

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCS for HB 383 Interstate Insurance Product Regulation Compact

SPONSOR(S): Insurance & Banking Subcommittee

TIED BILLS: **IDEN./SIM. BILLS:** SB 242

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
Orig. Comm.: Insurance & Banking Subcommittee		Reilly	Cooper

SUMMARY ANALYSIS

Proposed Committee Substitute (PCS) for House Bill 383 enacts into Florida law the Interstate Insurance Product Regulation Compact (the Compact), model legislation adopted by the National Association of Insurance Commissioners. The Compact provides for the development of uniform national standards for life insurance, annuity, disability income insurance, and long-term care products (including rate filings for the latter two insurance products) and application of these standards to insurer filings. A filing approved through the Compact is effective in all compacting states in which the insurer is authorized to write that line of business without further regulatory review. Currently 40 states (and the Commonwealth of Puerto Rico), representing approximately two-thirds of premium volume nationwide, have enacted the Compact. Insurers, however, have the option of filing with individuals states, rather than utilizing the Compact.

Under the PCS, Florida:

- Opts out of all uniform standards (current standards and those subsequently adopted) related to long-term care insurance.
- Adopts uniform standards for all other covered products adopted under the Compact as of March 1, 2013.
- Opts out of uniform standards adopted under the Compact after March 1, 2013 and amendments to existing uniform standards adopted after this date that substantially alter or add to existing uniform standards. However, the Florida Legislature may subsequently enact such standards and amendments into law.

The Compact is implemented through the Interstate Insurance Product Regulation Commission (the Commission), which has the authority to adopt rules and uniform standards; prescribe bylaws; borrow money; and remit filing fees to compacting states. The Commission is authorized to protect certain information from disclosure and close meetings in whole or in part. However, the PCS does not abrogate a person's right to access information under Florida law.

Article II, s. 3 of the Florida Constitution provides for separation of powers among the executive, legislative, and judicial branches. This provision has been interpreted to preclude legislative adoption of rules not yet promulgated by federal administrative bodies; such action being held an impermissible delegation of legislative authority. Under the PCS, Florida prospectively opts out of subsequently adopted uniform standards and subsequently adopted amendments to existing standards that substantially alter or add to such standards.

The PCS will have a positive fiscal impact on the private sector, as insurers may submit a single filing to the Commission, rather than making separate filings in each state in which they are authorized to do business. There is minimal fiscal impact on state or local government.

The PCS is effective October 1, 2013.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Regulatory Review of Insurer Filings¹

The Office of Insurance Regulation (OIR) reviews and approves insurance product forms and rates in Florida. Form filings include policy forms (contracts), which include new products, and may in some product lines include applications and marketing materials. Rate filings are requests from an insurer to increase, decrease, or maintain current rates associated with specific policy forms. Policy forms and rates are reviewed to determine compliance with Florida law and to ensure that the products are offered at a fair and adequate price, that premiums are reasonable in relation to the benefits they provide, and that they do not unfairly discriminate against segments of the public.

The Interstate Insurance Product Regulation Compact²

Background

In 2002, a working group of the National Association of Insurance Commissioners (NAIC) adopted the initial Interstate Insurance Compact Model (the Compact) to modernize state insurance regulation. The current version of the Compact includes amendments that were adopted in 2003. The Compact is designed to increase speed to market while retaining consumer protections relating to life insurance, annuity, disability income insurance, and long-term care insurance products. It also permits insurers and third-party filers to submit rate filings for disability income and long-term care insurance products.

Changes in the financial services marketplace have resulted in the previously mentioned insurance products competing directly with other retirement and estate planning instruments sold by banks and security firms. The Compact provides compacting states with the ability to develop uniform national product standards for these insurance products; establish a central point of filing; and thoroughly review filings and make regulatory decisions according to uniform product standards. A filing approved by the Interstate Insurance Product Regulation Commission, i.e., that satisfies uniform standards, is effective in all compacting states in which the insurer is authorized to write that particular line of business without further regulatory review. Currently, 40 states (and the Commonwealth of Puerto Rico),³ representing approximately two-thirds of premium volume nationwide, have enacted the Compact.

Overview

The Compact is implemented through the Interstate Insurance Product Regulation Commission (the Commission), a multi-state public entity. Each compacting state is represented by one member, each with one vote. Florida's Insurance Commissioner, or the Commissioner's designee, will serve as the state's representative on the Commission. The Commission came into existence in 2004 upon legislative enactment in Colorado and Utah and satisfied requirements to become operational in 2006.⁴

¹ See "Office of Insurance Regulation, 2010 Transition Manual" (December 2010). Available at <http://www.floir.com/> (last accessed: March 4, 2013).

² Background information available at the Interstate Insurance Product Regulation Commission's website, <http://insurancecompact.org/> (last accessed: March 4, 2013).

³ Alabama, Alaska, Colorado, Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, North Carolina, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Carolina, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming. The Commonwealth of Puerto Rico is also a Commission member.

⁴ The Commission would become operational when either 26 states had joined the Compact or compacting states represented more than 40% of nationwide premium volume.

The Commission's affairs are governed by a management committee, comprised of up to 14 members, as follows:

- One member from each of the six compacting states with the largest premium volume for products covered by the Compact, as determined from NAIC records for the prior year.
- Four members from compacting states with at least 2% of the market based on premium volume for covered products, which are selected on a rotating basis.
- Four members from compacting states with less than 2% of the market, based on premium volume for covered products, one from each of the NAIC's four zone regions.

A management committee establishes and oversees the Commission's organizational structure, and, upon a two-thirds vote of committee members, is authorized to submit proposed uniform standards to compacting states for adoption.

The Compact further provides for a legislative committee, comprised of state legislators or their designees, and two advisory committees (whose members are consumer and insurance industry representatives, respectively). The legislative committee monitors and makes recommendations to the Commission.

Authority of the Commission

The Commission is authorized to:

- Adopt rules and establish reasonable uniform standards for covered products and related advertisements, which have the force and effect of law and are binding in the compacting states to the extent provided in the Compact.
- Receive and review, in an expeditious manner, product filings for covered products and rate filings for disability income and long-term care insurance products. Commission approval of a filing has the force and effect of law and is binding in the compacting states to the extent provided in the Compact.
- Adopt operating procedures, which are binding in the compacting states to the extent provided in the Compact.
- Issue subpoenas requiring the attendance and testimony of witnesses and the production of evidence.
- Establish and maintain offices.
- Purchase and maintain insurance and bonds.
- Borrow, accept, or contract for services of personnel, including employees of a compacting state. Any such action with respect to employees of the State of Florida requires the express written consent of the state.
- Hire employees, professionals, and specialists, and elect or appoint officers.
- Accept appropriate donations and grants, avoiding the appearance of impropriety.
- Establish a budget,⁵ make expenditures, and remit filing fees⁶ to compacting states.
- Enforce compliance by compacting states with rules, uniform standards, operating procedures, and bylaws.
- Borrow money, provided that this power does not, in any manner, obligate the financial resources of Florida.
- Perform such other functions as may be necessary or appropriate to achieve the Compact's purposes consistent with state regulation of the business of insurance.
- Prescribe bylaws.

⁵ The Compact's operating revenue is based on an annual registration fee and a per filing fee (discussed in footnote 6). The registration fee is \$5,000 per company (insurers and third-party filers) or \$2,500 (for companies with less than \$50 million in premium volume and/or that file in 12 or fewer compacting states). The filing fee is prorated for companies that register after July 1st. Correspondence from the Interstate Insurance Product Regulation Commission, dated February 26, 2013, on file with staff of the Insurance & Banking Subcommittee.

⁶ *Id.* A filing must be accompanied by the applicable fee under the Commission's schedule of fees. Additionally, if the filing company is authorized in compacting states that have filing fees, these fees must also accompany the filing. The Commission will then remit such fees to the respective compacting states.

- Adopt a code of ethics, which does not supersede or otherwise limit the obligations of Florida's Insurance Commissioner or the Commissioner's designee under Florida's ethics laws or rules.

The Commission is required to provide written notice to compacting states that are not in compliance with adopted bylaws, rules, uniform standards, and operating procedures, with a timeframe for remedying the noncompliance. States that fail to timely comply are deemed in default, with all privileges and benefits conferred by the Compact suspended.

Key Terms Defined

Key terms defined by the Compact, include:

- Bylaws: Bylaws adopted by the Commission as of March 1, 2013, for its governance or for directing or controlling the Commission's actions or conduct.
- Compacting state: Any state which has enacted this Compact legislation and has not withdrawn...or been terminated... [from] the Compact.
- Insurer: Any entity licensed by a state to issue contracts of insurance for any of the lines of insurance covered by the Compact.
- Operating procedures: Procedures adopted by the Commission as of March 1, 2013, and subsequent amendments thereto if the methodology remains substantially consistent, implementing a rule, uniform standard, or provision of the Compact.
- Product: The form of a policy or contract, including any application, endorsement, or related form which is attached to and made a part of the policy or contract, and any evidence of coverage or certificate, for an individual or group annuity, life insurance, disability income, or long-term care insurance product that an insurer is authorized to issue.
- Rule: A statement of general or particular applicability and future effect adopted by the Commission as of March 1, 2013, and subsequent amendments thereto if the methodology remains substantially consistent, including a uniform standard ..., designed to implement, interpret, or prescribe law or policy or describe the organization, procedure, or practice requirements of the Commission, which shall have the force and effect of law in the compacting states.
- Third-party filer: An entity that submits a product filing to the Commission on behalf of an insurer.
- Uniform standard: A standard adopted by the Commission as of March 1, 2013, and subsequent amendments thereto if the methodology remains substantially consistent, for a product line pursuant to Article VII of the Compact and shall include all of the product requirements in aggregate; provided, each uniform standard shall be construed, whether express or implied, to prohibit the use of any inconsistent, misleading, or ambiguous provisions in a product and the form of the product made available to the public shall not be unfair, inequitable, or against public policy as determined by the Commission.

Product/Rate Filings and Commission Approval

Product filings for covered products and rate filings for disability income and long-term care insurance products may be submitted to: (1) the Commission or (2) a state regulator for a state in which the insurer is licensed to write that line of business. A filing that is approved by the Commission, i.e., that satisfies uniform standards, is effective in all compacting states in which the insurer is authorized to write that line of business without further regulatory review. By contrast, a filing submitted to a state is reviewed by the state for compliance with state standards and, if approved, is effective only in that state.

Appeals from adverse decisions of the Commission must be made within 30 days; with the review conducted by a panel appointed by the Commission. However, judicial review is available for appeals based on allegations that the Commission acted arbitrarily, capriciously, or abused its discretion.

Florida's Policy of Opting Out of Subsequently Adopted Uniform Standards and Amendments

Uniform standards have the force and effect of law, are binding in the compacting states, and require a two-thirds vote for adoption. Under the PCS, Florida:

- Prospectively opts out of all uniform standards adopted by the Commission involving long-term care insurance products.
- Adopts all uniform standards (except those relating to long-term care) adopted by the Commission as of March 1, 2013.

The PCS provides that it is Florida's policy to opt out, and requires the OIR to opt out, of: (1) new uniform standards adopted by the Commission after March 1, 2013; and (2) amendments adopted after March 1, 2013 to existing uniform standards that substantially alter or add to existing uniform standards until Florida enacts legislation to adopt or opt out of such standards or amendments. The OIR is required to immediately notify the Florida Legislature of any such actions by the Commission. The Financial Services Commission is given rulemaking authority to implement this act, which must be used to promulgate rules for opting out of subsequently adopted standards and amendments. If the OIR or a court of competent jurisdiction finds that the procedure for opting out has not been followed, the Florida Legislature will be notified, and reasonable and prompt measures must be taken to opt out of a uniform standard that has not been legislatively approved by Florida.

Delegation of Legislative Authority under the Florida Constitution

Article II, Sec. 3 of the Florida Constitution provides for separation of powers among the executive, legislative, and judicial branches. The Florida Supreme Court has held that it is an unconstitutional delegation of legislative authority for the Legislature to prospectively adopt rules not yet promulgated by federal administrative bodies.⁷ There does not appear to be any binding Florida case law that squarely addressed this issue in the context of interstate compacts. However, it can be argued that this prohibition (against prospective adoption by the Legislature of federal rules that have not yet been promulgated) extends to preclude the prospective adoption of uniform standards not yet adopted under an interstate compact.

Pursuant to the Compact, uniform standards adopted by the Commission have the force and effect of law and are binding in the compacting states. Under the PCS, Florida adopts all uniform standards (except those relating to long-term care insurance) that have been adopted by the Commission as of March 1, 2013. It also establishes Florida's policy to opt out, and requires the OIR to opt out, of subsequently adopted uniform standards and certain subsequently adopted amendments to existing uniform standards until the state enacts legislation to adopt or opt out of such standards or amendments. Thus, only those subsequently adopted standards or amendments that are reviewed by the Florida Legislature and enacted into state law will become effective in this state.

Meetings and Records under the Compact

The Commission is authorized to:

- Close a meeting⁸ in whole or in part. The Insurance Commissioner, or the Commissioner's designee, may only attend, or otherwise participate in, a closed meeting or executive session to the extent permitted by Florida law.
- Provide for the right of citizens to attend Committee meetings, except when necessary to protect the public's interest, the privacy of individuals, and insurers' proprietary information, including trade secrets.
- Adopt rules regarding conditions and procedures for public inspection and copying of the Commission's information and official records, except for records involving an individual's privacy or an insurer's trade secrets.
- Adopt rules to establish conditions and procedures for providing public access to product filing information.

⁷ *Freimuth v. State*, 272 So.2d 473, 476 (Fla. 1972); *Fla. Indus. Commission v. State ex rel. Orange State Oil Co.*, 21 So.2d 599, 603 (Fla. 1945).

⁸ Notices of all Commission meetings, including instructions for public participation, provided to the office, the Commissioner, or the Commissioner's designee must be published in the Florida Administrative Register.

Such provisions do not abrogate a person's right to access information under Florida law.

The PCS provides for the Commission's records and books to be maintained pursuant to the bylaws, and that confidential information of the Commission remains confidential when provided to any Commission member. However, all requests from the public to inspect or copy records, data, or information of the Commission, wherever received, by and in possession of the Insurance Commissioner, the Commissioner's designee, or the OIR are made subject to Florida's Public Records Law, ch. 119, F.S.

Florida's Public Records Law and the Compact

Article I, s. 24(a) of the State Constitution sets forth the state's public policy regarding access to government records. The section guarantees every person a right to inspect or copy any public record of the legislative, executive, and judicial branches of government. The Legislature, however, may provide by general law for the exemption of records and the exemption of meetings from the requirements of Article I, s. 24(a) of the State Constitution. The general law must state with specificity the public necessity justifying the exemption (public necessity statement) and must be no broader than necessary to accomplish its purpose. A bill enacting an exemption or substantially amending an existing exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.⁹

Public policy regarding access to government records is addressed further in the Florida Statutes. Section 119.07(1), F.S., guarantees every person a right to inspect and copy any state, county, or municipal record. Furthermore, the Open Government Sunset Review Act¹⁰ provides that a public record or public meeting exemption may be created or maintained only if it serves an identifiable public purpose. In addition, it may be no broader than is necessary to meet one of the following purposes:

- Allows the state or its political subdivisions to effectively and efficiently administer a governmental program, which administration would be significantly impaired without the exemption.
- Protects sensitive personal information that, if released, would be defamatory or would jeopardize an individual's safety; however, only the identity of an individual may be exempted under this provision.
- Protects trade or business secrets.

The Compact holds ineffective, as to a compacting state, any provisions that exceed the constitutional limits imposed on the legislature of that state. Provisions limiting access to information expressly provide that they do not abrogate a person's right to access information under Florida law. Although the Commission may close a meeting¹¹ in whole or in part, the Insurance Commissioner, or the Commissioner's designee, may only attend, or otherwise participate in such meeting or executive session, to the extent consistent with Florida law. Further, all requests from the public to inspect or copy records, data, or information of the Commission, wherever received, by and in possession of the Insurance Commissioner, the Commissioner's designee, or the OIR are made subject to Florida's Public Records Law, ch. 119, F.S.

Miscellaneous

- Requires the Commission to make an annual report to the governor and the legislature of each compacting state.

⁹ Section 24(c), Art. I of the State Constitution.

¹⁰ Section 119.15, F.S.

¹¹ In an informal opinion, the Florida Attorney General states that Florida's Sunshine Laws are applicable to Florida officials who transact business pursuant to an interstate compact. Op. Att'y Gen. Fla. Informal (1998) (regarding the Appalachian-Chattahoochee-Flint River Basin Compact). The compact created the "ACF Basin Commission," comprised of one representative each representing Alabama, Florida, and Georgia, and a non-voting member representing the United States. Available at <http://myfloridalegal.com> (last accessed: March 7, 2013).

- Provides for the withdrawal of compacting states, dissolution of the Compact when there are fewer than two compacting states, and winding up of the Compact's affairs.
- Provides that the terms of the Compact are severable if any provision is deemed unenforceable, and that the provisions of the Compact are to be liberally construed to effectuate its purposes.

B. SECTION DIRECTORY:

Section 1. Provides Legislative findings relating to the Interstate Insurance Product Regulation Model Compact.

Section 2. Sets forth the Interstate Insurance Product Regulation Compact.

Section 3. Provides for the adoption of uniform standards adopted under the Compact as of March 1, 2013, and establishes the state's policy to opt out of subsequently adopted standards.

Section 4. Provides that the Commission is subject to unemployment and reemployment taxes for persons who perform services for the Commission within the state, and for taxes for Commission business and other activities in Florida.

Section 5. Requires that requests for information that concern insurer trade secrets or matters of privacy be responded to in accordance with Florida law.

Section 6. Grants rulemaking authority to the Financial Services Commission.

Section 7. Provides an effective date of October 1, 2013.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The PCS potentially reduces the cost to insurers of filing and obtaining approval of products and advertising materials, since the Commission provides a clearinghouse that allows insurers to make one filing rather than separate filings in each state in which they do business.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The PCS does not appear to: require counties or municipalities to spend funds or take an action requiring the expenditure of funds; reduce the authority that counties or municipalities have to raise revenues in the aggregate; or, reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The Financial Services Commission is granted rulemaking authority to implement the Compact.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES