

26 | adjuster contracts without fee or penalty in certain
27 | circumstances; amending s. 626.860, F.S.; limiting the
28 | application of an exemption of regulation for
29 | attorneys in the negotiation of insurance claims;
30 | amending s. 626.865, F.S.; providing an additional
31 | requirement for a public adjuster's license; requiring
32 | public adjusters to have a specified minimum amount of
33 | errors and omissions insurance; amending s. 626.875,
34 | F.S.; requiring the posting of public adjuster
35 | licenses in principal places of business; requiring
36 | such licensees to have a specified license in his or
37 | her possession at certain times; providing additional
38 | recordkeeping requirements for adjusters; creating s.
39 | 626.8751, F.S.; providing requirements for payment of
40 | claims settled by public adjusters; amending s.
41 | 626.8796, F.S.; providing requirements for public
42 | adjuster contracts; authorizing recession of the
43 | contract by the insured in certain circumstances;
44 | requiring specified disclosures by a public adjuster;
45 | authorizing rulemaking; amending s. 626.8797, F.S.;
46 | providing additional requirements for proof of loss
47 | statements; amending s. 626.9541, F.S.; specifying
48 | additional conduct that constitutes unfair methods of
49 | competition and unfair or deceptive acts or practices;
50 | amending s. 627.4025, F.S.; revising provisions

51 relating to hurricane deductibles; amending s.
 52 627.4133, F.S.; reducing the period in which an
 53 insurer may cancel a property insurance policy in
 54 certain circumstances; amending s. 627.4554, F.S.;
 55 providing and revising definitions; revising the
 56 duties of insurers and agents concerning the sale of
 57 annuities; requiring insurers to maintain certain
 58 procedures; providing training and education
 59 requirements for agents; amending s. 634.041, F.S.;
 60 providing additional requirements for a service
 61 agreement policy; providing a directive to the
 62 Division of Law Revision; providing an effective date.

63

64 Be It Enacted by the Legislature of the State of Florida:

65

66 Section 1. Subsections (35) through (38) of section
 67 494.001, Florida Statutes, are renumbered as subsections (36)
 68 through (39), respectively, subsection (3) is amended, and a new
 69 subsection (35) is added to that section, to read:

70 494.001 Definitions.—As used in this chapter, the term:

71 (3) "Branch office" means a location, other than a
 72 mortgage broker's or mortgage lender's principal place of
 73 business: or a remote location

74 (a) The address of which appears on business cards,
 75 stationery, or advertising used by the licensee in connection

76 | with business conducted under this chapter;

77 | (b) At which the licensee's name, advertising or
78 | promotional materials, or signage suggests that mortgage loans
79 | are originated, negotiated, funded, or serviced; or

80 | (c) At which mortgage loans are originated, negotiated,
81 | funded, or serviced by a licensee.

82 | (35) "Remote location" means a location, other than a
83 | principal place of business or a branch office, at which a loan
84 | originator of a licensee may conduct business. Licensees may
85 | allow loan originators to work from a remote location if:

86 | (a) The licensee has written policies and procedures for
87 | supervision of loan originators working from a remote location.

88 | (b) Access to company platforms and customer information
89 | is in accordance with the licensee's comprehensive written
90 | information security plan.

91 | (c) An in-person customer interaction does not occur at a
92 | loan originator's residence, unless such residence is a licensed
93 | location.

94 | (d) Physical records are not maintained at a remote
95 | location.

96 | (e) Customer interactions and conversations about
97 | consumers will be in compliance with federal and state
98 | information security requirements, including applicable
99 | provisions under the Gramm-Leach-Bliley Act and the Safeguards
100 | Rule established by the Federal Trade Commission, set forth at

101 16 CFR Part 314, as such requirements may be amended from time
102 to time.

103 (f) Loan originators working at a remote location access
104 the company's secure systems, including a cloud-based system,
105 directly from any out-of-office device such employee uses,
106 including a laptop, telephones desktop computer, and tablet, via
107 a virtual private network (VPN) or comparable system that
108 ensures secure connectivity and requires passwords or other
109 forms of authentication to access.

110 (g) Licensee ensures that appropriate security updates,
111 patches, or other alterations to the security of all devices
112 used at remote locations are installed and maintained.

113 (h) Licensee has an ability to remotely lock or erase
114 company-related contents of any device or otherwise remotely
115 limit all access to a company's secure systems.

116 (i) The Nationwide Multistate Licensing System and
117 Registry's record of a loan originator who works from a remote
118 location designates the principal place of business as the loan
119 originator's registered location or the loan originator has
120 elected a licensed branch office as a registered location.

121 Section 2. Subsection (1) of section 494.0067, Florida
122 Statutes, is amended to read:

123 494.0067 Requirements of mortgage lenders.—

124 (1) A mortgage lender that makes mortgage loans on real
125 estate in this state shall transact business from a principal

126 | place of business, branch office, or remote location. Each
 127 | principal place of business, ~~and~~ each branch office, and remote
 128 | location shall be operated under the full charge, control, and
 129 | supervision of the licensee pursuant to this part.

130 | Section 3. Section 501.2042, Florida Statutes, is created
 131 | to read:

132 | 501.2042 Unlawful acts and practices by online crowd-
 133 | funding campaigns.-

134 | (1) As used in this section, the term:

135 | (a) "Crowd-funding campaign" means an online fundraising
 136 | initiative that is intended to receive monetary donations from
 137 | donors and is created by an organizer in the interest of a
 138 | beneficiary.

139 | (b) "Crowd-funding platform" means an entity doing
 140 | business in this state and that provides an online medium for
 141 | the creation and facilitation of a crowd-funding campaign.

142 | (c) "Disaster" means any natural, technological, or civil
 143 | emergency that occurs in this state and that causes damage of
 144 | sufficient severity and magnitude to result in a declaration of
 145 | a state of emergency by a county, the Governor, or the President
 146 | of the United States.

147 | (d) "Organizer" means a person who:

148 | 1. Resides or is domiciled in this state.

149 | 2. Has an account on a crowd-funding platform and has
 150 | created a crowd-funding campaign either as a beneficiary or on

151 behalf of a beneficiary, regardless of whether the beneficiary
152 or the crowd-funding campaign has received donations.

153 (2) When an organizer arranges a crowd-funding campaign
154 related to a disaster, the organizer must produce to the crowd-
155 funding platform a complete and accurate accounting of all
156 donations received and expended by the crowd-funding campaign.
157 The crowd-funding platform must publish all received accountings
158 on its website.

159 Section 4. Section 520.23, Florida Statutes, is amended to
160 read:

161 520.23 Disclosures required.—Each agreement governing the
162 sale or lease of a distributed energy generation system shall,
163 at a minimum, include a written statement printed in at least
164 12-point type that is separate from the agreement, is separately
165 acknowledged by the buyer or lessee, and includes the following
166 information and disclosures, if applicable:

167 (1) The name, address, telephone number, and e-mail
168 address of the buyer or lessee.

169 (2) The name, address, telephone number, e-mail address,
170 and valid state contractor license number of the person
171 responsible for installing the distributed energy generation
172 system.

173 (3) The name, address, telephone number, e-mail address,
174 and valid state contractor license number of the distributed
175 energy generation system maintenance provider, if different from

176 the person responsible for installing the distributed energy
177 generation system.

178 (4) The customer contact center phone number for the
179 Department of Business and Professional Regulation.

180 (5)-(4) A written statement indicating whether the
181 distributed energy generation system is being purchased or
182 leased.

183 (a) If the distributed energy generation system will be
184 leased, the written statement must include a disclosure in
185 substantially the following form: "You are entering into an
186 agreement to lease a distributed energy generation system. You
187 will lease (not own) the system installed on your property."

188 (b) If the distributed energy generation system will be
189 purchased, the written statement must include a disclosure in
190 substantially the following form: "You are entering into an
191 agreement to purchase a distributed energy generation system.
192 You will own (not lease) the system installed on your property."

193 (6)-(5) The total cost to be paid by the buyer or lessee,
194 including any interest, installation fees, document preparation
195 fees, service fees, or other fees.

196 (7)-(6) A payment schedule, including any amounts owed at
197 contract signing, at the commencement of installation, at the
198 completion of installation, and any final payments. If the
199 distributed energy generation system is being leased, the
200 written statement must include the frequency and amount of each

201 payment due under the lease and the total estimated lease
202 payments over the term of the lease.

203 (8)~~(7)~~ Each state or federal tax incentive or rebate, if
204 any, relied upon by the seller in determining the price of the
205 distributed energy generation system.

206 (9)~~(8)~~ A description of the assumptions used to calculate
207 any savings estimates provided to the buyer or lessee, and if
208 such estimates are provided, a statement in substantially the
209 following form: "It is important to understand that future
210 electric utility rates are estimates only. Your future electric
211 utility rates may vary."

212 (10)~~(9)~~ A description of any one-time or recurring fees,
213 including, but not limited to, estimated system removal fees,
214 maintenance fees, Internet connection fees, and automated
215 clearinghouse fees. If late fees may apply, the description must
216 describe the circumstances triggering such late fees.

217 (11)~~(10)~~ A statement notifying the buyer whether the
218 distributed energy generation system is being financed and, if
219 so, a statement in substantially the following form: "If your
220 system is financed, carefully read any agreements and/or
221 disclosure forms provided by your lender. This statement does
222 not contain the terms of your financing agreement. If you have
223 any questions about your financing agreement, contact your
224 finance provider before signing a contract."

225 (12)~~(11)~~ A statement notifying the buyer whether the

226 seller is assisting in arranging financing of the distributed
227 energy generation system and, if so, a statement in
228 substantially the following form: "If your system is financed,
229 carefully read any agreements and/or disclosure forms provided
230 by your lender. This statement does not contain the terms of
231 your financing agreement. If you have any questions about your
232 financing agreement, contact your finance provider before
233 signing a contract."

234 (13)~~(12)~~ A provision notifying the buyer or lessee of the
235 right to rescind the agreement for a period of at least 3
236 business days after the agreement is signed. This subsection
237 does not apply to a contract to sell or lease a distributed
238 energy generation system in a solar community in which the
239 entire community has been marketed as a solar community and all
240 of the homes in the community are intended to have a distributed
241 energy generation system, or a solar community in which the
242 developer has incorporated solar technology for purposes of
243 meeting the Florida Building Code in s. 553.73.

244 (14)~~(13)~~ A description of the distributed energy
245 generation system design assumptions, including the make and
246 model of the major components, system size, estimated first-year
247 energy production, and estimated annual energy production
248 decreases, including the overall percentage degradation over the
249 estimated life of the distributed energy generation system, and
250 the status of utility compensation for excess energy generated

251 by the system at the time of contract signing. A seller who
252 provides a warranty or guarantee of the energy production output
253 of the distributed energy generation system may provide a
254 description of such warranty or guarantee in lieu of a
255 description of the system design and components.

256 (15)~~(14)~~ A description of any performance or production
257 guarantees.

258 (16)~~(15)~~ A description of the ownership and
259 transferability of any tax credits, rebates, incentives, or
260 renewable energy certificates associated with the distributed
261 energy generation system, including a disclosure as to whether
262 the seller will assign or sell any associated renewable energy
263 certificates to a third party.

264 (17)~~(16)~~ A statement in substantially the following form:
265 "You are responsible for property taxes on property you own.
266 Consult a tax professional to understand any tax liability or
267 eligibility for any tax credits that may result from the
268 purchase of your distributed energy generation system."

269 (18)~~(17)~~ The approximate start and completion dates for
270 the installation of the distributed energy generation system.

271 (19)~~(18)~~ A disclosure as to whether maintenance and
272 repairs of the distributed energy generation system are included
273 in the purchase price.

274 (20)~~(19)~~ A disclosure as to whether any warranty or
275 maintenance obligations related to the distributed energy

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276 generation system may be sold or transferred by the seller to a
277 third party and, if so, a statement in substantially the
278 following form: "Your contract may be assigned, sold, or
279 transferred without your consent to a third party who will be
280 bound to all the terms of the contract. If a transfer occurs,
281 you will be notified if this will change the address or phone
282 number to use for system maintenance or repair requests."

283 (21)~~(20)~~ If the distributed energy generation system will
284 be purchased, a disclosure notifying the buyer of the
285 requirements for interconnecting the system to the utility
286 system.

287 (22)~~(21)~~ A disclosure notifying the buyer or lessee of the
288 party responsible for obtaining interconnection approval.

289 (23)~~(22)~~ A description of any roof warranties.

290 (24) A statement in substantially the following form: "You
291 should consider the age and remaining life of your roof prior to
292 installing a distributed energy generation system. Replacement
293 of your roof may require re-installment of the distributed
294 energy generation system."

295 (25)~~(23)~~ A disclosure notifying the lessee whether the
296 seller will insure a leased distributed energy generation system
297 against damage or loss and, if applicable, the circumstances
298 under which the seller will not insure the system against damage
299 or loss.

300 (26)~~(24)~~ A statement,~~if applicable,~~ in substantially the

301 following form: "You are responsible for obtaining insurance
302 policies or coverage for any loss of or damage to the system.
303 Consult an insurance professional to understand how to protect
304 against the risk of loss or damage to the system."

305 (27) A statement in substantially the following form:
306 "Placing a distributed energy generation system on your roof may
307 impact your future insurance premiums. You are responsible for
308 contacting your insurance carrier, prior to entering into a
309 purchase or lease agreement, to confirm whether your current
310 policy or coverage will need to be modified upon installing the
311 distributed energy generation system onto your dwelling."

312 ~~(28)-(25)~~ A disclosure notifying the buyer or lessee
313 whether the seller or lessor will place a lien on the buyer's or
314 lessee's home or other property as a result of entering into a
315 purchase or lease agreement for the distributed energy
316 generation system.

317 ~~(29)-(26)~~ A disclosure notifying the buyer or lessee
318 whether the seller or lessor will file a fixture filing or a
319 State of Florida Uniform Commercial Code Financing Statement
320 Form (UCC-1) on the distributed energy generation system.

321 ~~(30)-(27)~~ A disclosure identifying whether the agreement
322 contains any restrictions on the buyer's or lessee's ability to
323 modify or transfer ownership of a distributed energy generation
324 system, including whether any modification or transfer is
325 subject to review or approval by a third party.

326 ~~(31)-(28)~~ A disclosure as to whether the lease agreement
 327 may be transferred to a purchaser upon sale of the home or real
 328 property to which the system is affixed, and any conditions for
 329 such transfer.

330 ~~(32)-(29)~~ A blank section that allows the seller to provide
 331 additional relevant disclosures or explain disclosures made
 332 elsewhere in the disclosure form.

333
 334 The requirement to provide a written statement under this
 335 section may be satisfied by the electronic delivery of a
 336 document within 24 hours of execution of the written statement
 337 containing the required statement if the intended recipient of
 338 the electronic document affirmatively acknowledges its receipt.
 339 An electronic document satisfies the font and other formatting
 340 standards required for the written statement if the format and
 341 the relative size of characters of the electronic document are
 342 reasonably similar to those required in the written document or
 343 if the information is otherwise displayed in a reasonably
 344 conspicuous manner.

345 Section 5. Section 626.551, Florida Statutes, is amended
 346 to read:

347 626.551 Notice of change of address, name.—A licensee must
 348 notify the department, in writing, within 5 ~~30~~ days after a
 349 change of name, residence address, principal business street
 350 address, mailing address, contact telephone numbers, including a

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351 business telephone number, or e-mail address. A licensee who has
352 moved his or her principal place of residence and principal
353 place of business from this state shall have his or her license
354 and all appointments immediately terminated by the department.
355 Failure to notify the department within the required time shall
356 result in a fine not to exceed \$250 for the first offense and a
357 fine of at least \$500 or suspension or revocation of the license
358 pursuant to s. 626.611, s. 626.6115, s. 626.621, or s. 626.6215
359 for a subsequent offense. The department may adopt rules to
360 administer and enforce this section.

361 Section 6. Section 626.602, Florida Statutes, is amended
362 to read:

363 626.602 Insurance agency and adjusting firm names;
364 disapproval.—The department may disapprove the use of any true
365 or fictitious name, other than the bona fide natural name of an
366 individual, by any insurance agency or adjusting firm on any of
367 the following grounds:

368 (1) The name interferes with or is too similar to a name
369 already filed and in use by another agency, or adjusting firm,
370 or insurer.

371 (2) The use of the name may mislead the public in any
372 respect.

373 (3) The name states or implies that the agency or
374 adjusting firm is an insurer, motor club, hospital service plan,
375 state or federal agency, charitable organization, or entity that

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376 primarily provides advice and counsel rather than sells or
377 solicits insurance, settles claims, or is entitled to engage in
378 insurance activities not permitted under licenses held or
379 applied for. This provision does not prohibit the use of the
380 word "state" or "states" in the name of the agency. The use of
381 the word "state" or "states" in the name of an agency or
382 adjusting firm does not in and of itself imply that the agency
383 or adjusting firm is a state agency.

384 (4) (a) The name contains the word "Medicare" or
385 "Medicaid."

386 (b) An insurance agency whose name contains the word
387 "Medicare" or "Medicaid" but which is licensed as of July 1,
388 2021, may continue to use that name until June 30, 2023,
389 provided that the agency's license remains valid. If the
390 agency's license expires or is suspended or revoked, the agency
391 may not be relicensed using that name. Licenses for agencies
392 with names containing either of these words automatically expire
393 on July 1, 2023, unless these words are removed from the name.
394 This paragraph is repealed July 1, 2023.

395 Section 7. Section 626.854, Florida Statutes, is amended
396 to read:

397 626.854 "Public adjuster" defined; prohibitions.—The
398 Legislature finds that it is necessary for the protection of the
399 public to regulate public insurance adjusters and to prevent the
400 unauthorized practice of law.

401 (1) A "public adjuster" is any person, except a duly
402 licensed attorney at law as exempted under s. 626.860, who, for
403 money, commission, or any other thing of value, directly or
404 indirectly prepares, completes, or files an insurance claim for
405 an insured or third-party claimant, regardless of how that
406 person describes or presents his or her services, or who, for
407 money, commission, or any other thing of value, acts on behalf
408 of, or aids an insured or third-party claimant in negotiating
409 for or effecting the settlement of a claim or claims for loss or
410 damage covered by an insurance contract, regardless of how that
411 person describes or presents his or her services, or who
412 advertises for employment as an adjuster of such claims. The
413 term also includes any person who, for money, commission, or any
414 other thing of value, directly or indirectly solicits,
415 investigates, or adjusts such claims on behalf of a public
416 adjuster, an insured, or a third-party claimant. The term does
417 not include a person who photographs or inventories damaged
418 personal property or business personal property or a person
419 performing duties under another professional license, if such
420 person does not otherwise solicit, adjust, investigate, or
421 negotiate for or attempt to effect the settlement of a claim.

422 (2) This definition does not apply to:

423 (a) A licensed health care provider or employee thereof
424 who prepares or files a health insurance claim form on behalf of
425 a patient.

426 (b) A licensed health insurance agent who assists an
427 insured with coverage questions, medical procedure coding
428 issues, balance billing issues, understanding the claims filing
429 process, or filing a claim, as such assistance relates to
430 coverage under a health insurance policy.

431 (c) A person who files a health claim on behalf of another
432 and does so without compensation.

433 (3) A public adjuster may not give legal advice or act on
434 behalf of or aid any person in negotiating or settling a claim
435 relating to bodily injury, death, or noneconomic damages.

436 (4) For purposes of this section, the term "insured"
437 includes only the policyholder and any beneficiaries named or
438 similarly identified in the policy.

439 (5) A public adjuster may not directly or indirectly
440 through any other person or entity solicit an insured or
441 claimant by any means except on Monday through Saturday of each
442 week and only between the hours of 8 a.m. and 8 p.m. on those
443 days.

444 (6) (a) When entering a contract for adjuster services
445 after July 1, 2023, a public adjuster is prohibited from
446 contracting with anyone other than the named insured unless the
447 named insured provides written consent, subsequent to entering a
448 contract for public adjusting services.

449 (b) In the event a public adjuster contracts with a third
450 party in settling the named insured's claim, without first

451 obtaining the insured's written consent, payment of the third
 452 party's fees shall be made from the public adjuster's fee.

453 (7)-(6) An insured or claimant may cancel a public
 454 adjuster's contract to adjust a claim without penalty or
 455 obligation within 10 days after the date on which the contract
 456 is executed. If the contract was entered into based on events
 457 that are the subject of a declaration of a state of emergency by
 458 the Governor, an insured or claimant may cancel the public
 459 adjuster's contract to adjust a claim without penalty or
 460 obligation within 30 days after the date on which the contract
 461 is executed. The public adjuster's contract must contain the
 462 following language in minimum 18-point bold type immediately
 463 before the space reserved in the contract for the signature of
 464 the insured or claimant: "You, the insured, may cancel this
 465 contract for any reason without penalty or obligation to you
 466 within 10 days after the date of this contract. If this contract
 467 was entered into based on events that are the subject of a
 468 declaration of a state of emergency by the Governor, you may
 469 cancel this contract for any reason without penalty or
 470 obligation to you within 30 days after the date of this
 471 contract. You may also cancel the contract without penalty or
 472 obligation to you if I, as your public adjuster, fail to provide
 473 you and your insurer a copy of a written estimate within 45 days
 474 of the execution of the contract in accordance with s.
 475 626.854(15)(b), Florida Statutes." The ~~by providing~~ notice of

476 | cancellation shall be provided to ...(name of public
 477 | adjuster)..., submitted in writing and sent by certified mail,
 478 | return receipt requested, or other form of mailing that provides
 479 | proof thereof, at the address specified in the contract.

480 | ~~(8)-(7)~~ It is an unfair and deceptive insurance trade
 481 | practice pursuant to s. 626.9541 for a public adjuster or any
 482 | other person to circulate or disseminate any advertisement,
 483 | announcement, or statement containing any assertion,
 484 | representation, or statement with respect to the business of
 485 | insurance which is untrue, deceptive, or misleading.

486 | (a) The following statements, made in any public
 487 | adjuster's advertisement or solicitation, are considered
 488 | deceptive or misleading:

489 | 1. A statement or representation that invites an insured
 490 | policyholder to submit a claim when the policyholder does not
 491 | have covered damage to insured property.

492 | 2. A statement or representation that invites an insured
 493 | policyholder to submit a claim by offering monetary or other
 494 | valuable inducement.

495 | 3. A statement or representation that invites an insured
 496 | policyholder to submit a claim by stating that there is "no
 497 | risk" to the policyholder by submitting such claim.

498 | 4. A statement or representation, or use of a logo or
 499 | shield, that implies or could mistakenly be construed to imply
 500 | that the solicitation was issued or distributed by a

501 governmental agency or is sanctioned or endorsed by a
 502 governmental agency.

503 (b) For purposes of this paragraph, the term "written
 504 advertisement" includes only newspapers, magazines, flyers, and
 505 bulk mailers. The following disclaimer, which is not required to
 506 be printed on standard size business cards, must be added in
 507 bold print and capital letters in typeface no smaller than the
 508 typeface of the body of the text to all written advertisements
 509 by a public adjuster:

510 "THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD A
 511 CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU ARE
 512 SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU MAY
 513 DISREGARD THIS ADVERTISEMENT."

514 (9)~~(8)~~ A public adjuster, a public adjuster apprentice, or
 515 any person or entity acting on behalf of a public adjuster or
 516 public adjuster apprentice may not give or offer to give a
 517 monetary loan or advance to a client or prospective client.

518 (10)~~(9)~~ A public adjuster, public adjuster apprentice, or
 519 any individual or entity acting on behalf of a public adjuster
 520 or public adjuster apprentice may not give or offer to give,
 521 directly or indirectly, any article of merchandise having a
 522 value in excess of \$25 to any individual for the purpose of
 523 advertising or as an inducement to entering into a contract with
 524 a public adjuster.

525 (11) If the insurer, not later than 14 days after the date

526 on which the loss is reported to the insurer, either pays or
527 commits in writing to pay to the insured the policy limit of the
528 insurance policy, the public adjuster shall:

529 (a) Inform the insured that, due to the insurer's payment
530 or commitment to pay the policy limit, the loss recovery amount
531 might not be increased by the insurer.

532 (b) Not receive a commission consisting of a percentage of
533 the total amount paid by an insurer to resolve the claim.

534 (c) Be entitled only to reasonable compensation from the
535 insured for the time spent and expenses incurred on the claim by
536 the public adjuster, until the claim is paid or the insured
537 receives a written commitment to pay from the insurer.

538 (12) If the public adjuster enters into a contract with an
539 insured or claimant after the insured or claimant unsuccessfully
540 negotiates an insurance claim payment and the public adjuster is
541 successful in obtaining a higher insurance claim payment, the
542 public adjuster shall receive a commission consisting of 10
543 percent of the difference between the initial insurance claim
544 payment offer made to the insured and the final insurance claim
545 payment obtained through the work of the public adjuster after
546 entering into the contract with the insured or claimant.

547 (13)-(10)-(a) If a public adjuster enters into a contract
548 with an insured or claimant to reopen a claim or file a
549 supplemental claim that seeks additional payments for a claim
550 that has been previously paid in part or in full or settled by

551 the insurer, the public adjuster may not charge, agree to, or
552 accept from any source compensation, payment, commission, fee,
553 or any other thing of value based on a previous settlement or
554 previous claim payments by the insurer for the same cause of
555 loss. The charge, compensation, payment, commission, fee, or any
556 other thing of value must be based only on the claim payments or
557 settlements paid to the insured, exclusive of attorney fees and
558 costs, obtained through the work of the public adjuster after
559 entering into the contract with the insured or claimant.
560 Compensation for the reopened or supplemental claim may not
561 exceed 20 percent of the reopened or supplemental claim payment.
562 In no event shall the contracts described in this paragraph
563 exceed the limitations in paragraph (b).

564 (b) A public adjuster may not charge, agree to, or accept
565 from any source compensation, payment, commission, fee, or any
566 other thing of value in excess of:

567 1. Ten percent of the amount of insurance claim payments
568 or settlements, exclusive of attorney fees and costs, paid to
569 the insured by the insurer for claims based on events that are
570 the subject of a declaration of a state of emergency by the
571 Governor. This provision applies to claims made during the year
572 after the declaration of emergency. After that year, the
573 limitations in subparagraph 2. apply.

574 2. Twenty percent of the amount of insurance claim
575 payments or settlements, exclusive of attorney fees and costs,

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576 | paid to the insured by the insurer for claims that are not based
577 | on events that are the subject of a declaration of a state of
578 | emergency by the Governor.

579 | (c) Insurance claim payments made by the insurer do not
580 | include policy deductibles, and public adjuster compensation may
581 | not be based on the deductible portion of a claim.

582 | (d) Public adjuster compensation may not be based on
583 | amounts attributable to additional living expenses, unless such
584 | compensation is affirmatively agreed to in a separate agreement
585 | that includes a disclosure in substantially the following form:
586 | "I agree to retain and compensate the public adjuster for
587 | adjusting my additional living expenses and securing payment
588 | from my insurer for amounts attributable to additional living
589 | expenses payable under the policy issued on my (home/mobile
590 | home/condominium unit)."

591 | (e) Public adjuster rate of compensation may not be
592 | increased based solely on the fact that the claim is litigated.

593 | (f) Any maneuver, shift, or device through which the
594 | limits on compensation set forth in this subsection are exceeded
595 | is a violation of this chapter punishable as provided under s.
596 | 626.8698.

597 | (14) (a) ~~(11)~~ Each public adjuster must provide to the
598 | claimant or insured a written estimate of the loss to assist in
599 | the submission of a proof of loss or any other claim for payment
600 | of insurance proceeds within 60 days after the date of the

601 contract. The written estimate must include an itemized, per-
602 unit estimate of the repairs, including itemized information on
603 equipment, materials, labor, and supplies, in accordance with
604 accepted industry standards. The public adjuster shall retain
605 such written estimate for at least 5 years and shall make the
606 estimate available to the claimant or insured, the insurer, and
607 the department upon request.

608 (b) An insured may cancel the contract with no additional
609 penalties or fees charged by the public adjuster if such an
610 estimate is not provided within 45 days, subject to the
611 cancellation notice requirement in this section.

612 ~~(15)-(12)~~ A public adjuster, public adjuster apprentice, or
613 any person acting on behalf of a public adjuster or apprentice
614 may not accept referrals of business from any person with whom
615 the public adjuster conducts business if there is any form or
616 manner of agreement to compensate the person, directly or
617 indirectly, for referring business to the public adjuster. A
618 public adjuster may not compensate any person, except for
619 another public adjuster, directly or indirectly, for the
620 principal purpose of referring business to the public adjuster.

621 ~~(16)-(13)~~ A company employee adjuster, independent
622 adjuster, attorney, investigator, or other persons acting on
623 behalf of an insurer that needs access to an insured or claimant
624 or to the insured property that is the subject of a claim must
625 provide at least 48 hours' notice to the insured or claimant,

626 public adjuster, or legal representative before scheduling a
627 meeting with the claimant or an onsite inspection of the insured
628 property. The insured or claimant may deny access to the
629 property if the notice has not been provided. The insured or
630 claimant may waive the 48-hour notice.

631 (17)~~(14)~~ The public adjuster must ensure that prompt
632 notice is given of the claim to the insurer, the public
633 adjuster's contract is provided to the insurer, the property is
634 available for inspection of the loss or damage by the insurer,
635 and the insurer is given an opportunity to interview the insured
636 directly about the loss and claim. The insurer must be allowed
637 to obtain necessary information to investigate and respond to
638 the claim.

639 (a) The insurer may not exclude the public adjuster from
640 its in-person meetings with the insured. The insurer shall meet
641 or communicate with the public adjuster in an effort to reach
642 agreement as to the scope of the covered loss under the
643 insurance policy. The public adjuster shall meet or communicate
644 with the insurer in an effort to reach agreement as to the scope
645 of the covered loss under the insurance policy. This section
646 does not impair the terms and conditions of the insurance policy
647 in effect at the time the claim is filed.

648 (b) A public adjuster may not restrict or prevent an
649 insurer, company employee adjuster, independent adjuster,
650 attorney, investigator, or other person acting on behalf of the

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651 insurer from having reasonable access at reasonable times to any
652 insured or claimant or to the insured property that is the
653 subject of a claim.

654 (c) A public adjuster may not act or fail to reasonably
655 act in any manner that obstructs or prevents an insurer or
656 insurer's adjuster from timely conducting an inspection of any
657 part of the insured property for which there is a claim for loss
658 or damage. The public adjuster representing the insureds may be
659 present for the insurer's inspection, but if the unavailability
660 of the public adjuster otherwise delays the insurer's timely
661 inspection of the property, the public adjuster or the insureds
662 must allow the insurer to have access to the property without
663 the participation or presence of the public adjuster or insureds
664 in order to facilitate the insurer's prompt inspection of the
665 loss or damage.

666 (18)~~(15)~~ A licensed contractor under part I of chapter
667 489, or a subcontractor of such licensee, may not advertise,
668 solicit, offer to handle, handle, or perform public adjuster
669 services as provided in subsection (1) unless licensed and
670 compliant as a public adjuster under this chapter. The
671 prohibition against solicitation does not preclude a contractor
672 from suggesting or otherwise recommending to a consumer that the
673 consumer consider contacting his or her insurer to determine if
674 the proposed repair is covered under the consumer's insurance
675 policy, except as it relates to solicitation prohibited in s.

676 489.147. In addition, the contractor may discuss or explain a
677 bid for construction or repair of covered property with the
678 residential property owner who has suffered loss or damage
679 covered by a property insurance policy, or the insurer of such
680 property, if the contractor is doing so for the usual and
681 customary fees applicable to the work to be performed as stated
682 in the contract between the contractor and the insured.

683 (19)~~(16)~~ A public adjuster shall not acquire any interest
684 in salvaged property, except with the written consent and
685 permission of the insured through a signed affidavit.

686 (20)~~(17)~~ A public adjuster, a public adjuster apprentice,
687 or a person acting on behalf of an adjuster or apprentice may
688 not enter into a contract or accept a power of attorney that
689 vests in the public adjuster, the public adjuster apprentice, or
690 the person acting on behalf of the adjuster or apprentice the
691 effective authority to choose the persons or entities that will
692 perform repair work in a property insurance claim or provide
693 goods or services that will require the insured or third-party
694 claimant to expend funds in excess of those payable to the
695 public adjuster under the terms of the contract for adjusting
696 services.

697 (21)~~(18)~~ Subsections (5)-(20) ~~(5)-(17)~~ apply only to
698 residential property insurance policies and condominium unit
699 owner policies as described in s. 718.111(11).

700 (22)~~(19)~~ Except as otherwise provided in this chapter, no

701 person, except an attorney at law or a licensed public adjuster,
 702 may for money, commission, or any other thing of value, directly
 703 or indirectly:

704 (a) Prepare, complete, or file an insurance claim for an
 705 insured or a third-party claimant;

706 (b) Act on behalf of or aid an insured or a third-party
 707 claimant in negotiating for or effecting the settlement of a
 708 claim for loss or damage covered by an insurance contract;

709 (c) Offer to initiate or negotiate a claim on behalf of an
 710 insured;

711 (d) Advertise services that require a license as a public
 712 adjuster; or

713 (e) Solicit, investigate, or adjust a claim on behalf of a
 714 public adjuster, an insured, or a third-party claimant.

715 (23)~~(20)~~ The department may take administrative actions
 716 and impose fines against any persons performing claims
 717 adjusting, soliciting, or any other services described in this
 718 section without the licensure required under this section or s.
 719 626.112.

720 (24)~~(21)~~ A public adjuster, public adjuster apprentice, or
 721 public adjusting firm that solicits a claim and does not enter
 722 into a contract with an insured or a third-party claimant
 723 pursuant to paragraph (13)(a) ~~(10)(a)~~ may not charge an insured
 724 or a third-party claimant or receive payment by any other source
 725 for any type of service related to the insured or third-party

726 claimant's claim.

727 ~~(25)~~(22)(a) Any following act by a public adjuster, a
728 public adjuster apprentice, or a person acting on behalf of a
729 public adjuster or public adjuster apprentice is prohibited and
730 shall result in discipline as applicable under this part:

731 1. Offering to a residential property owner a rebate,
732 gift, gift card, cash, coupon, waiver of any insurance
733 deductible, or any other thing of value in exchange for:

734 a. Allowing a contractor, a public adjuster, a public
735 adjuster apprentice, or a person acting on behalf of a public
736 adjuster or public adjuster apprentice to conduct an inspection
737 of the residential property owner's roof; or

738 b. Making an insurance claim for damage to the residential
739 property owner's roof.

740 2. Offering, delivering, receiving, or accepting any
741 compensation, inducement, or reward for the referral of any
742 services for which property insurance proceeds would be used for
743 roofing repairs or replacement.

744 (b) Notwithstanding the fine set forth in s. 626.8698, a
745 public adjuster or public adjuster apprentice may be subject to
746 a fine not to exceed \$10,000 per act for a violation of this
747 subsection and a fine not to exceed \$20,000 per act for a
748 violation of this subsection that occurs during a state of
749 emergency declared by executive order or proclamation of the
750 Governor pursuant to s. 252.36.

751 (c) A person who engages in an act prohibited by this
 752 subsection and who is not a public adjuster or a public adjuster
 753 apprentice, or is not otherwise exempt from licensure, is guilty
 754 of the unlicensed practice of public adjusting and may be:

755 1. Subject to all applicable penalties set forth in this
 756 part.

757 2. Notwithstanding subparagraph 1., subject to a fine not
 758 to exceed \$10,000 per act for a violation of this subsection and
 759 a fine not to exceed \$20,000 per act for a violation of this
 760 subsection that occurs during a state of emergency declared by
 761 executive order or proclamation of the Governor pursuant to s.
 762 252.36.

763 Section 8. Section 626.860, Florida Statutes, is amended
 764 to read:

765 626.860 Attorneys at law; exemption.—Attorneys at law duly
 766 licensed to practice law in the courts of this state, and in
 767 good standing with The Florida Bar, shall not be required to be
 768 licensed under ~~the provisions of~~ this code to authorize them to
 769 adjust or participate in the adjustment of any claim, loss, or
 770 damage arising under policies or contracts of insurance. This
 771 exemption does not extend to the employees, interns, volunteers,
 772 or contractors of an attorney or of a law firm.

773 Section 9. Section 626.865, Florida Statutes, is amended
 774 to read:

775 626.865 Public adjuster's qualifications; ~~7~~ bond; errors

776 and omissions insurance.—

777 (1) The department shall issue a license to an applicant
778 for a public adjuster's license upon determining that the
779 applicant has paid the applicable fees specified in s. 624.501
780 and possesses the following qualifications:

781 (a) Is a natural person at least 18 years of age.

782 (b) Is a United States citizen or legal alien who
783 possesses work authorization from the United States Bureau of
784 Citizenship and Immigration Services.

785 (c) Is trustworthy and has such business reputation as
786 would reasonably assure that the applicant will conduct his or
787 her business as insurance adjuster fairly and in good faith and
788 without detriment to the public.

789 (d) Has not been found guilty of or has not pleaded guilty
790 or nolo contendere to any crime involving theft or dishonesty,
791 regardless of adjudication, within the last 10 years.

792 (e)~~(d)~~ Has had sufficient experience, training, or
793 instruction concerning the adjusting of damages or losses under
794 insurance contracts, other than life and annuity contracts, is
795 sufficiently informed as to the terms and effects of the
796 provisions of those types of insurance contracts, and possesses
797 adequate knowledge of the laws of this state relating to such
798 contracts as to enable and qualify him or her to engage in the
799 business of insurance adjuster fairly and without injury to the
800 public or any member thereof with whom the applicant may have

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801 business as a public adjuster.

802 (f)~~(e)~~ Has been licensed and appointed in this state as a
803 nonresident public adjuster on a continual basis for the
804 previous 6 months, or has been licensed as an all-lines
805 adjuster, and has been appointed on a continual basis for the
806 previous 6 months as a public adjuster apprentice under s.
807 626.8561, as an independent adjuster under s. 626.855, or as a
808 company employee adjuster under s. 626.856.

809 (2) At the time of application for license as a public
810 adjuster, the applicant shall file with the department a bond
811 executed and issued by a surety insurer authorized to transact
812 such business in this state, in the amount of \$50,000,
813 conditioned for the faithful performance of his or her duties as
814 a public adjuster under the license for which the applicant has
815 applied, and thereafter maintain the bond unimpaired throughout
816 the existence of the license.

817 (a) The bond must be in favor of the department and must
818 specifically authorize recovery by the department of the damages
819 sustained in case the licensee is guilty of fraud or unfair
820 practices in connection with his or her business as public
821 adjuster.

822 (b) The bond must remain in effect for 1 year after the
823 expiration or termination of the license.

824 (c) The aggregate liability of the surety for all such
825 damages may not exceed the amount of the bond. The bond may not

826 be terminated unless at least 30 days' written notice is given
827 to the licensee and filed with the department.

828 (3) At the time of application for license as a public
829 adjuster, the applicant must file with the department a current
830 certificate of an errors and omissions policy executed by and
831 issued by an admitted insurer authorized to issue errors and
832 omissions policies in this state, which shall be in the minimum
833 amount of \$500,000 per occurrence.

834 (4)~~(3)~~ The department may not issue a license as a public
835 adjuster to any individual who has not passed the examination
836 for a public adjuster's license. Any individual who is applying
837 for reinstatement of a license after completion of a period of
838 suspension and any individual who is applying for a new license
839 after termination, cancellation, revocation, or expiration of a
840 prior license as a public adjuster must pass the examination
841 required for licensure as a public adjuster after approval of
842 the application for reinstatement or for a new license
843 regardless of whether the applicant passed an examination prior
844 to issuance of the license that was suspended, terminated,
845 canceled, revoked, or expired.

846 Section 10. Section 626.875, Florida Statutes, is amended
847 to read:

848 626.875 Office and records.—

849 (1) (a) Each appointed independent adjuster and licensed
850 public adjuster must maintain a place of business in this state

851 | which is accessible to the public and keep therein the usual and
852 | customary records pertaining to transactions under the license.
853 | This provision does not prohibit maintenance of such an office
854 | in the home of the licensee.

855 | (b) A license issued under this chapter must at all times
856 | be posted in a conspicuous place in the principal place of
857 | business of the license holder. If the licensee is conducting
858 | business away from the place of business such that the license
859 | cannot be posted, the licensee shall have such license in his or
860 | her actual possession at the time of carrying on such business.

861 | (2) The records of the adjuster relating to a particular
862 | claim or loss shall be so retained in the adjuster's place of
863 | business for a period of not less than 5 years after completion
864 | of the adjustment and shall be available for inspection by the
865 | department at all times. This provision shall not be deemed to
866 | prohibit return or delivery to the insurer or insured of
867 | documents furnished to or prepared by the adjuster and required
868 | by the insurer or insured to be returned or delivered thereto.
869 | At a minimum, the following records must be maintained for a
870 | period of not less than 5 years:

871 | (a) Name, address, telephone number, and e-mail address of
872 | the insured, and the name of the attorney representing the
873 | insured, if applicable.

874 | (b) The date, location, and amount of the loss.

875 | (c) An unaltered copy of the executed disclosure document

876 required by s. 626.8796.

877 (d) An unaltered copy of the executed public adjuster
 878 contract required by s. 626.8796.

879 (e) A copy of the estimate of damages provided to the
 880 insurer.

881 (f) The name of the insurer; the name of the claims
 882 representative of the insurer; and the amount, expiration date,
 883 and number of each policy under which the loss is covered.

884 (g) An itemized statement of the recoveries by the insured
 885 from the sources known to the adjuster.

886 (h) An itemized statement of all compensation received by
 887 the public adjuster from any source, in connection with the
 888 loss.

889 (i) A register of all money received, deposited,
 890 disbursed, and withdrawn in connection with a transaction with
 891 the insured, including fees, transfers, and disbursements in
 892 connection with the loss.

893 Section 11. Section 626.8751, Florida Statutes, is created
 894 to read:

895 626.8751 Payment of claim.—When a claim is settled while
 896 the insured is represented by a public adjuster, the insurer
 897 shall issue the payment in check form. A total of two checks
 898 shall be issued. The first check shall be made payable to the
 899 public adjuster as payee, but not in excess of the amount of the
 900 public adjuster's fee, as indicated in the executed public

901 adjuster contract signed by the insured and submitted to the
902 insurer. The second check must reflect the balance of the
903 proceeds and be payable to the insured as the payee in the form
904 of a separate check.

905 Section 12. Section 626.8796, Florida Statutes, is amended
906 to read:

907 626.8796 Public adjuster contracts; disclosure statement;
908 fraud statement.-

909 (1) All contracts for public adjuster services must be in
910 writing in at least 12-point font, titled "Public Adjuster
911 Contract" and prominently display the following statement on the
912 contract in minimum 18-point bold type before the space reserved
913 for in the contract for the signature of the insured: "Pursuant
914 to s. 817.234, Florida Statutes, any person who, with the intent
915 to injure, defraud, or deceive an insurer or insured, prepares,
916 presents, or causes to be presented a proof of loss or estimate
917 of cost or repair of damaged property in support of a claim
918 under an insurance policy knowing that the proof of loss or
919 estimate of claim or repairs contains false, incomplete, or
920 misleading information concerning any fact or thing material to
921 the claim commits a felony of the third degree, punishable as
922 provided in s. 775.082, s. 775.083, or s. 775.084, Florida
923 Statutes."

924 (2) A public adjuster contract relating to a property and
925 casualty claim must contain the full name, permanent business

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926 address, phone number, e-mail address, and license number of the
927 public adjuster; the full name of the public adjusting firm; and
928 the insured's full name, ~~and~~ street address, phone number, and
929 e-mail address, together with a brief description of the loss.
930 The contract must state the percentage of compensation for the
931 public adjuster's services in minimum 18-point bold type before
932 the space reserved for in the contract for the signature of the
933 insured; the type of claim, including an emergency claim,
934 nonemergency claim, or supplemental claim; the initials of the
935 named insured on each page that does not contain the insured's
936 signature; the signatures of the public adjuster and all named
937 insureds; and the signature date. If all of the named insureds'
938 signatures are not available, the public adjuster must submit an
939 affidavit signed by the available named insureds attesting that
940 they have authority to enter into the contract and settle all
941 claim issues on behalf of the named insureds. An unaltered copy
942 of the executed contract must be remitted to the insured at the
943 time of execution and to the insurer within 3 ~~30~~ days after
944 execution. A public adjusting firm that adjusts claims primarily
945 for commercial entities with operations in more than one state
946 and that does not directly or indirectly perform adjusting
947 services for insurers or individual homeowners is deemed to
948 comply with the requirements of this subsection if, at the time
949 a proof of loss is submitted, the public adjusting firm remits
950 to the insurer an affidavit signed by the public adjuster or

951 public adjuster apprentice that identifies:

952 (a) The full name, permanent business address, phone
953 number, e-mail address, and license number of the public
954 adjuster or public adjuster apprentice.

955 (b) The full name of the public adjusting firm.

956 (c) The insured's full name, ~~and~~ street address, phone
957 number, and e-mail address together with a brief description of
958 the loss.

959 (d) An attestation that the compensation for public
960 adjusting services will not exceed the limitations provided by
961 law.

962 (e) The type of claim, including an emergency claim,
963 nonemergency claim, or supplemental claim.

964 (3) The public adjuster shall not provide services until
965 both the insured and insurer have been provided with unaltered
966 copies of the executed contract.

967 (4) The insured may rescind the contract for public
968 adjuster services if the public adjuster has not submitted a
969 written estimate to the insurer within 45 days of executing the
970 contract.

971 (5) Before the signing of the contract, the public
972 adjuster shall provide the insured with a separate disclosure
973 document to be signed by the insured, on a form adopted by the
974 department, regarding the claim process that accomplishes the
975 following:

976 (a) Defines the following types of adjusters who may be
977 involved in the claim process: company adjuster, independent
978 adjuster, and public adjuster.

979 (b) Explains that the public adjuster is not a
980 representative or employee of the insurer.

981 (c) Explains that the insured is not required to hire a
982 public adjuster, but has a right to do so.

983 (d) Explains that an insured has a right to initiate
984 direct communications with the insured's attorney, the insurer,
985 the company adjuster, the insurer's attorney, or any person
986 regarding the settlement of the insured's claim.

987 (e) Explains that the public adjuster's salary, fee,
988 commission, or other consideration to be paid to a public
989 adjuster is the insured's responsibility.

990 (f) Explains that the public adjuster is required to
991 provide the insured an unaltered copy of the executed contract
992 at the time of execution.

993 (g) Explains that if the contract was entered based on
994 events that are the subject of a declaration of a state of
995 emergency by the Governor, the insured has a right to rescind
996 the contract within 30 days.

997 (h) The public adjuster shall provide an unaltered copy of
998 the executed disclosure document to the insured at the time of
999 execution.

1000 (6) A contract that does not comply with this section is

1001 invalid and unenforceable.

1002 (7) The department may adopt rules pursuant to ss.
 1003 120.536(1) and 120.54 to implement this section, including rules
 1004 to adopt forms required by this section.

1005 Section 13. Section 626.8797, Florida Statutes, is amended
 1006 to read:

1007 626.8797 Proof of loss; fraud statement.—All proof-of-loss
 1008 statements must prominently display the following statement in
 1009 minimum 18-point bold type before the space reserved in the
 1010 contract for the signature of the insured: "Pursuant to s.
 1011 817.234, Florida Statutes, any person who, with the intent to
 1012 injure, defraud, or deceive any insurer or insured, prepares,
 1013 presents, or causes to be presented a proof of loss or estimate
 1014 of cost or repair of damaged property in support of a claim
 1015 under an insurance policy knowing that the proof of loss or
 1016 estimate of claim or repairs contains any false, incomplete, or
 1017 misleading information concerning any fact or thing material to
 1018 the claim commits a felony of the third degree, punishable as
 1019 provided in s. 775.082, s. 775.083, or s. 775.084, Florida
 1020 Statutes."

1021 Section 14. Paragraph (a) of subsection (1) of section
 1022 626.9541, Florida Statutes, is amended to read:

1023 626.9541 Unfair methods of competition and unfair or
 1024 deceptive acts or practices defined.—

1025 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE

1026 ACTS.—The following are defined as unfair methods of competition
 1027 and unfair or deceptive acts or practices:

1028 (a) Misrepresentations and false advertising of insurance
 1029 policies.—Knowingly making, issuing, circulating, or causing to
 1030 be made, issued, or circulated, any estimate, illustration,
 1031 circular, statement, sales presentation, omission, comparison,
 1032 or property and casualty certificate of insurance altered after
 1033 being issued, which:

1034 1. Misrepresents the benefits, advantages, conditions, or
 1035 terms of any insurance policy.

1036 2. Misrepresents the dividends or share of the surplus to
 1037 be received on any insurance policy.

1038 3. Makes any false or misleading statements as to the
 1039 dividends or share of surplus previously paid on any insurance
 1040 policy.

1041 4. Is misleading, or is a misrepresentation, as to the
 1042 financial condition of any person or as to the legal reserve
 1043 system upon which any life insurer operates.

1044 5. Uses any name or title of any insurance policy or class
 1045 of insurance policies misrepresenting the true nature thereof.

1046 6. Is a misrepresentation for the purpose of inducing, or
 1047 tending to induce, the lapse, forfeiture, exchange, conversion,
 1048 or surrender of any insurance policy.

1049 7. Is a misrepresentation for the purpose of effecting a
 1050 pledge or assignment of, or effecting a loan against, any

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1051 insurance policy.

1052 8. Misrepresents any insurance policy as being shares of
1053 stock or misrepresents ownership interest in the company.

1054 9. Uses any advertisement that would mislead or otherwise
1055 cause a reasonable person to believe mistakenly that the state
1056 or the Federal Government is responsible for the insurance sales
1057 activities of any person or stands behind any person's credit or
1058 that any person, the state, or the Federal Government guarantees
1059 any returns on insurance products or is a source of payment of
1060 any insurance obligation of or sold by any person.

1061 10. Fails to disclose a third party that receives
1062 royalties, referral fees, or other remuneration for sponsorship,
1063 marketing, or use of third-party branding for a health insurance
1064 contract as defined in s. 624.603.

1065 Section 15. Paragraph (c) of subsection (2) of section
1066 627.4025, Florida Statutes, is amended, and paragraph (d) is
1067 added to that subsection, to read:

1068 627.4025 Residential coverage and hurricane coverage
1069 defined.—

1070 (2) As used in policies providing residential coverage:

1071 (c) "Hurricane" for purposes of paragraphs (a) and (b)
1072 means a storm system that has been declared to be a hurricane by
1073 the National Hurricane Center of the National Weather Service.
1074 The duration of the hurricane includes the time period, in
1075 Florida:

1076 1. Beginning at the time a ~~hurricane watch or~~ hurricane
 1077 warning is issued for any part of Florida by the National
 1078 Hurricane Center of the National Weather Service; and

1079 ~~2. Continuing for the time period during which the~~
 1080 ~~hurricane conditions exist anywhere in Florida; and~~

1081 2.3. Ending 24 ~~72~~ hours following the termination of the
 1082 last hurricane watch or hurricane warning issued for any part of
 1083 Florida by the National Hurricane Center of the National Weather
 1084 Service.

1085 (d) "Hurricane deductible" means the deductible applicable
 1086 to loss caused by a hurricane.

1087 Section 16. Paragraph (b) of subsection (1) and paragraph
 1088 (b) of subsection (2) of section 627.4133, Florida Statutes, are
 1089 amended to read:

1090 627.4133 Notice of cancellation, nonrenewal, or renewal
 1091 premium.—

1092 (1) Except as provided in subsection (2):

1093 (b) An insurer issuing a policy providing coverage for
 1094 property, casualty, except mortgage guaranty, surety, or marine
 1095 insurance, other than motor vehicle insurance subject to s.
 1096 627.728 or s. 627.7281, shall give the first-named insured
 1097 written notice of cancellation or termination other than
 1098 nonrenewal at least 45 days prior to the effective date of the
 1099 cancellation or termination, including in the written notice the
 1100 reason or reasons for the cancellation or termination, except

1101 that:

1102 1. When cancellation is for nonpayment of premium, at
1103 least 10 days' written notice of cancellation accompanied by the
1104 reason therefor shall be given. As used in this subparagraph and
1105 s. 440.42(3), the term "nonpayment of premium" means failure of
1106 the named insured to discharge when due any of her or his
1107 obligations in connection with the payment of premiums on a
1108 policy or any installment of such premium, whether the premium
1109 is payable directly to the insurer or its agent or indirectly
1110 under any premium finance plan or extension of credit, or
1111 failure to maintain membership in an organization if such
1112 membership is a condition precedent to insurance coverage.

1113 "Nonpayment of premium" also means the failure of a financial
1114 institution to honor an insurance applicant's check after
1115 delivery to a licensed agent for payment of a premium, even if
1116 the agent has previously delivered or transferred the premium to
1117 the insurer. If a dishonored check represents the initial
1118 premium payment, the contract and all contractual obligations
1119 shall be void ab initio unless the nonpayment is cured within
1120 the earlier of 5 days after actual notice by certified mail is
1121 received by the applicant or 15 days after notice is sent to the
1122 applicant by certified mail or registered mail, and if the
1123 contract is void, any premium received by the insurer from a
1124 third party shall be refunded to that party in full; and

1125 2. When such cancellation or termination occurs during the

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1126 first 90 days during which the insurance is in force and the
1127 insurance is canceled or terminated for reasons other than
1128 nonpayment of premium, at least 20 days' written notice of
1129 cancellation or termination accompanied by the reason therefor
1130 shall be given except where there has been a material
1131 misstatement or misrepresentation or failure to comply with the
1132 underwriting requirements established by the insurer.

1133

1134 After the policy has been in effect for 60 ~~90~~ days, no such
1135 policy shall be canceled by the insurer except when there has
1136 been a material misstatement, a nonpayment of premium, a failure
1137 to comply with underwriting requirements established by the
1138 insurer within 90 days of the date of effectuation of coverage,
1139 or a substantial change in the risk covered by the policy or
1140 when the cancellation is for all insureds under such policies
1141 for a given class of insureds. This subsection does not apply to
1142 individually rated risks having a policy term of less than 90
1143 days.

1144 (2) With respect to any personal lines or commercial
1145 residential property insurance policy, including, but not
1146 limited to, any homeowner, mobile home owner, farmowner,
1147 condominium association, condominium unit owner, apartment
1148 building, or other policy covering a residential structure or
1149 its contents:

1150 (b) The insurer shall give the first-named insured written

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1151 notice of nonrenewal, cancellation, or termination at least 120
1152 days before the effective date of the nonrenewal, cancellation,
1153 or termination. The notice must include the reason for the
1154 nonrenewal, cancellation, or termination, except that:

1155 1. If cancellation is for nonpayment of premium, at least
1156 10 days' written notice of cancellation accompanied by the
1157 reason therefor must be given. As used in this subparagraph, the
1158 term "nonpayment of premium" means failure of the named insured
1159 to discharge when due her or his obligations for paying the
1160 premium on a policy or an installment of such premium, whether
1161 the premium is payable directly to the insurer or its agent or
1162 indirectly under a premium finance plan or extension of credit,
1163 or failure to maintain membership in an organization if such
1164 membership is a condition precedent to insurance coverage. The
1165 term also means the failure of a financial institution to honor
1166 an insurance applicant's check after delivery to a licensed
1167 agent for payment of a premium even if the agent has previously
1168 delivered or transferred the premium to the insurer. If a
1169 dishonored check represents the initial premium payment, the
1170 contract and all contractual obligations are void ab initio
1171 unless the nonpayment is cured within the earlier of 5 days
1172 after actual notice by certified mail is received by the
1173 applicant or 15 days after notice is sent to the applicant by
1174 certified mail or registered mail. If the contract is void, any
1175 premium received by the insurer from a third party must be

1176 | refunded to that party in full.

1177 | 2. If cancellation or termination occurs during the first
 1178 | 90 days the insurance is in force and the insurance is canceled
 1179 | or terminated for reasons other than nonpayment of premium, at
 1180 | least 20 days' written notice of cancellation or termination
 1181 | accompanied by the reason therefor must be given unless there
 1182 | has been a material misstatement or misrepresentation or a
 1183 | failure to comply with the underwriting requirements established
 1184 | by the insurer.

1185 | 3. After the policy has been in effect for 60 ~~90~~ days, the
 1186 | policy may not be canceled by the insurer unless there has been
 1187 | a material misstatement; a nonpayment of premium; a failure to
 1188 | comply, within 90 days after the date of effectuation of
 1189 | coverage, with underwriting requirements established by the
 1190 | insurer before the date of effectuation of coverage; or a
 1191 | substantial change in the risk covered by the policy or unless
 1192 | the cancellation is for all insureds under such policies for a
 1193 | given class of insureds. This subparagraph does not apply to
 1194 | individually rated risks that have a policy term of less than 90
 1195 | days.

1196 | 4. After a policy or contract has been in effect for more
 1197 | than 90 days, the insurer may not cancel or terminate the policy
 1198 | or contract based on credit information available in public
 1199 | records.

1200 | 5. A policy that is nonrenewed by Citizens Property

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1201 Insurance Corporation, pursuant to s. 627.351(6), for a policy
1202 that has been assumed by an authorized insurer offering
1203 replacement coverage to the policyholder is exempt from the
1204 notice requirements of paragraph (a) and this paragraph. In such
1205 cases, the corporation must give the named insured written
1206 notice of nonrenewal at least 45 days before the effective date
1207 of the nonrenewal.

1208 6. Notwithstanding any other provision of law, an insurer
1209 may cancel or nonrenew a property insurance policy after at
1210 least 45 days' notice if the office finds that the early
1211 cancellation of some or all of the insurer's policies is
1212 necessary to protect the best interests of the public or
1213 policyholders and the office approves the insurer's plan for
1214 early cancellation or nonrenewal of some or all of its policies.
1215 The office may base such finding upon the financial condition of
1216 the insurer, lack of adequate reinsurance coverage for hurricane
1217 risk, or other relevant factors. The office may condition its
1218 finding on the consent of the insurer to be placed under
1219 administrative supervision pursuant to s. 624.81 or to the
1220 appointment of a receiver under chapter 631.

1221 7. A policy covering both a home and a motor vehicle may
1222 be nonrenewed for any reason applicable to the property or motor
1223 vehicle insurance after providing 90 days' notice.

1224 Section 17. Section 627.4554, Florida Statutes, is amended
1225 to read:

1226 627.4554 Annuity investments.—

1227 (1) PURPOSE.—The purpose of this section is to require
 1228 agents to act in the best interest of the consumer when making
 1229 a recommendation of an annuity and to require insurers to
 1230 establish and maintain a system to supervise so set forth
 1231 ~~standards and procedures for making recommendations to consumers~~
 1232 ~~which result in transactions involving annuity products, and to~~
 1233 ~~establish a system for supervising such recommendations in order~~
 1234 ~~to ensure that the insurance needs and financial objectives of~~
 1235 consumers are effectively ~~appropriately~~ addressed at the time of
 1236 the transaction.

1237 (2) SCOPE.—This section applies to any sale or
 1238 recommendation of ~~made to a consumer to purchase, exchange, or~~
 1239 ~~replace an annuity by an insurer or its agent, and which results~~
 1240 ~~in the purchase, exchange, or replacement recommended.~~

1241 (3) DEFINITIONS.—As used in this section, the term:

1242 (a) "Agent" means a person or entity required to be
 1243 licensed under the laws of this state to sell, solicit, or
 1244 negotiate insurance, including annuities. For purposes of this
 1245 section, the term includes an insurer where no agent is involved
 1246 ~~has the same meaning as provided in s. 626.015.~~

1247 (b) "Annuity" means an insurance product under state law
 1248 which is individually solicited, whether classified as an
 1249 individual or group annuity.

1250 (c) "Cash compensation" means any discount, concession,

1251 fee, service fee, commission, sales charge, loan, override, or
1252 cash benefit received by an agent in connection with the
1253 recommendation or sale of an annuity from an insurer,
1254 intermediary, or directly from the consumer.

1255 (d) "Consumer profile information" means information that
1256 is reasonably appropriate to determine whether a recommendation
1257 addresses the consumer's financial situation, insurance needs
1258 and financial objectives, including, at a minimum, the
1259 following:

- 1260 1. Age.
- 1261 2. Annual income.
- 1262 3. Financial situation and needs, including debts and
1263 other obligations.
- 1264 4. Financial experience.
- 1265 5. Insurance needs.
- 1266 6. Financial objectives.
- 1267 7. Intended use of the annuity.
- 1268 8. Financial time horizon.
- 1269 9. Existing assets or financial products, including
1270 investment, annuity, and insurance holdings.
- 1271 10. Liquidity needs.
- 1272 11. Liquid net worth.
- 1273 12. Risk tolerance, including, but not limited to,
1274 willingness to accept nonguaranteed elements in the annuity.
- 1275 13. Financial resources used to fund the annuity.

1276 14. Tax status.
 1277 ~~(e)~~ "FINRA" means the Financial Industry Regulatory
 1278 Authority or a succeeding agency.
 1279 ~~(f)~~ "Insurer" has the same meaning as provided in s.
 1280 624.03.
 1281 (g) "Intermediary" means an entity contracted directly
 1282 with an insurer or with another entity contracted with an
 1283 insurer to facilitate the sale of the insurer's annuities by
 1284 agents.
 1285 (h) "Material conflict of interest" means a financial
 1286 interest of the agent in the sale of an annuity that a
 1287 reasonable person would expect to influence the impartiality of
 1288 a recommendation. The term does not include cash compensation or
 1289 noncash compensation.
 1290 (i) "Noncash compensation" means any form of compensation
 1291 that is not cash compensation, including, but not limited to,
 1292 health insurance, office rent, office support, and retirement
 1293 benefits.
 1294 (j) "Nonguaranteed elements" means the premiums, credited
 1295 interest rates, including any bonus; benefits; values;
 1296 dividends; noninterest based credits; charges; or elements of
 1297 formulas used to determine any of these, that are subject to
 1298 company discretion and are not guaranteed at issue. An element
 1299 is considered nonguaranteed if any of the underlying
 1300 nonguaranteed elements are used in its calculation.

1301 (k)-(e) "Recommendation" means advice provided by an
 1302 ~~insurer or its agent to an individual a consumer that was~~
 1303 ~~intended to result or does result which would result in a the~~
 1304 purchase, an exchange, or a replacement of an annuity in
 1305 accordance with that advice. The term does not include general
 1306 communication to the public, generalized customer services,
 1307 assistance or administrative support, general educational
 1308 information and tools, prospectuses, or other product and sales
 1309 material.

1310 (l)-(f) "Replacement" means a transaction in which a new
 1311 ~~annuity policy or contract~~ is to be purchased and it is known or
 1312 should be known to the proposing ~~insurer or its agent,~~ or to the
 1313 proposing insurer whether or not an agent is involved, that by
 1314 reason of such transaction an existing annuity or other
 1315 insurance policy has been or is to be any of the following ~~or~~
 1316 ~~contract will be:~~

1317 1. Lapsed, forfeited, surrendered or partially
 1318 surrendered, assigned to the replacing insurer, or otherwise
 1319 terminated;

1320 2. Converted to reduced paid-up insurance, continued as
 1321 extended term insurance, or otherwise reduced in value due to
 1322 the use of nonforfeiture benefits or other policy values;

1323 3. Amended so as to effect a reduction in benefits or the
 1324 term for which coverage would otherwise remain in force or for
 1325 which benefits would be paid;

- 1326 4. Reissued with a reduction in cash value; or
- 1327 5. Used in a financed purchase.

1328 (m) "SEC" means the United States Securities and Exchange
 1329 Commission.

1330 ~~(g) "Suitability information" means information related to~~
 1331 ~~the consumer which is reasonably appropriate to determine the~~
 1332 ~~suitability of a recommendation made to the consumer, including~~
 1333 ~~the following:~~

- 1334 1. ~~Age;~~
- 1335 2. ~~Annual income;~~
- 1336 3. ~~Financial situation and needs, including the financial~~
 1337 ~~resources used for funding the annuity;~~
- 1338 4. ~~Financial experience;~~
- 1339 5. ~~Financial objectives;~~
- 1340 6. ~~Intended use of the annuity;~~
- 1341 7. ~~Financial time horizon;~~
- 1342 8. ~~Existing assets, including investment and life~~
 1343 ~~insurance holdings;~~
- 1344 9. ~~Liquidity needs;~~
- 1345 10. ~~Liquid net worth;~~
- 1346 11. ~~Risk tolerance; and~~
- 1347 12. ~~Tax status.~~

1348 (4) EXEMPTIONS.—Unless otherwise specifically included,
 1349 this section does not apply to transactions involving:

- 1350 (a) Direct-response solicitations where there is no

1351 recommendation based on information collected from the consumer
 1352 pursuant to this section;

1353 (b) Contracts used to fund:

1354 1. An employee pension or welfare benefit plan that is
 1355 covered by the federal Employee Retirement and Income Security
 1356 Act;

1357 2. A plan described by s. 401(a), s. 401(k), s. 403(b), s.
 1358 408(k), or s. 408(p) of the Internal Revenue Code, if
 1359 established or maintained by an employer;

1360 3. A government or church plan defined in s. 414 of the
 1361 Internal Revenue Code, a government or church welfare benefit
 1362 plan, or a deferred compensation plan of a state or local
 1363 government or tax-exempt organization under s. 457 of the
 1364 Internal Revenue Code; or

1365 4. A nonqualified deferred compensation arrangement
 1366 established or maintained by an employer or plan sponsor;

1367 ~~(c)5-~~ Settlements or assumptions of liabilities associated
 1368 with personal injury litigation or a dispute or claim-resolution
 1369 process; or

1370 ~~(d)6-~~ Formal prepaid funeral contracts.

1371 (5) DUTIES OF INSURERS AND AGENTS.—

1372 (a) An agent, when making a recommendation of an annuity,
 1373 shall act in the best interest of the consumer under the
 1374 circumstances known at the time the recommendation is made,
 1375 without placing the financial interest of the agent or insurer

1376 ahead of the consumer's interest. An agent has acted in the best
1377 interest of the consumer if the agent has satisfied the
1378 following obligations regarding care, disclosure, conflict of
1379 interest, and documentation:

1380 1. a. The agent, in making a recommendation, shall
1381 exercise reasonable diligence, care, and skill to:

1382 (I) Know the financial situation, insurance needs, and
1383 financial objectives of the customer.

1384 (II) Understand the available options after making a
1385 reasonable inquiry into options available to the agent.

1386 (III) Have a reasonable basis to believe the recommended
1387 option effectively addresses the consumer's financial situation,
1388 insurance needs, and financial objectives over the life of the
1389 product, as evaluated in light of the consumer profile
1390 information.

1391 (IV) Communicate the reason or reasons for the
1392 recommendation.

1393 b. The requirements of subparagraph a. include:

1394 (I) Making reasonable efforts to obtain consumer profile
1395 information from the consumer before the recommendation of an
1396 annuity.

1397 (II) Requiring an agent to consider the types of products
1398 the agent is authorized and licensed to recommend or sell that
1399 address the consumer's financial situation, insurance needs and
1400 financial objectives. This does not require analysis or

1401 consideration of any products outside the authority and license
1402 of the agent or other possible alternative products or
1403 strategies available in the market at the time of the
1404 recommendation. Agents shall be held to standards applicable to
1405 agents with similar authority and licensure.

1406 (III) Having a reasonable basis to believe the consumer
1407 would benefit from certain features of the annuity, such as
1408 annuitization, death or living benefit or other insurance-
1409 related features.

1410 c. The requirements of this subsection do not create a
1411 fiduciary obligation or relationship and only create a
1412 regulatory obligation as provided in this section.

1413 d. The consumer profile information, characteristics of
1414 the insurer and product costs, rates, benefits and features are
1415 those factors generally relevant in making a determination
1416 whether an annuity effectively addresses the consumer's
1417 financial situation, insurance needs, and financial objectives
1418 but the level of importance of each factor under the care
1419 obligation of this paragraph may vary depending on the facts and
1420 circumstances of a particular case. However, each factor may not
1421 be considered in isolation.

1422 e. The requirements under subparagraph a. apply to the
1423 particular annuity as a whole and the underlying subaccounts to
1424 which funds are allocated at the time of purchase or exchange of
1425 an annuity, and riders and similar product enhancements, if any.

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1426 f. Subparagraph a. does not require that the annuity with
1427 the lowest one-time occurrence compensation structure or
1428 multiple occurrence compensation structure shall necessarily be
1429 recommended.

1430 g. Subparagraph a. does require the agent to have ongoing
1431 monitoring obligations under the care obligation, although such
1432 an obligation may be separately owed under the terms of a
1433 fiduciary, consulting, investment, advising, or financial
1434 planning agreement between the consumer and the agent.

1435 h. In the case of an exchange or replacement of an
1436 annuity, the agent shall consider the whole transaction, which
1437 includes taking into consideration whether:

1438 (I) The consumer will incur a surrender charge; be subject
1439 to the commencement of a new surrender period; lose existing
1440 benefits, such as death, living or other contractual benefits;
1441 or be subject to increased fees, investment advisory fees, or
1442 charges for riders and similar product enhancements.

1443 (II) The replacing product would substantially benefit the
1444 consumer in comparison to the replaced product over the life of
1445 the product.

1446 (III) The consumer has had another annuity exchange or
1447 replacement and, in particular, an exchange or replacement
1448 within the preceding 60 months.

1449 i. This section does not require an agent to obtain any
1450 license other than an agent license with the appropriate line of

1451 authority to sell, solicit, or negotiate insurance in this
1452 state, including, but not limited to, any securities license, in
1453 order to fulfill the duties and obligations contained in this
1454 section; provided the agent does not give advice or provide
1455 services that are otherwise subject to securities laws or engage
1456 in any other activity requiring other professional licenses.

1457 2. Disclosure obligation.

1458 a. Before the recommendation or sale of an annuity, the
1459 agent shall prominently disclose to the consumer on a form
1460 substantially similar to that posted on the office website as
1461 Appendix A:

1462 (I) A description of the scope and terms of the
1463 relationship with the consumer and the role of the agent in the
1464 transaction.

1465 (II) An affirmative statement on whether the agent is
1466 licensed and authorized to sell the following products:

1467 (A) Fixed annuities.

1468 (B) Fixed indexed annuities.

1469 (C) Variable annuities.

1470 (D) Life insurance.

1471 (E) Mutual funds.

1472 (F) Stocks and bonds.

1473 (G) Certificates of deposit.

1474 (III) An affirmative statement describing the insurers for
1475 which the agent is authorized, contracted or appointed, or

1476 otherwise able to sell insurance products, using the following
 1477 descriptions:

1478 (A) From one insurer;

1479 (B) From two or more insurers; or

1480 (C) From two or more insurers, although primarily
 1481 contracted with one insurer.

1482 (IV) A description of the sources and types of cash
 1483 compensation and noncash compensation to be received by the
 1484 agent, including whether the agent is to be compensated for the
 1485 sale of a recommended annuity by commission as part of premium
 1486 or other remuneration received from the insurer, intermediary or
 1487 other agent, or by fee as a result of a contract for advice or
 1488 consulting services; and

1489 (V) A notice of the consumer's right to request additional
 1490 information regarding cash compensation described in
 1491 subparagraph b.

1492 b. Upon request of the consumer or the consumer's
 1493 designated representative, the agent shall disclose:

1494 (I) A reasonable estimate of the amount of cash
 1495 compensation to be received by the agent, which may be stated as
 1496 a range of amounts or percentages.

1497 (II) Whether the cash compensation is a one-time or
 1498 multiple occurrence amount, and if a multiple occurrence amount,
 1499 the frequency and amount of the occurrence, which may be stated
 1500 as a range of amounts or percentages; and ~~When recommending the~~

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1501 ~~purchase or exchange of an annuity to a consumer which results~~
1502 ~~in an insurance transaction or series of insurance transactions,~~
1503 ~~the agent, or the insurer where no agent is involved, must have~~
1504 ~~reasonable grounds for believing that the recommendation is~~
1505 ~~suitable for the consumer, based on the consumer's suitability~~
1506 ~~information, and that there is a reasonable basis to believe all~~
1507 ~~of the following:~~

1508 c.1. Before or at the time of the recommendation or sale
1509 of an annuity, the agent shall have a reasonable basis to
1510 believe the consumer has been ~~reasonably~~ informed of various
1511 features of the annuity, such as the potential surrender period
1512 and surrender charge; potential tax penalty if the consumer
1513 sells, exchanges, surrenders, or annuitizes the annuity;
1514 mortality and expense fees; any annual fees; investment advisory
1515 fees; potential charges for and features of riders or other
1516 options of the annuity; limitations on interest returns;
1517 potential changes in nonguaranteed elements of the annuity;
1518 insurance and investment components; and market risk.

1519 2. The consumer would benefit from certain features of the
1520 annuity, such as tax-deferred growth, annuitization, or the
1521 death or living benefit.

1522 3. An agent shall identify and avoid or reasonably manage
1523 and disclose material conflicts of interest, including material
1524 conflicts of interest related to an ownership interest.

1525 4. An agent shall at the time of the recommendation or

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1526 sale:

1527 a. Make a written record of any recommendation and the

1528 basis for the recommendation, subject to this section.

1529 b. Obtain a consumer signed statement on a form

1530 substantially similar to that posted on the office website as

1531 Appendix B, documenting:

1532 (I) A customer's refusal to provide the consumer profile

1533 information, if any.

1534 (II) A customer's understanding of the ramifications of

1535 not providing his or her consumer profile information or

1536 providing insufficient consumer profile information.

1537 c. Obtain a consumer signed statement on a form

1538 substantially similar to that posted on the office website as

1539 Appendix C, acknowledging the annuity transaction is not

1540 recommended if a customer decides to enter into an annuity

1541 transaction that is not based on the agent's recommendation.

1542 5. Application of the best interest obligation. Any

1543 requirement applicable to an agent under this subsection shall

1544 apply to every agent who has exercised material control or

1545 influence in the making of a recommendation and has received

1546 direct compensation as a result of the recommendation or sale,

1547 regardless of whether the agent has had any direct contact with

1548 the consumer. Activities such as providing or delivering

1549 marketing or education materials, product wholesaling or other

1550 back office product support, and general supervision of an agent

1551 do not, in and of themselves, constitute material control or
1552 influence.

1553 ~~3. The particular annuity as a whole, the underlying~~
1554 ~~subaccounts to which funds are allocated at the time of purchase~~
1555 ~~or exchange of the annuity, and riders and similar product~~
1556 ~~enhancements, if any, are suitable; and, in the case of an~~
1557 ~~exchange or replacement, the transaction as a whole is suitable~~
1558 ~~for the particular consumer based on his or her suitability~~
1559 ~~information.~~

1560 ~~4. In the case of an exchange or replacement of an~~
1561 ~~annuity, the exchange or replacement is suitable after~~
1562 ~~considering whether the consumer:~~

1563 ~~a. Will incur a surrender charge; be subject to the~~
1564 ~~commencement of a new surrender period; lose existing benefits,~~
1565 ~~such as death, living, or other contractual benefits; or be~~
1566 ~~subject to increased fees, investment advisory fees, or charges~~
1567 ~~for riders and similar product enhancements;~~

1568 ~~b. Would benefit from product enhancements and~~
1569 ~~improvements; and~~

1570 ~~e. Has had another annuity exchange or replacement,~~
1571 ~~including an exchange or replacement within the preceding 36~~
1572 ~~months.~~

1573 ~~(b) Before executing a purchase, exchange, or replacement~~
1574 ~~of an annuity resulting from a recommendation, an insurer or its~~
1575 ~~agent must make reasonable efforts to obtain the consumer's~~

1576 ~~suitability information. The information shall be collected on~~
 1577 ~~form DFS-H1-1980, which is hereby incorporated by reference, and~~
 1578 ~~completed and signed by the applicant and agent. Questions~~
 1579 ~~requesting this information must be presented in at least 12-~~
 1580 ~~point type and be sufficiently clear so as to be readily~~
 1581 ~~understandable by both the agent and the consumer. A true and~~
 1582 ~~correct executed copy of the form must be provided by the agent~~
 1583 ~~to the insurer, or to the person or entity that has contracted~~
 1584 ~~with the insurer to perform this function as authorized by this~~
 1585 ~~section, within 10 days after execution of the form, and shall~~
 1586 ~~be provided to the consumer no later than the date of delivery~~
 1587 ~~of the contract or contracts.~~

1588 ~~(c) Except as provided under paragraph (d), an insurer may~~
 1589 ~~not issue an annuity recommended to a consumer unless there is a~~
 1590 ~~reasonable basis to believe the annuity is suitable based on the~~
 1591 ~~consumer's suitability information.~~

1592 ~~(b)(d)~~ 1. ~~Except as provided under subparagraph 2, An~~
 1593 ~~insurer's issuance of an annuity must be reasonable based on all~~
 1594 ~~the circumstances actually known to the insurer at the time the~~
 1595 ~~annuity is issued. However, an insurer or its agent shall not~~
 1596 ~~have~~ does not have an obligation to a consumer related to an
 1597 annuity transaction under paragraph (a)1. ~~(a) or paragraph (c)~~
 1598 if:

1599 a.1. A recommendation has not been made;

1600 b.2. A recommendation was made and is later found to have

1601 | been based on materially inaccurate information provided by the
 1602 | consumer;

1603 | ~~c.3.~~ A consumer refuses to provide relevant suitability
 1604 | information and the annuity transaction is not recommended; or

1605 | ~~d.4.~~ A consumer decides to enter into an annuity
 1606 | transaction that is not based on a recommendation of an insurer
 1607 | or its agent.

1608 | 2. An insurer's issuance of an annuity subject to
 1609 | subparagraph 1. shall be reasonable under all the circumstances
 1610 | actually known to the insurer at the time the annuity is issued.

1611 | (c)1. Except as permitted under paragraph (b), an insurer
 1612 | may not issue an annuity recommended to a consumer unless there
 1613 | is a reasonable basis to believe the annuity would effectively
 1614 | address the particular consumer's financial situation, insurance
 1615 | needs, and financial objectives based on the consumer's consumer
 1616 | profile information.

1617 | ~~(e) At the time of sale, the agent or the agent's~~
 1618 | ~~representative must:~~

1619 | ~~1. Make a record of any recommendation made to the~~
 1620 | ~~consumer pursuant to paragraph (a);~~

1621 | ~~2. Obtain the consumer's signed statement documenting his~~
 1622 | ~~or her refusal to provide suitability information, if~~
 1623 | ~~applicable; and~~

1624 | ~~3. Obtain the consumer's signed statement acknowledging~~
 1625 | ~~that an annuity transaction is not recommended if he or she~~

1626 ~~decides to enter into an annuity transaction that is not based~~
 1627 ~~on the insurer's or its agent's recommendation, if applicable.~~

1628 ~~(f) Before executing a replacement or exchange of an~~
 1629 ~~annuity contract resulting from a recommendation, the agent must~~
 1630 ~~provide on form DFS-H1-1981, which is hereby incorporated by~~
 1631 ~~reference, information that compares the differences between the~~
 1632 ~~existing annuity contract and the annuity contract being~~
 1633 ~~recommended in order to determine the suitability of the~~
 1634 ~~recommendation and its benefit to the consumer. A true and~~
 1635 ~~correct executed copy of this form must be provided by the agent~~
 1636 ~~to the insurer, or to the person or entity that has contracted~~
 1637 ~~with the insurer to perform this function as authorized by this~~
 1638 ~~section, within 10 days after execution of the form, and must be~~
 1639 ~~provided to the consumer no later than the date of delivery of~~
 1640 ~~the contract or contracts.~~

1641 2.(g) An insurer shall establish and maintain a
 1642 supervision system that is reasonably designed to achieve the
 1643 insurer's and its agent's compliance with this section
 1644 including, but not limited to, the following:

1645 ~~1. Such system must include, but is not limited to:~~

1646 a. The insurer shall establish and maintain ~~Maintaining~~
 1647 reasonable procedures to inform its agents of the requirements
 1648 of this section and incorporating those requirements into
 1649 relevant agent training manuals.

1650 b. The insurer shall establish and maintain ~~Establishing~~

1651 standards for agent product training and shall establish and
1652 maintain reasonable procedures to require its agents to comply
1653 with the requirements of subsection (6).†

1654 c. The insurer shall provide ~~Providing~~ product-specific
1655 training and training materials that explain all material
1656 features of its annuity products to its agents.†

1657 d. The insurer shall establish and maintain ~~Maintaining~~
1658 procedures for the review of each recommendation before issuance
1659 of an annuity which are designed to ensure that there is a
1660 reasonable basis to determine the recommended annuity would
1661 effectively address the particular consumer's financial
1662 situation, insurance needs, and financial objectives ~~for~~
1663 ~~determining that a recommendation is suitable~~. Such review
1664 procedures may use a screening system for identifying selected
1665 transactions for additional review and may be accomplished
1666 electronically or through other means, including, but not
1667 limited to, physical review. Such electronic or other system may
1668 be designed to require additional review only of those
1669 transactions identified for additional review using established
1670 selection criteria.†

1671 e. The insurer shall establish and maintain ~~Maintaining~~
1672 reasonable procedures to detect recommendations that are not in
1673 compliance with paragraphs (a), (b), (d), and (e). This may
1674 include, but is not limited to ~~suitable~~, such as confirmation of
1675 consumer suitability information, systematic customer surveys,

1676 agent and consumer interviews, confirmation letters, agent
 1677 statements or attestations, and internal monitoring programs.
 1678 This sub-subparagraph does not prevent an insurer from using
 1679 sampling procedures or from confirming the consumer profile
 1680 ~~suitability~~ information after the issuance or delivery of the
 1681 annuity.~~;~~ and

1682 f. The insurer shall establish and maintain reasonable
 1683 procedures to assess, prior to, or upon issuance or delivery of,
 1684 an annuity, whether an agent has provided to the consumer the
 1685 information required to be provided under this subsection.

1686 g. The insurer shall establish and maintain reasonable
 1687 procedures to identify and address suspicious consumer refusals
 1688 to provide consumer profile information.

1689 h. The insurer shall establish and maintain reasonable
 1690 procedures to identify and eliminate any sales contests, sales
 1691 quotas, bonuses, and noncash compensation that are based on the
 1692 sales of specific annuities within a limited period of time. The
 1693 requirements of this subparagraph are not intended to prohibit
 1694 the receipt of health insurance, office rents, office support,
 1695 retirement benefits, or other employee benefits by employees as
 1696 long as those benefits are not based upon the volume of sales of
 1697 a specific annuity within a limited period of time.

1698 ~~i.f.~~ The insurer shall annually provide ~~providing~~ a
 1699 written report to senior managers, including the senior manager
 1700 who is responsible for audit functions, which details a review,

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1701 along with appropriate testing, which is reasonably designed to
1702 determine the effectiveness of the supervision system, the
1703 exceptions found, and corrective action taken or recommended, if
1704 any.

1705 3.2. An insurer is not required to include in its
1706 supervision system:

1707 a. Agent recommendations to consumers of products other
1708 than the annuities offered by the insurer;

1709 b. Consideration of or comparison to options available to
1710 the agent or compensation relating to those options other than
1711 annuities or other products offered by the insurer.

1712 4.3. An insurer may contract for performance of a
1713 function, including maintenance of procedures, required under
1714 subparagraph 1.

1715 a. An insurer's supervision system under this subsection
1716 shall include supervision of contractual performance under this
1717 subsection ~~If an insurer contracts for the performance of a~~
1718 ~~function, the insurer must include the supervision of~~
1719 ~~contractual performance as part of those procedures listed in~~
1720 ~~subparagraph 1.~~ These include, but are not limited to:

1721 (I) Monitoring and, as appropriate, conducting audits to
1722 ensure that the contracted function is properly performed; and

1723 (II) Annually obtaining a certification from a senior
1724 manager who has responsibility for the contracted function that
1725 the manager has a reasonable basis to represent, and does not

1726 represent ~~for representing~~ that the function is being properly
1727 performed.

1728 b. An insurer is responsible for taking appropriate
1729 corrective action and may be subject to sanctions and penalties
1730 pursuant to subsection (8) ~~(7)~~ regardless of whether the insurer
1731 contracts for performance of a function and regardless of the
1732 insurer's compliance with sub-subparagraph a.

1733 (d)-(h) Neither an agent nor an insurer shall ~~may not~~
1734 dissuade, or attempt to dissuade, a consumer from:

- 1735 1. Truthfully responding to an insurer's request for
1736 confirmation of consumer profile suitability information;
1737 2. Filing a complaint; or
1738 3. Cooperating with the investigation of a complaint.

1739 (e)1.-(i) Recommendations and sales made in compliance with
1740 comparable standards shall ~~FINRA requirements pertaining to the~~
1741 ~~suitability and supervision of annuity transactions~~ satisfy the
1742 requirements of this section. This applies to all
1743 recommendations and FINRA broker-dealer sales of variable
1744 annuities made by financial professionals in compliance with
1745 business rules, controls, and procedures that satisfy a
1746 comparable standard even if such standard would not otherwise
1747 apply to the product or recommendation at issue ~~and fixed~~
1748 ~~annuities if the suitability and supervision is similar to those~~
1749 ~~applied to variable annuity sales.~~ However, this paragraph does
1750 not limit the ability of the office or the department to

1751 investigate and enforce, including investigate, the provisions
1752 ~~of~~ this section.

1753 2. Subparagraph 1. shall not limit the insurer's
1754 obligation to comply with subsection (5) (c)1., although the
1755 insurer may base its analysis on information received from
1756 either the financial professional or the entity supervising the
1757 financial professional.

1758 3. For this paragraph to apply, an insurer shall must:

1759 a.1. Monitor relevant conduct of the financial
1760 professional seeking to rely on subparagraph 1. or the entity
1761 responsible for supervising the financial professional, such as
1762 the financial professional's broker-dealer or an investment
1763 adviser registered under federal or state securities law, the
1764 ~~FINRA member broker-dealer~~ using information collected in the
1765 normal course of an insurer's business; and

1766 b.2. Provide to the entity responsible for supervising the
1767 financial professional seeking to rely on subparagraph 1., such
1768 as the financial professional's broker dealer or investment
1769 adviser registered under federal or state securities laws, FINRA
1770 ~~member broker-dealer~~ information and reports that are reasonably
1771 appropriate to assist such entity ~~the FINRA member broker-dealer~~
1772 in maintaining its supervision system.

1773 4. For purposes of this paragraph, the term:

1774 a. "Comparable standards" means:

1775 (I) With respect to broker-dealers and registered

1776 representatives of broker-dealers, applicable SEC and FINRA
 1777 rules pertaining to best interest obligations and supervision of
 1778 annuity recommendations and sales including, but not limited to,
 1779 Regulation Best Interest, 17 C.F.R. s. 240.151-1, and any
 1780 amendments or successor regulations thereto;

1781 (II) With respect to investment advisers registered under
 1782 federal or state securities laws or investment adviser
 1783 representatives, the fiduciary duties and all other requirements
 1784 imposed on such investment advisers or investment adviser
 1785 representatives by contract or under the Investment Advisers Act
 1786 of 1940 or applicable state securities laws, including, but not
 1787 limited to, Form ADV and interpretations; and

1788 (III) With respect to plan fiduciaries or fiduciaries, the
 1789 duties, obligations, prohibitions and all other requirements
 1790 attendant to such status under ERISA, or the IRC and any
 1791 amendments or successor statutes thereto.

1792 b. "Financial professional" means an agent that is
 1793 regulated and acting as:

1794 (I) A broker dealer registered under federal or state
 1795 securities laws or a registered representative of a broker-
 1796 dealer;

1797 (II) An investment adviser registered under federal or
 1798 state securities laws or an investment adviser representative
 1799 associated with the federal or state registered investment
 1800 adviser; or

1801 (III) A plan fiduciary under Section 3(21) of the Employee
 1802 Retirement Income Security Act of 1974 (ERISA) or fiduciary
 1803 under Section 4975(e)(3) of the Internal Revenue Code (IRC) or
 1804 any amendments or successor statutes thereto.

1805 (6) AGENT TRAINING.—

1806 (a) An agent shall not solicit the sale of an annuity
 1807 product unless the agent has adequate knowledge of the product
 1808 to recommend the annuity and the agent is in compliance with the
 1809 insurer's standards for product training. An agent may rely on
 1810 insurer-provided product-specific training standards and
 1811 materials to comply with this subsection.

1812 (b)1.a. An agent who engages in the sale of annuity
 1813 products shall complete a one-time 4 hour training course. This
 1814 requirement is not part of an agent's continuing education
 1815 requirement in s. 626.2815; however, if a course provider
 1816 submits and receives approval from the Department of Financial
 1817 Services, then the course could also be eligible for continuing
 1818 education credit pursuant to s. 626.2815.

1819 b. Agents who hold a life insurance line of authority on
 1820 the effective date of this act and who desire to sell annuities
 1821 shall complete the requirements of this subsection within 6
 1822 months after the effective date of this act. Individuals who
 1823 obtain a life insurance line of authority after the effective
 1824 date of this act may not engage in the sale of annuities until
 1825 the annuity training course required under this subsection has

1826 | been completed.

1827 | 2. The minimum length of the training required under this
1828 | subsection is 4 hours.

1829 | 3. The training required under this subsection shall
1830 | include information on the following topics:

1831 | a. The types of annuities and various classifications of
1832 | annuities.

1833 | b. Identification of the parties to an annuity.

1834 | c. How product-specific annuity contract features affect
1835 | consumers.

1836 | d. The application of income taxation of qualified and
1837 | nonqualified annuities.

1838 | e. The primary uses of annuities.

1839 | f. Appropriate standard of conduct, sales practices,
1840 | replacement, and disclosure requirements.

1841 | 4. Providers of courses intended to comply with this
1842 | subsection shall cover all topics listed in the prescribed
1843 | outline and shall not present any marketing information or
1844 | provide training on sales techniques or provide specific
1845 | information about a particular insurer's products. Additional
1846 | topics may be offered in conjunction with and in addition to the
1847 | required outline.

1848 | 5. A provider of an annuity training course intended to
1849 | comply with this subsection shall register as a continuing
1850 | education provider in this state and comply with the rules and

1851 guidelines applicable to agent continuing education courses as
1852 set forth in s. 626.2815.

1853 6. An agent who has completed an annuity training course
1854 approved by the Office of Insurance Regulation prior to the
1855 effective date of this act shall, within 6 months after the
1856 effective date of this act, complete either:

1857 a. A new four credit training course approved by Office of
1858 Insurance Regulation after the effective date of this act; or

1859 b. An additional one-time one credit training course
1860 approved by Office of Insurance Regulation and provided by the
1861 Office of Insurance Regulation-approved education provider on
1862 appropriate sales practices, replacement and disclosure
1863 requirements under this section.

1864 7. Annuity training courses may be conducted and completed
1865 by classroom or self-study methods in accordance with s.
1866 626.2815.

1867 8. Providers of annuity training shall comply with the
1868 reporting requirements and shall issue certificates of
1869 completion in accordance with s. 626.2815.

1870 9. The satisfaction of the training requirements of
1871 another state that are substantially similar to the provisions
1872 of this subsection shall be deemed to satisfy the training
1873 requirements of this subsection in this state.

1874 10. The satisfaction of the training requirements of any
1875 course or courses with components substantially similar to the

1876 provisions of this subsection shall be deemed to satisfy the
 1877 training requirements of this subsection in this state.

1878 11. An insurer shall verify that an agent has completed
 1879 the annuity training course required under this subsection
 1880 before allowing the agent to sell an annuity product for that
 1881 insurer. An insurer may satisfy its responsibility under this
 1882 subsection by obtaining certificates of completion of the
 1883 training course or obtaining reports provided by commissioner-
 1884 sponsored database systems or vendors or from a reasonably
 1885 reliable commercial database vender that has a reporting
 1886 arrangement with approved insurance education providers.

1887 (7)-(6) RECORDKEEPING.-

1888 (a) Insurers and agents must maintain or be able to make
 1889 available to the office or department records of the information
 1890 collected from the consumer and other information used in making
 1891 the recommendations that were the basis for insurance
 1892 transactions for 5 years after the insurance transaction is
 1893 completed by the insurer. An insurer may maintain the
 1894 documentation on behalf of its agent.

1895 (b) Records required to be maintained under this
 1896 subsection may be maintained in paper, photographic,
 1897 microprocess, magnetic, mechanical, or electronic media, or by
 1898 any process that accurately reproduces the actual document.

1899 (8)-(7) COMPLIANCE MITIGATION; PENALTIES.-

1900 (a) An insurer is responsible for compliance with this

1901 section. If a violation occurs because of the action or inaction
 1902 of the insurer or its agent which results in harm to a consumer,
 1903 the office may order the insurer to take reasonably appropriate
 1904 corrective action for the consumer and may impose appropriate
 1905 penalties and sanctions.

1906 (b) The department may order:

1907 1. An ~~insurance~~ agent to take reasonably appropriate
 1908 corrective action for a consumer harmed by a violation of this
 1909 section by the ~~insurance~~ agent, including monetary restitution
 1910 of penalties or fees incurred by the consumer, and impose
 1911 appropriate penalties and sanctions.

1912 2. A managing general agency or insurance agency that
 1913 employs or contracts with an ~~insurance~~ agent to sell or solicit
 1914 the sale of annuities to consumers to take reasonably
 1915 appropriate corrective action for a consumer harmed by a
 1916 violation of this section by the ~~insurance~~ agent.

1917 (c) In addition to any other penalty authorized under
 1918 chapter 626, the department shall order an insurance agent to
 1919 pay restitution to a consumer who has been deprived of money by
 1920 the agent's misappropriation, conversion, or unlawful
 1921 withholding of moneys belonging to the consumer in the course of
 1922 a transaction involving annuities. The amount of restitution
 1923 required to be paid may not exceed the amount misappropriated,
 1924 converted, or unlawfully withheld. This paragraph does not limit
 1925 or restrict a person's right to seek other remedies as provided

1926 | by law.

1927 | (d) Any applicable penalty under the Florida Insurance
 1928 | Code for a violation of this section shall be reduced or
 1929 | eliminated according to a schedule adopted by the office or the
 1930 | department, as appropriate, if corrective action for the
 1931 | consumer was taken promptly after a violation was discovered.

1932 | (e) A violation of this section does not create or imply a
 1933 | private cause of action.

1934 | (9)~~(8)~~ PROHIBITED CHARGES.—An annuity contract issued to a
 1935 | senior consumer age 65 or older may not contain a surrender or
 1936 | deferred sales charge for a withdrawal of money from an annuity
 1937 | exceeding 10 percent of the amount withdrawn. The charge shall
 1938 | be reduced so that no surrender or deferred sales charge exists
 1939 | after the end of the 10th policy year or 10 years after the date
 1940 | of each premium payment if multiple premiums are paid, whichever
 1941 | is later. This subsection does not apply to annuities purchased
 1942 | by an accredited investor, as defined in Regulation D as adopted
 1943 | by the United States Securities and Exchange Commission, or to
 1944 | those annuities specified in paragraph (4) (b).

1945 | (10)~~(9)~~ RULES.—The department and the commission may adopt
 1946 | rules to administer this section.

1947 | Section 18. Paragraph (b) of subsection (8) of section
 1948 | 634.041, Florida Statutes, is amended to read:

1949 | 634.041 Qualifications for license.—To qualify for and
 1950 | hold a license to issue service agreements in this state, a

1951 service agreement company must be in compliance with this part,
 1952 with applicable rules of the commission, with related sections
 1953 of the Florida Insurance Code, and with its charter powers and
 1954 must comply with the following:

1955 (8)

1956 (b) A service agreement company does not have to establish
 1957 and maintain an unearned premium reserve if it secures and
 1958 maintains contractual liability insurance in accordance with the
 1959 following:

1960 1. Coverage of 100 percent of the claim exposure is
 1961 obtained from an insurer approved by the office, which holds a
 1962 certificate of authority under s. 624.401 to do business within
 1963 this state, or secured through a risk retention group, which is
 1964 authorized to do business within this state under s. 627.943 or
 1965 s. 627.944. Such insurer or risk retention group must maintain a
 1966 surplus as regards policyholders of at least \$15 million.

1967 2. If the service agreement company does not meet its
 1968 contractual obligations, the contractual liability insurance
 1969 policy binds its issuer to pay or cause to be paid to the
 1970 service agreement holder all legitimate claims and cancellation
 1971 refunds for all service agreements issued by the service
 1972 agreement company while the policy was in effect. This
 1973 requirement also applies to those service agreements for which
 1974 no premium has been remitted to the insurer.

1975 3. If the issuer of the contractual liability policy is

1976 fulfilling the service agreements covered by the contractual
 1977 liability policy and the service agreement holder cancels the
 1978 service agreement, the issuer must make a full refund of
 1979 unearned premium to the consumer, subject to the cancellation
 1980 fee provisions of s. 634.121(3). The sales representative and
 1981 agent must refund to the contractual liability policy issuer
 1982 their unearned pro rata commission.

1983 4. The policy may not be canceled, terminated, or
 1984 nonrenewed by the insurer or the service agreement company
 1985 unless a 90-day written notice thereof has been given to the
 1986 office by the insurer before the date of the cancellation,
 1987 termination, or nonrenewal.

1988 5. The service agreement company must provide the office
 1989 with the claims statistics.

1990 6. A policy issued in compliance with this subparagraph
 1991 may either pay 100 percent of claims as they are incurred, or
 1992 100 percent of claims due in the event of the failure of the
 1993 service agreement company to pay such claims when due.

1994
 1995 All funds or premiums remitted to an insurer by a motor vehicle
 1996 service agreement company under this part shall remain in the
 1997 care, custody, and control of the insurer and shall be counted
 1998 as an asset of the insurer; provided, however, this requirement
 1999 does not apply when the insurer and the motor vehicle service
 2000 agreement company are affiliated companies and members of an

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2001 insurance holding company system. If the motor vehicle service
2002 agreement company chooses to comply with this paragraph but also
2003 maintains a reserve to pay claims, such reserve shall only be
2004 considered an asset of the covered motor vehicle service
2005 agreement company and may not be simultaneously counted as an
2006 asset of any other entity.

2007 Section 19. The Division of Law Revision is directed to
2008 replace the phrase "the effective date of this act" wherever it
2009 occurs in this act with the date this act becomes a law.

2010 Section 20. This act shall take effect upon becoming a
2011 law.