commission is acting as receiver,  
23 venue is proper and judicial proceedings by or against the com-  
24 mission shall be brought in a court of competent jurisdiction  
25 where the commission's principal office is located.

## ARTICLE IV. POWERS OF THE COMMISSION

The commission shall have the following powers:

1. To promulgate rules which shall have the force and effect of statutory law and shall be binding in the compacting states to the extent and in the manner provided in this compact.
2. To promulgate operating procedures which shall be binding in the compacting states to the extent and in the manner provided in this compact.
3. To oversee, supervise, and coordinate the activities of receivers in compacting states.
4. To act as receiver of insurers organized under the laws of, engaged in or doing the business of insurance in, a compacting state upon the request of the commissioner of such state or when grounds for receivership by the commission exist under article IX of this compact.
5. To act as deputy receiver of insurers organized under the laws of, engaged in or doing the business of insurance in, a noncompacting state in accordance with article IX of this compact.
6. To act as ancillary receiver in a compacting state of an insurer domiciled in a noncompacting state.
7. To monitor the activities and functions of guaranty associations in the compacting states.
8. To delegate its operating authority or functions; provided, that its rulemaking authority under article VII of this compact shall not be delegated.

1           9. To bring or prosecute legal proceedings or actions in  
2 its name as the commission, or in the name of the commission  
3 acting as receiver.

4           10. To bring or prosecute legal proceedings or actions on  
5 behalf of an estate or its policyholders and creditors; provided,  
6 that any guaranty association's standing to sue or be sued under  
7 applicable law shall not be affected.

8           11. To issue subpoenas requiring the attendance and testi-  
9 mony of witnesses and the production of evidence.

10          12. To establish and maintain offices.

11          13. To purchase and maintain insurance and bonds.

12          14. To borrow, accept, or contract for services of person-  
13 nel, including, but not limited to, members and their staff.

14          15. To elect or appoint such officers, attorneys, employ-  
15 ees, or agents, and to fix their compensation, define their  
16 duties, and determine their qualifications; and to establish the  
17 commission's personnel policies and programs relating to, among  
18 other things, conflicts of interest, rates of compensation, and  
19 qualifications of personnel.

20          16. To accept any and all donations and grants of money,  
21 equipment, supplies, materials, and services, and to receive,  
22 utilize, and dispose of the same.

23          17. To lease, purchase, accept gifts or donations of, or  
24 otherwise to own, hold, improve, or use, any property, real, per-  
25 sonal, or mixed.

1 18. To sell, convey, mortgage, pledge, lease, exchange,  
2 abandon, or otherwise dispose of any property, real, personal, or  
3 mixed.

4 19. To enforce compliance with commission rules, operating  
5 procedures, and bylaws.

6 20. To provide for dispute resolution among compacting  
7 states and receivers.

8 21. To represent and advise compacting states on issues  
9 relating to insurers domiciled or doing business in noncompacting  
10 jurisdictions, consistent with the purposes of this compact.

11 22. To provide advice and training to receivership person-  
12 nel of compacting states, and to be a resource for compacting  
13 states by maintaining a reference library of relevant materials.

14 23. To establish a budget and make expenditures.

15 24. To borrow money.

16 25. To appoint committees including, but not limited to, an  
17 industry advisory committee and an executive committee of  
18 members.

19 26. To provide and receive information relating to receiv-  
20 erships and guaranty associations, and to cooperate with law  
21 enforcement agencies.

22 27. To adopt and use a corporate seal.

23 28. To perform such other functions as may be necessary or  
24 appropriate to achieve the purposes of this compact as may be  
25 consistent with the state regulation of the business of insurance  
26 pursuant to the McCarran-Ferguson Act.

## 1 ARTICLE V. ORGANIZATION OF THE COMMISSION

## 2 Section A. Membership, Voting and Bylaws

3 1. Each compacting state shall have and be limited to one  
4 member. Each member shall be qualified to serve in such capacity  
5 under or pursuant to the applicable law of the compacting state.  
6 Each compacting state retains the discretionary right to deter-  
7 mine the due election or appointment and qualification of its own  
8 commissioner, and to fill all vacancies of its members.

9 2. Each member shall be entitled to 1 vote.

10 3. The commission shall, by a majority of the members, pre-  
11 scribe bylaws to govern its conduct as may be necessary or appro-  
12 priate to carry out the purposes of the compact, including, but  
13 not limited to:

14 a. Establishing the fiscal year of the commission.

15 b. Providing reasonable standards and procedures: (i) for  
16 the establishment of committees, and (ii) governing any general  
17 or specific delegation of any authority or function of the  
18 commission.

19 c. Providing reasonable procedures for calling and conduct-  
20 ing meetings of the commission, and ensuring reasonable notice of  
21 each such meeting.

22 d. Establishing the titles and responsibilities of the  
23 officers of the commission.

24 e. Providing reasonable standards and procedures for the  
25 establishment of the personnel policies and programs of the  
26 commission. Notwithstanding any civil service or other similar

1 laws of any compacting state, the bylaws shall exclusively govern  
2 the personnel policies and programs of the commission.

3 f. Providing a mechanism for winding up the operations of  
4 the commission and the equitable return of any surplus funds that  
5 may exist after the termination of the compact after the payment  
6 and/or reserving of all of its debts and obligations.

#### 7 Section B. Officers and Personnel

8 1. The commission shall, by a majority of the members,  
9 elect annually from among its members a chairperson and a vice  
10 chairperson, each of whom shall have such authorities and duties  
11 as may be specified in the bylaws. The chairperson or, in his or  
12 her absence or disability, a member designated in accordance with  
13 the bylaws, shall preside at all meetings of the commission. The  
14 officers so elected shall serve without compensation or remunera-  
15 tion from the commission; provided that, subject to the avail-  
16 ability of budgeted funds, the officers shall be reimbursed for  
17 any actual and necessary costs and expenses incurred by them in  
18 the performance of their duties and responsibilities as officers  
19 of the commission.

20 2. The commission may, by a majority of the members,  
21 appoint or retain an executive director for such period, upon  
22 such terms and conditions and for such compensation as the com-  
23 mission may deem appropriate. The executive director shall serve  
24 as secretary to the commission, but shall not be a member of the  
25 commission. The executive director shall hire and supervise such  
26 other staff as may be authorized by the commission.

1 Section C. Corporate records of the commission

2 The commission shall maintain its corporate books and  
3 records in accordance with the bylaws.

4 Section D. Qualified immunity, defense and indemnification

5 1. The members, officers, executive director, and employees  
6 of the commission shall be immune from suit and liability, either  
7 personally or in their official capacity, for any claim for  
8 damage to or loss of property or personal injury or other civil  
9 liability caused or arising out of any actual or alleged act,  
10 error, or omission that occurred, or that such person had a rea-  
11 sonable basis for believing occurred within the scope of commis-  
12 sion employment, duties, or responsibilities; provided, that  
13 nothing in this paragraph shall be construed to protect any such  
14 person from suit and/or liability for any damage, loss, injury,  
15 or liability caused by the intentional or willful and wanton mis-  
16 conduct of any such person, or to protect the commission acting  
17 as receiver under article IX of this compact.

18 2. The commission shall defend any commissioner of a com-  
19 pacting state, or his or her representatives or employees, or the  
20 commission's representatives or employees, in any civil action  
21 seeking to impose liability, arising out of any actual or alleged  
22 act, error, or omission that occurred within the scope of commis-  
23 sion employment, duties, or responsibilities, or that the  
24 defendant had a reasonable basis for believing occurred within  
25 the scope of commission employment, duties, or responsibilities;  
26 provided, that the actual or alleged act, error, or omission did

1 not result from gross negligence or intentional wrongdoing on the  
2 part of such person.

3       3. The commission shall indemnify and hold the commissioner  
4 of a compacting state, or his or her representatives or employ-  
5 ees, or the commission's representatives or employees, harmless  
6 in the amount of any settlement or judgment obtained against such  
7 persons arising out of any actual or alleged act, error or omis-  
8 sion that occurred within the scope of commission employment,  
9 duties, or responsibilities, or that such persons had a reason-  
10 able basis for believing occurred within the scope of commission  
11 employment, duties, or responsibilities, provided, that the  
12 actual or alleged act, error, or omission did not result from  
13 gross negligence or intentional wrongdoing on the part of such  
14 person.

15       4. The costs and expenses of defense and indemnification of  
16 the commission acting as receiver of an estate shall be paid as  
17 administrative expenses from the assets of that estate unless  
18 such costs and expenses are covered by insurance maintained by  
19 the commission.

20           ARTICLE VI. MEETINGS AND ACTS OF THE COMMISSION

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

23       2. Except as otherwise provided in this compact and unless  
24 a greater percentage is required by the bylaws, in order to con-  
25 stitute an act of the commission, such act shall have been taken  
26 at a meeting of the commission and shall have received an  
27 affirmative vote of a majority of the members.

1           3. Each member of the commission shall have the right and  
2 power to cast a vote to which that compacting state is entitled  
3 and to participate in the business and affairs of the  
4 commission. A member shall vote in person and shall not delegate  
5 his or her vote to another member. The bylaws may provide for  
6 members' participation in meetings by telephone or other means of  
7 telecommunication.

8           4. The commission shall meet at least once during each cal-  
9 endar year. The chairperson of the commission may call addi-  
10 tional meetings at any time and, upon the request of a majority  
11 of the members, shall call additional meetings.

12          5. The commission's rules shall establish conditions and  
13 procedures under which the commission shall make its information  
14 and official records available to the public for inspection or  
15 copying. The commission may exempt from disclosure any informa-  
16 tion or official records to the extent they would adversely  
17 affect personal privacy rights or proprietary interests. In  
18 promulgating such rules, the commission may consider any special  
19 circumstances pertaining to insurer insolvencies, but shall be  
20 guided by the principles embodied in state and federal freedom of  
21 information laws. The commission may promulgate additional rules  
22 under which it may make available to law enforcement agencies  
23 records and information otherwise exempt from disclosure, and may  
24 enter into agreements with law enforcement agencies to receive or  
25 exchange information or records subject to nondisclosure and con-  
26 fidentiality provisions.

1           6. Public notice shall be given of all meetings and all  
2 meetings shall be open to the public, except as set forth in the  
3 rules or as otherwise provided in this compact. The commission  
4 shall promulgate rules consistent with the principles contained  
5 in the government in sunshine act, 5 U.S.C. Section 552(b), as  
6 may be amended. The commission and any of its committees may  
7 close a meeting to the public where it determines by 2/3 vote  
8 that an open meeting would be likely to:

9           a. Relate solely to the commission's internal personnel  
10 practices and procedures.

11           b. Disclose matters specifically exempted from disclosure  
12 by statute.

13           c. Disclose trade secrets or commercial or financial infor-  
14 mation which is privileged or confidential.

15           d. Involve accusing any person of a crime, or formally cen-  
16 suring any person.

17           e. Disclose information of a personal nature where disclo-  
18 sure would constitute a clearly unwarranted invasion of personal  
19 privacy.

20           f. Disclose investigatory records compiled for law enforce-  
21 ment purposes.

22           g. Disclose information contained in or related to examina-  
23 tion, operating, or condition reports prepared by, or on behalf  
24 of or for the use of, the commission with respect to a regulated  
25 entity for the purpose of regulation or supervision of such  
26 entity.

1 h. Disclose information, the premature disclosure of which  
2 would significantly endanger the stability of a regulated  
3 entity.

4 i. Specifically relate to the commission's issuance of a  
5 subpoena, or its participation in a civil action or proceeding.

6 7. For every meeting closed pursuant to this provision, the  
7 commission's chief legal officer shall publicly certify that, in  
8 his or her opinion, the meeting may be closed to the public, and  
9 shall reference each relevant exemptive provision. The commis-  
10 sion shall keep minutes which shall fully and clearly describe  
11 all matters discussed in any meeting and shall provide a full and  
12 accurate summary of any actions taken, and the reasons therefor,  
13 including a description of each of the views expressed on any  
14 item and the record of any roll call vote (reflected in the vote  
15 of each member on the question). All documents considered in  
16 connection with any action shall be identified in such minutes.

17 ARTICLE VII. RULEMAKING FUNCTIONS OF THE COMMISSION

18 1. The commission shall promulgate rules and operating pro-  
19 cedures in order to effectively and efficiently achieve the pur-  
20 pose of this compact; provided, that the commission shall not  
21 promulgate any rules: (i) directly relating to the guaranty  
22 association, including but not limited to, rules governing cover-  
23 age, funding, or assessment mechanisms; or (ii) except pursuant  
24 to rules promulgated under article VII(3) of this compact, alter-  
25 ing the statutory priorities for distributing assets out of an  
26 estate.

1           2. Rulemaking shall occur pursuant to the criteria set  
2 forth in this article and the rules and operating procedures  
3 adopted pursuant thereto. Such rulemaking shall substantially  
4 conform to the principles of the federal administrative procedure  
5 act, 5 U.S.C.S. section 551 et seq., and the federal advisory  
6 committee act, 5 U.S.C.S. app. 2, section 1 et seq., as may be  
7 amended.

8           3. Other than the adoption of such rules as are necessary  
9 for the orderly operation of the commission, the first rule to be  
10 considered by the commission shall be uniform provisions govern-  
11 ing insurer receiverships including, but not limited to, provi-  
12 sions requiring compacting states to implement, execute, and  
13 administer in a fair, just, effective, and efficient manner rules  
14 and operating procedures relating to receiverships. The commis-  
15 sion shall within 3 years of the adoption of this compact by 2 or  
16 more states, promulgate such uniform provisions through the rule-  
17 making process. Such uniform provisions shall become law in all  
18 of the compacting states upon legislative enactment in a majority  
19 of the compacting states.

20           4. All rules and amendments shall become binding as of the  
21 date specified in each rule or amendment; provided, that if a  
22 compacting state expressly rejects such rule or amendment through  
23 legislative enactment as of the expiration of the second full  
24 calendar year after such rule is promulgated, such rule or amend-  
25 ment shall have no further force and effect in the rejecting com-  
26 pacting state. If a majority of compacting states reject a rule,

1 then such rule shall have no further force and effect in any  
2 compacting states.

3       5. When prescribing a rule or operating procedure, the com-  
4 mission shall: (a) effect publication of proposed rulemaking,  
5 stating with particularity the text of the rule or operating pro-  
6 cedure which is proposed and the reason for the proposed rule or  
7 operating procedure; (b) allow persons to submit written data,  
8 facts, opinions, and arguments, which information shall be pub-  
9 licly available; (c) provide an opportunity for an informal hear-  
10 ing; and (d) promulgate a final rule or operating procedure and  
11 its effective date, if appropriate, based on the rulemaking  
12 record.

13       6. Not later than 60 days after a rule or operating proce-  
14 dure is promulgated, any interested person may file a petition in  
15 a court of competent jurisdiction where the commission's princi-  
16 pal office is located for judicial review of such rule or operat-  
17 ing procedure. If the court finds that the commission's action  
18 is not supported by substantial evidence in the rulemaking  
19 record, the court shall hold the rule unlawful and set it aside.

## 20 ARTICLE VIII. OVERSIGHT AND DISPUTE RESOLUTION BY THE COMMISSION

### 21       Section A. Oversight

22       1. The commission shall oversee the administration and  
23 operations of receiverships in compacting states, and shall moni-  
24 tor receiverships being administered in noncompacting states  
25 which may significantly affect compacting states.

26       2. To aid its monitoring, oversight, and coordination  
27 responsibilities, the commission shall establish operating

1 procedures requiring each member to submit written reports to the  
2 commission as follows:

3       a. An initial report to the commission upon a finding or  
4 other official action by the compacting state that grounds exist  
5 for receivership of an insurer doing business in more than 1  
6 state. Thereafter, reports shall be submitted periodically and  
7 as otherwise required pursuant to the commission's operating  
8 procedures. The commission shall be entitled to receive notice  
9 of, and shall have standing to appear in, compacting states'  
10 receiverships.

11       b. An initial report of the status of an insurer within a  
12 reasonable time after the initiation of a receivership.

13       3. The commission shall promulgate operating procedures  
14 requiring receivers to submit to the commission periodic written  
15 reports and such additional information and documentation as the  
16 commission may reasonably request. Each compacting state's  
17 receivers shall establish the capability to obtain and provide  
18 all records, data, and information required by the commission in  
19 accordance with the commission's operating procedures.

20       4. Except as to privileged records, data, and information,  
21 the laws of any compacting state pertaining to confidentiality or  
22 nondisclosure shall not relieve any compacting state commissioner  
23 of the responsibility to disclose any relevant records, data, or  
24 information to the commission; provided, that disclosure to the  
25 commission shall not be deemed to waive or otherwise affect any  
26 confidentiality requirement; and further provided, that the  
27 commission shall be subject to the compacting state's laws

1 pertaining to confidentiality and nondisclosure with respect to  
2 all records, data, and information in its possession.

3       5. The courts and executive agencies in each compacting  
4 state shall enforce this compact and shall take all actions nec-  
5 essary and appropriate to effectuate the compact's purposes and  
6 intent. In any receivership or other judicial or administrative  
7 proceeding in a compacting state pertaining to the subject matter  
8 of this compact which may affect the powers, responsibilities, or  
9 actions of the commission, the commission shall be entitled to  
10 receive all service of process in any such proceeding, and shall  
11 have standing to intervene in the receivership or proceeding for  
12 all purposes.

13       6. The commission shall analyze and correlate records,  
14 data, information, and reports received from receivers and guar-  
15 anty associations, and shall make recommendations for improving  
16 their performance to the compacting states. The commission shall  
17 include summary information and data regarding its oversight  
18 functions in its annual report.

19       Section B. Dispute Resolution

20       1. The commission shall attempt, upon the request of a  
21 member, to resolve any disputes or other issues which are subject  
22 to this compact and which may arise among compacting states and  
23 noncompacting states.

24       2. The compacting states shall report to the commission on  
25 issues or activities of concern to them, and cooperate with and  
26 support the commission in the discharge of its duties and  
27 responsibilities.

1       3. The commission shall promulgate an operating procedure  
2 providing for binding dispute resolution for disputes among  
3 receivers.

4       4. The commission shall facilitate voluntary dispute reso-  
5 lution for disputes among guaranty associations and receivers.

6       ARTICLE IX. RECEIVERSHIP FUNCTIONS OF THE COMMISSION

7       1. The commission has authority to act as receiver of any  
8 insurer domiciled, engaged in or doing business in a compacting  
9 state upon the request of the commissioner of such compacting  
10 state, or as otherwise provided in this compact.

11       a. The commission as receiver shall have all powers and  
12 duties pursuant to the receivership laws of the domiciliary  
13 state.

14       b. The commission shall maintain accounts of receipts and  
15 disbursements of the estates consistent with the accounting prac-  
16 tices and procedures set forth in the bylaws.

17       c. The commission shall cause an annual audit of each  
18 estate for which it is acting as receiver to be conducted by an  
19 independent certified public accountant. The costs and expenses  
20 of such audit shall be paid as administrative expenses from the  
21 assets of the estate. The commission shall not cause an annual  
22 audit to be conducted of any estate which lacks sufficient assets  
23 to conduct such audit.

24       d. The commission as receiver is authorized to delegate its  
25 receivership duties and functions, and to effectuate such delega-  
26 tion through contracts with others.

1           2. The commission shall act as receiver of any insurer  
2 domiciled or doing business in a compacting state in the event  
3 that the member acting as receiver in that compacting state fails  
4 to comply with duly-adopted commission rules or operating  
5 procedures. The commission shall notify such member in writing  
6 of his or her noncompliance with commission rules or operating  
7 procedures. If the member acting as receiver fails to remedy  
8 such noncompliance within 10 days after his or her receipt of  
9 such notification, the commission may petition the supervising  
10 court before which such receivership is pending for an order sub-  
11 stituting and appointing the commission as receiver of the  
12 estate.

13           3. The commission shall not act as receiver of an estate  
14 which appears to lack sufficient assets to fund such receivership  
15 unless the compacting state makes provisions for the payment of  
16 the estate's administrative expenses satisfactory to the  
17 commission.

18           4. The commission may act as deputy receiver for any  
19 insurer domiciled or doing business in a noncompacting state in  
20 accordance with such state's laws, upon request of that noncom-  
21 pacting state's commissioner and approval of the commission.

22           5. With respect to receiverships pending in a compacting  
23 state on the effective date of the enactment of this compact by  
24 the compacting state:

25           a. The commission may act as receiver of an insurer upon  
26 the request of that compacting state's member and approval of the  
27 commission.

1           b. The commission shall oversee, monitor, and coordinate  
2 the activities of all receiverships pending in that compacting  
3 state regardless whether the commission is acting as receiver of  
4 estates in the compacting state.

5                                   ARTICLE X. FINANCE

6           1. The commission shall pay or provide for the payment of  
7 the reasonable expenses of its establishment and organization.

8           2. Except as otherwise provided in this compact or by act  
9 of the commission, the costs and expenses of each compacting  
10 state shall be the sole and exclusive responsibility of the  
11 respective compacting states. The commission may pay or provide  
12 for actual and necessary costs and expenses for attendance of its  
13 members at official meetings of the commission or its designated  
14 committees.

15          3. The commission shall levy on and collect an annual  
16 assessment from each compacting state and each insurer authorized  
17 to do business in a compacting state, and writing direct insur-  
18 ance, to cover the cost of the internal operations and activities  
19 of the commission and its staff in a total amount sufficient to  
20 cover the commission's annual budget.

21          a. The aggregate annual assessment amount shall be allo-  
22 cated 75% to insurers, hereinafter referred to as the "insurers'  
23 portion", and 25% to compacting states, hereinafter referred to  
24 as the "compacting states' portion". The insurers portion shall  
25 be allocated to each insurer by the percentage derived from a  
26 fraction, the numerator of which shall be the gross direct  
27 written premium received on that insurer's business in all

1 compacting states and the denominator of which shall be the gross  
2 direct written premium received by all insurers on business in  
3 all compacting states. The compacting states' portion shall be  
4 allocated to each compacting state by the percentage derived from  
5 a fraction, the numerator of which shall be the gross direct  
6 written premium received by all insurers on business in that com-  
7 pacting state and the denominator shall be the gross direct writ-  
8 ten premium received on all insurers on business in all compact-  
9 ing states. Each compacting state's portion shall be funded as  
10 designated by that state's legislature. In no event shall an  
11 insurer's assessment be less than \$50.00 or more than \$25,000.00;  
12 provided, that affiliated insurers' combined assessments shall  
13 not exceed \$50,000.00. Upon the request of an insurer, the com-  
14 mission may exempt or defer the assessment of any insurer, if  
15 such assessment would cause the insurer's financial impairment.

16       b. These assessments shall not be used to pay any costs or  
17 expenses incurred by the commission and its staff acting as  
18 receiver of estates. Such costs and expenses shall be payable  
19 from the assets of the estates as provided by law, except as oth-  
20 erwise provided in this compact.

21       c. Each insurer authorized to do business in a compacting  
22 state shall timely pay assessments to the commission. Failure to  
23 pay such assessments shall not be grounds for the revocation,  
24 suspension, or denial of an insurer's authority to do business,  
25 but shall subject the insurer to suit by the commission for  
26 recovery of any assessment due, attorneys' fees and costs,  
27 together with interest from the date the assessment is due at a

1 rate of 10% per annum, and to civil forfeiture in an amount to be  
2 determined by the commissioner of that compacting state in which  
3 the insurer received the greatest premium in the year next pre-  
4 ceding the first year for which the insurer shall be delinquent  
5 in payment of assessments.

6       4. The commission shall be reimbursed in the following  
7 manner for the costs and expenses incurred by the commission and  
8 its staff acting as receiver of estates to the extent that an  
9 insurer's assets may be insufficient for the effective adminis-  
10 tration of its estate:

11       a. If the insurer is domiciled in a compacting state, the  
12 estate shall be closed unless that compacting state makes provi-  
13 sions for reimbursing the commission.

14       b. If the insurer is unauthorized to do business in a com-  
15 pacting state or if the insurer is domiciled in a noncompacting  
16 state and subject to ancillary receivership, then the commission  
17 and such state shall make provisions for reimbursing the commis-  
18 sion prior to the commission becoming receiver of such insurer.

19       5. To fund the cost of the initial operations of the com-  
20 mission until its first annual budget is adopted and related  
21 assessments have been made, contributions from compacting states  
22 and others may be accepted and a 1-time assessment on insurers  
23 doing a direct insurance business in the compacting states may be  
24 made not to exceed \$450.00 per insurer.

25       6. The commission's adopted budget for a fiscal year shall  
26 not be approved until it has been subject to notice and comment  
27 as set forth in article VII of this compact. The budget shall

1 determine the amount of the annual assessment. The commission  
2 may accumulate a net worth not to exceed 30% of its then annual  
3 cost of operation to provide for contingencies and events not  
4 contemplated. These accumulated funds shall be held separately  
5 and shall not be used for any other purpose. The commission's  
6 budget may include a provision for a contribution to the  
7 commission's net worth.

8       7. The commission shall be exempt from all taxation in and  
9 by the compacting states.

10       8. The commission shall not pledge the credit of any com-  
11 pacting state except by and with the appropriate legal authority  
12 of that compacting state.

13       9. The commission shall keep complete and accurate accounts  
14 of all its internal receipts (including grants and donations) and  
15 disbursements of all funds, other than receivership assets, under  
16 its control. The internal financial accounts of the commission  
17 shall be subject to the accounting procedures established under  
18 its bylaws. The financial accounts and reports including the  
19 system of internal controls and procedures of the commission  
20 shall be audited annually by an independent certified public  
21 accountant. Upon the determination of the commission, but no  
22 less frequently than every 3 years, the review of such indepen-  
23 dent auditor shall include a management and performance audit of  
24 the commission. The report of such independent audit shall be  
25 made available to the public and shall be included in and become  
26 part of the annual report of the commission to the governors and  
27 legislatures of the compacting states. The commission's internal

1 accounts, any workpapers related to any internal audit and any  
2 workpapers related to the independent audit, shall be confiden-  
3 tial; provided that, such materials shall be made available: (i)  
4 in compliance with the order of any court of competent jurisdic-  
5 tion; (ii) pursuant to such reasonable rules as the commission  
6 shall promulgate; and (iii) to any commissioner, governor of a  
7 compacting state, or their duly authorized representatives.

8       10. No compacting state shall have any claim to or owner-  
9 ship of any property held by or vested in the commission or the  
10 commission acting as receiver or to any other commission funds  
11 held pursuant to the provisions of this compact.

12       ARTICLE XI. COMPACTING STATES, EFFECTIVE DATE AND AMENDMENT

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

14       2. The compact shall become effective and binding upon leg-  
15 islative enactment of the compact into law by 2 compacting  
16 states. Thereafter, it shall become effective and binding as to  
17 any other compacting state upon enactment of the compact into law  
18 by that state.

19       3. Amendments to the compact may be proposed by the commis-  
20 sion for enactment by the compacting states. No amendment shall  
21 become effective and binding upon the commission and the compact-  
22 ing states unless and until it is enacted into law by unanimous  
23 consent of the compacting states.

24       ARTICLE XII. WITHDRAWAL, DEFAULT AND TERMINATION

25       Section A. Withdrawal

26       1. Once effective, the compact shall continue in force and  
27 remain binding upon each and every compacting state; provided,

1 that a compacting state may withdraw from the compact  
2 ("withdrawing state") by enacting a statute specifically repeal-  
3 ing the statute which enacted the compact into law.

4       2. The effective date of withdrawal is the effective date  
5 of the repeal; provided, that the repeal shall not apply to any  
6 receiverships, for which the commission as acting as receiver,  
7 pending on the date of the repeal except by mutual agreement of  
8 the commission and the withdrawing state.

9       3. The withdrawing state shall immediately notify the  
10 chairperson of the commission in writing upon the introduction of  
11 legislation repealing this compact in the withdrawing state.

12       4. The commission shall notify the other compacting states  
13 of the withdrawing state's intent to withdraw within 60 days of  
14 its receipt thereof.

15       5. The withdrawing state is responsible for all assess-  
16 ments, obligations, and liabilities incurred through the effec-  
17 tive date of withdrawal, including any obligations, the per-  
18 formance of which extend beyond the effective date of withdrawal,  
19 except to the extent those obligations may have been released or  
20 relinquished by mutual agreement of the commission and the with-  
21 drawing state. Notwithstanding the foregoing, the withdrawing  
22 state is responsible for the costs and expenses of its estates  
23 subject to this compact pending on the date of repeal; the com-  
24 mission and the other estates subject to this compact shall not  
25 bear any costs and expenses related to the withdrawing states'  
26 estates unless otherwise mutually agreed upon between the  
27 commission and the withdrawing state.

1       6. Reinstatement following withdrawal of any compacting  
2 state shall occur upon the withdrawing state reenacting the com-  
3 pact or upon such later date as determined by the commission.

4       Section B. Default

5       1. If the commission determines that any compacting state  
6 has at any time defaulted ("defaulting state") in the performance  
7 of any of its obligations or responsibilities under this compact,  
8 or the bylaws and duly promulgated rules, all rights, privileges,  
9 and benefits conferred by this compact and any agreements entered  
10 into pursuant to this compact shall be suspended from the effec-  
11 tive date of default as fixed by the commission. The grounds for  
12 default include, but are not limited to, failure of a compacting  
13 state to perform such obligations or responsibilities and any  
14 other grounds designated in commission rules. The commission  
15 shall immediately notify the defaulting state in writing of the  
16 defaulting state's suspension pending a cure of the default. The  
17 commission shall stipulate the conditions and the time period  
18 within which the defaulting state must cure its default. If the  
19 defaulting state fails to cure the default within the time period  
20 specified by the commission, the defaulting state shall be termi-  
21 nated from the compact upon an affirmative vote of a majority of  
22 the compacting states and all rights, privileges, and benefits  
23 conferred by this compact shall be terminated from the effective  
24 date of termination.

25       2. Within 60 days of the effective date of termination of a  
26 defaulting state, the commission shall notify the governor and

1 the majority and minority leaders of the defaulting state's  
2 legislature of such termination.

3       3. The termination of a defaulting state shall apply to all  
4 receiverships, for which the commission is acting as receiver,  
5 pending on the effective date of termination except by mutual  
6 agreement of the commission and the defaulting state.

7       4. The defaulting state is responsible for all assessments,  
8 obligations, and liabilities incurred through the effective date  
9 of termination, and is responsible for the costs and expenses  
10 relating to its estates subject to this compact pending on the  
11 date of the termination. The commission and the other estates  
12 subject to this compact shall not bear any costs relating to the  
13 defaulting state's estates unless otherwise mutually agreed upon  
14 between the commission and the defaulting state.

15       5. Reinstatement following termination of any compacting  
16 state requires both a reenactment of the compact by the default-  
17 ing state and the approval of the commission pursuant to the  
18 rules.

19       Section C. Dissolution of Compact

20       1. The compact dissolves effective upon the date of the  
21 withdrawal or default of the compacting state which reduces mem-  
22 bership in the compact to 1 compacting state.

23       2. Upon the dissolution of this compact, the compact  
24 becomes null and void and shall be of no further force or effect,  
25 and the business and affairs of the commission shall be wound up  
26 and any surplus funds shall be distributed in accordance with the  
27 bylaws.

## ARTICLE XIII. SEVERABILITY AND CONSTRUCTION

1  
2 1. The provisions of this compact shall be severable, and  
3 if any phrase, clause, sentence, or provision is deemed unen-  
4 forceable, the remaining provisions of the compact shall be  
5 enforceable.

6 2. The provisions of this compact shall be liberally con-  
7 strued to effectuate its purposes.

## ARTICLE XIV. BINDING EFFECT OF COMPACT AND OTHER LAWS

## Section A. Other Laws

8  
9  
10 1. Nothing herein prevents the enforcement of any other law  
11 of a compacting state that is not inconsistent with this  
12 compact.

13 2. All compacting states' laws conflicting with this com-  
14 pact are superseded to the extent of the conflict.

## Section B. Binding Effect of this Compact

15  
16 1. All lawful actions of the commission, including all  
17 rules and operating procedures promulgated by the commission, are  
18 binding upon the compacting states.

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

21 3. Upon the request of a party to a conflict over meaning  
22 or interpretation of commission actions, and upon a majority vote  
23 of the compacting states, the commission may issue advisory opin-  
24 ions regarding such meaning or interpretation.

25 4. In the event any provision of this compact exceeds the  
26 constitutional limits imposed on the legislature of any  
27 compacting state, the obligations, duties, powers, or

1 jurisdiction sought to be conferred by such provision upon the  
2 commission shall be ineffective and such obligations, duties,  
3 powers, or jurisdiction shall remain in the compacting state and  
4 shall be exercised by the agency thereof to which such obliga-  
5 tions, duties, powers, or jurisdiction are delegated by law in  
6 effect at the time this compact becomes effective.

7       Sec. 2. The purposes of this compact and the powers of the  
8 interstate insurance receivership commission established by this  
9 compact are necessarily limited in authority, function, and scope  
10 to the receivership activities and powers vested in the insurance  
11 commissioner under chapter 81 of the insurance code of 1956, Act  
12 No. 218 of the Public Acts of 1956, being sections 500.8101 to  
13 500.8159 of the Michigan Compiled Laws. This compact does not  
14 authorize the interstate insurance receivership commission or the  
15 insurance commissioner to expand the activities of this compact  
16 beyond receivership activities.