

**The Florida Senate**  
**BILL ANALYSIS AND FISCAL IMPACT STATEMENT**

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Governmental Oversight and Accountability

**BILL:** CS/CS/SB 242

**INTRODUCER:** Governmental Oversight and Accountability Committee, Banking and Insurance Committee and Senator Hukill

**SUBJECT:** Interstate Insurance Product Regulation Compact

**DATE:** April 9, 2013                      **REVISED:** \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Knudson</u>	<u>Burgess</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Naf</u>	<u>McVaney</u>	<u>GO</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AGG</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

**Please see Section VIII. for Additional Information:**

- |                              |                                     |   |
|------------------------------|-------------------------------------|---|
| A. COMMITTEE SUBSTITUTE..... | <input checked="" type="checkbox"/> | Statement of Substantial Changes        |
| B. AMENDMENTS.....           | <input type="checkbox"/>            | Technical amendments were recommended   |
|                              | <input type="checkbox"/>            | Amendments were recommended             |
|                              | <input type="checkbox"/>            | Significant amendments were recommended |

**I. Summary:**

CS/CS/SB 242 enacts the Interstate Insurance Product Regulation Compact (Compact). The Compact is intended to help states join together to regulate designated insurance products, specifically, the following asset-based insurance products:

- Life insurance;
- Annuities;
- Disability income insurance; and
- Long-term care insurance, though the state is prospectively opting out of all uniform standards for Long-term care insurance in the Compact.

Upon joining the Compact, Florida will become a member of the Interstate Insurance Product Regulation Commission (Commission). The primary duties of the Commission are to:

- Develop uniform standards for product lines;
- Receive and promptly review products; and
- Approve product filings that satisfy applicable uniform standards.

The bill has an effective date of October 1, 2013.

This bill creates undesignated sections of the Florida Statutes.

## II. Present Situation:

### The Interstate Insurance Product Regulation Compact

The Interstate Insurance Product Regulation Compact (Compact) is an agreement among the compacting states to uniform standards for the regulation of four insurance product lines:

- Life insurance,
- Annuities,
- Disability income, and
- Long-term care insurance.

The Compact is implemented through the Interstate Insurance Product Regulation Commission (Commission).<sup>1</sup> Each compacting state is represented by one member, who is that state's representative to the Commission. All Compact members<sup>2</sup> receive one vote under the Compact. The adoption of a uniform standard requires a two-thirds vote of Commission members. Bylaws require a majority vote of members. The Commission is governed by a 14-member management committee. The Management Committee members currently include the seven largest Compacting States according to premium volume,<sup>3</sup> four mid-sized states with at least 2 percent of the national premium volume<sup>4</sup> and one additional state from each of four regional zones<sup>5</sup>

The primary duties of the Commission are to:

- Develop uniform standards for product lines;
- Receive and promptly review products;
- Approve product filings that satisfy applicable uniform standards.

If Florida joins the Compact, any product whose product line is governed by the Compact and is submitted to the Commission, if approved, will be approved to be offered for sale in Florida<sup>6</sup> if it complies with the requirements of the Compact. The model laws and regulations of the Compact will govern and generally preempt the application of conflicting Florida law governing the

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<sup>1</sup> The Commission is a multi-state joint public entity that came into existence in March 2004 upon the legislative enactment of two states, Colorado and Utah, respectively. The Commission did not become operational for purposes of adopting uniform product standards until it May 2006, when it met the requirement set by the terms of the Compact. The Commission has 41 Member States representing approximately two-thirds of the premium volume nationwide.

<sup>2</sup> The other Compact members are Alabama, Alaska, Colorado, Georgia, Hawaii, Idaho, Indiana, Iowa, Kentucky, Louisiana, Maine, Massachusetts, Minnesota, Nebraska, Nevada, New Mexico, Oklahoma, Oregon, Puerto Rico, Rhode Island, South Carolina, Tennessee, Utah, Vermont, West Virginia and Wyoming

<sup>3</sup> Illinois, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania and Texas.

<sup>4</sup> Maryland, Missouri, Virginia, and Wisconsin

<sup>5</sup> Kansas, Mississippi, New Hampshire and Washington

<sup>6</sup> If the insurer is authorized to transact business in Florida.

product.<sup>7</sup> A state may opt out of a uniform standard via legislation or rule either at the time the state enacts the Compact or prior to the enactment of a new standard or rule approved by the Commission. Florida will opt out of Commission standards for long-term care insurance and join the Compact for life insurance, annuities, and disability income insurance under CS/CS/SB 242.

The Florida Legislature has in the past enacted laws containing greater consumer protections than are generally available in other states. For instance, in Florida, the suitability of an annuity—the appropriateness of a particular annuity product relative to the consumer’s age, investment objectives, and current and future financial needs—has been a primary concern with regard to transactions involving consumers, particularly senior consumers. In 2004, the Florida Legislature enacted a model law on annuities, the Annuity Transactions Model Regulation of the National Association of Insurance Commissioners (NAIC) in s. 627.4554, F.S.<sup>8</sup> The 2008 Legislature, however, subsequently passed the John and Patricia Seibel Act, which strengthened Florida’s annuity standards and procedures.<sup>9</sup> Those standards were further strengthened by the 2010 Legislature.<sup>10</sup>

To date, the Commission has adopted uniform standards for the following individual product lines: term and whole life insurance, variable and non-variable adjustable life insurance, variable and non-variable annuities, long-term care insurance, and disability income insurance. The Commission has also promulgated standards relating to the applications for the various individual lines of insurance, the benefit features of individual life policies, the benefit features of individual annuities, and for changes to mortality tables used for individual life insurance. Standards for group term life insurance have also been adopted. The Commission is in the process of developing uniform standards for group annuities and standards for specific benefits offered in group term life insurance policies.

## **Life Insurance**

Life insurance is insurance of human lives.<sup>11</sup> Life insurance provides survivor benefits for designated beneficiaries upon the death of the insured. The three most common types of life insurance are whole life, term life, and universal life. Whole life insurance provides a fixed amount of life insurance coverage while building cash value. The premium remains the same until the maturity date (usually age 100). Benefits are payable upon the death of the insured or on the maturity date. The cash value of the policy increases as premiums are paid and allow loans to be made on the policy for up to the amount of the cash value. Term life insurance is purchased for a specific time period and pays a death benefit only if the insured dies during the specified time period. Term insurance does not build cash value. Term life insurance policies may contain provisions allowing the insured to renew the policy after expiration of the term or convert the

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<sup>7</sup> All lawful actions of the Commission, including all uniform standards, rules, and operating procedures, are binding on compacting states. The Compact prevents the enforcement of any other law of a compacting state, except that the Commission may not abrogate or restrict the access to state courts; remedies related to breach of contract, tort, or other laws not specifically directed to the content of the product; state law relating to the construction of insurance contracts; or the authority of the state Attorney General.

<sup>8</sup> Section 146, ch. 2004-390, L.O.F.

<sup>9</sup> Section 9, ch. 2008-237, L.O.F.

<sup>10</sup> Section 52, ch. 2010-175, L.O.F.

<sup>11</sup> Section 624.602, F.S.

policy to a whole life policy. Universal life insurance is a combination of a term life policy and the ability to accumulate cash value.

### **Annuities**

An annuity is a form of life insurance transaction involving a contract between a customer and an insurer wherein the customer makes a lump sum payment or series of payments to an insurer that in return agrees to make periodic payments back to the annuitant at a future date, either for the annuitant's life or a specified period. Annuities can be obtained in either immediate or deferred form. In an immediate annuity the annuity company is typically given a lump sum payment in exchange for immediate and regular periodic payments, which may be for as long as the contract owner lives. For a deferred annuity, premiums are usually either paid in a lump sum or by a series of payments, and the annuity is subject to an *accumulation phase*, when those payments experience tax-deferred growth, followed by the *annuitization* or *payout phase*, when the annuity provides a regular stream of periodic payments to the consumer. Annuities are often used for retirement planning because they provide a guaranteed source of income for future years.

### **Disability Income Insurance**

Disability income insurance pays a weekly or monthly income for a specific period if the insured suffers a disability and cannot continue working or obtain work. The disability may involve sickness, injury, or a combination of the two. Disability policies often contain an elimination period, which is a specified time period after the date of disability that must pass before the insured may receive benefits. Most disability insurance plans coordinate benefits with Social Security benefits and workers' compensation to eliminate duplication of coverage.

### **Long-Term Care Insurance**

Long-term care insurance policies provide benefits for a broad range of supportive medical, personal and social services needed by people who are unable to meet their basic living needs for an extended period of time for services not covered by a regular health insurance, Medicare or Medicare supplement insurance policy. The need for long-term care insurance may be caused by accident, illness or frailty. Such conditions include the inability to move about, dress, bathe, eat, use a toilet, medicate and avoid incontinence. Also, care may be needed to help the disabled with household cleaning, preparing meals, shopping, paying bills, visiting the doctor, answering the phone and taking medications. Additional long-term care disabilities are due to cognitive impairment from stroke, depression, dementia, Alzheimer's disease, Parkinson's disease and other medical conditions that affect the brain.

Florida law establishes requirements for long-term care policies in the Long-Term Care Insurance Act.<sup>12</sup> The act specifies filing requirements, disclosure, advertising, and performance standards for such policies, minimum standards for home health care benefits, mandatory offers, cancellation requirements, and standards for benefit triggers for receiving benefits under the policy. The act also provides consumers grace periods for late payment and notice of cancellation.<sup>13</sup>

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<sup>12</sup> Part XVIII of chapter 627, F.S.

<sup>13</sup> Section 627.94073, F.S.

### III. Effect of Proposed Changes:

CS/CS/SB 242 enacts the Interstate Insurance Product Regulation Compact. The Compact is intended to help states join together to regulate designated insurance products, specifically, the following asset-based insurance products:

- Life insurance;
- Annuities;
- Disability income insurance; and
- Long-term care insurance, though the state is prospectively opting out of all uniform standards for Long-term care insurance in the Compact.

#### **Legislative Findings and Declaration of Intent**

**Section 1** creates an undesignated section of statute stating that Florida intends to join the Interstate Insurance Product Regulation Compact (Compact) and become a member of the Interstate Insurance Product Regulation Commission (Commission). The Legislature finds that the Compact will, through a single source for filing new products and a uniform set of product standards that provide a high level of consumer protection, address the increased mobility of the populace and significant changes in the financial services marketplace that have resulted in asset-based insurance products competing directly with other retirement and estate planning instruments sold by banks and securities firms. The Legislature also declares that it is adopting the compact under the understanding that no uniform standards long-term care insurance rate increase filings will be developed.

#### **Enactment of the Compact and Membership in the Commission**

**Section 2** makes the state a compacting state under the Compact and a member of the Commission, whose purposes are to protect consumer interests, develop uniform standards for insurance products, establish a clearinghouse to promptly review insurance products and related advertisements, give regulatory approval to product filings and advertisements that satisfy the applicable uniform standard, coordinate regulatory resources among states, create the Commission, and perform these and other related functions.

#### ***Commission Membership, Voting, and Bylaws***

Each compacting state has one member of the Commission, who is entitled to one vote. The Commission is governed by a management committee of up to 14 members consisting of:

- One member each from the four compacting states with the largest premium volume for individual and group annuities, life, disability income, and long-term care insurance products.
- One member from the four compacting states with at least 2 percent of the market described above selected on a rotating basis, other than from the six states with the largest premium volume.
- One member from four compacting states with less than 2 percent of the market described above, with one selecting from each of the four zone regions of the NAIC.

The Commission annually elects officers from the management committee and is authorized to select an executive director who serves as secretary to the Commission but may not be a Commission member.

The Compact requires the establishment of legislative and advisory committees. The legislative committee consists of state legislators and monitors and makes recommendations to the Commission. The management committee must consult with the legislative committee prior to adopting any uniform standard, change in Commission bylaws, annual budget or other significant matter. Two advisory committees must be established, one comprising independent consumer representatives and another composed of insurance industry representatives. Additional advisory committees may be established. Adoption of bylaws requires a majority vote of members.

### ***Amendments to the Compact***

Amendments to the Compact may be proposed by the Commission for enactment by the compacting states. An amendment is adopted only if unanimously enacted into law by all of the compacting states.

### **Powers of the Commission**

The bill establishes the Interstate Insurance Product Regulation Commission. The Commission may:

- Develop uniform standards for product lines;
- Receive and promptly review products;
- Approve product filings that satisfy applicable uniform standards.

### ***Uniform Standards***

The Commission has authority to adopt uniform standards by rule. A “uniform standard” is a commission standard for a product line, plus subsequent amendments that use a substantially consistent methodology. A uniform standard includes all product requirements in the aggregate. A uniform standard must be construed to prohibit the use of inconsistent, misleading, or ambiguous provisions in a product. The uniform standard must also ensure that the form of any product made available to the public is not unfair, inequitable, or against public policy as determined by the Commission. Adoption of a uniform standard requires a two-thirds vote of Commission members.

For purposes of this act, Florida is adopting all uniform standards that the Commission has adopted as of March 1, 2013, other than for long-term care insurance. The bill states that the Office of Insurance Regulation (OIR) shall opt out of any new uniform standard or amendment to a standard that substantially changes it that is adopted by the Commission after March 1, 2013. The bill directs the OIR to opt out of the uniform standard and authorizes the state Financial Services Commission to adopt rules to opt out of any new uniform standards or substantial amendments until such standards or amendments are approved by the Legislature.

### ***Commission Receipt, Review, and Approval of Products***

The Commission also has authority to receive and review products filed with the Commission and rate filings for disability income and long-term care insurance products (Florida is opting out of all uniform standards involving long-term care). Products and disability income insurance rates that satisfy the appropriate uniform standard may be approved. Commission approval has the force and effect of law and is binding on compacting states.

A product is the policy form or contract and includes any application, endorsement, or related form that is attached to and part of the policy or contract. The term also includes 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.

The Commission may designate certain products and advertisements that may self-certify compliance with uniform standards and commission rules and are not required to obtain prior approval from the Commission. The Commission may issue subpoenas requiring the testimony of witnesses and production of evidence and may also bring and prosecute legal proceedings if the standing of any state insurance department to sue or be sued is not affected. The Commission has the power to adopt rules that have the force and effect of law and are binding in the compacting states. Such rules include uniform standards for product and related advertisements that are filed with the Commission.

To obtain approval of a product, the insurer must file the Product with the Commission and pay applicable fees. Any product approved by the Commission may be sold or otherwise issued in any compacting state in which the insurer is authorized to do business. An insurer may alternatively file its product with a state insurance department, and such filing will be subject to the laws of that state.

### ***Review of Commission Decisions Regarding Filings***

A disapproved product or advertisement may be appealed to a review panel appointed by the Commission within 30 days of the Commission's determination. An allegation that the Commission disapproved a product or advertisement arbitrarily, capriciously, abused its discretion, or otherwise acted not accordance with law is subject to judicial review. Judicial proceedings must be brought in a court where the principal office of the Commission is located (Washington, DC).

### ***Rulemaking by the Commission and State Opt-Out Procedure***

The rulemaking process must conform to the Model State Administrative Procedure Act of 1981, as amended. Prior to adopting a uniform standard, the Commission must give written notice to the relevant state legislative committees in each compacting state. In adopting a uniform standard, the Commission must consider all submitted materials and issue a concise explanation of its decision. Uniform standards are effective 90 days after their adoption by the Commission. Judicial review of Commission rules (including uniform standards) or operating procedures is available but limited by the Compact. Any person may petition for judicial review, but the

petition does not stay or prevent the rule or operating procedure from becoming effective unless the court finds the petitioner has a substantial likelihood of success. The court may not find a Commission rule or operating procedure unlawful if it represents a reasonable exercise of the Commission's authority

A state may opt out of a uniform standard via legislation or rule. Florida is prospectively opting out of all uniform standards involving long-term care insurance products, as allowed by the terms of the Compact. Opting out of a uniform standard via rule requires the state to give the Commission written notice within 10 business days after the uniform standard is adopted and find that the uniform standard does not provide reasonable protections to the consumers of that state. The OIR Commissioner must make specific findings of fact and conclusions of law detailing the facts that warrant departure of the uniform standards and that those facts outweigh the Legislature's intent to join the compact and a presumption that the uniform standard provides reasonable consumer protections.

### ***Compliance Enforcement***

The Commission monitors compacting states for compliance with Commission bylaws, rules, uniform standards, and operation procedures, and provides written notice to a state that is in noncompliance.

The state insurance commissioner retains authority to oversee the market regulation of the activities of insurers in that state. An insurance product or advertisement that has been approved or certified by the Commission, however, does not violate the provisions, standards, or requirements of the Compact unless the Commission holds a hearing and issues a final order finding a violation. If an advertisement has not been approved or certified to the Commission, the state insurance commissioner may only bring an action for violating a standard of the Compact if the Commission first authorizes the action.

### ***Withdrawing From or Dissolving the Compact; State Default, Suspension and Termination***

A state may withdraw from the Compact by repealing the law that enacted the Compact. Withdrawal from the Compact does not affect product filings approved or self certified, or approved advertisements, except by mutual agreement of the Commission and the withdrawing state, unless the state formally rescinds approval in the same manner as provided by the laws of that state for disapproving products or advertisements previously approved under state law. The compact is dissolved once there is only one compact member.

The Commission may suspend a state that is determined to have defaulted in the performance of its obligations or duties under the Compact or the bylaws, rules, or operating procedures of the Compact. The Commission must notify a defaulting state in writing and provide a time period within which the state may cure the default. The state will be terminated from the Compact if the default is not timely cured. Products and advertisements approved by the Commission, or self-certified, remain in force in the same manner as though the state had withdrawn voluntarily. Reinstatement following termination requires reenacting the Compact.



***Actions of Commission are Binding on States; Conflict of Laws; Advisory Opinions***

All lawful actions of the Commission, including all rules and operating procedures, are binding on compacting states. Agreements between the Commission and compacting states are binding in accordance with their terms. The Compact prevents the enforcement of any other law of a compacting state, except that the Commission may not abrogate or restrict the access to state courts; remedies related to breach of contract, tort, or other laws not specifically directed to the content of the product; state law relating to the construction of insurance contracts; or the authority of the state Attorney General. A Compact provision is ineffective as to a state, however, if it exceeds the constitutional limits imposed on the Legislature of a state. If an insurance product is filed with an individual state, it is subject to the law of that state.

If requested by a party to a conflict over the meaning or interpretation of Commission actions and approved by a majority vote of the compacting states, the Commission may issue advisory opinions regarding the meaning or interpretation in dispute.

**Inspection of Commission Records**

The Commission must adopt rules creating conditions and procedures for the public inspection and copying of information and official records, except for records involving the privacy of individuals and insurers' trade secrets. The Commission may also adopt additional rules allowing it make available otherwise exempt records and information to federal and state agencies, including law enforcement. All public requests to inspect or copy records, data, or information of the Commission that is in the possession of the OIR, insurance commissioner, or commissioner's designee, are subject to Chapter 119, Florida Statutes.

**Commission Funding and Expenses**

The Commission covers the cost of its operations and activities through the collection of filing fees. The annual budget may not be approved until it has been subject to the required notice and comment period. The Commission is exempt from all taxation by compacting states. The Commission may not pledge the credit of any compacting state except with the legal authorization of the compacting state. Complete and accurate accounts of Commission financial records must be kept and shall be audited annually by an independent certified public accountant. At least every 3 years, the audit must include a management and performance audit of the Commission.

**Severability Clause**

The Compact provisions are severable from provisions that are deemed unenforceable.

### **Adoption of All Commission Uniform Standards; State Opt-Out of All Future Uniform Standards and All Long-Term Care Insurance Product Standards**

**Section 3.** All uniform standards of the Commission as of March 1, 2013, other than for long-term care insurance, are adopted as the law of this state. The state also prospectively opts out of all uniform standards involving long-term care insurance products.

The Office of Insurance Regulation (OIR) must, however, opt out of all new uniform standards that the Commission adopts after March 1, 2013, that substantially alter or add to existing Commission uniform standards that the state adopted pursuant to this bill until the state enacts legislation to adopt or opt out of the new uniform standards or amendments to uniform standards. The OIR must immediately notify the legislature of any new uniform standard or amendment to an existing standard.

The bill grants rulemaking authority to the Financial Services Commission to implement the compact. The rulemaking authority must be used to opt out of any new uniform standards or amendments of the commission until such standards are legislatively approved.

### **Unemployment and Reemployment Taxes**

**Section 4** imposes state unemployment and reemployment taxes under ch. 443, F.S., on any Commission employees who perform services within this state. The Commission is also subject to state taxation for any business or activity conducted or performed in the state.

### **Public Requests for Inspection and Copying of Information, Data, or Records**

**Section 5.** Specifies that notwithstanding the provisions of the Compact governing public inspection and copying of records (Article VIII, sections 1 and 2); product filing information (Article X, section 2); and documents and information related to Commission finances or internal audits (Article XII, section 6), a request by a Florida resident for public inspection and copying of information, data, or official records that include:

- Insurer trade secrets will be referred to the Commissioner of the OIR who will respond to the request in accordance with s. 624.4213, F.S.
- Matters of privacy of individuals will be referred to the Commissioner of the OIR who will respond to the request in accordance with s. 119.071, F.S.

The section also specifies that nothing in the act abrogates a person's right to access information consistent with the Constitution and laws of Florida.

### **Rulemaking**

**Section 6.** Grants rulemaking authority to the Financial Services Commission to implement the act, which may use that authority to opt out of new uniform standards adopted after October 1, 2013, until such standards are approved by the Legislature.

**Effective Date**

**Section 7.** The effective date of the act is October 1, 2013.

**IV. Constitutional Issues:****A. Municipality/County Mandates Restrictions:**

None.

**B. Public Records/Open Meetings Issues:**

None.

**C. Trust Funds Restrictions:****Non-Delegation Doctrine**

Statutory authorization to compact or enter reciprocal agreements with other states potentially implicates the “nondelegation doctrine.” Article III, Section 1 of the Florida Constitution states that “[t]he legislative power of the state shall be vested in a legislature of the State of Florida.” The Florida Supreme Court has held that this constitutional provision requires application of a “strict separation of powers doctrine...which encompasses two fundamental prohibitions’.”<sup>14</sup> No branch of Government may delegate its constitutionally assigned powers to another branch.<sup>15</sup>

The Legislature may constitutionally transfer subordinate functions to “permit administration of legislative policy by an agency with the expertise and flexibility to deal with complex and fluid conditions.”<sup>16</sup> However, the Legislature “may not delegate the power to enact a law or the right to exercise unrestricted discretion in applying the law.”<sup>17</sup> Further, the nondelegation doctrine precludes the legislature from delegating its powers “absent ascertainable minimal standards and guidelines.”<sup>18</sup> When the Legislature delegates power to another body, it “must clearly announce adequate standards to guide in the execution of the powers delegated.”<sup>19</sup>

The CS/CS attempts to comply with the nondelegation doctrine by expressing that it is state policy to prospectively opt-out of all uniform standards and new substantial amendments to such standards that are adopted by the Commission after March 1, 2013. The bill directs the Office of Insurance Regulation to opt out all such uniform standards and new substantial amendments. The Financial Services Commission must use its

<sup>14</sup> *Fla. Dep’t of State, Div. of Elections v. Martin*, 916 So.2d 763, 769 (Fla. 2005) (quoting *State v. Cotton*, 769 So.2d 345, 353 (Fla. 2000), and *Chiles*, 589 So.2d at 264).

<sup>15</sup> *Chiles*, 589 So.2d at 264.

<sup>16</sup> *Microtel v. Fla. Pub. Serv. Comm’n*, 464 So.2d 1189, 1191 (Fla.1985) (citing *State, Dep’t of Citrus v. Griffin*, 239 So.2d 577 (Fla.1970)).

<sup>17</sup> *Sims v. State*, 754 So.2d 657, 668 (Fla. 2000).

<sup>18</sup> *Dep’t of Bus. Reg., Div. of Alcoholic Beverages & Tobacco v. Jones*, 474 So.2d 359, 361 (Fla. 1st DCA 1985).

<sup>19</sup> *Martin*, 916 So.2d at 770.

rulemaking authority under the bill to opt out of uniform standards and substantial amendments until they are approved by the Legislature.

### **Inspection and Copying of Public Records**

Section VIII of the Compact requires the Commission to adopt rules establishing conditions and procedures for the inspection of its information and official records. This implicates Florida's constitutional and statutory laws which provide a broad grant of authority to the public to inspect or copy any public record.

Article I, s. 24 of the State Constitution, provides that “[e]very person has the right to inspect or copy any public record made or received in connection with the official business of any public body, officer, or employee of the state, or persons acting on their behalf, except with respect to records exempted pursuant to this section or specifically made confidential by this Constitution. This section specifically includes the legislative, executive, and judicial branches of government and each agency or department created thereunder; counties, municipalities, and districts; and each constitutional officer, board, and commission, or entity created pursuant to law or this Constitution.”

In addition to the State Constitution, the Public Records Act, which pre-dates the public records provision of the State Constitution, specifies conditions under which public access must be provided to records of an agency. Section 119.07(1)(a), F.S., states that, “[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public record.” Unless specifically exempted, all agency records are available for public inspection. The term “public record” is broadly defined to mean, “all documents, papers, letters, maps, books, tapes, photographs, films, sound recordings, data processing software, or other material, regardless of the physical form, characteristics, or means of transmission, made or received pursuant to law or ordinance or in connection with the transaction of official business by any agency.”

Only the Legislature is authorized to create exemptions to open government requirements. Exemptions must be created by general law and such law must specifically state the public necessity justifying the exemption. Further, the exemption must be no broader than necessary to accomplish the stated purpose of the law. A bill enacting an exemption may not contain other substantive provisions, although it may contain multiple exemptions that relate to one subject.

The Compact specifies that the Commission rules must allow for the public inspection and copying of its information and official records, except information and records involving the privacy of individuals and trade secrets. Under the CS/CS, a request for public inspection and copying information involving individual privacy will be referred to the state insurance commissioner who will handle it in accordance with s. 119.071, F.S. Similarly, a request for public inspection and copying of potential insurer trade secret information will be referred to the state insurance commissioner who will handle it in accordance with s. 624.4213, F.S.

**V. Fiscal Impact Statement:****A. Tax/Fee Issues:**

Representatives from the Florida Department of Revenue state that, “[e]ven though Article XII of the Compact exempts the Commission from all taxation, if the Commission employs persons who work in Florida, it will be subject to the labor laws of Florida in ch. 443, F.S. Federal law (26 U.S.C. 3309) requires states to make nonprofit entities and governmental entities liable for reemployment tax. Certain employers are allowed to elect to reimburse Florida for reemployment benefits (not a tax) paid to any of its employees instead of paying the Florida reemployment tax. The Commission, as a non-profit entity, would be permitted to elect to be a reimbursing employer in Florida. If the Commission does not make such election for any Florida employees, the Commission would be required to pay the reemployment tax.”

The CS/CS specifies that the Commission is subject to state unemployment or reemployment taxes imposed pursuant to ch. 443, F.S., in compliance with the Federal Unemployment Tax Act, for any persons employed by the Commission who perform services for it within the state. The bill also specifies that the Commission is subject to taxation for any commission business or activity conducted or performed in Florida.

**B. Private Sector Impact:**

Representatives from the Office of Insurance Regulation indicate that the state’s membership in the Compact could potentially reduce the cost of filing and obtaining approval of asset-based insurance products.

**C. Government Sector Impact:**

If Florida becomes a member of the Compact, the Office of Insurance Regulation may experience a reduction in its workload for those functions now performed by the Commission. That reduction in workload could result in decreased appropriation needs for the Office. Representatives from the OIR indicate that the office will not incur a fiscal impact if Florida adopts the Compact.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:****Other Comments: Department of Financial Services**

The Department of Financial Services states that certain compact provisions relating to annuity investments by seniors, such as s. 2, Art. 8 of the compact, provide less protection than do the provisions currently found in s. 627.4554, F.S. For example, the DFS states that the compact

provisions do not limit surrender/withdrawal charges to 10% or charge period duration to 10 years for purchasers age 65 or older, as is currently required by state law.<sup>20</sup>

It is unclear whether such compact provisions comply with state law. If not, such compact provisions, to the extent they are in conflict with state law, would supersede the relevant state provisions. Adoption of the compact provisions relating to annuity investments by seniors appears to be required for participation in the compact.

### **Other Comments: Drafting**

Lines 113-116 of the bill require public records requests that include matters of privacy of individuals to be handled in accordance with s. 119.071, F.S., which provides general agency public records exemptions. It is suggested that the reference be amended to instead refer to s. 119.07(1), F.S., which governs compliance with a public records request. Although s. 119.071, F.S., includes general public records exemptions relating to certain agency personnel, specifying that provision could be interpreted to exclude other, more specific applicable public records exemptions.

## **VIII. Additional Information:**

### **A. Committee Substitute – Statement of Substantial Changes:** (Summarizing differences between the Committee Substitute and the prior version of the bill.)

#### **CS/CS by Governmental Oversight and Accountability on April 9, 2013:**

The CS/CS amends a requirement that certain public records requests be handled in accordance with s. 119.071, F.S., to instead require such requests to be handled in accordance with s. 119.07(1), F.S.

#### **CS by Banking and Insurance on April 2, 2013:**

The CS adds the following provisions to the bill:

- Standards clarifying the extent of immunity from liability granted to the Commission executive director, members, officers, employees, and representatives.
- Specifies that the OIR must opt-out of all uniform standards and amendments to such standards adopted by the Commission after March 1, 2013, and that the Financial Services Commission must adopt rules making the opt-out effective until the Legislature approves the new uniform standard or amendment.
- Specifies that the Compact may not violate provisions of the state Constitution and law relating to public inspection and copying of documents and information and requires the insurance commissioner to handle such requests related to matters of privacy of individuals and insurer trade secrets.
- Specifies that the Commission is subject to state unemployment taxes, state reemployment taxes, and taxation for business or activity conducted or performed in Florida.

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<sup>20</sup> *SB 242 Bill Analysis*, Department of Financial Services, March 21, 2013 (on file with the Governmental Oversight and Accountability Committee).

B. Amendments:

None.

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This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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