



BRIEFING SHEET ON IMPLIED CONGRESSIONAL CONSENT

Prepared by the Compact Office

- **The Compact's Governance Committee has prepared for member consideration a position statement finding the Compact possesses implied congressional consent, as a way of bolstering the legal effect of the Compact under state law.**
- On April 27, 2020, the [Colorado Supreme Court issued an opinion](#) in *Amica Life Insurance Co. v. Wertz*, finding that without congressional consent, the General Assembly could not delegate the power to approve insurance policies sold in Colorado under a standard that differs from Colorado statute to an interstate compact. The Court framed the Uniform Standards as regulations and ruled regulations cannot conflict with state statute on a product content requirement. The ruling is based on Colorado's constitutional non-delegation doctrine restricting legislative power to the legislature and did not follow the progeny of cases that enforce binding agreements among states.
- **Proposed Position Statement 1-2022 acknowledges the Compact received implied congressional consent when in 2006, Congress enacted, and President Bush signed, a law that authorized the District of Columbia to enter the Compact and approved the delegation of authority necessary for the Commission to achieve the purposes of the Compact.** Having implied congressional consent transforms regulations established by an interstate compact into federal law to prevail over inconsistent state law pursuant to the Supremacy Clause. Congressional consent would result in all provisions of the Compact standards and rules having the force and effect of law and binding in the Compacting States, as originally intended in Article IV, Section 2 of the Compact enacted by the States.
- With the 1999 passage of the Gramm-Leach-Bliley Act, state insurance regulators were challenged to improve speed-to-market and find uniformity in the regulation of asset-based insurance products to prevent pre-emption by the federal government. **The Compact was developed as a state-based solution where the Uniform Standards are drafted and adopted by expert state insurance regulators, maintaining state control while modernizing some aspects of rate and form review.** The Compact Statute drafters and state legislatures, experienced with interstate compacts, understood that Uniform Standards for a specific product component could not match every Compacting State's law.
- **Recognition of implied congressional consent does not change the way the Compact has operated since its inception.** It is a state-based, member-driven organization.
- **State legislatures control a state's participation in the Compact.** Legislatures must pass the Compact legislation and can withdraw and opt out of a Uniform Standard at any time.
- **State insurance regulators draft and adopt Uniform Standards.** The Compact cannot approve a form or rate filing that falls outside of the scope of any Uniform Standard. To adopt a new or amended standard, a 2/3 supermajority vote is required.
- **Several months are provided between the introduction and adoption of a new or amended Uniform Standards** for member states and interested parties to comment, ask questions, and/or raise concerns.
- **States are not required to participate in an adopted Uniform Standard;** states have 10 business days from date of promulgation of a Uniform Standard to request a stay of the Uniform Standard while their state pursues opting out.
- If you have any questions, please contact [Karen Schutter](#) or [Becky McElduff](#).