

- Compacts are:
 - An important governance tool for states used for a myriad of multistate cooperative efforts from water use to child custody issues
 - A contract among states, with the terms enacted by the legislature of each participating state.
 - Do not require federal consent to be effective unless they potentially undermine federal supremacy
- With federal consent, express or implied, a compact's terms can preempt conflicting state constitutions or laws

- Through legislation over the past 15+ years, 46 states have entered into a compact to form the Insurance Compact Commission (ICC)
- As a compact, the ICC became a joint public agency of all member states, separate from the NAIC, with each Commissioner representing their respective state in a role akin to a board member, and ICC staff serving as their joint regulatory staff
- The ICC allows the member states to regulate life insurance, annuities, disability and long term care insurance products to be sold in their states, with the member states working together to develop uniform product standards, or policy and application terms and actuarial requirements

- Life insurance companies have the option to file their proposed products with the ICC, where ICC staff reviews, comments and approves or rejects proposed product filings
- NCOIL served as a key advocate for enactment and implementation of the Compact legislation across the country
- In 2020, the ICC retained Squire Patton Boggs to conduct a Governance Review. The Report prepared by Squire included a review of the Colorado Supreme Court's decision in *Amica Life Ins. Co. v. Wertz*
https://www.insurancecompact.org/documents/2020-12_report-governance_review_spb.pdf

- In *Amica Life Ins. Co. v. Wertz*, the Colorado Supreme Court ruled that the Colorado constitution preempted the ICC Uniform Standards on life insurance based on an assumption that the ICC did not have Congressional consent
 - In their briefs, both Amica and Wertz asserted, without substantiation, that ICC has not received federal consent
 - A minority of other ICC Member states have constitutional terms similar to Colorado
- The ICC has received Congressional consent, through the doctrine of implied consent granted when Congress approved the District of Columbia's membership in 2006, but the court did not consider or discuss the ICC's implied Congressional consent

- The *Amica* decision has narrow impact so long as the states and ICC educate regulators, the states and the public about the strong and unique body of law that supports it
- States and the ICC can acknowledge the ICC's implied Congressional consent so that the Colorado Supreme Court's logic in *Amica* does not erode the future certainty and uniformity of ICC-filed products through actions such as:
 - Issue clarifying Advisory Opinion
 - Continuous Member and Legislator Education
 - Require filing companies to provide notice of litigation involving validity of Uniform Standards and intervene in appropriate cases

Questions?

Mary Jo Hudson
Squire Patton Boggs

Office: 614-365-2732

Email: mj.hudson@squirepb.com