

By Senator DiCeglie

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1 A bill to be entitled
2 An act relating to consumer protection; amending s.
3 494.001, F.S.; revising the definition of the term
4 "branch office"; defining the term "remote location";
5 authorizing a licensee under ch. 494, F.S., to allow
6 loan originators to work from remote locations if
7 specified conditions are met; amending s. 494.0067,
8 F.S.; specifying that mortgage lenders may transact
9 business from branch offices and remote locations;
10 providing a requirement for operating remote
11 locations; creating s. 501.2042, F.S.; defining terms;
12 providing requirements for organizers of crowd-funding
13 campaigns related to disasters and for crowd-funding
14 platforms; amending s. 520.23, F.S.; revising
15 disclosure requirements for agreements governing the
16 sale or lease of a distributed energy generation
17 system; amending s. 626.551, F.S.; revising the
18 timeframe in which an insurance representative must
19 notify the Department of Financial Services of certain
20 changes in information; amending s. 626.602, F.S.;
21 providing applicability of provisions relating to the
22 disapproval of insurance agency names to adjusting
23 firm names; revising grounds on which such names may
24 be disapproved by the department; providing for repeal
25 of a provision upon becoming obsolete; amending s.
26 626.854, F.S.; revising the definition of "public
27 adjuster"; prohibiting public adjusters from
28 contracting with anyone other than the named insured
29 without the insured's written consent; specifying a

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30 penalty for noncompliance; specifying timeframes in
31 which an insured or a claimant may cancel a public
32 adjuster's contract without penalty or contract under
33 certain circumstances; revising requirements for
34 public adjuster's contracts; specifying requirements
35 for public adjusters if the insurer, within a certain
36 timeframe, pays or commits in writing to pay to the
37 insured the policy limit of the policy; specifying the
38 commission a public adjuster receives under certain
39 circumstances; amending s. 626.860, F.S.; providing
40 that an attorney's exemption from public adjuster
41 licensure requirements do not apply to certain
42 persons; amending s. 626.865, F.S.; revising
43 qualifications for a public adjuster's license;
44 requiring applicants for public adjuster licenses to
45 file with the department a specified errors and
46 omissions insurance policy; amending s. 626.875, F.S.;
47 revising recordkeeping requirements for appointed
48 independent adjusters and licensed public adjusters;
49 creating s. 626.8751, F.S.; specifying claims payment
50 requirements for insurers when a claim is settled
51 while the insured is represented by a public adjuster;
52 amending s. 626.8796, F.S.; revising requirements for
53 public adjuster contracts; specifying requirements for
54 and prohibitions on public adjusters relating to such
55 contracts; providing construction; authorizing the
56 department to adopt rules; amending s. 626.8797, F.S.;
57 revising a fraud statement requirement in proof-of-
58 loss statements; amending s. 626.9541, F.S.; adding a

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59 unfair or deceptive insurance act relating to health
60 insurance contracts; amending s. 627.4025, F.S.;

61 revising the definition of the term "hurricane," and
62 defining the term "hurricane deductible," as used in
63 policies providing residential coverage; amending s.
64 627.4133, F.S.; revising the timeframe after which
65 certain insurers may not cancel policies except for
66 specified reasons; amending s. 627.4554, F.S.;

67 revising legislative purpose; revising applicability;
68 revising and defining terms; revising and specifying
69 duties of insurers and agents relating to the
70 recommendation and sale of annuity investments;
71 specifying comparable standards that comply with such
72 requirements; specifying agent training requirements;
73 providing and revising construction; amending s.
74 634.041, F.S.; specifying authorized methods of paying
75 claims for motor vehicle service agreements; providing
76 a directive to the Division of Law Revision; providing
77 an effective date.

78

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

80

81 Section 1. Subsections (35) through (38) of section
82 494.001, Florida Statutes, are renumbered as subsections (36)
83 through (39), respectively, subsection (3) is amended, and a new
84 subsection (35) is added to that section, to read:

85 494.001 Definitions.—As used in this chapter, the term:

86 (3) "Branch office" means a remote location or a location,
87 other than a mortgage broker's or mortgage lender's principal

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88 place of business:

89 (a) The address of which appears on business cards,
90 stationery, or advertising used by the licensee in connection
91 with business conducted under this chapter;

92 (b) At which the licensee's name, advertising or
93 promotional materials, or signage suggests that mortgage loans
94 are originated, negotiated, funded, or serviced; or

95 (c) At which mortgage loans are originated, negotiated,
96 funded, or serviced by a licensee.

97 (35) "Remote location" means a location, other than a
98 principal place of business or a branch office, at which a loan
99 originator of a licensee may conduct business. A licensee may
100 allow loan originators to work from remote locations if:

101 (a) The licensee has written policies and procedures for
102 supervision of loan originators working from remote locations.

103 (b) Access to company platforms and customer information is
104 in accordance with the licensee's comprehensive written
105 information security plan.

106 (c) An in-person customer interaction does not occur at a
107 loan originator's residence unless such residence is a licensed
108 location.

109 (d) Physical records are not maintained at a remote
110 location.

111 (e) Customer interactions and conversations about consumers
112 will be in compliance with federal and state information
113 security requirements, including applicable provisions under the
114 Gramm-Leach-Bliley Act and the Safeguards Rule established by
115 the Federal Trade Commission, set forth at 16 C.F.R. part 314,
116 as such requirements may be amended from time to time.

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117 (f) A loan originator working at a remote location accesses
118 the company's secure systems, including a cloud-based system,
119 directly from any out-of-office device such as a laptop, phone,
120 desktop computer, or tablet, through a virtual private network
121 or comparable system that ensures secure connectivity and that
122 requires passwords or other forms of authentication to access.

123 (g) The licensee ensures that appropriate security updates,
124 patches, or other alterations to the security of all devices
125 used at remote locations are installed and maintained.

126 (h) The licensee is able to remotely lock or erase company-
127 related contents of any device or otherwise remotely limit all
128 access to a company's secure systems.

129 (i) The registry's record of a loan originator who works
130 from a remote location designates the principal place of
131 business as the loan originator's registered location, or the
132 loan originator has elected a licensed branch office as a
133 registered location.

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

136 494.0067 Requirements of mortgage lenders.-

137 (1) A mortgage lender that makes mortgage loans on real
138 estate in this state shall transact business from a principal
139 place of business, branch office, or remote location. Each
140 principal place of business, ~~and~~ each branch office, and remote
141 location shall be operated under the full charge, control, and
142 supervision of the licensee pursuant to this part.

143 Section 3. Section 501.2042, Florida Statutes, is created
144 to read:

145 501.2042 Unlawful acts and practices by online crowd-

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146 funding campaigns.—

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

148 (a) "Crowd-funding campaign" means an online fundraising
149 initiative that is intended to receive monetary donations from
150 donors and is created by an organizer in the interest of a
151 beneficiary.

152 (b) "Crowd-funding platform" means an entity doing business
153 in this state which provides an online medium for the creation
154 and facilitation of a crowd-funding campaign.

155 (c) "Disaster" means any natural, technological, or civil
156 emergency that occurs in this state and that causes damage of
157 sufficient severity and magnitude to result in a declaration of
158 a state of emergency by a county, the Governor, or the President
159 of the United States.

160 (d) "Organizer" means a person who:

161 1. Resides or is domiciled in this state.

162 2. Has an account on a crowd-funding platform and has
163 created a crowd-funding campaign either as a beneficiary or on
164 behalf of a beneficiary, regardless of whether the beneficiary
165 or the crowd-funding campaign has received donations.

166 (2) When an organizer arranges a crowd-funding campaign
167 related to a disaster, the organizer must produce to the crowd-
168 funding platform a complete and accurate accounting of all
169 donations received and expended by the crowd-funding campaign.
170 The crowd-funding platform must publish all received accountings
171 on its website.

172 Section 4. Section 520.23, Florida Statutes, is amended to
173 read:

174 520.23 Disclosures required.—Each agreement governing the

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175 sale or lease of a distributed energy generation system shall,
176 at a minimum, include a written statement printed in at least
177 12-point type that is separate from the agreement, is separately
178 acknowledged by the buyer or lessee, and includes the following
179 information and disclosures, if applicable:

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

182 (2) The name, address, telephone number, e-mail address,
183 and valid state contractor license number of the person
184 responsible for installing the distributed energy generation
185 system.

186 (3) The name, address, telephone number, e-mail address,
187 and valid state contractor license number of the distributed
188 energy generation system maintenance provider, if different from
189 the person responsible for installing the distributed energy
190 generation system.

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

193 (5)~~(4)~~ A written statement indicating whether the
194 distributed energy generation system is being purchased or
195 leased.

196 (a) If the distributed energy generation system will be
197 leased, the written statement must include a disclosure in
198 substantially the following form: "You are entering into an
199 agreement to lease a distributed energy generation system. You
200 will lease (not own) the system installed on your property."

201 (b) If the distributed energy generation system will be
202 purchased, the written statement must include a disclosure in
203 substantially the following form: "You are entering into an

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204 agreement to purchase a distributed energy generation system.
205 You will own (not lease) the system installed on your property.”

206 (6)~~(5)~~ The total cost to be paid by the buyer or lessee,
207 including any interest, installation fees, document preparation
208 fees, service fees, or other fees.

209 (7)~~(6)~~ A payment schedule, including any amounts owed at
210 contract signing, at the commencement of installation, at the
211 completion of installation, and any final payments. If the
212 distributed energy generation system is being leased, the
213 written statement must include the frequency and amount of each
214 payment due under the lease and the total estimated lease
215 payments over the term of the lease.

216 (8)~~(7)~~ Each state or federal tax incentive or rebate, if
217 any, relied upon by the seller in determining the price of the
218 distributed energy generation system.

219 (9)~~(8)~~ A description of the assumptions used to calculate
220 any savings estimates provided to the buyer or lessee, and if
221 such estimates are provided, a statement in substantially the
222 following form: “It is important to understand that future
223 electric utility rates are estimates only. Your future electric
224 utility rates may vary.”

225 (10)~~(9)~~ A description of any one-time or recurring fees,
226 including, but not limited to, estimated system removal fees,
227 maintenance fees, Internet connection fees, and automated
228 clearinghouse fees. If late fees may apply, the description must
229 describe the circumstances triggering such late fees.

230 (11)~~(10)~~ A statement notifying the buyer whether the
231 distributed energy generation system is being financed and, if
232 so, a statement in substantially the following form: “If your

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233 system is financed, carefully read any agreements and/or
234 disclosure forms provided by your lender. This statement does
235 not contain the terms of your financing agreement. If you have
236 any questions about your financing agreement, contact your
237 finance provider before signing a contract.”

238 (12)~~(11)~~ A statement notifying the buyer whether the seller
239 is assisting in arranging financing of the distributed energy
240 generation system and, if so, a statement in substantially the
241 following form: “If your system is financed, carefully read any
242 agreements and/or disclosure forms provided by your lender. This
243 statement does not contain the terms of your financing
244 agreement. If you have any questions about your financing
245 agreement, contact your finance provider before signing a
246 contract.”

247 (13)~~(12)~~ A provision notifying the buyer or lessee of the
248 right to rescind the agreement for a period of at least 3
249 business days after the agreement is signed. This subsection
250 does not apply to a contract to sell or lease a distributed
251 energy generation system in a solar community in which the
252 entire community has been marketed as a solar community and all
253 of the homes in the community are intended to have a distributed
254 energy generation system, or a solar community in which the
255 developer has incorporated solar technology for purposes of
256 meeting the Florida Building Code in s. 553.73.

257 (14)~~(13)~~ A description of the distributed energy generation
258 system design assumptions, including the make and model of the
259 major components, system size, estimated first-year energy
260 production, and estimated annual energy production decreases,
261 including the overall percentage degradation over the estimated

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262 life of the distributed energy generation system, and the status
263 of utility compensation for excess energy generated by the
264 system at the time of contract signing. A seller who provides a
265 warranty or guarantee of the energy production output of the
266 distributed energy generation system may provide a description
267 of such warranty or guarantee in lieu of a description of the
268 system design and components.

269 (15)~~(14)~~ A description of any performance or production
270 guarantees.

271 (16)~~(15)~~ A description of the ownership and transferability
272 of any tax credits, rebates, incentives, or renewable energy
273 certificates associated with the distributed energy generation
274 system, including a disclosure as to whether the seller will
275 assign or sell any associated renewable energy certificates to a
276 third party.

277 (17)~~(16)~~ A statement in substantially the following form:
278 "You are responsible for property taxes on property you own.
279 Consult a tax professional to understand any tax liability or
280 eligibility for any tax credits that may result from the
281 purchase of your distributed energy generation system."

282 (18)~~(17)~~ The approximate start and completion dates for the
283 installation of the distributed energy generation system.

284 (19)~~(18)~~ A disclosure as to whether maintenance and repairs
285 of the distributed energy generation system are included in the
286 purchase price.

287 (20)~~(19)~~ A disclosure as to whether any warranty or
288 maintenance obligations related to the distributed energy
289 generation system may be sold or transferred by the seller to a
290 third party and, if so, a statement in substantially the

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291 following form: "Your contract may be assigned, sold, or
292 transferred without your consent to a third party who will be
293 bound to all the terms of the contract. If a transfer occurs,
294 you will be notified if this will change the address or phone
295 number to use for system maintenance or repair requests."

296 (21)~~(20)~~ If the distributed energy generation system will
297 be purchased, a disclosure notifying the buyer of the
298 requirements for interconnecting the system to the utility
299 system.

300 (22)~~(21)~~ A disclosure notifying the buyer or lessee of the
301 party responsible for obtaining interconnection approval.

302 (23)~~(22)~~ A description of any roof warranties.

303 (24) A statement in substantially the following form: "You
304 should consider the age and remaining life of your roof prior to
305 installing a distributed energy generation system. Replacement
306 of your roof may require re-installment of the distributed
307 energy generation system."

308 (25)~~(23)~~ A disclosure notifying the lessee whether the
309 seller will insure a leased distributed energy generation system
310 against damage or loss and, if applicable, the circumstances
311 under which the seller will not insure the system against damage
312 or loss.

313 (26)~~(24)~~ A statement, ~~if applicable,~~ in substantially the
314 following form: "You are responsible for obtaining insurance
315 policies or coverage for any loss of or damage to the system.
316 Consult an insurance professional to understand how to protect
317 against the risk of loss or damage to the system."

318 (27) A statement in substantially the following form:
319 "Placing a distributed energy generation system on your roof may

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320 impact your future insurance premiums. You are responsible for
321 contacting your insurance carrier, prior to entering into a
322 purchase or lease agreement, to confirm whether your current
323 policy or coverage will need to be modified upon installing the
324 distributed energy generation system onto your dwelling."

325 (28)~~(25)~~ A disclosure notifying the buyer or lessee whether
326 the seller or lessor will place a lien on the buyer's or
327 lessee's home or other property as a result of entering into a
328 purchase or lease agreement for the distributed energy
329 generation system.

330 (29)~~(26)~~ A disclosure notifying the buyer or lessee whether
331 the seller or lessor will file a fixture filing or a State of
332 Florida Uniform Commercial Code Financing Statement Form (UCC-1)
333 on the distributed energy generation system.

334 (30)~~(27)~~ A disclosure identifying whether the agreement
335 contains any restrictions on the buyer's or lessee's ability to
336 modify or transfer ownership of a distributed energy generation
337 system, including whether any modification or transfer is
338 subject to review or approval by a third party.

339 (31)~~(28)~~ A disclosure as to whether the lease agreement may
340 be transferred to a purchaser upon sale of the home or real
341 property to which the system is affixed, and any conditions for
342 such transfer.

343 (32)~~(29)~~ A blank section that allows the seller to provide
344 additional relevant disclosures or explain disclosures made
345 elsewhere in the disclosure form.

346

347 The requirement to provide a written statement under this
348 section may be satisfied by the electronic delivery of a

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349 document within 24 hours after execution of the written
350 statement containing the required statement if the intended
351 recipient of the electronic document affirmatively acknowledges
352 its receipt. An electronic document satisfies the font and other
353 formatting standards required for the written statement if the
354 format and the relative size of characters of the electronic
355 document are reasonably similar to those required in the written
356 document or if the information is otherwise displayed in a
357 reasonably conspicuous manner.

358 Section 5. Section 626.551, Florida Statutes, is amended to
359 read:

360 626.551 Notice of change of address, name.—A licensee must
361 notify the department, in writing, within 5 ~~30~~ days after a
362 change of name, residence address, principal business street
363 address, mailing address, contact telephone numbers, including a
364 business telephone number, or e-mail address. A licensee who has
365 moved his or her principal place of residence and principal
366 place of business from this state shall have his or her license
367 and all appointments immediately terminated by the department.
368 Failure to notify the department within the required time shall
369 result in a fine not to exceed \$250 for the first offense and a
370 fine of at least \$500 or suspension or revocation of the license
371 pursuant to s. 626.611, s. 626.6115, s. 626.621, or s. 626.6215
372 for a subsequent offense. The department may adopt rules to
373 administer and enforce this section.

374 Section 6. Section 626.602, Florida Statutes, is amended to
375 read:

376 626.602 Insurance agency and adjusting firm names;
377 disapproval.—The department may disapprove the use of any true

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378 or fictitious name, other than the bona fide natural name of an
379 individual, by any insurance agency or adjusting firm on any of
380 the following grounds:

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

384 (2) The use of the name may mislead the public in any
385 respect.

386 (3) The name states or implies that the agency or adjusting
387 firm is an insurer, motor club, hospital service plan, state or
388 federal agency, charitable organization, or entity that
389 primarily provides advice and counsel rather than sells or
390 solicits insurance, settles claims, or is entitled to engage in
391 insurance activities not permitted under licenses held or
392 applied for. This provision does not prohibit the use of the
393 word "state" or "states" in the name of the agency. The use of
394 the word "state" or "states" in the name of an agency or
395 adjusting firm does not in and of itself imply that the agency
396 or adjusting firm is a state agency.

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

398 (b) An insurance agency whose name contains the word
399 "Medicare" or "Medicaid" but which is licensed as of July 1,
400 2021, may continue to use that name until June 30, 2023,
401 provided that the agency's license remains valid. If the
402 agency's license expires or is suspended or revoked, the agency
403 may not be relicensed using that name. Licenses for agencies
404 with names containing either of these words automatically expire
405 on July 1, 2023, unless these words are removed from the name.
406 This paragraph is repealed July 1, 2023.

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407 Section 7. Section 626.854, Florida Statutes, is amended to
408 read:

409 626.854 "Public adjuster" defined; prohibitions.—The
410 Legislature finds that it is necessary for the protection of the
411 public to regulate public insurance adjusters and to prevent the
412 unauthorized practice of law.

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

434 (2) This definition does not apply to:

435 (a) A licensed health care provider or employee thereof who

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436 prepares or files a health insurance claim form on behalf of a
437 patient.

438 (b) A licensed health insurance agent who assists an
439 insured with coverage questions, medical procedure coding
440 issues, balance billing issues, understanding the claims filing
441 process, or filing a claim, as such assistance relates to
442 coverage under a health insurance policy.

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

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

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

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

456 (6) (a) When entering a contract for adjuster services after
457 July 1, 2023, a public adjuster is prohibited from contracting
458 with anyone other than the named insured unless the named
459 insured provides written consent, subsequent to entering a
460 contract for public adjusting services.

461 (b) In the event a public adjuster contracts with a third
462 party in settling the named insured's claim, without first
463 obtaining the insured's written consent, payment of the third
464 party's fees shall be made from the public adjuster's fee.

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465 (7)~~(6)~~ An insured or claimant may cancel a public
466 adjuster's contract to adjust a claim without penalty or
467 obligation within 10 days after the date on which the contract
468 is executed. If the contract was entered into based on events
469 that are the subject of a declaration of a state of emergency by
470 the Governor, an insured or claimant may cancel the public
471 adjuster's contract to adjust a claim without penalty or
472 obligation within 30 days after the date on which the contract
473 is executed. The public adjuster's contract must contain the
474 following language in minimum 18-point bold type immediately
475 before the space reserved in the contract for the signature of
476 the insured or claimant: "You, the insured, may cancel this
477 contract for any reason without penalty or obligation to you
478 within 10 days after the date of this contract. If this contract
479 was entered into based on events that are the subject of a
480 declaration of a state of emergency by the Governor, you may
481 cancel this contract for any reason without penalty or
482 obligation to you within 30 days after the date of this
483 contract. You may also cancel the contract without penalty or
484 obligation to you if I, as your public adjuster, fail to provide
485 you and your insurer a copy of a written estimate within 45 days
486 of the execution of the contract in accordance with s.
487 626.854(14)(b), Florida Statutes." ~~The by providing~~ notice of
488 cancellation shall be provided to ...(name of public
489 adjuster)..., submitted in writing and sent by certified mail,
490 return receipt requested, or other form of mailing that provides
491 proof thereof, at the address specified in the contract.

492 (8)~~(7)~~ It is an unfair and deceptive insurance trade
493 practice pursuant to s. 626.9541 for a public adjuster or any

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494 other person to circulate or disseminate any advertisement,
495 announcement, or statement containing any assertion,
496 representation, or statement with respect to the business of
497 insurance which is untrue, deceptive, or misleading.

498 (a) The following statements, made in any public adjuster's
499 advertisement or solicitation, are considered deceptive or
500 misleading:

501 1. A statement or representation that invites an insured
502 policyholder to submit a claim when the policyholder does not
503 have covered damage to insured property.

504 2. A statement or representation that invites an insured
505 policyholder to submit a claim by offering monetary or other
506 valuable inducement.

507 3. A statement or representation that invites an insured
508 policyholder to submit a claim by stating that there is "no
509 risk" to the policyholder by submitting such claim.

510 4. A statement or representation, or use of a logo or
511 shield, that implies or could mistakenly be construed to imply
512 that the solicitation was issued or distributed by a
513 governmental agency or is sanctioned or endorsed by a
514 governmental agency.

515 (b) For purposes of this paragraph, the term "written
516 advertisement" includes only newspapers, magazines, flyers, and
517 bulk mailers. The following disclaimer, which is not required to
518 be printed on standard size business cards, must be added in
519 bold print and capital letters in typeface no smaller than the
520 typeface of the body of the text to all written advertisements
521 by a public adjuster:
522

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

527
528 (9)~~(8)~~ A public adjuster, a public adjuster apprentice, or
529 any person or entity acting on behalf of a public adjuster or
530 public adjuster apprentice may not give or offer to give a
531 monetary loan or advance to a client or prospective client.

532 (10)~~(9)~~ A public adjuster, public adjuster apprentice, or
533 any individual or entity acting on behalf of a public adjuster
534 or public adjuster apprentice may not give or offer to give,
535 directly or indirectly, any article of merchandise having a
536 value in excess of \$25 to any individual for the purpose of
537 advertising or as an inducement to entering into a contract with
538 a public adjuster.

539 (11) If the insurer, not later than 14 days after the date
540 on which the loss is reported to the insurer, either pays or
541 commits in writing to pay to the insured the policy limit of the
542 insurance policy, the public adjuster shall:

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

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

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

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552 (12) If the public adjuster enters into a contract with an
553 insured or claimant after the insured or claimant unsuccessfully
554 negotiates an insurance claim payment and the public adjuster is
555 successful in obtaining a higher insurance claim payment, the
556 public adjuster shall receive a commission consisting of 10
557 percent of the difference between the initial insurance claim
558 payment offer made to the insured and the final insurance claim
559 payment obtained through the work of the public adjuster after
560 entering into the contract with the insured or claimant.

561 (13)~~(10)~~ (a) If a public adjuster enters into a contract
562 with an insured or claimant to reopen a claim or file a
563 supplemental claim that seeks additional payments for a claim
564 that has been previously paid in part or in full or settled by
565 the insurer, the public adjuster may not charge, agree to, or
566 accept from any source compensation, payment, commission, fee,
567 or any other thing of value based on a previous settlement or
568 previous claim payments by the insurer for the same cause of
569 loss. The charge, compensation, payment, commission, fee, or any
570 other thing of value must be based only on the claim payments or
571 settlements paid to the insured, exclusive of attorney fees and
572 costs, obtained through the work of the public adjuster after
573 entering into the contract with the insured or claimant.

574 Compensation for the reopened or supplemental claim may not
575 exceed 20 percent of the reopened or supplemental claim payment.
576 In no event shall the contracts described in this paragraph
577 exceed the limitations in paragraph (b).

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

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581 1. Ten percent of the amount of insurance claim payments or
582 settlements, exclusive of attorney fees and costs, paid to the
583 insured by the insurer for claims based on events that are the
584 subject of a declaration of a state of emergency by the
585 Governor. This provision applies to claims made during the year
586 after the declaration of emergency. After that year, the
587 limitations in subparagraph 2. apply.

588 2. Twenty percent of the amount of insurance claim payments
589 or settlements, exclusive of attorney fees and costs, paid to
590 the insured by the insurer for claims that are not based on
591 events that are the subject of a declaration of a state of
592 emergency by the Governor.

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

596 (d) Public adjuster compensation may not be based on
597 amounts attributable to additional living expenses, unless such
598 compensation is affirmatively agreed to in a separate agreement
599 that includes a disclosure in substantially the following form:
600 "I agree to retain and compensate the public adjuster for
601 adjusting my additional living expenses and securing payment
602 from my insurer for amounts attributable to additional living
603 expenses payable under the policy issued on my (home/mobile
604 home/condominium unit)."

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

607 (f) Any maneuver, shift, or device through which the limits
608 on compensation set forth in this subsection are exceeded is a
609 violation of this chapter punishable as provided under s.

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610 626.8698.

611 (14) (a)~~(11)~~ Each public adjuster must provide to the
612 claimant or insured a written estimate of the loss to assist in
613 the submission of a proof of loss or any other claim for payment
614 of insurance proceeds within 60 days after the date of the
615 contract. The written estimate must include an itemized, per-
616 unit estimate of the repairs, including itemized information on
617 equipment, materials, labor, and supplies, in accordance with
618 accepted industry standards. The public adjuster shall retain
619 such written estimate for at least 5 years and shall make the
620 estimate available to the claimant or insured, the insurer, and
621 the department upon request.

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

626 (15)~~(12)~~ A public adjuster, public adjuster apprentice, or
627 any person acting on behalf of a public adjuster or apprentice
628 may not accept referrals of business from any person with whom
629 the public adjuster conducts business if there is any form or
630 manner of agreement to compensate the person, directly or
631 indirectly, for referring business to the public adjuster. A
632 public adjuster may not compensate any person, except for
633 another public adjuster, directly or indirectly, for the
634 principal purpose of referring business to the public adjuster.

635 (16)~~(13)~~ A company employee adjuster, independent adjuster,
636 attorney, investigator, or other persons acting on behalf of an
637 insurer that needs access to an insured or claimant or to the
638 insured property that is the subject of a claim must provide at

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639 least 48 hours' notice to the insured or claimant, public
640 adjuster, or legal representative before scheduling a meeting
641 with the claimant or an onsite inspection of the insured
642 property. The insured or claimant may deny access to the
643 property if the notice has not been provided. The insured or
644 claimant may waive the 48-hour notice.

645 (17)~~(14)~~ The public adjuster must ensure that prompt notice
646 is given of the claim to the insurer, the public adjuster's
647 contract is provided to the insurer, the property is available
648 for inspection of the loss or damage by the insurer, and the
649 insurer is given an opportunity to interview the insured
650 directly about the loss and claim. The insurer must be allowed
651 to obtain necessary information to investigate and respond to
652 the claim.

653 (a) The insurer may not exclude the public adjuster from
654 its in-person meetings with the insured. The insurer shall meet
655 or communicate with the public adjuster in an effort to reach
656 agreement as to the scope of the covered loss under the
657 insurance policy. The public adjuster shall meet or communicate
658 with the insurer in an effort to reach agreement as to the scope
659 of the covered loss under the insurance policy. This section
660 does not impair the terms and conditions of the insurance policy
661 in effect at the time the claim is filed.

662 (b) A public adjuster may not restrict or prevent an
663 insurer, company employee adjuster, independent adjuster,
664 attorney, investigator, or other person acting on behalf of the
665 insurer from having reasonable access at reasonable times to any
666 insured or claimant or to the insured property that is the
667 subject of a claim.

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668 (c) A public adjuster may not act or fail to reasonably act
669 in any manner that obstructs or prevents an insurer or insurer's
670 adjuster from timely conducting an inspection of any part of the
671 insured property for which there is a claim for loss or damage.
672 The public adjuster representing the insureds may be present for
673 the insurer's inspection, but if the unavailability of the
674 public adjuster otherwise delays the insurer's timely inspection
675 of the property, the public adjuster or the insureds must allow
676 the insurer to have access to the property without the
677 participation or presence of the public adjuster or insureds in
678 order to facilitate the insurer's prompt inspection of the loss
679 or damage.

680 (18)~~(15)~~ A licensed contractor under part I of chapter 489,
681 or a subcontractor of such licensee, may not advertise, solicit,
682 offer to handle, handle, or perform public adjuster services as
683 provided in subsection (1) unless licensed and compliant as a
684 public adjuster under this chapter. The prohibition against
685 solicitation does not preclude a contractor from suggesting or
686 otherwise recommending to a consumer that the consumer consider
687 contacting his or her insurer to determine if the proposed
688 repair is covered under the consumer's insurance policy, except
689 as it relates to solicitation prohibited in s. 489.147. In
690 addition, the contractor may discuss or explain a bid for
691 construction or repair of covered property with the residential
692 property owner who has suffered loss or damage covered by a
693 property insurance policy, or the insurer of such property, if
694 the contractor is doing so for the usual and customary fees
695 applicable to the work to be performed as stated in the contract
696 between the contractor and the insured.

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697 (19)~~(16)~~ A public adjuster shall not acquire any interest
698 in salvaged property, except with the written consent and
699 permission of the insured through a signed affidavit.

700 (20)~~(17)~~ A public adjuster, a public adjuster apprentice,
701 or a person acting on behalf of an adjuster or apprentice may
702 not enter into a contract or accept a power of attorney that
703 vests in the public adjuster, the public adjuster apprentice, or
704 the person acting on behalf of the adjuster or apprentice the
705 effective authority to choose the persons or entities that will
706 perform repair work in a property insurance claim or provide
707 goods or services that will require the insured or third-party
708 claimant to expend funds in excess of those payable to the
709 public adjuster under the terms of the contract for adjusting
710 services.

711 (21)~~(18)~~ Subsections (5)-(20) ~~(5)-(17)~~ apply only to
712 residential property insurance policies and condominium unit
713 owner policies as described in s. 718.111(11).

714 (22)~~(19)~~ Except as otherwise provided in this chapter, no
715 person, except an attorney at law or a licensed public adjuster,
716 may for money, commission, or any other thing of value, directly
717 or indirectly:

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

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

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

725 (d) Advertise services that require a license as a public

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726 adjuster; or

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

729 (23)~~(20)~~ The department may take administrative actions and
730 impose fines against any persons performing claims adjusting,
731 soliciting, or any other services described in this section
732 without the licensure required under this section or s. 626.112.

733 (24)~~(21)~~ A public adjuster, public adjuster apprentice, or
734 public adjusting firm that solicits a claim and does not enter
735 into a contract with an insured or a third-party claimant
736 pursuant to paragraph (13) (a) ~~(10) (a)~~ may not charge an insured
737 or a third-party claimant or receive payment by any other source
738 for any type of service related to the insured or third-party
739 claimant's claim.

740 (25)~~(22)~~(a) Any following act by a public adjuster, a
741 public adjuster apprentice, or a person acting on behalf of a
742 public adjuster or public adjuster apprentice is prohibited and
743 shall result in discipline as applicable under this part:

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

747 a. Allowing a contractor, a public adjuster, a public
748 adjuster apprentice, or a person acting on behalf of a public
749 adjuster or public adjuster apprentice to conduct an inspection
750 of the residential property owner's roof; or

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

753 2. Offering, delivering, receiving, or accepting any
754 compensation, inducement, or reward for the referral of any

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755 services for which property insurance proceeds would be used for
756 roofing repairs or replacement.

757 (b) Notwithstanding the fine set forth in s. 626.8698, a
758 public adjuster or public adjuster apprentice may be subject to
759 a fine not to exceed \$10,000 per act for a violation of this
760 subsection and a fine not to exceed \$20,000 per act for a
761 violation of this subsection that occurs during a state of
762 emergency declared by executive order or proclamation of the
763 Governor pursuant to s. 252.36.

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

768 1. Subject to all applicable penalties set forth in this
769 part.

770 2. Notwithstanding subparagraph 1., subject to a fine not
771 to exceed \$10,000 per act for a violation of this subsection and
772 a fine not to exceed \$20,000 per act for a violation of this
773 subsection that occurs during a state of emergency declared by
774 executive order or proclamation of the Governor pursuant to s.
775 252.36.

776 Section 8. Section 626.860, Florida Statutes, is amended to
777 read:

778 626.860 Attorneys at law; exemption.—Attorneys at law duly
779 licensed to practice law in the courts of this state, and in
780 good standing with The Florida Bar, shall not be required to be
781 licensed under ~~the provisions of~~ this code to authorize them to
782 adjust or participate in the adjustment of any claim, loss, or
783 damage arising under policies or contracts of insurance. This

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784 exemption does not extend to the employees, interns, volunteers,
785 or contractors of an attorney or of a law firm.

786 Section 9. Section 626.865, Florida Statutes, is amended to
787 read:

788 626.865 Public adjuster's qualifications; 7 bond; errors and
789 omissions insurance.—

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

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

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

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

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

805 (e) ~~(d)~~ Has had sufficient experience, training, or
806 instruction concerning the adjusting of damages or losses under
807 insurance contracts, other than life and annuity contracts, is
808 sufficiently informed as to the terms and effects of the
809 provisions of those types of insurance contracts, and possesses
810 adequate knowledge of the laws of this state relating to such
811 contracts as to enable and qualify him or her to engage in the
812 business of insurance adjuster fairly and without injury to the

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813 public or any member thereof with whom the applicant may have
814 business as a public adjuster.

815 (f)~~(e)~~ Has been licensed and appointed in this state as a
816 nonresident public adjuster on a continual basis for the
817 previous 6 months, or has been licensed as an all-lines
818 adjuster, and has been appointed on a continual basis for the
819 previous 6 months as a public adjuster apprentice under s.
820 626.8561, as an independent adjuster under s. 626.855, or as a
821 company employee adjuster under s. 626.856.

822 (2) At the time of application for license as a public
823 adjuster, the applicant shall file with the department a bond
824 executed and issued by a surety insurer authorized to transact
825 such business in this state, in the amount of \$50,000,
826 conditioned for the faithful performance of his or her duties as
827 a public adjuster under the license for which the applicant has
828 applied, and thereafter maintain the bond unimpaired throughout
829 the existence of the license.

830 (a) The bond must be in favor of the department and must
831 specifically authorize recovery by the department of the damages
832 sustained in case the licensee is guilty of fraud or unfair
833 practices in connection with his or her business as public
834 adjuster.

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

837 (c) The aggregate liability of the surety for all such
838 damages may not exceed the amount of the bond. The bond may not
839 be terminated unless at least 30 days' written notice is given
840 to the licensee and filed with the department.

841 (3) At the time of application for license as a public

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842 adjuster, the applicant must file with the department a current
843 certificate of an errors and omissions policy executed by and
844 issued by an admitted insurer authorized to issue errors and
845 omissions policies in this state, which shall be in the minimum
846 amount of \$500,000 per occurrence.

847 (4)~~(3)~~ The department may not issue a license as a public
848 adjuster to any individual who has not passed the examination
849 for a public adjuster's license. Any individual who is applying
850 for reinstatement of a license after completion of a period of
851 suspension and any individual who is applying for a new license
852 after termination, cancellation, revocation, or expiration of a
853 prior license as a public adjuster must pass the examination
854 required for licensure as a public adjuster after approval of
855 the application for reinstatement or for a new license
856 regardless of whether the applicant passed an examination prior
857 to issuance of the license that was suspended, terminated,
858 canceled, revoked, or expired.

859 Section 10. Section 626.875, Florida Statutes, is amended
860 to read:

861 626.875 Office and records.—

862 (1)(a) Each appointed independent adjuster and licensed
863 public adjuster must maintain a place of business in this state
864 which is accessible to the public and keep therein the usual and
865 customary records pertaining to transactions under the license.
866 This provision does not prohibit maintenance of such an office
867 in the home of the licensee.

868 (b) A license issued under this chapter must at all times
869 be posted in a conspicuous place in the principal place of
870 business of the license holder. If the licensee is conducting

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871 business away from the place of business such that the license
872 cannot be posted, the licensee shall have such license in his or
873 her actual possession at the time of carrying on such business.

874 (2) The records of the adjuster relating to a particular
875 claim or loss shall be so retained in the adjuster's place of
876 business for a period of not less than 5 years after completion
877 of the adjustment and shall be available for inspection by the
878 department at all times. This provision shall not be deemed to
879 prohibit return or delivery to the insurer or insured of
880 documents furnished to or prepared by the adjuster and required
881 by the insurer or insured to be returned or delivered thereto.
882 At a minimum, the following records must be maintained for a
883 period of not less than 5 years:

884 (a) Name, address, telephone number, and e-mail address of
885 the insured, and the name of the attorney representing the
886 insured, if applicable.

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

888 (c) An unaltered copy of the executed disclosure document
889 required by s. 626.8796.

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

892 (e) A copy of the estimate of damages provided to the
893 insurer.

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

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

899 (h) An itemized statement of all compensation received by

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900 the public adjuster from any source, in connection with the
901 loss.

902 (i) A register of all money received, deposited, disbursed,
903 and withdrawn in connection with a transaction with the insured,
904 including fees, transfers, and disbursements in connection with
905 the loss.

906 Section 11. Section 626.8751, Florida Statutes, is created
907 to read:

908 626.8751 Payment of claim.—When a claim is settled while
909 the insured is represented by a public adjuster, the insurer
910 shall issue the payment in check form. A total of two checks
911 shall be issued. The first check shall be made payable to the
912 public adjuster as payee, but not in excess of the amount of the
913 public adjuster's fee, as indicated in the executed public
914 adjuster contract signed by the insured and submitted to the
915 insurer. The second check must reflect the balance of the
916 proceeds and be payable to the insured as the payee in the form
917 of a separate check.

918 Section 12. Section 626.8796, Florida Statutes, is amended
919 to read:

920 626.8796 Public adjuster contracts; disclosure statement;
921 fraud statement.—

922 (1) All contracts for public adjuster services must be in
923 writing in at least 12-point font, titled "Public Adjuster
924 Contract" and prominently display the following statement on the
925 contract in minimum 18-point bold type before the space reserved
926 for in the contract for the signature of the insured: "Pursuant
927 to s. 817.234, Florida Statutes, any person who, with the intent
928 to injure, defraud, or deceive an insurer or insured, prepares,

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929 presents, or causes to be presented a proof of loss or estimate
930 of cost or repair of damaged property in support of a claim
931 under an insurance policy knowing that the proof of loss or
932 estimate of claim or repairs contains false, incomplete, or
933 misleading information concerning any fact or thing material to
934 the claim commits a felony of the third degree, punishable as
935 provided in s. 775.082, s. 775.083, or s. 775.084, Florida
936 Statutes."

937 (2) A public adjuster contract relating to a property and
938 casualty claim must contain the full name, permanent business
939 address, phone number, e-mail address, and license number of the
940 public adjuster; the full name of the public adjusting firm; and
941 the insured's full name, ~~and~~ street address, phone number, and
942 e-mail address, together with a brief description of the loss.
943 The contract must state the percentage of compensation for the
944 public adjuster's services in minimum 18-point bold type before
945 the space reserved for in the contract for the signature of the
946 insured; the type of claim, including an emergency claim,
947 nonemergency claim, or supplemental claim; the initials of the
948 named insured on each page that does not contain the insured's
949 signature; the signatures of the public adjuster and all named
950 insureds; and the signature date. If all of the named insureds'
951 signatures are not available, the public adjuster must submit an
952 affidavit signed by the available named insureds attesting that
953 they have authority to enter into the contract and settle all
954 claim issues on behalf of the named insureds. An unaltered copy
955 of the executed contract must be remitted to the insured at the
956 time of execution and to the insurer within 3 ~~30~~ days after
957 execution. A public adjusting firm that adjusts claims primarily

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958 for commercial entities with operations in more than one state
959 and that does not directly or indirectly perform adjusting
960 services for insurers or individual homeowners is deemed to
961 comply with the requirements of this subsection if, at the time
962 a proof of loss is submitted, the public adjusting firm remits
963 to the insurer an affidavit signed by the public adjuster or
964 public adjuster apprentice that identifies:

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

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

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

972 (d) An attestation that the compensation for public
973 adjusting services will not exceed the limitations provided by
974 law.

975 (e) The type of claim, including an emergency claim,
976 nonemergency claim, or supplemental claim.

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

980 (4) The insured may rescind the contract for public
981 adjuster services if the public adjuster has not submitted a
982 written estimate to the insurer within 45 days after executing
983 the contract.

984 (5) Before the signing of the contract, the public adjuster
985 shall provide the insured with a separate disclosure document to
986 be signed by the insured, on a form adopted by the department,

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987 regarding the claim process that accomplishes the following:

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

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

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

995 (d) Explains that an insured has a right to initiate direct
996 communications with the insured's attorney, the insurer, the
997 company adjuster, the insurer's attorney, or any person
998 regarding the settlement of the insured's claim.

999 (e) Explains that the public adjuster's salary, fee,
1000 commission, or other consideration to be paid to a public
1001 adjuster is the insured's responsibility.

1002 (f) Explains that the public adjuster is required to
1003 provide the insured an unaltered copy of the executed contract
1004 at the time of execution.

1005 (g) Explains that if the contract was entered based on
1006 events that are the subject of a declaration of a state of
1007 emergency by the Governor, the insured has a right to rescind
1008 the contract within 30 days.

1009 (h) The public adjuster shall provide an unaltered copy of
1010 the executed disclosure document to the insured at the time of
1011 execution.

1012 (6) A contract that does not comply with this section is
1013 invalid and unenforceable.

1014 (7) The department may adopt rules pursuant to ss.
1015 120.536(1) and 120.54 to implement this section, including rules

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1016 to adopt forms required by this section.

1017 Section 13. Section 626.8797, Florida Statutes, is amended
1018 to read:

1019 626.8797 Proof of loss; fraud statement.—All proof-of-loss
1020 statements must prominently display the following statement in
1021 minimum 18-point bold type before the space reserved in the
1022 contract for the signature of the insured: "Pursuant to s.
1023 817.234, Florida Statutes, any person who, with the intent to
1024 injure, defraud, or deceive any insurer or insured, prepares,
1025 presents, or causes to be presented a proof of loss or estimate
1026 of cost or repair of damaged property in support of a claim
1027 under an insurance policy knowing that the proof of loss or
1028 estimate of claim or repairs contains any false, incomplete, or
1029 misleading information concerning any fact or thing material to
1030 the claim commits a felony of the third degree, punishable as
1031 provided in s. 775.082, s. 775.083, or s. 775.084, Florida
1032 Statutes."

1033 Section 14. Paragraph (a) of subsection (1) of section
1034 626.9541, Florida Statutes, is amended to read:

1035 626.9541 Unfair methods of competition and unfair or
1036 deceptive acts or practices defined.—

1037 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE
1038 ACTS.—The following are defined as unfair methods of competition
1039 and unfair or deceptive acts or practices:

1040 (a) *Misrepresentations and false advertising of insurance*
1041 *policies.*—Knowingly making, issuing, circulating, or causing to
1042 be made, issued, or circulated, any estimate, illustration,
1043 circular, statement, sales presentation, omission, comparison,
1044 or property and casualty certificate of insurance altered after

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1045 being issued, which:

1046 1. Misrepresents the benefits, advantages, conditions, or
1047 terms of any insurance policy.

1048 2. Misrepresents the dividends or share of the surplus to
1049 be received on any insurance policy.

1050 3. Makes any false or misleading statements as to the
1051 dividends or share of surplus previously paid on any insurance
1052 policy.

1053 4. Is misleading, or is a misrepresentation, as to the
1054 financial condition of any person or as to the legal reserve
1055 system upon which any life insurer operates.

1056 5. Uses any name or title of any insurance policy or class
1057 of insurance policies misrepresenting the true nature thereof.

1058 6. Is a misrepresentation for the purpose of inducing, or
1059 tending to induce, the lapse, forfeiture, exchange, conversion,
1060 or surrender of any insurance policy.

1061 7. Is a misrepresentation for the purpose of effecting a
1062 pledge or assignment of, or effecting a loan against, any
1063 insurance policy.

1064 8. Misrepresents any insurance policy as being shares of
1065 stock or misrepresents ownership interest in the company.

1066 9. Uses any advertisement that would mislead or otherwise
1067 cause a reasonable person to believe mistakenly that the state
1068 or the Federal Government is responsible for the insurance sales
1069 activities of any person or stands behind any person's credit or
1070 that any person, the state, or the Federal Government guarantees
1071 any returns on insurance products or is a source of payment of
1072 any insurance obligation of or sold by any person.

1073 10. Fails to disclose a third party that receives

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1074 royalties, referral fees, or other remuneration for sponsorship,
 1075 marketing, or use of third-party branding for a health insurance
 1076 contract as defined in s. 624.603.

1077 Section 15. Paragraph (c) of subsection (2) of section
 1078 627.4025, Florida Statutes, is amended, and paragraph (d) is
 1079 added to that subsection, to read:

1080 627.4025 Residential coverage and hurricane coverage
 1081 defined.—

1082 (2) As used in policies providing residential coverage:

1083 (c) "Hurricane" for purposes of paragraphs (a) and (b)
 1084 means a storm system that has been declared to be a hurricane by
 1085 the National Hurricane Center of the National Weather Service.
 1086 The duration of the hurricane includes the time period, in
 1087 Florida:

1088 1. Beginning at the time a ~~hurricane watch or~~ hurricane
 1089 warning is issued for any part of Florida by the National
 1090 Hurricane Center of the National Weather Service; and

1091 ~~2. Continuing for the time period during which the~~
 1092 ~~hurricane conditions exist anywhere in Florida; and~~

1093 ~~3.~~ Ending 24 ~~72~~ hours following the termination of the last
 1094 hurricane watch or hurricane warning issued for any part of
 1095 Florida by the National Hurricane Center of the National Weather
 1096 Service.

1097 (d) "Hurricane deductible" means the deductible applicable
 1098 to loss caused by a hurricane.

1099 Section 16. Paragraph (b) of subsection (1) and paragraph
 1100 (b) of subsection (2) of section 627.4133, Florida Statutes, are
 1101 amended to read:

1102 627.4133 Notice of cancellation, nonrenewal, or renewal

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1103 premium.—

1104 (1) Except as provided in subsection (2):

1105 (b) An insurer issuing a policy providing coverage for
1106 property, casualty, except mortgage guaranty, surety, or marine
1107 insurance, other than motor vehicle insurance subject to s.
1108 627.728 or s. 627.7281, shall give the first-named insured
1109 written notice of cancellation or termination other than
1110 nonrenewal at least 45 days prior to the effective date of the
1111 cancellation or termination, including in the written notice the
1112 reason or reasons for the cancellation or termination, except
1113 that:

1114 1. When cancellation is for nonpayment of premium, at least
1115 10 days' written notice of cancellation accompanied by the
1116 reason therefor shall be given. As used in this subparagraph and
1117 s. 440.42(3), the term "nonpayment of premium" means failure of
1118 the named insured to discharge when due any of her or his
1119 obligations in connection with the payment of premiums on a
1120 policy or any installment of such premium, whether the premium
1121 is payable directly to the insurer or its agent or indirectly
1122 under any premium finance plan or extension of credit, or
1123 failure to maintain membership in an organization if such
1124 membership is a condition precedent to insurance coverage.
1125 "Nonpayment of premium" also means the failure of a financial
1126 institution to honor an insurance applicant's check after
1127 delivery to a licensed agent for payment of a premium, even if
1128 the agent has previously delivered or transferred the premium to
1129 the insurer. If a dishonored check represents the initial
1130 premium payment, the contract and all contractual obligations
1131 shall be void ab initio unless the nonpayment is cured within

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1132 the earlier of 5 days after actual notice by certified mail is
1133 received by the applicant or 15 days after notice is sent to the
1134 applicant by certified mail or registered mail, and if the
1135 contract is void, any premium received by the insurer from a
1136 third party shall be refunded to that party in full; and

1137 2. When such cancellation or termination occurs during the
1138 first 90 days during which the insurance is in force and the
1139 insurance is canceled or terminated for reasons other than
1140 nonpayment of premium, at least 20 days' written notice of
1141 cancellation or termination accompanied by the reason therefor
1142 shall be given except where there has been a material
1143 misstatement or misrepresentation or failure to comply with the
1144 underwriting requirements established by the insurer.

1145
1146 After the policy has been in effect for 60 ~~90~~ days, no such
1147 policy shall be canceled by the insurer except when there has
1148 been a material misstatement, a nonpayment of premium, a failure
1149 to comply with underwriting requirements established by the
1150 insurer within 90 days of the date of effectuation of coverage,
1151 or a substantial change in the risk covered by the policy or
1152 when the cancellation is for all insureds under such policies
1153 for a given class of insureds. This subsection does not apply to
1154 individually rated risks having a policy term of less than 90
1155 days.

1156 (2) With respect to any personal lines or commercial
1157 residential property insurance policy, including, but not
1158 limited to, any homeowner, mobile home owner, farmowner,
1159 condominium association, condominium unit owner, apartment
1160 building, or other policy covering a residential structure or

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1161 its contents:

1162 (b) The insurer shall give the first-named insured written
1163 notice of nonrenewal, cancellation, or termination at least 120
1164 days before the effective date of the nonrenewal, cancellation,
1165 or termination. The notice must include the reason for the
1166 nonrenewal, cancellation, or termination, except that:

1167 1. If cancellation is for nonpayment of premium, at least
1168 10 days' written notice of cancellation accompanied by the
1169 reason therefor must be given. As used in this subparagraph, the
1170 term "nonpayment of premium" means failure of the named insured
1171 to discharge when due her or his obligations for paying the
1172 premium on a policy or an installment of such premium, whether
1173 the premium is payable directly to the insurer or its agent or
1174 indirectly under a premium finance plan or extension of credit,
1175 or failure to maintain membership in an organization if such
1176 membership is a condition precedent to insurance coverage. The
1177 term also means the failure of a financial institution to honor
1178 an insurance applicant's check after delivery to a licensed
1179 agent for payment of a premium even if the agent has previously
1180 delivered or transferred the premium to the insurer. If a
1181 dishonored check represents the initial premium payment, the
1182 contract and all contractual obligations are void ab initio
1183 unless the nonpayment is cured within the earlier of 5 days
1184 after actual notice by certified mail is received by the
1185 applicant or 15 days after notice is sent to the applicant by
1186 certified mail or registered mail. If the contract is void, any
1187 premium received by the insurer from a third party must be
1188 refunded to that party in full.

1189 2. If cancellation or termination occurs during the first

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1190 90 days the insurance is in force and the insurance is canceled
1191 or terminated for reasons other than nonpayment of premium, at
1192 least 20 days' written notice of cancellation or termination
1193 accompanied by the reason therefor must be given unless there
1194 has been a material misstatement or misrepresentation or a
1195 failure to comply with the underwriting requirements established
1196 by the insurer.

1197 3. After the policy has been in effect for 60 ~~90~~ days, the
1198 policy may not be canceled by the insurer unless there has been
1199 a material misstatement; a nonpayment of premium; a failure to
1200 comply, within 90 days after the date of effectuation of
1201 coverage, with underwriting requirements established by the
1202 insurer before the date of effectuation of coverage; or a
1203 substantial change in the risk covered by the policy or unless
1204 the cancellation is for all insureds under such policies for a
1205 given class of insureds. This subparagraph does not apply to
1206 individually rated risks that have a policy term of less than 90
1207 days.

1208 4. After a policy or contract has been in effect for more
1209 than 90 days, the insurer may not cancel or terminate the policy
1210 or contract based on credit information available in public
1211 records.

1212 5. A policy that is nonrenewed by Citizens Property
1213 Insurance Corporation, pursuant to s. 627.351(6), for a policy
1214 that has been assumed by an authorized insurer offering
1215 replacement coverage to the policyholder is exempt from the
1216 notice requirements of paragraph (a) and this paragraph. In such
1217 cases, the corporation must give the named insured written
1218 notice of nonrenewal at least 45 days before the effective date

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1219 of the nonrenewal.

1220 6. Notwithstanding any other provision of law, an insurer
1221 may cancel or nonrenew a property insurance policy after at
1222 least 45 days' notice if the office finds that the early
1223 cancellation of some or all of the insurer's policies is
1224 necessary to protect the best interests of the public or
1225 policyholders and the office approves the insurer's plan for
1226 early cancellation or nonrenewal of some or all of its policies.
1227 The office may base such finding upon the financial condition of
1228 the insurer, lack of adequate reinsurance coverage for hurricane
1229 risk, or other relevant factors. The office may condition its
1230 finding on the consent of the insurer to be placed under
1231 administrative supervision pursuant to s. 624.81 or to the
1232 appointment of a receiver under chapter 631.

1233 7. A policy covering both a home and a motor vehicle may be
1234 nonrenewed for any reason applicable to the property or motor
1235 vehicle insurance after providing 90 days' notice.

1236 Section 17. Section 627.4554, Florida Statutes, is amended
1237 to read:

1238 627.4554 Annuity investments.—

1239 (1) PURPOSE.—The purpose of this section is to require
1240 agents to act in the best interest of the consumer when making a
1241 recommendation of an annuity and to require insurers to
1242 establish and maintain a system to supervise so ~~set forth~~
1243 ~~standards and procedures for making recommendations to consumers~~
1244 ~~which result in transactions involving annuity products, and to~~
1245 ~~establish a system for supervising such recommendations in order~~
1246 ~~to ensure~~ that the insurance needs and financial objectives of
1247 consumers are effectively ~~appropriately~~ addressed at the time of

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1248 the transaction.

1249 (2) SCOPE.—This section applies to any sale or
1250 recommendation of ~~made to a consumer to purchase, exchange, or~~
1251 ~~replace an annuity by an insurer or its agent, and which results~~
1252 ~~in the purchase, exchange, or replacement recommended.~~

1253 (3) DEFINITIONS.—As used in this section, the term:

1254 (a) "Agent" means a person or entity required to be
1255 licensed under the laws of this state to sell, solicit, or
1256 negotiate insurance, including annuities. For purposes of this
1257 section, the term includes an insurer where no agent is involved
1258 ~~has the same meaning as provided in s. 626.015.~~

1259 (b) "Annuity" means an insurance product under state law
1260 which is individually solicited, whether classified as an
1261 individual or group annuity.

1262 (c) "Cash compensation" means any discount, concession,
1263 fee, service fee, commission, sales charge, loan, override, or
1264 cash benefit received by an agent from an insurer, intermediary,
1265 or directly from the consumer in connection with the
1266 recommendation or sale of an annuity.

1267 (d) "Consumer profile information" means information that
1268 is reasonably appropriate to determine whether a recommendation
1269 addresses the consumer's financial situation, insurance needs,
1270 and financial objectives, including, at a minimum, the
1271 following:

1272 1. Age.

1273 2. Annual income.

1274 3. Financial situation and needs, including debts and other
1275 obligations.

1276 4. Financial experience.

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- 1277 5. Insurance needs.
- 1278 6. Financial objectives.
- 1279 7. Intended use of the annuity.
- 1280 8. Financial time horizon.
- 1281 9. Existing assets or financial products, including
 1282 investment, annuity, and insurance holdings.
- 1283 10. Liquidity needs.
- 1284 11. Liquid net worth.
- 1285 12. Risk tolerance, including, but not limited to,
 1286 willingness to accept nonguaranteed elements in the annuity.
- 1287 13. Financial resources used to fund the annuity.
- 1288 14. Tax status.
- 1289 ~~(e)~~ "FINRA" means the Financial Industry Regulatory
 1290 Authority or a succeeding agency.
- 1291 ~~(f)~~ "Insurer" has the same meaning as provided in s.
 1292 624.03.
- 1293 (g) "Intermediary" means an entity contracted directly with
 1294 an insurer or with another entity contracted with an insurer to
 1295 facilitate the sale of the insurer's annuities by agents.
- 1296 (h) "Material conflict of interest" means a financial
 1297 interest of the agent in the sale of an annuity which a
 1298 reasonable person would expect to influence the impartiality of
 1299 a recommendation. The term does not include cash compensation or
 1300 noncash compensation.
- 1301 (i) "Noncash compensation" means any form of compensation
 1302 that is not cash compensation, including, but not limited to,
 1303 health insurance, office rent, office support, and retirement
 1304 benefits.
- 1305 (j) "Nonguaranteed elements" means the premiums; credited

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1306 interest rates, including any bonus; benefits; values;
1307 dividends; noninterest based credits; charges; or elements of
1308 formulas used to determine any of these, that are subject to
1309 company discretion and are not guaranteed at issue. An element
1310 is considered nonguaranteed if any of the underlying
1311 nonguaranteed elements are used in its calculation.

1312 (k)-(e) "Recommendation" means advice provided by an insurer
1313 or its agent to an individual a consumer which was intended to
1314 result or does result which would result in a the purchase, an
1315 exchange, or a replacement of an annuity in accordance with that
1316 advice. The term does not include general communication to the
1317 public, generalized customer services, assistance or
1318 administrative support, general educational information and
1319 tools, prospectuses, or other product and sales material.

1320 (l)-(f) "Replacement" means a transaction in which a new
1321 annuity policy or contract is to be purchased and it is known or
1322 should be known to the proposing insurer or its agent, or to the
1323 proposing insurer whether or not an agent is involved, that by
1324 reason of such transaction an existing annuity or other
1325 insurance policy has been or is to be any of the following or
1326 contract will be:

1327 1. Lapsed, forfeited, surrendered or partially surrendered,
1328 assigned to the replacing insurer, or otherwise terminated;

1329 2. Converted to reduced paid-up insurance, continued as
1330 extended term insurance, or otherwise reduced in value due to
1331 the use of nonforfeiture benefits or other policy values;

1332 3. Amended so as to effect a reduction in benefits or the
1333 term for which coverage would otherwise remain in force or for
1334 which benefits would be paid;

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4. Reissued with a reduction in cash value; or

5. Used in a financed purchase.

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

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

- ~~1. Age;~~
- ~~2. Annual income;~~
- ~~3. Financial situation and needs, including the financial resources used for funding the annuity;~~
- ~~4. Financial experience;~~
- ~~5. Financial objectives;~~
- ~~6. Intended use of the annuity;~~
- ~~7. Financial time horizon;~~
- ~~8. Existing assets, including investment and life insurance holdings;~~
- ~~9. Liquidity needs;~~
- ~~10. Liquid net worth;~~
- ~~11. Risk tolerance; and~~
- ~~12. Tax status.~~

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

- (a) Direct-response solicitations where there is no recommendation based on information collected from the consumer pursuant to this section;
- (b) Contracts used to fund:
 1. An employee pension or welfare benefit plan that is

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1364 covered by the federal Employee Retirement and Income Security
 1365 Act;

1366 2. A plan described by s. 401(a), s. 401(k), s. 403(b), s.
 1367 408(k), or s. 408(p) of the Internal Revenue Code, if
 1368 established or maintained by an employer;

1369 3. A government or church plan defined in s. 414 of the
 1370 Internal Revenue Code, a government or church welfare benefit
 1371 plan, or a deferred compensation plan of a state or local
 1372 government or tax-exempt organization under s. 457 of the
 1373 Internal Revenue Code; or

1374 4. A nonqualified deferred compensation arrangement
 1375 established or maintained by an employer or plan sponsor;

1376 (c)5- Settlements or assumptions of liabilities associated
 1377 with personal injury litigation or a dispute or claim-resolution
 1378 process; or

1379 (d)6- Formal prepaid funeral contracts.

1380 (5) DUTIES OF INSURERS AND AGENTS.—

1381 (a) An agent, when making a recommendation of an annuity,
 1382 shall act in the best interest of the consumer under the
 1383 circumstances known at the time the recommendation is made,
 1384 without placing the financial interest of the agent or insurer
 1385 ahead of the consumer's interest. An agent has acted in the best
 1386 interest of the consumer if the agent has satisfied the
 1387 following obligations regarding care, disclosure, conflict of
 1388 interest, and documentation:

1389 1.a. The agent, in making a recommendation, shall exercise
 1390 reasonable diligence, care, and skill to:

1391 (I) Know the financial situation, insurance needs, and
 1392 financial objectives of the customer.

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1393 (II) Understand the available options after making a
1394 reasonable inquiry into options available to the agent.

1395 (III) Have a reasonable basis to believe the recommended
1396 option effectively addresses the consumer's financial situation,
1397 insurance needs, and financial objectives over the life of the
1398 product, as evaluated in light of the consumer profile
1399 information.

1400 (IV) Communicate the reason or reasons for the
1401 recommendation.

1402 b. The requirements of sub-subparagraph a. include:

1403 (I) Making reasonable efforts to obtain consumer profile
1404 information from the consumer before the recommendation of an
1405 annuity.

1406 (II) Requiring an agent to consider the types of products
1407 the agent is authorized and licensed to recommend or sell which
1408 address the consumer's financial situation, insurance needs, and
1409 financial objectives. This does not require analysis or
1410 consideration of any products outside the authority and license
1411 of the agent or other possible alternative products or
1412 strategies available in the market at the time of the
1413 recommendation. Agents shall be held to standards applicable to
1414 agents with similar authority and licensure.

1415 (III) Having a reasonable basis to believe the consumer
1416 would benefit from certain features of the annuity, such as
1417 annuitization, death or living benefit, or other insurance-
1418 related features.

1419 c. The requirements of this subsection do not create a
1420 fiduciary obligation or relationship and only create a
1421 regulatory obligation as provided in this section.

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1422 d. The consumer profile information, characteristics of the
1423 insurer, and product costs, rates, benefits, and features are
1424 those factors generally relevant in making a determination
1425 whether an annuity effectively addresses the consumer's
1426 financial situation, insurance needs, and financial objectives,
1427 but the level of importance of each factor under the care
1428 obligation of this paragraph may vary depending on the facts and
1429 circumstances of a particular case. However, each factor may not
1430 be considered in isolation.

1431 e. The requirements under sub-subparagraph a. apply to the
1432 particular annuity as a whole and the underlying subaccounts to
1433 which funds are allocated at the time of purchase or exchange of
1434 an annuity, and riders and similar product enhancements, if any.

1435 f. Sub-subparagraph a. does not require that the annuity
1436 with the lowest one-time occurrence compensation structure or
1437 multiple occurrence compensation structure shall necessarily be
1438 recommended.

1439 g. Sub-subparagraph a. does require the agent to have
1440 ongoing monitoring obligations under the care obligation,
1441 although such an obligation may be separately owed under the
1442 terms of a fiduciary, consulting, investment, advising, or
1443 financial planning agreement between the consumer and the agent.

1444 h. In the case of an exchange or replacement of an annuity,
1445 the agent shall consider the whole transaction, which includes
1446 taking into consideration whether:

1447 (I) The consumer will incur a surrender charge; be subject
1448 to the commencement of a new surrender period; lose existing
1449 benefits, such as death, living, or other contractual benefits;
1450 or be subject to increased fees, investment advisory fees, or

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1451 charges for riders and similar product enhancements.

1452 (II) The replacing product would substantially benefit the
1453 consumer in comparison to the replaced product over the life of
1454 the product.

1455 (III) The consumer has had another annuity exchange or
1456 replacement and, in particular, an exchange or replacement
1457 within the preceding 60 months.

1458 i. This section does not require an agent to obtain any
1459 license other than an agent license with the appropriate line of
1460 authority to sell, solicit, or negotiate insurance in this
1461 state, including, but not limited to, any securities license, in
1462 order to fulfill the duties and obligations contained in this
1463 section; provided, the agent does not give advice or provide
1464 services that are otherwise subject to securities laws or engage
1465 in any other activity requiring other professional licenses.

1466 2. Disclosure obligation.

1467 a. Before the recommendation or sale of an annuity, the
1468 agent shall prominently disclose to the consumer on a form
1469 substantially similar to that posted on the office website as
1470 Appendix A:

1471 (I) A description of the scope and terms of the
1472 relationship with the consumer and the role of the agent in the
1473 transaction.

1474 (II) An affirmative statement on whether the agent is
1475 licensed and authorized to sell the following products:

1476 (A) Fixed annuities.

1477 (B) Fixed indexed annuities.

1478 (C) Variable annuities.

1479 (D) Life insurance.

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- 1480 (E) Mutual funds.
- 1481 (F) Stocks and bonds.
- 1482 (G) Certificates of deposit.
- 1483 (III) An affirmative statement describing the insurers for
1484 which the agent is authorized, contracted, or appointed, or
1485 otherwise able to sell insurance products, using the following
1486 descriptions:
- 1487 (A) From one insurer;
- 1488 (B) From two or more insurers; or
- 1489 (C) From two or more insurers, although primarily
1490 contracted with one insurer.
- 1491 (IV) A description of the sources and types of cash
1492 compensation and noncash compensation to be received by the
1493 agent, including whether the agent is to be compensated for the
1494 sale of a recommended annuity by commission as part of premium
1495 or other remuneration received from the insurer, intermediary,
1496 or other agent, or by fee as a result of a contract for advice
1497 or consulting services; and
- 1498 (V) A notice of the consumer's right to request additional
1499 information regarding cash compensation described in sub-
1500 subparagraph b.
- 1501 b. Upon request of the consumer or the consumer's
1502 designated representative, the agent shall disclose:
- 1503 (I) A reasonable estimate of the amount of cash
1504 compensation to be received by the agent, which may be stated as
1505 a range of amounts or percentages.
- 1506 (II) Whether the cash compensation is a one-time or
1507 multiple occurrence amount; and if a multiple occurrence amount,
1508 the frequency and amount of the occurrence, which may be stated

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1509 ~~as a range of amounts or percentages. When recommending the~~
1510 ~~purchase or exchange of an annuity to a consumer which results~~
1511 ~~in an insurance transaction or series of insurance transactions,~~
1512 ~~the agent, or the insurer where no agent is involved, must have~~
1513 ~~reasonable grounds for believing that the recommendation is~~
1514 ~~suitable for the consumer, based on the consumer's suitability~~
1515 ~~information, and that there is a reasonable basis to believe all~~
1516 ~~of the following:~~

1517 c.1. Before or at the time of the recommendation or sale of
1518 an annuity, the agent shall have a reasonable basis to believe
1519 the consumer has been reasonably informed of various features of
1520 the annuity, such as the potential surrender period and
1521 surrender charge; potential tax penalty if the consumer sells,
1522 exchanges, surrenders, or annuitizes the annuity; mortality and
1523 expense fees; any annual fees; investment advisory fees;
1524 potential charges for and features of riders or other options of
1525 the annuity; limitations on interest returns; potential changes
1526 in nonguaranteed elements of the annuity; insurance and
1527 investment components; and market risk.

1528 3.2. The consumer would benefit from certain features of
1529 the annuity, such as tax-deferred growth, annuitization, or the
1530 death or living benefit.

1531 4. An agent shall identify and avoid or reasonably manage
1532 and disclose material conflicts of interest, including material
1533 conflicts of interest related to an ownership interest.

1534 5. An agent shall at the time of the recommendation or
1535 sale:

1536 a. Make a written record of any recommendation and the
1537 basis for the recommendation, subject to this section.

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1538 b. Obtain a consumer signed statement on a form
1539 substantially similar to that posted on the office website as
1540 Appendix B, documenting:

1541 (I) A customer's refusal to provide the consumer profile
1542 information, if any.

1543 (II) A customer's understanding of the ramifications of not
1544 providing his or her consumer profile information or providing
1545 insufficient consumer profile information.

1546 c. Obtain a consumer signed statement on a form
1547 substantially similar to that posted on the office website as
1548 Appendix C, acknowledging the annuity transaction is not
1549 recommended if a customer decides to enter into an annuity
1550 transaction that is not based on the agent's recommendation.

1551 6. Application of the best interest obligation. Any
1552 requirement applicable to an agent under this subsection shall
1553 apply to every agent who has exercised material control or
1554 influence in the making of a recommendation and has received
1555 direct compensation as a result of the recommendation or sale,
1556 regardless of whether the agent has had any direct contact with
1557 the consumer. Activities such as providing or delivering
1558 marketing or education materials, product wholesaling or other
1559 back office product support, and general supervision of an agent
1560 do not, in and of themselves, constitute material control or
1561 influence.

1562 ~~3. The particular annuity as a whole, the underlying~~
1563 ~~subaccounts to which funds are allocated at the time of purchase~~
1564 ~~or exchange of the annuity, and riders and similar product~~
1565 ~~enhancements, if any, are suitable; and, in the case of an~~
1566 ~~exchange or replacement, the transaction as a whole is suitable~~

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1567 ~~for the particular consumer based on his or her suitability~~
1568 ~~information.~~

1569 ~~4. In the case of an exchange or replacement of an annuity,~~
1570 ~~the exchange or replacement is suitable after considering~~
1571 ~~whether the consumer:~~

1572 ~~a. Will incur a surrender charge; be subject to the~~
1573 ~~commencement of a new surrender period; lose existing benefits,~~
1574 ~~such as death, living, or other contractual benefits; or be~~
1575 ~~subject to increased fees, investment advisory fees, or charges~~
1576 ~~for riders and similar product enhancements;~~

1577 ~~b. Would benefit from product enhancements and~~
1578 ~~improvements; and~~

1579 ~~c. Has had another annuity exchange or replacement,~~
1580 ~~including an exchange or replacement within the preceding 36~~
1581 ~~months.~~

1582 ~~(b) Before executing a purchase, exchange, or replacement~~
1583 ~~of an annuity resulting from a recommendation, an insurer or its~~
1584 ~~agent must make reasonable efforts to obtain the consumer's~~
1585 ~~suitability information. The information shall be collected on~~
1586 ~~form DFS-H1-1980, which is hereby incorporated by reference, and~~
1587 ~~completed and signed by the applicant and agent. Questions~~
1588 ~~requesting this information must be presented in at least 12-~~
1589 ~~point type and be sufficiently clear so as to be readily~~
1590 ~~understandable by both the agent and the consumer. A true and~~
1591 ~~correct executed copy of the form must be provided by the agent~~
1592 ~~to the insurer, or to the person or entity that has contracted~~
1593 ~~with the insurer to perform this function as authorized by this~~
1594 ~~section, within 10 days after execution of the form, and shall~~
1595 ~~be provided to the consumer no later than the date of delivery~~

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1596 ~~of the contract or contracts.~~

1597 ~~(c) Except as provided under paragraph (d), an insurer may~~
1598 ~~not issue an annuity recommended to a consumer unless there is a~~
1599 ~~reasonable basis to believe the annuity is suitable based on the~~
1600 ~~consumer's suitability information.~~

1601 ~~(b)(d)~~ 1. Except as provided under subparagraph 2., An
1602 ~~insurer's issuance of an annuity must be reasonable based on all~~
1603 ~~the circumstances actually known to the insurer at the time the~~
1604 ~~annuity is issued. However, an insurer or its agent shall not~~
1605 ~~have does not have an obligation to a consumer related to an~~
1606 ~~annuity transaction under subparagraph (a)1. paragraph (a) or~~
1607 ~~paragraph (c) if:~~

1608 ~~a.1.~~ A recommendation has not been made;

1609 ~~b.2.~~ A recommendation was made and is later found to have
1610 been based on materially inaccurate information provided by the
1611 consumer;

1612 ~~c.3.~~ A consumer refuses to provide relevant suitability
1613 information and the annuity transaction is not recommended; or

1614 ~~d.4.~~ A consumer decides to enter into an annuity
1615 transaction that is not based on a recommendation of an insurer
1616 or its agent.

1617 2. An insurer's issuance of an annuity subject to
1618 subparagraph 1. shall be reasonable under all the circumstances
1619 actually known to the insurer at the time the annuity is issued.

1620 (c)1. Except as permitted under paragraph (b), an insurer
1621 may not issue an annuity recommended to a consumer unless there
1622 is a reasonable basis to believe the annuity would effectively
1623 address the particular consumer's financial situation, insurance
1624 needs, and financial objectives based on the consumer's consumer

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1625 profile information.

1626 ~~(e) At the time of sale, the agent or the agent's~~
1627 ~~representative must:~~

1628 ~~1. Make a record of any recommendation made to the consumer~~
1629 ~~pursuant to paragraph (a);~~

1630 ~~2. Obtain the consumer's signed statement documenting his~~
1631 ~~or her refusal to provide suitability information, if~~
1632 ~~applicable; and~~

1633 ~~3. Obtain the consumer's signed statement acknowledging~~
1634 ~~that an annuity transaction is not recommended if he or she~~
1635 ~~decides to enter into an annuity transaction that is not based~~
1636 ~~on the insurer's or its agent's recommendation, if applicable.~~

1637 ~~(f) Before executing a replacement or exchange of an~~
1638 ~~annuity contract resulting from a recommendation, the agent must~~
1639 ~~provide on form DFS-H1-1981, which is hereby incorporated by~~
1640 ~~reference, information that compares the differences between the~~
1641 ~~existing annuity contract and the annuity contract being~~
1642 ~~recommended in order to determine the suitability of the~~
1643 ~~recommendation and its benefit to the consumer. A true and~~
1644 ~~correct executed copy of this form must be provided by the agent~~
1645 ~~to the insurer, or to the person or entity that has contracted~~
1646 ~~with the insurer to perform this function as authorized by this~~
1647 ~~section, within 10 days after execution of the form, and must be~~
1648 ~~provided to the consumer no later than the date of delivery of~~
1649 ~~the contract or contracts.~~

1650 2.(g) An insurer shall establish and maintain a supervision
1651 system that is reasonably designed to achieve the insurer's and
1652 its agent's compliance with this section, including, but not
1653 limited to, the following:-

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1654 ~~1. Such system must include, but is not limited to:~~

1655 a. The insurer shall establish and maintain ~~Maintaining~~
1656 reasonable procedures to inform its agents of the requirements
1657 of this section and incorporating those requirements into
1658 relevant agent training manuals.~~†~~

1659 b. The insurer shall establish and maintain ~~Establishing~~
1660 standards for agent product training and shall establish and
1661 maintain reasonable procedures to require its agents to comply
1662 with the requirements of subsection (6).~~†~~

1663 c. The insurer shall provide ~~Providing~~ product-specific
1664 training and training materials that explain all material
1665 features of its annuity products to its agents.~~†~~

1666 d. The insurer shall establish and maintain ~~Maintaining~~
1667 procedures for the review of each recommendation before issuance
1668 of an annuity which are designed to ensure that there is a
1669 reasonable basis to determine the recommended annuity would
1670 effectively address the particular consumer's financial
1671 situation, insurance needs, and financial objectives ~~for~~
1672 ~~determining that a recommendation is suitable.~~ Such review
1673 procedures may use a screening system for identifying selected
1674 transactions for additional review and may be accomplished
1675 electronically or through other means, including, but not
1676 limited to, physical review. Such electronic or other system may
1677 be designed to require additional review only of those
1678 transactions identified for additional review using established
1679 selection criteria.~~†~~

1680 e. The insurer shall establish and maintain ~~Maintaining~~
1681 reasonable procedures to detect recommendations that are not in
1682 compliance with paragraphs (a), (b), (d), and (e). This may

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1683 include, but is not limited to, ~~suitable, such as~~ confirmation
1684 of consumer suitability information, systematic customer
1685 surveys, agent and consumer interviews, confirmation letters,
1686 agent statements or attestations, and internal monitoring
1687 programs. This sub-subparagraph does not prevent an insurer from
1688 using sampling procedures or from confirming the consumer
1689 profile ~~suitability~~ information after the issuance or delivery
1690 of the annuity. ~~;~~ ~~and~~

1691 f. The insurer shall establish and maintain reasonable
1692 procedures to assess, prior to or upon issuance or delivery of
1693 an annuity, whether an agent has provided to the consumer the
1694 information required to be provided under this subsection.

1695 g. The insurer shall establish and maintain reasonable
1696 procedures to identify and address suspicious consumer refusals
1697 to provide consumer profile information.

1698 h. The insurer shall establish and maintain reasonable
1699 procedures to identify and eliminate any sales contests, sales
1700 quotas, bonuses, and noncash compensation that are based on the
1701 sales of specific annuities within a limited period of time. The
1702 requirements of this sub-subparagraph are not intended to
1703 prohibit the receipt of health insurance, office rents, office
1704 support, retirement benefits, or other employee benefits by
1705 employees, as long as those benefits are not based upon the
1706 volume of sales of a specific annuity within a limited period of
1707 time.

1708 i.f. ~~The insurer shall~~ annually provide ~~providing~~ a written
1709 report to senior managers, including the senior manager who is
1710 responsible for audit functions, which details a review, along
1711 with appropriate testing, which is reasonably designed to

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1712 determine the effectiveness of the supervision system, the
1713 exceptions found, and corrective action taken or recommended, if
1714 any.

1715 ~~3.2.~~ An insurer is not required to include in its
1716 supervision system:

1717 a. Agent recommendations to consumers of products other
1718 than the annuities offered by the insurer; or

1719 b. Consideration of or comparison to options available to
1720 the agent or compensation relating to those options other than
1721 annuities or other products offered by the insurer.

1722 ~~4.3.~~ An insurer may contract for performance of a function,
1723 including maintenance of procedures, required under subparagraph
1724 1.

1725 a. An insurer's supervision system under this subsection
1726 shall include supervision of contractual performance under this
1727 subsection ~~If an insurer contracts for the performance of a~~
1728 ~~function, the insurer must include the supervision of~~
1729 ~~contractual performance as part of those procedures listed in~~
1730 ~~subparagraph 1.~~ These include, but are not limited to:

1731 (I) Monitoring and, as appropriate, conducting audits to
1732 ensure that the contracted function is properly performed; and

1733 (II) Annually obtaining a certification from a senior
1734 manager who has responsibility for the contracted function that
1735 the manager has a reasonable basis to represent, and does not
1736 represent ~~for representing~~ that the function is being properly
1737 performed.

1738 b. An insurer is responsible for taking appropriate
1739 corrective action and may be subject to sanctions and penalties
1740 pursuant to subsection (8) ~~(7)~~ regardless of whether the insurer

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1741 contracts for performance of a function and regardless of the
1742 insurer's compliance with sub-subparagraph a.

1743 (d)(h) Neither an agent nor an insurer shall ~~may not~~
1744 dissuade, or attempt to dissuade, a consumer from:

1745 1. Truthfully responding to an insurer's request for
1746 confirmation of consumer profile ~~suitability~~ information;

1747 2. Filing a complaint; or

1748 3. Cooperating with the investigation of a complaint.

1749 (e)1.(i) Recommendations and sales made in compliance with
1750 comparable standards shall ~~FINRA requirements pertaining to the~~
1751 ~~suitability and supervision of annuity transactions~~ satisfy the
1752 requirements of this section. This applies to all
1753 recommendations and ~~FINRA broker-dealer~~ sales of ~~variable~~
1754 annuities made by financial professionals in compliance with
1755 business rules, controls, and procedures that satisfy a
1756 comparable standard even if such standard would not otherwise
1757 apply to the product or recommendation at issue ~~and fixed~~
1758 ~~annuities if the suitability and supervision is similar to those~~
1759 ~~applied to variable annuity sales.~~ However, this paragraph does
1760 not limit the ability of the office or the department to
1761 investigate and enforce, ~~including investigate, the provisions~~
1762 ~~of~~ this section.

1763 2. Subparagraph 1. shall not limit the insurer's obligation
1764 to comply with subparagraph (c)1., although the insurer may base
1765 its analysis on information received from either the financial
1766 professional or the entity supervising the financial
1767 professional.

1768 3. For this paragraph to apply, an insurer shall ~~must~~:

1769 a.1. Monitor relevant conduct of the financial professional

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1770 seeking to rely on subparagraph 1. or the entity responsible for
1771 supervising the financial professional, such as the financial
1772 professional's broker-dealer or an investment adviser registered
1773 under federal or state securities law, ~~the FINRA member broker-~~
1774 ~~dealer~~ using information collected in the normal course of an
1775 insurer's business; and

1776 b.2. Provide to the entity responsible for supervising the
1777 financial professional seeking to rely on subparagraph 1., such
1778 as the financial professional's broker-dealer or investment
1779 adviser registered under federal or state securities laws, ~~FINRA~~
1780 ~~member broker-dealer~~ information and reports that are reasonably
1781 appropriate to assist such entity ~~the FINRA member broker-dealer~~
1782 in maintaining its supervision system.

1783 4. For purposes of this paragraph, the term:

1784 a. "Comparable standards" means:

1785 (I) With respect to broker-dealers and registered
1786 representatives of broker-dealers, applicable SEC and FINRA
1787 rules pertaining to best interest obligations and supervision of
1788 annuity recommendations and sales including, but not limited to,
1789 Regulation Best Interest, 17 C.F.R. s. 240.151-1, and any
1790 amendments or successor regulations thereto;

1791 (II) With respect to investment advisers registered under
1792 federal or state securities laws or investment adviser
1793 representatives, the fiduciary duties and all other requirements
1794 imposed on such investment advisers or investment adviser
1795 representatives by contract or under the Investment Advisers Act
1796 of 1940 or applicable state securities laws, including, but not
1797 limited to, Form ADV and interpretations; and

1798 (III) With respect to plan fiduciaries or fiduciaries, the

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1799 duties, obligations, prohibitions and all other requirements
1800 attendant to such status under the Employee Retirement Income
1801 Security Act of 1974 or the Internal Revenue Code and any
1802 amendments or successor statutes thereto.

1803 b. "Financial professional" means an agent that is
1804 regulated and acting as:

1805 (I) A broker-dealer registered under federal or state
1806 securities laws or a registered representative of a broker-
1807 dealer;

1808 (II) An investment adviser registered under federal or
1809 state securities laws or an investment adviser representative
1810 associated with the federal or state registered investment
1811 adviser; or

1812 (III) A plan fiduciary under s. 3(21) of the Employee
1813 Retirement Income Security Act of 1974 or fiduciary under s.
1814 4975(e)(3) of the Internal Revenue Code or any amendments or
1815 successor statutes thereto.

1816 (6) AGENT TRAINING.—

1817 (a) An agent shall not solicit the sale of an annuity
1818 product unless the agent has adequate knowledge of the product
1819 to recommend the annuity and the agent is in compliance with the
1820 insurer's standards for product training. An agent may rely on
1821 insurer-provided product-specific training standards and
1822 materials to comply with this subsection.

1823 (b)1.a. An agent who engages in the sale of annuity
1824 products shall complete a one-time 4-hour training course. This
1825 requirement is not part of an agent's continuing education
1826 requirement in s. 626.2815; however, if a course provider
1827 submits and receives approval from the department, the course is

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1828 eligible for continuing education credit pursuant to s.
1829 626.2815.

1830 b. Agents who hold a life insurance line of authority on
1831 the effective date of this act and who desire to sell annuities
1832 shall complete the requirements of this subsection within 6
1833 months after the effective date of this act. Individuals who
1834 obtain a life insurance line of authority after the effective
1835 date of this act may not engage in the sale of annuities until
1836 the annuity training course required under this subsection has
1837 been completed.

1838 2. The minimum length of the training required under this
1839 subsection is 4 hours.

1840 3. The training required under this subsection shall
1841 include information on the following topics:

1842 a. The types of annuities and various classifications of
1843 annuities.

1844 b. Identification of the parties to an annuity.

1845 c. How product-specific annuity contract features affect
1846 consumers.

1847 d. The application of income taxation of qualified and
1848 nonqualified annuities.

1849 e. The primary uses of annuities.

1850 f. The appropriate standard of conduct, sales practices,
1851 replacement, and disclosure requirements.

1852 4. Providers of courses intended to comply with this
1853 subsection shall cover all topics listed in the prescribed
1854 outline and shall not present any marketing information or
1855 provide training on sales techniques or provide specific
1856 information about a particular insurer's products. Additional

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1857 topics may be offered in conjunction with and in addition to the
1858 required outline.

1859 5. A provider of an annuity training course intended to
1860 comply with this subsection shall register as a continuing
1861 education provider in this state and comply with the rules and
1862 guidelines applicable to agent continuing education courses as
1863 set forth in s. 626.2815.

1864 6. An agent who has completed an annuity training course
1865 approved by the office prior to the effective date of this act
1866 shall, within 6 months after the effective date of this act,
1867 complete either:

1868 a. A new 4-hour credit training course approved by the
1869 office after the effective date of this act; or

1870 b. An additional one-time one credit training course
1871 approved by the office and provided by an office-approved
1872 education provider on appropriate sales practices, replacement,
1873 and disclosure requirements under this section.

1874 7. Annuity training courses may be conducted and completed
1875 by classroom or self-study methods in accordance with s.
1876 626.2815.

1877 8. Providers of annuity training shall comply with the
1878 reporting requirements and shall issue certificates of
1879 completion in accordance with s. 626.2815.

1880 9. The satisfaction of the training requirements of another
1881 state that are substantially similar to the provisions of this
1882 subsection shall be deemed to satisfy the training requirements
1883 of this subsection in this state.

1884 10. The satisfaction of the training requirements of any
1885 course or courses with components substantially similar to the

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1886 provisions of this subsection shall be deemed to satisfy the
1887 training requirements of this subsection in this state.

1888 11. An insurer shall verify that an agent has completed the
1889 annuity training course required under this subsection before
1890 allowing the agent to sell an annuity product for that insurer.
1891 An insurer may satisfy its responsibility under this subsection
1892 by obtaining certificates of completion of the training course
1893 or obtaining reports provided by commissioner-sponsored database
1894 systems or vendors or from a reasonably reliable commercial
1895 database vender that has a reporting arrangement with approved
1896 insurance education providers.

1897 (7)~~(6)~~ RECORDKEEPING.—

1898 (a) Insurers and agents must maintain or be able to make
1899 available to the office or department records of the information
1900 collected from the consumer and other information used in making
1901 the recommendations that were the basis for insurance
1902 transactions for 5 years after the insurance transaction is
1903 completed by the insurer. An insurer may maintain the
1904 documentation on behalf of its agent.

1905 (b) Records required to be maintained under this subsection
1906 may be maintained in paper, photographic, microprocess,
1907 magnetic, mechanical, or electronic media, or by any process
1908 that accurately reproduces the actual document.

1909 (8)~~(7)~~ COMPLIANCE MITIGATION; PENALTIES.—

1910 (a) An insurer is responsible for compliance with this
1911 section. If a violation occurs because of the action or inaction
1912 of the insurer or its agent which results in harm to a consumer,
1913 the office may order the insurer to take reasonably appropriate
1914 corrective action for the consumer and may impose appropriate

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1915 penalties and sanctions.

1916 (b) The department may order:

1917 1. An ~~insurance~~ agent to take reasonably appropriate
1918 corrective action for a consumer harmed by a violation of this
1919 section by the ~~insurance~~ agent, including monetary restitution
1920 of penalties or fees incurred by the consumer, and impose
1921 appropriate penalties and sanctions.

1922 2. A managing general agency or insurance agency that
1923 employs or contracts with an ~~insurance~~ agent to sell or solicit
1924 the sale of annuities to consumers to take reasonably
1925 appropriate corrective action for a consumer harmed by a
1926 violation of this section by the ~~insurance~~ agent.

1927 (c) In addition to any other penalty authorized under
1928 chapter 626, the department shall order an insurance agent to
1929 pay restitution to a consumer who has been deprived of money by
1930 the agent's misappropriation, conversion, or unlawful
1931 withholding of moneys belonging to the consumer in the course of
1932 a transaction involving annuities. The amount of restitution
1933 required to be paid may not exceed the amount misappropriated,
1934 converted, or unlawfully withheld. This paragraph does not limit
1935 or restrict a person's right to seek other remedies as provided
1936 by law.

1937 (d) Any applicable penalty under the Florida Insurance Code
1938 for a violation of this section shall be reduced or eliminated
1939 according to a schedule adopted by the office or the department,
1940 as appropriate, if corrective action for the consumer was taken
1941 promptly after a violation was discovered.

1942 (e) A violation of this section does not create or imply a
1943 private cause of action.

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1944 (9)~~(8)~~ PROHIBITED CHARGES.—An annuity contract issued to a
1945 senior consumer age 65 or older may not contain a surrender or
1946 deferred sales charge for a withdrawal of money from an annuity
1947 exceeding 10 percent of the amount withdrawn. The charge shall
1948 be reduced so that no surrender or deferred sales charge exists
1949 after the end of the 10th policy year or 10 years after the date
1950 of each premium payment if multiple premiums are paid, whichever
1951 is later. This subsection does not apply to annuities purchased
1952 by an accredited investor, as defined in Regulation D as adopted
1953 by the United States Securities and Exchange Commission, or to
1954 those annuities specified in paragraph (4) (b).

1955 (10)~~(9)~~ RULES.—The department and the commission may adopt
1956 rules to administer this section.

1957 Section 18. Paragraph (b) of subsection (8) of section
1958 634.041, Florida Statutes, is amended to read:

1959 634.041 Qualifications for license.—To qualify for and hold
1960 a license to issue service agreements in this state, a service
1961 agreement company must be in compliance with this part, with
1962 applicable rules of the commission, with related sections of the
1963 Florida Insurance Code, and with its charter powers and must
1964 comply with the following:

1965 (8)

1966 (b) A service agreement company does not have to establish
1967 and maintain an unearned premium reserve if it secures and
1968 maintains contractual liability insurance in accordance with the
1969 following:

1970 1. Coverage of 100 percent of the claim exposure is
1971 obtained from an insurer approved by the office, which holds a
1972 certificate of authority under s. 624.401 to do business within

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1973 this state, or secured through a risk retention group, which is
1974 authorized to do business within this state under s. 627.943 or
1975 s. 627.944. Such insurer or risk retention group must maintain a
1976 surplus as regards policyholders of at least \$15 million.

1977 2. If the service agreement company does not meet its
1978 contractual obligations, the contractual liability insurance
1979 policy binds its issuer to pay or cause to be paid to the
1980 service agreement holder all legitimate claims and cancellation
1981 refunds for all service agreements issued by the service
1982 agreement company while the policy was in effect. This
1983 requirement also applies to those service agreements for which
1984 no premium has been remitted to the insurer.

1985 3. If the issuer of the contractual liability policy is
1986 fulfilling the service agreements covered by the contractual
1987 liability policy and the service agreement holder cancels the
1988 service agreement, the issuer must make a full refund of
1989 unearned premium to the consumer, subject to the cancellation
1990 fee provisions of s. 634.121(3). The sales representative and
1991 agent must refund to the contractual liability policy issuer
1992 their unearned pro rata commission.

1993 4. The policy may not be canceled, terminated, or
1994 nonrenewed by the insurer or the service agreement company
1995 unless a 90-day written notice thereof has been given to the
1996 office by the insurer before the date of the cancellation,
1997 termination, or nonrenewal.

1998 5. The service agreement company must provide the office
1999 with the claims statistics.

2000 6. A policy issued in compliance with this subparagraph may
2001 either pay 100 percent of claims as they are incurred, or 100

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2002 percent of claims due in the event of the failure of the service
2003 agreement company to pay such claims when due.

2004
2005 All funds or premiums remitted to an insurer by a motor vehicle
2006 service agreement company under this part shall remain in the
2007 care, custody, and control of the insurer and shall be counted
2008 as an asset of the insurer; provided, however, this requirement
2009 does not apply when the insurer and the motor vehicle service
2010 agreement company are affiliated companies and members of an
2011 insurance holding company system. If the motor vehicle service
2012 agreement company chooses to comply with this paragraph but also
2013 maintains a reserve to pay claims, such reserve shall only be
2014 considered an asset of the covered motor vehicle service
2015 agreement company and may not be simultaneously counted as an
2016 asset of any other entity.

2017 Section 19. The Division of Law Revision is directed to
2018 replace the phrase "the effective date of this act" wherever it
2019 occurs in this act with the date this act becomes a law.

2020 Section 20. This act shall take effect upon becoming a law.