

CHAPTER 2010-175

Committee Substitute for Committee Substitute for Senate Bill No. 2176

An act relating to insurance; amending s. 30.2905, F.S.; providing for interpretation of provisions relating to workers' compensation benefits for certain services performed by off-duty deputy sheriffs; authorizing sheriffs to include certain proportionate costs of workers' compensation premiums for off-duty deputy sheriffs providing certain services; amending s. 112.18, F.S.; providing conditions under which a law enforcement officer, correctional officer, or correctional probation officer who suffers from a specified medical condition and has materially departed from the prescribed treatment for that condition shall lose a specified presumption for workers' compensation claims made on or after a specified date; defining the term "prescribed course of treatment"; providing for independent medical examinations in certain situations; providing that only claims made before or within a specified period after leaving employment are eligible for a specified presumption; creating s. 624.46223, F.S.; prohibiting an association, fund, or pool created for the purpose of forming or managing a risk management mechanism or providing self-insurance for a public entity from requiring its members to give more than 60 days' notice of the member's intention to withdraw from the association, fund, or pool; amending s. 627.062, F.S.; exempting certain categories or types of insurance and types of commercial lines risks from certain rate requirements; requiring that insurers or rating organizations establish and use rates, rating schedules, or rating manuals allowing for a reasonable rate of return on certain insurance and risks; requiring that an insurer notify the Office of Insurance Regulation of any changes to rates for certain insurance and risks; requiring that such notice contain certain information; requiring that an insurer maintain certain information; providing that such information is subject to examination by the office; requiring that the office consider certain rate factors and standards when examining such information for the purpose of determining whether the rate is excessive, inadequate, or unfairly discriminatory; requiring that a rating organization provide notice to the office of any changes to loss cost for certain types of insurance within a specified period after such change; providing requirements for such notification; requiring that a rating organization maintain certain information; providing that such information is subject to examination by the office; requiring that specified rate factors and standards be used in such examination; authorizing the office, when reviewing a rate, to require that an insurer provide certain information at the insurer's expense; amending s. 627.0651, F.S.; exempting commercial motor vehicle insurance from certain motor vehicle insurance rate requirements; prohibiting certain insurance rates from being excessive, inadequate, or unfairly discriminatory; requiring that insurers or rating organizations establish and use rates, rating schedules, or rating manuals allowing for a reasonable rate of return on certain insurance and risks;

requiring that an insurer notify the office of any changes to rates for certain insurance and risks; requiring that such notice contain certain information; requiring that an insurer maintain certain information; providing that such information is subject to examination by the office; requiring that the office consider certain rate factors and standards when examining such information for the purpose of determining whether the rate is excessive, inadequate, or unfairly discriminatory; requiring that a rating organization provide notice to the office of any changes to loss cost for certain types of insurance within a specified period after such change; providing requirements for such notification; requiring that a rating organization maintain certain information; providing that such information is subject to examination by the office; requiring that specified rate factors and standards be used in such examination; authorizing the office, when reviewing a rate, to require that an insurer provide certain information at the insurer's expense; amending s. 626.9541, F.S.; prohibiting construction to prevent a Medicare supplement insurer from granting a premium credit to insureds under certain circumstances; amending s. 627.6741, F.S.; specifying absence of a prohibition against certain Medicare supplement policy insurers from entering into agreements through a network with certain facilities; specifying absence of a requirement to file certain contracts with the Office of Insurance Regulation; amending s. 627.6745, F.S.; requiring certain insurers to factor certain deductibles and premium credits into loss-ratio calculation and policy premiums; amending s. 628.4615, F.S., relating to specialty insurers; conforming a cross-reference; amending s. 634.011, F.S.; revising the definition of the term "motor vehicle service agreement"; amending s. 634.031, F.S.; providing penalties for certain licensure violations; amending s. 634.041, F.S., relating to qualifications for licensure; conforming cross-references; amending s. 634.095, F.S.; prohibiting service agreement companies from issuing certain deceptive advertisements, operating without a subsisting license, or remitting premiums to a person other than the obligated service agreement company; amending s. 634.121, F.S.; deleting a requirement that certain service agreement forms be approved by the Office of Insurance Regulation of the Financial Services Commission; requiring the service agreements to include certain written disclosures; amending s. 634.1213, F.S.; authorizing the office to order a service agreement company to stop using forms that do not comply with specified requirements; amending s. 634.137, F.S.; deleting a schedule for the submissions of certain reports; amending s. 634.141, F.S.; providing guidelines for the office to use in determining whether to examine a company; amending s. 634.1815, F.S.; requiring certain rebates to be approved by the company issuing a service agreement; amending s. 634.282, F.S.; clarifying provisions relating to the refund of excess premiums or charges; requiring that a consumer receive a sample copy of the service agreement prior to the sale of a service agreement; amending s. 634.301, F.S.; revising certain definitions relating home warranties; amending s. 634.303, F.S.; providing that it is a first-degree misdemeanor for a person without a subsisting license to provide or offer to provide home warranties; amending s. 634.308, F.S.; providing an exception to certain

grounds for licensure suspension or revocation; amending s. 634.312, F.S.; deleting a requirement that certain home warranty agreement forms be approved by the office; requiring the home warranty contracts to include certain written disclosures; amending s. 634.3123, F.S.; authorizing the office to order a home warranty association to stop using forms that do not comply with specified requirements; amending s. 634.314, F.S.; providing guidelines for the office to use in determining whether to examine an association; amending s. 634.3205, F.S.; requiring certain rebates to be approved by the association issuing a service agreement; amending s. 634.336, F.S.; requiring that a consumer receive a sample copy of the service agreement prior to the sale of a service agreement; amending s. 634.344, F.S.; prohibiting certain coercive actions relating to the sale of a home warranty in connection with the lending of money; amending s. 634.401, F.S.; redefining the term “indemnify”; amending s. 634.403, F.S.; providing that it is a first-degree misdemeanor for a person without a subsisting license to provide or offer to provide service warranties; amending s. 634.406, F.S., relating to financial requirements; conforming a cross-reference; amending s. 634.414, F.S.; deleting a requirement that certain service warranty forms be approved by the office; deleting certain requirements relating to the display of the issuing association’s name on literature; requiring the service warranty contracts to include certain written disclosures; amending s. 634.4145, F.S.; authorizing the office to order a service warranty association to stop using forms that do not comply with specified requirements; amending s. 634.415, F.S.; deleting a requirement that associations file certain quarterly statements and special reports; amending s. 634.416, F.S.; providing guidelines for the office to use in determining whether to examine an service warranty association; amending s. 634.4225, F.S.; requiring certain rebates to be approved by the association issuing a service warranty; amending s. 634.436, F.S.; requiring that a consumer receive a sample copy of the service agreement prior to the sale of a service agreement; amending s. 634.136, F.S.; deleting certain provisions requiring records to be maintained by motor vehicle service contract companies; amending s. 634.313, F.S.; deleting certain requirements for reports relating to taxes on premiums; repealing ss. 634.1216 and 634.3126, F.S., relating to required rate filings; providing a short title; amending s. 624.310, F.S.; expanding the definition of “affiliated party” to include certain third-party marketers; creating s. 624.46223, F.S.; prohibiting a self-insurance association, fund, or pool from requiring its members to provide more than a specified maximum period of notice of any member’s intent to withdraw; amending s. 626.221, F.S.; expanding the list of individuals who are exempt from the requirement to pass an examination before being issued a license as an agent, customer representative, or adjuster; amending s. 626.025, F.S.; including family members of insurance agents in a prohibition related to the transaction of life insurance; amending s. 626.2815, F.S.; providing an exemption from certain continuing education requirements to certain agents; authorizing the department to take certain action in applying such exemption; amending s. 626.621, F.S.; expanding grounds for discretionary refusal, suspension, or revocation of certain licenses; amending s. 626.641, F.S.;

prohibiting the Department of Financial Services from issuing certain licenses in certain circumstances; amending s. 626.798, F.S.; prohibiting a family member of a life insurance agent from being a beneficiary of certain policies; prohibiting an agent or a family member of such agent from being designated as a trustee or guardian or being granted power of attorney unless he or she is a family member of the policy owner or insured, or is a bank or trust company duly authorized to act as a fiduciary; amending s. 626.9521, F.S.; increasing the administrative fine that may be imposed for each willful violation of the offenses of twisting and churning; increasing the administrative fine that may be imposed for each willful violation of the offense of submitting fraudulent signatures on an application or policy-related document; requiring that a licensee make a reasonable effort to ascertain a customer's age at the time of completion of an insurance application; authorizing the use of video depositions in certain circumstances; amending s. 626.99, F.S.; requiring that the buyer's guide for fixed annuities be in the form provided by the National Association of Insurance Commissioners Annuity Disclosure Model Regulation; authorizing the use of a policy summary for variable annuities until the NAIC or the department develops a buyer's guide; extending the unconditional refund period for fixed annuity contracts and variable or market value annuity contracts for customers 65 years of age or older; requiring that the unconditional refund amount for a variable or market value annuity contract be equal to the cash surrender value provided in the contract, plus any fees or charges deducted from the premiums or imposed under the contract; providing for applicability of certain provisions; requiring that an insurer provide a prospective purchaser of an annuity policy with a buyer's guide to annuities; requiring that such buyer's guide contain certain information; requiring that an insurer attach a cover page to an annuity policy informing the purchaser of the unconditional refund period; requiring that the cover page provide other specified information; amending s. 627.4554, F.S.; defining the term "accredited investor"; authorizing the Department of Financial Services to order an insurance agent to pay monetary restitution to a senior consumer under certain circumstances; limiting the amount of such restitution; prohibiting an annuity contract issued to a senior consumer from containing a surrender or deferred sales charge for withdrawal of funds from an annuity in excess of a specified maximum amount; providing for the periodic reduction of such charge; providing effective dates.

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

Section 1. Subsection (2) of section 30.2905, Florida Statutes, is amended to read:

30.2905 Program to contract for employment of off-duty deputies for security services.—

(2)(a) Any such public or private employer of a deputy sheriff shall be responsible for the acts or omissions of the deputy sheriff while performing

services for that employer while off duty, including workers' compensation benefits.

(b) However, for the workers' compensation purposes of this section;

1. A deputy sheriff so employed who sustains an injury while enforcing the criminal, traffic, or penal laws of this state shall be regarded as working on duty.

2. The term "enforcing the criminal, traffic, or penal laws of this state" shall be interpreted to include, but is not limited to, providing security, patrol, or traffic direction for a private or public employer.

3. A sheriff may include the sheriff's proportionate costs of workers' compensation premiums for the off-duty deputy sheriffs providing such services.

Section 2. Section 112.18, Florida Statutes, is amended to read:

112.18 Firefighters and law enforcement or correctional officers; special provisions relative to disability.—

(1)(a) Any condition or impairment of health of any Florida state, municipal, county, port authority, special tax district, or fire control district firefighter or any law enforcement officer, ~~or~~ correctional officer, or correctional probation officer as defined in s. 943.10(1), (2), or (3) caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death shall be presumed to have been accidental and to have been suffered in the line of duty unless the contrary be shown by competent evidence. However, any such firefighter or law enforcement officer must ~~shall~~ have successfully passed a physical examination upon entering into any such service as a firefighter or law enforcement officer, which examination failed to reveal any evidence of any such condition. Such presumption does ~~shall~~ not apply to benefits payable under or granted in a policy of life insurance or disability insurance, unless the insurer and insured have negotiated for such additional benefits to be included in the policy contract.

(b)1. For any workers' compensation claim filed under this section and chapter 440 occurring on or after July 1, 2010, a law enforcement officer, correctional officer, or correctional probation officer as defined in s. 943.10(1), (2), or (3) suffering from tuberculosis, heart disease, or hypertension is presumed not to have incurred such disease in the line of duty as provided in this section if the law enforcement officer, correctional officer, or correctional probation officer:

a. Departed in a material fashion from the prescribed course of treatment of his or her personal physician and the departure is demonstrated to have resulted in a significant aggravation of the tuberculosis, heart disease, or hypertension resulting in disability or increasing the disability or need for medical treatment; or

b. Was previously compensated pursuant to this section and chapter 440 for tuberculosis, heart disease, or hypertension and thereafter sustains and reports a new compensable workers' compensation claim under this section and chapter 440, and the law enforcement officer, correctional officer, or correctional probation officer has departed in a material fashion from the prescribed course of treatment of an authorized physician for the preexisting workers' compensation claim and the departure is demonstrated to have resulted in a significant aggravation of the tuberculosis, heart disease, or hypertension resulting in disability or increasing the disability or need for medical treatment.

2. As used in this paragraph, "prescribed course of treatment" means prescribed medical courses of action and prescribed medicines for the specific disease or diseases claimed and as documented in the prescribing physician's medical records.

3. If there is a dispute as to the appropriateness of the course of treatment prescribed by a physician under sub-subparagraph 1.a. or sub-subparagraph 1.b. or whether a departure in a material fashion from the prescribed course of treatment is demonstrated to have resulted in a significant aggravation of the tuberculosis, heart disease, or hypertension resulting in disability or increasing the disability or need for medical treatment, the law enforcement officer, correctional officer, or correctional probation officer is entitled to seek an independent medical examination pursuant to s. 440.13(5).

4. A law enforcement officer, correctional officer, or correctional probation officer is not entitled to the presumption provided in this section unless a claim for benefits is made prior to or within 180 days after leaving the employment of the employing agency.

(2) This section authorizes each governmental entity specified in subsection (1) shall be construed to authorize the above governmental entities to negotiate policy contracts for life and disability insurance to include accidental death benefits or double indemnity coverage which shall include the presumption that any condition or impairment of health of any firefighter, law enforcement officer, or correctional officer caused by tuberculosis, heart disease, or hypertension resulting in total or partial disability or death was accidental and suffered in the line of duty, unless the contrary be shown by competent evidence.

Section 3. Section 624.46223, Florida Statutes, is created to read:

624.46223 Notice of intent to withdraw.—An association, fund, or pool authorized under Florida law and created for the purpose of forming or managing a risk management mechanism or providing self-insurance for a public entity in this state may not require its members, as a prerequisite for withdrawing from the association, fund, or pool, to give more than 60 days' notice of the member's intention to withdraw from the association, fund, or pool.

Section 4. Paragraph (d) is added to subsection (3) of section 627.062, Florida Statutes, to read:

627.062 Rate standards.—

(3)

(d)1. The following categories or kinds of insurance and types of commercial lines risks are not subject to paragraph (2)(a) or paragraph (2)(f):

- a. Excess or umbrella.
- b. Surety and fidelity.
- c. Boiler and machinery and leakage and fire extinguishing equipment.
- d. Errors and omissions.
- e. Directors and officers, employment practices, and management liability.
- f. Intellectual property and patent infringement liability.
- g. Advertising injury and Internet liability insurance.
- h. Property risks rated under a highly protected risks rating plan.
- i. Any other commercial lines categories or kinds of insurance or types of commercial lines risks that the office determines should not be subject to paragraph (2)(a) or paragraph (2)(f) because of the existence of a competitive market for such insurance, similarity of such insurance to other categories or kinds of insurance not subject to paragraph (2)(a) or paragraph (2)(f), or to improve the general operational efficiency of the office.

2. Insurers or rating organizations shall establish and use rates, rating schedules, or rating manuals to allow the insurer a reasonable rate of return on insurance and risks described in subparagraph 1. which are written in this state.

3. An insurer must notify the office of any changes to rates for insurance and risks described in subparagraph 1. no later than 30 days after the effective date of the change. The notice must include the name of the insurer, the type or kind of insurance subject to rate change, total premium written during the immediately preceding year by the insurer for the type or kind of insurance subject to the rate change, and the average statewide percentage change in rates. Underwriting files, premiums, losses, and expense statistics with regard to insurance and risks described in subparagraph 1. written by an insurer shall be maintained by the insurer and subject to examination by the office. Upon examination, the office shall, in accordance with generally accepted and reasonable actuarial techniques, consider the rate factors in paragraphs (2)(b), (c), and (d) and the standards in paragraph (2)(e) to determine if the rate is excessive, inadequate, or unfairly discriminatory.

4. A rating organization must notify the office of any changes to loss cost for insurance and risks described in subparagraph 1. no later than 30 days after the effective date of the change. The notice must include the name of the rating organization, the type or kind of insurance subject to a loss cost change, loss costs during the immediately preceding year for the type or kind of insurance subject to the loss cost change, and the average statewide percentage change in loss cost. Loss and exposure statistics with regard to risks applicable to loss costs for a rating organization not subject to paragraph (2)(a) or paragraph (2)(f) shall be maintained by the rating organization and are subject to examination by the office. Upon examination, the office shall, in accordance with generally accepted and reasonable actuarial techniques, consider the rate factors in paragraphs (2)(b)-(d) and the standards in paragraph (2)(e) to determine if the rate is excessive, inadequate, or unfairly discriminatory.

5. In reviewing a rate, the office may require the insurer to provide at the insurer's expense all information necessary to evaluate the condition of the company and the reasonableness of the rate according to the applicable criteria described in this section.

Section 5. Subsection (14) is added to section 627.0651, Florida Statutes, to read:

627.0651 Making and use of rates for motor vehicle insurance.—

(14)(a) Commercial motor vehicle insurance covering a fleet of 20 or more self-propelled vehicles is not subject to subsection (1), subsection (2), or subsection (9) or s. 627.0645.

(b) The rates for insurance described in this subsection may not be excessive, inadequate, or unfairly discriminatory.

(c) Insurers shall establish and use rates, rating schedules, or rating manuals to allow the insurer a reasonable rate of return on commercial motor vehicle insurance written in this state covering a fleet of 20 or more self-propelled vehicles.

(d) An insurer must notify the office of any changes to rates for type of insurance described in this subsection no later than 30 days after the effective date of the change. The notice shall include the name of the insurer, the type or kind of insurance subject to rate change, total premium written during the immediately preceding year by the insurer for the type or kind of insurance subject to the rate change, and the average statewide percentage change in rates. Underwriting files, premiums, losses, and expense statistics for the type of insurance described in this subsection shall be maintained by the insurer and subject to examination by the office. Upon examination, the office shall, in accordance with generally accepted and reasonable actuarial techniques, consider the factors in paragraphs (2)(a)–(l) and apply subsections (3)–(8) to determine if the rate is excessive, inadequate, or unfairly discriminatory.

(e) A rating organization must notify the office of any changes to loss cost for the type of insurance described in this subsection no later than 30 days after the effective date of the change. The notice shall include the name of the rating organization, the type or kind of insurance subject to a loss cost change, loss costs during the immediately preceding year for the type or kind of insurance subject to the loss cost change, and the average statewide percentage change in loss cost. Loss and exposure statistics with regard to risks applicable to loss costs for a rating organization not subject to subsection (1), subsection (2), or subsection (9) shall be maintained by the rating organization and are subject to examination by the office. Upon examination, the office shall, in accordance with generally accepted and reasonable actuarial techniques, consider the rate factors in paragraphs (2)(a)-(l) and apply subsections (3)-(8) to determine if the rate is excessive, inadequate, or unfairly discriminatory.

(f) In reviewing the rate, the office may require the insurer to provide at the insurer's expense all information necessary to evaluate the condition of the company and the reasonableness of the rate according to the applicable criteria described herein.

Section 6. Subsection (3) is added to section 626.9541, Florida Statutes, to read:

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

(3) INPATIENT FACILITY NETWORK.—This section may not be construed to prohibit a Medicare supplement insurer from granting a premium credit to insureds for using an in-network inpatient facility.

Section 7. Subsection (6) is added to section 627.6741, Florida Statutes, to read:

627.6741 Issuance, cancellation, nonrenewal, and replacement.—

(6) An insurer offering a Medicare supplement policy under this part is not prohibited from entering into an agreement through a network with inpatient facilities that agree to waive the Medicare Part A deductible in whole or in part. An insurer is not required to file a copy of the network agreement with, and such network agreements are not subject to approval of, the office.

Section 8. Subsection (8) is added to section 627.6745, Florida Statutes, to read:

627.6745 Loss ratio standards; public rate hearings.—

(8) For an insurer that enters into a network agreement pursuant to s. 627.6741(6), the waiver of the Medicare Part A deductible and premium credit shall be factored into the insurer's loss-ratio calculation and policy premium.

Section 9. Effective upon this act becoming a law, paragraph (b) of subsection (1) of section 628.4615, Florida Statutes, is amended to read:

628.4615 Specialty insurers; acquisition of controlling stock, ownership interest, assets, or control; merger or consolidation.—

(1) For the purposes of this section, the term “specialty insurer” means any person holding a license or certificate of authority as:

(b) A home warranty association authorized to issue “home warranties” as those terms are defined in s. 634.301~~(3) and (4)~~;

Section 10. Effective upon this act becoming a law, subsection (8) of section 634.011, Florida Statutes, is amended to read:

634.011 Definitions.—As used in this part, the term:

(8) “Motor vehicle service agreement” or “service agreement” means any contract or agreement indemnifying the service agreement holder for the motor vehicle listed on the service agreement and arising out of the ownership, operation, and use of the motor vehicle against loss caused by failure of any mechanical or other component part, or any mechanical or other component part that does not function as it was originally intended; however, nothing in this part shall prohibit or affect the giving, free of charge, of the usual performance guarantees by manufacturers or dealers in connection with the sale of motor vehicles. Transactions exempt under s. 624.125 are expressly excluded from this definition and are exempt from the provisions of this part. Service agreements that are sold to persons other than consumers and that cover motor vehicles used for commercial purposes are excluded from this definition and are exempt from regulation under the Florida Insurance Code. The term “motor vehicle service agreement” includes any contract or agreement that provides:

(a) For the coverage or protection defined in this subsection and which is issued or provided in conjunction with an additive product applied to the motor vehicle that is the subject of such contract or agreement;

(b) For payment of vehicle protection expenses.

1.a. “Vehicle protection expenses” means a preestablished flat amount payable for the loss of or damage to a vehicle or expenses incurred by the service agreement holder for loss or damage to a covered vehicle, including, but not limited to, applicable deductibles under a motor vehicle insurance policy; temporary vehicle rental expenses; expenses for a replacement vehicle that is at least the same year, make, and model of the stolen motor vehicle; sales taxes or registration fees for a replacement vehicle that is at least the same year, make, and model of the stolen vehicle; or other incidental expenses specified in the agreement.

b. “Vehicle protection product” means a product or system installed or applied to a motor vehicle or designed to prevent the theft of the motor vehicle or assist in the recovery of the stolen motor vehicle.

2. Vehicle protection expenses shall be payable in the event of loss or damage to the vehicle as a result of the failure of the vehicle protection product to prevent the theft of the motor vehicle or to assist in the recovery of the stolen motor vehicle. Vehicle protection expenses covered under the agreement shall be clearly stated in the service agreement form, unless the agreement provides for the payment of a preestablished flat amount, in which case the service agreement form shall clearly identify such amount.

3. Motor vehicle service agreements providing for the payment of vehicle protection expenses shall either:

a. Reimburse a service agreement holder for the following expenses, at a minimum: deductibles applicable to comprehensive coverage under the service agreement holder’s motor vehicle insurance policy; temporary vehicle rental expenses; sales taxes and registration fees on a replacement vehicle that is at least the same year, make, and model of the stolen motor vehicle; and the difference between the benefits paid to the service agreement holder for the stolen vehicle under the service agreement holder’s comprehensive coverage and the actual cost of a replacement vehicle that is at least the same year, make, and model of the stolen motor vehicle; or

b. Pay a preestablished flat amount to the service agreement holder.

Payments shall not duplicate any benefits or expenses paid to the service agreement holder by the insurer providing comprehensive coverage under a motor vehicle insurance policy covering the stolen motor vehicle; however, the payment of vehicle protection expenses at a preestablished flat amount of \$5,000 or less does not duplicate any benefits or expenses payable under any comprehensive motor vehicle insurance policy; or

(c)1. For the payment for paintless dent-removal services provided by a company whose primary business is providing such services.

2. “Paintless dent-removal” means the process of removing dents, dings, and creases, including hail damage, from a vehicle without affecting the existing paint finish, but does not include services that involve the replacement of vehicle body panels or sanding, bonding, or painting.

Section 11. Effective upon this act becoming a law, subsection (7) is added to section 634.031, Florida Statutes, to read:

634.031 License required.—

(7) Any person who violates this section commits, in addition to any other violation, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 12. Effective upon this act becoming a law, paragraph (b) of subsection (8) and paragraph (b) of subsection (11) of section 634.041, Florida Statutes, are amended to read:

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

(8)

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

1. The insurance covers 100 percent of its claim exposure and is obtained from an insurer approved by the office which holds a certificate of authority to do business within this state.

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

3. If the issuer of the contractual liability policy is fulfilling the service agreements covered by the contractual liability policy and the service agreement holder cancels the service agreement, the issuer must make a full refund of unearned premium to the consumer, subject to the cancellation fee provisions of s. 634.121(3)(5). The sales representative and agent must refund to the contractual liability policy issuer their unearned pro rata commission.

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

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

All funds or premiums remitted to an insurer by a motor vehicle service agreement company under this part shall remain in the care, custody, and control of the insurer and shall be counted as an asset of the insurer; provided, however, this requirement does not apply when the insurer and the motor vehicle service agreement company are affiliated companies and members of an insurance holding company system. If the motor vehicle service agreement company chooses to comply with this paragraph but also

maintains a reserve to pay claims, such reserve shall only be considered an asset of the covered motor vehicle service agreement company and may not be simultaneously counted as an asset of any other entity.

(11)

(b) Notwithstanding any other requirement of this part, a service agreement company maintaining an unearned premium reserve on all service agreements in accordance with paragraph (8)(a) may offer service agreements providing vehicle protection expenses if it maintains contractual liability insurance only on all service agreements providing vehicle protection expenses and continues to maintain the 50-percent reserve for all service agreements not providing vehicle protection expenses. A service agreement company maintaining contractual liability insurance for all service agreements providing vehicle protection expenses and the 50-percent reserve for all other service agreements must, in the service agreement register as required under s. 634.136(2)(4), distinguish between insured service agreements providing vehicle protection expenses and service agreements not providing vehicle protection expenses.

Section 13. Effective upon this act becoming a law, paragraph (d) is added to subsection (3) of section 634.095, Florida Statutes, and subsection (7) is added to that section, to read:

634.095 Prohibited acts.—Any service agreement company or salesperson that engages in one or more of the following acts is, in addition to any applicable denial, suspension, revocation, or refusal to renew or continue any appointment or license, guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083:

(3) Issuing or causing to be issued any advertisement which:

(d) Is false, deceptive, or misleading with respect to:

1. The service agreement company's affiliation with a motor vehicle manufacturer;

2. The service agreement company's possession of information regarding a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty;

3. The expiration of a motor vehicle owner's current motor vehicle manufacturer's original equipment warranty; or

4. Any requirement that the motor vehicle owner register for a new motor vehicle service agreement with the company in order to maintain coverage under the current motor vehicle service agreement or manufacturer's original equipment warranty.

(7) Remitting premiums received on motor vehicle service agreements sold to any person other than the licensed service agreement company that is

obligated to perform under such agreement, if the agreement between such company and the salesperson requires that premiums be submitted directly to the service agreement company.

Section 14. Effective upon this act becoming a law, section 634.121, Florida Statutes, is amended to read:

634.121 Filing of Forms, required procedures, provisions.—

~~(1) A service agreement form or related form may not be issued or used in this state unless it has been filed with and approved by the office. Upon application for a license, the office shall require the applicant to submit for approval each brochure, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution. The office shall disapprove any document which is untrue, deceptive, or misleading or which contains misrepresentations or omissions of material facts.~~

~~(a) After an application has been approved, a licensee is not required to submit brochures or advertisement to the office for approval; however, a licensee may not have published, and a person may not publish, any brochure or advertisement which is untrue, deceptive, or misleading or which contains misrepresentations or omissions of material fact.~~

~~(b) For purposes of this section, brochures and advertising includes, but is not limited to, any report, circular, public announcement, certificate, or other printed matter or advertising material which is designed or used to solicit or induce any persons to enter into any motor vehicle service agreement.~~

~~(c) The office shall disapprove any service agreement form providing vehicle protection expenses which does not clearly indicate either the method for calculating the benefit to be paid or provided to the service agreement holder or the preestablished flat amount payable pursuant to the terms of the service agreement. All service agreement forms providing vehicle protection expenses shall clearly indicate the term of the service agreement, whether new or used cars are eligible for the vehicle protection product, and that the service agreement holder may not make any claim against the Florida Insurance Guarantee Association for vehicle protection expenses. The service agreement shall be provided to a service agreement holder on a form that provides only vehicle protection expenses. A service agreement form providing vehicle protection expenses must state that the service agreement holder must have in force at the time of loss comprehensive motor vehicle insurance coverage as a condition precedent to requesting payment of vehicle protection expenses.~~

~~(2) Every filing required under this section must be made not less than 30 days in advance of issuance or use. At the expiration of 30 days from the date of filing, a form so filed becomes approved unless prior thereto it has been affirmatively disapproved by written notice of the office. The office may~~

extend by not more than an additional 15 days the period within which it may affirmatively approve or disapprove any form by giving notice of extension before the expiration of the initial 30-day period. At the expiration of any period as so extended and in the absence of prior affirmative disapproval, the form becomes approved.

(1)(3) Before the sale of any service agreement, written notice must be given to the prospective purchaser by the service agreement company or its agent or salesperson, ~~on an office-approved form~~, that purchase of the service agreement is not required in order to purchase or obtain financing for a motor vehicle.

(2)(4) All motor vehicle service agreements are assignable in a consumer transaction and must contain a statement in conspicuous, boldfaced type, informing the purchaser of the service agreement of her or his right to assign it to a subsequent retail purchaser of the motor vehicle covered by the service agreement and all conditions on such right of transfer. The assignment must occur within a period of time specified in the agreement, which period may not expire earlier than 15 days after the date of the sale or transfer of the motor vehicle. The service agreement company may charge an assignment fee not to exceed \$40.

(3)(5)(a) Each service agreement must contain a cancellation provision. Any service agreement is cancelable by the purchaser within 60 days after purchase. The refund must be 100 percent of the gross premium paid, less any claims paid on the agreement. A reasonable administrative fee may be charged not to exceed 5 percent of the gross premium paid by the agreement holder.

(b) After the service agreement has been in effect for 60 days, it may not be canceled by the insurer or service agreement company unless:

1. There has been a material misrepresentation or fraud at the time of sale of the service agreement;
2. The agreement holder has failed to maintain the motor vehicle as prescribed by the manufacturer;
3. The odometer has been tampered with or disabled and the agreement holder has failed to repair the odometer; or
4. For nonpayment of premium by the agreement holder, in which case the service agreement company shall provide the agreement holder notice of cancellation by certified mail.

If the service agreement is canceled by the insurer or service agreement company, the return of premium must not be less than 100 percent of the paid unearned pro rata premium, ~~less any claims paid on the agreement~~. If, after 60 days, the service agreement is canceled by the service agreement holder, the insurer or service agreement company shall return directly to the agreement holder not less than 90 percent of the unearned pro rata premium,

less any claims paid on the agreement. The service agreement company remains responsible for full refunds to the consumer on canceled service agreements. However, the salesperson and agent are responsible for the refund of the unearned pro rata commission. A service agreement company may effectuate refunds through the issuing salesperson or agent.

~~(4)~~(6) If the service agreement is canceled, pursuant to an order of liquidation, the salesperson or agent is responsible for refunding, and must refund, to the receiver the unearned pro rata commission.

~~(5)~~(7) If a service agreement company violates any lawful order of the office or fails to meet its contractual obligations under this part, upon notice from the office, the sales representative or agent must refund to the service agreement holder the unearned pro rata commission, unless the sales representative or agent has made other arrangements, satisfactory to the office, with the service agreement holder.

~~(6)~~(8) Each service agreement, which includes a copy of the application form, must be mailed or delivered to the agreement holder within 45 days after the date of purchase.

~~(7)~~(9) Each service agreement form must contain in conspicuous, boldfaced type any statement or clause that places restrictions or limitations on the benefits offered or disclose such restrictions or limitations in regular type in a section of the service agreement containing a conspicuous, boldfaced type heading.

~~(8)~~(10) If an insurer or service agreement company intends to use or require the use of remanufactured or used replacement parts, each service agreement form as well as all service agreement brochures must contain in conspicuous, boldfaced type a statement to that effect.

~~(9)~~(11) Each service agreement form as well as all service agreement company sales brochures must clearly identify the name, address, and Florida license number of the licensed insurer or service agreement company.

~~(10)~~(12) If a service agreement contains a rental car provision, it must disclose the terms and conditions of this benefit in conspicuous, boldfaced type or disclose such restrictions or limitations in regular type in a section of the service agreement containing a conspicuous, boldfaced type heading.

(11) By July 1, 2011, each service agreement sold in this state must be accompanied by a written disclosure to the consumer that the rate charged for the service agreement is not subject to regulation by the office. A service agreement company may comply with this requirement by including such disclosure in its service agreement form or in a separate written notice provided to the consumer at the time of sale.

Section 15. Effective upon this act becoming a law, section 634.1213, Florida Statutes, is amended to read:

634.1213 Noncompliant forms Grounds for disapproval.—The office may order a service agreement company to stop using disapprove any service agreement form that or service agreement company sales brochures filed under s. 634.121, or withdraw any previous approval thereof, if the form or brochure:

(1) Is in any respect in violation of or does not comply with this part, any applicable provision of the Florida Insurance Code, or any applicable rule of the office ~~commission~~.

(2) Contains or incorporates by reference when such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses, or exceptions and conditions which deceptively affect the risk purported to be assumed in the general coverage of the service agreement.

(3) Has any title, heading, or other indication of its provisions which is misleading.

(4) Is printed or otherwise reproduced in such manner as to render any material provision of the form substantially illegible.

(5) Contains any provision which is unfair or inequitable or which encourages misrepresentation.

(6) Contains any provision which makes it difficult to determine the actual insurer or service agreement company issuing the form.

(7) Contains any provision for reducing claim payments due to depreciation of parts, except for marine engines.

Section 16. Effective upon this act becoming a law, subsection (1) of section 634.137, Florida Statutes, is amended to read:

634.137 Financial and statistical reporting requirements.—

(1) By March 1 of each year, each service agreement company shall submit to the office annual financial reports on forms prescribed by the commission and furnished by the office ~~as follows~~:

~~(a) Reports for a period ending December 31 are due by March 1.~~

~~(b) Reports for a period ending March 31 are due by May 15.~~

~~(c) Reports for a period ending June 30 are due by August 15.~~

~~(d) Reports for a period ending September 30 are due by November 15.~~

Section 17. Effective upon this act becoming a law, section 634.141, Florida Statutes, is amended to read:

634.141 Examination of companies.—

(1) Motor vehicle service agreement companies licensed under this part may shall be subject to periodic examination by the office in the same manner and subject to the same terms and conditions as applies to insurers under part II of chapter 624. The commission may by rule establish provisions whereby a company may be exempted from examination.

(2) The office shall determine whether to conduct an examination of a company by considering:

(a) The amount of time that the company has been continuously licensed and operating under the same management and control.

(b) The company's history of compliance with applicable law.

(c) The number of consumer complaints against the company.

(d) The financial condition of the company, demonstrated by the financial reports submitted pursuant to s. 634.137.

Section 18. Effective upon this act becoming a law, paragraph (b) of subsection (1) of section 634.1815, Florida Statutes, is amended to read:

634.1815 Rebating; when allowed.—

(1) No salesperson shall rebate any portion of his or her commission except as follows:

(b) The rebate shall be in accordance with a rebating schedule filed with and approved by the salesperson ~~with the service agreement company~~ issuing the service agreement to which the rebate applies. The service agreement company shall maintain a copy of all rebating schedules for a period of 3 years.

Section 19. Effective upon this act becoming a law, subsection (13) of section 634.282, Florida Statutes, is amended, and subsection (17) is added to that section, to read:

634.282 Unfair methods of competition and unfair or deceptive acts or practices defined.—The following methods, acts, or practices are defined as unfair methods of competition and unfair or deceptive acts or practices:

(13) ILLEGAL DEALINGS IN PREMIUMS; EXCESS OR REDUCED CHARGES FOR MOTOR VEHICLE SERVICE AGREEMENTS.—

(a) Knowingly collecting any sum as a premium or charge for a motor vehicle service agreement, which is not then provided, or is not in due course to be provided, subject to acceptance of the risk by a service agreement company or an insurer, by a motor vehicle service agreement issued by a service agreement company or an insurer as permitted by this part.

(b) Knowingly collecting as a premium or charge for a motor vehicle service agreement any sum in excess of or less than the premium or charge

applicable to such motor vehicle service agreement, in accordance with the applicable classifications and rates as filed with the office, and as specified in the motor vehicle service agreement. However, there is no violation of this subsection if excess premiums or charges are refunded to the service agreement holder within 45 days after receipt of the agreement by the service agreement company or if the licensed sales representative's commission is reduced by the amount of any premium undercharge.

(17) FAILURE TO PROVIDE TERMS AND CONDITIONS PRIOR TO SALE.—Failing to provide a consumer with a complete sample copy of the terms and conditions of the service agreement prior to the time of sale upon a request for the same by the consumer. A service agreement company may comply with this subsection by providing the consumer with a sample copy of the terms and conditions of the service agreement or by directing the consumer to a website that displays a complete sample of the terms and conditions of the service agreement.

No provision of this section shall be deemed to prohibit a service agreement company or a licensed insurer from giving to service agreement holders, prospective service agreement holders, and others for the purpose of advertising, any article of merchandise having a value of not more than \$25.

Section 20. Effective upon this act becoming a law, section 634.301, Florida Statutes, as amended by section 1 of chapter 2007-235, Laws of Florida, is amended to read:

634.301 Definitions.—As used in this part, the term:

(1) “Gross written premiums” means the total amount of premiums, paid for the entire period of the home warranty, inclusive of commissions, for which the association is obligated under home warranties issued.

(2) “Home improvement” means major remodeling, enclosure of a garage, addition of a room, addition of a pool, and other like items that add value to the residential property. The term does not include normal maintenance for items such as painting, reroofing, and other like items subject to normal wear and tear.

~~(2)(3)~~ “Home warranty” or “warranty” means any contract or agreement:

~~(a)—Offered in connection with the sale of residential property;~~

~~(b)—Offered in connection with a loan of \$5,000 or more which is secured by residential property that is the subject of the warranty, but not in connection with the sale of such property;~~

~~(c)—Offered in connection with a home improvement of \$7,500 or more for residential property that is the subject of the warranty, but not in connection with the sale of such property; or~~

~~(d)—Offered in connection with a home inspection service as defined under s. 468.8311(4) or a mold assessment as defined under s. 468.8411(3);~~

whereby a person undertakes to indemnify the warranty holder against the cost of repair or replacement, or actually furnishes repair or replacement, of any structural component or appliance of a home, necessitated by wear and tear or an inherent defect of any such structural component or appliance or necessitated by the failure of an inspection to detect the likelihood of any such loss. However, this part does not prohibit the giving of usual performance guarantees by either the builder of a home or the manufacturer or seller of an appliance, as long as no identifiable charge is made for such guarantee. This part does not permit the provision of indemnification against consequential damages arising from the failure of any structural component or appliance of a home, which practice constitutes the transaction of insurance subject to all requirements of the insurance code. This part does not apply to service contracts entered into between consumers and nonprofit organizations or cooperatives the members of which consist of condominium associations and condominium owners and which perform repairs and maintenance for appliances or maintenance of the residential property. This part does not apply to a contract or agreement offered ~~in connection with a sale of residential property~~ by a warranty association in compliance with part III, provided such contract or agreement only relates to the systems and appliances of the covered residential property and does not cover any structural component of the residential property.

~~(3)(4)~~ “Home warranty association” means any corporation or any other organization, other than an authorized insurer, issuing home warranties.

~~(4)(5)~~ “Impaired” means having liabilities in excess of assets.

~~(5)(6)~~ “Insolvent” means the inability of a corporation to pay its debts as they become due in the usual course of its business.

~~(6)(7)~~ “Insurance code” means the Florida Insurance Code.

~~(7)(8)~~ “Insurer” means any property or casualty insurer duly authorized to transact such business in this state.

~~(8)(9)~~ “Listing period” means the period of time residential property is listed for sale with a licensed real estate broker, beginning on the date the residence is first listed for sale and ending on either the date the sale of the residence is closed, the date the residence is taken off the market, or the date the listing contract with the real estate broker expires.

~~(9)(10)~~ “Net assets” means the amount by which the total statutory assets of an association exceed the total liabilities of the association.

~~(10)(11)~~ “Person” includes an individual, company, corporation, association, insurer, agent, and every other legal entity.

~~(11)~~(12) “Premium” means the total consideration received, or to be received, by an insurer or home warranty association for or related to the issuance and delivery of any binder or warranty, including any charges designated as assessments or fees for policies, surveys, inspections, or service or any other charges.

~~(12)~~(13) “Sales representative” means any person with whom an insurer or home inspection or warranty association has a contract and who is utilized by such insurer or association for the purpose of selling or issuing home warranties. The term includes all employees of an insurer or association engaged directly in the sale or issuance of home warranties.

~~(13)~~(14) “Structural component” means the roof, plumbing system, electrical system, foundation, basement, walls, ceilings, or floors of a home.

Section 21. Effective upon this act becoming a law, subsection (4) is added to section 634.303, Florida Statutes, to read:

634.303 License required.—

(4) Any person who provides, offers to provide, or holds oneself out as providing or offering to provide home warranties in this state or from this state without holding a subsisting license commits, in addition to any other violation, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 22. Effective upon this act becoming a law, paragraph (f) of subsection (2) of section 634.308, Florida Statutes, is amended to read:

634.308 Grounds for suspension or revocation of license.—

(2) The license of any home warranty association shall be suspended, revoked, or not renewed if it is determined that such association:

(f) Has issued warranty contracts which renewal contracts provide that the cost of renewal exceeds the then-current cost for new warranty contracts, unless the increase is supported by the claims history or claims cost data, or impose a fee for inspection of the premises.

Section 23. Effective upon this act becoming a law, section 634.312, Florida Statutes, is amended to read:

634.312 Forms; required provisions and procedures ~~Filing; approval of forms.~~—

~~(1) No warranty form or related form shall be issued or used in this state unless it has been filed with and approved by the office. Also upon application for a license, the office shall require the applicant to submit for approval each brochure, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution. Approval of the application constitutes approval of such documents,~~

~~unless the applicant has consented otherwise in writing. The office shall disapprove any document which is untrue, deceptive, or misleading or which contains misrepresentations or omissions of material facts.~~

~~(a) After an application has been approved, a licensee is not required to submit brochures or advertisement to the office for approval; however, a licensee may not have published, and a person may not publish, any brochure or advertisement which is untrue, deceptive, or misleading or which contains misrepresentations or omissions of material fact.~~

~~(b) For purposes of this section, brochures and advertising includes, but is not limited to, any report, circular, public announcement, certificate, or other printed matter or advertising material which is designed or used to solicit or induce any persons to enter into any home warranty agreement.~~

~~(2) Every such filing shall be made not less than 30 days in advance of issuance or use. At the expiration of 30 days from date of filing, a form so filed shall be deemed approved unless prior thereto it has been affirmatively approved or disapproved by written order of the office.~~

~~(3) The office shall not approve any such form that imposes a fee for inspection of the premises.~~

~~(1)(4) All home warranty contracts are assignable in a consumer transaction and must contain a statement informing the purchaser of the home warranty of her or his right to assign it, at least within 15 days from the date the home is sold or transferred, to a subsequent retail purchaser of the home covered by the home warranty and all conditions on such right of transfer. The home warranty company may charge an assignment fee not to exceed \$40. Home warranty assignments include, but are not limited to, the assignment from a home builder who purchased the home warranty to a subsequent home purchaser.~~

~~(2)(5) Subject to the insurer's or home warranty association's requirement as to payment of premium, every home warranty shall be mailed or delivered to the warranty holder not later than 45 days after the effectuation of coverage, and the application is part of the warranty contract document.~~

~~(3)(6) All home warranty contracts must state in conspicuous, boldfaced type that the home warranty may not provide listing period coverage free of charge.~~

~~(4)(7) All home warranty contracts must disclose any exclusions, restrictions, or limitations on the benefits offered or the coverage provided by the home warranty contract in boldfaced type, and must contain, in boldfaced type, a statement on the front page of the contract substantially similar to the following: "Certain items and events are not covered by this contract. Please refer to the exclusions listed on page of this document."~~

~~(5)(8) Each home warranty contract shall contain a cancellation provision. Any home warranty agreement may be canceled by the purchaser~~

within 10 days after purchase. The refund must be 100 percent of the gross premium paid, less any claims paid on the agreement. A reasonable administrative fee may be charged, not to exceed 5 percent of the gross premium paid by the warranty agreement holder. After the home warranty agreement has been in effect for 10 days, if the contract is canceled by the warranty holder, a return of premium shall be based upon 90 percent of unearned pro rata premium less any claims that have been paid. If the contract is canceled by the association for any reason other than for fraud or misrepresentation, a return of premium shall be based upon 100 percent of unearned pro rata premium, less any claims paid on the agreement.

(6) By July 1, 2011, each home warranty contract sold in this state must be accompanied by a written disclosure to the consumer that the rate charged for the contract is not subject to regulation by the office. A home warranty association may comply with this requirement by including such disclosure in its home warranty contract form or in a separate written notice provided to the consumer at the time of sale.

Section 24. Effective upon this act becoming a law, section 634.3123, Florida Statutes, is amended to read:

634.3123 Noncompliant Grounds for disapproval of forms.—The office may order a home warranty association to stop using any contract shall disapprove any form that filed under s. 634.312 or withdraw any previous approval if the form:

- (1) Is in violation of or does not comply with this part.
- (2) Contains or incorporates by reference, when such incorporation is otherwise permissible, any inconsistent, ambiguous, or misleading clauses or exceptions or conditions which deceptively affect the risk purported to be assumed in the general coverage of the contract.
- (3) Has any title, heading, or other indication of its provisions which is misleading.
- (4) Is printed or otherwise reproduced in such a manner as to render any material provision of the form illegible.
- (5) Provides that the cost of renewal exceeds the then-current cost for new warranty contracts, unless the increase is supported by the claims history or claims cost data, or impose a fee for inspection of the premises.

Section 25. Effective upon this act becoming a law, section 634.314, Florida Statutes, is amended to read:

634.314 Examination of associations.—

(1) Home warranty associations licensed under this part may shall be subject to periodic examinations by the office, in the same manner and

subject to the same terms and conditions as apply to insurers under part II of chapter 624 of the insurance code.

(2) The office shall determine whether to conduct an examination of a home warranty association by considering:

(a) The amount of time that the association has been continuously licensed and operating under the same management and control.

(b) The association's history of compliance with applicable law.

(c) The number of consumer complaints against the association.

(d) The financial condition of the association, demonstrated by the financial reports submitted pursuant to s. 634.313.

Section 26. Effective upon this act becoming a law, paragraph (b) of subsection (1) of section 634.3205, Florida Statutes, is amended to read:

634.3205 Rebating; when allowed.—

(1) No sales representative shall rebate any portion of his or her commission except as follows:

(b) The rebate shall be in accordance with a rebating schedule filed with and approved by the sales representative ~~with the~~ home warranty association issuing the home warranty to which the rebate applies. The home warranty association shall maintain a copy of all rebating schedules for a period of 3 years.

Section 27. Effective upon this act becoming a law, subsection (8) of section 634.336, Florida Statutes, is amended, and subsection (9) is added to that section, to read:

634.336 Unfair methods of competition and unfair or deceptive acts or practices defined.—The following methods, acts, or practices are defined as unfair methods of competition and unfair or deceptive acts or practices:

(8) COERCION OF DEBTORS.—When a home warranty is sold as ~~authorized by s. 634.301(3)(b):~~

(a) Requiring, as a condition precedent or condition subsequent to the lending of the money or the extension of the credit or any renewal thereof, that the person to whom such credit is extended purchase a home warranty; or

(b) Failing to provide the advice required by s. 634.344.

(9) FAILURE TO PROVIDE TERMS AND CONDITIONS PRIOR TO SALE.—Failing to provide a consumer with a complete sample copy of the terms and conditions of the home warranty contract prior to the time of sale upon a request for the same by the consumer. A home warranty association

may comply with this subsection by providing the consumer with a sample copy of the terms and conditions of the home warranty contract or by directing the consumer to a website that displays a complete sample of the terms and conditions of the contract.

Section 28. Effective upon this act becoming a law, section 634.344, Florida Statutes, is amended to read:

634.344 Coercion of debtor prohibited.—

(1) When a home warranty is sold in connection with the lending of money as authorized by s. 634.301(3)(b), ~~a no~~ person may not require, as a condition precedent or condition subsequent to the lending of the money or the extension of the credit or any renewal thereof, that the person to whom such money or credit is extended purchase a home warranty.

(2) When a home warranty is purchased in connection with the lending of money ~~as authorized by s. 634.301(3)(b)~~, the insurer or home warranty association or the sales representative of the insurer or home warranty association shall advise the borrower or purchaser in writing that Florida law prohibits the lender from requiring the purchase of a home warranty as a condition precedent or condition subsequent to the making of the loan.

Section 29. Effective upon this act becoming a law, subsection (5) of section 634.401, Florida Statutes, is amended to read:

634.401 Definitions.—As used in this part, the term:

(5) “Indemnify” means to undertake repair or replacement of a consumer product, or pay compensation for such repair or replacement by cash, check, store credit, gift card, or other similar means, in return for the payment of a segregated premium, when such consumer product suffers operational failure.

Section 30. Effective upon this act becoming a law, subsection (5) is added to section 634.403, Florida Statutes, to read:

634.403 License required.—

(5) Any person who provides, offers to provide, or holds oneself out as providing or offering to provide a service warranty in this state or from this state without holding a subsisting license commits, in addition to any other violation, a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

Section 31. Effective upon this act becoming a law, paragraph (e) of subsection (3) of section 634.406, Florida Statutes, is amended to read:

634.406 Financial requirements.—

(3) An association will not be required to establish an unearned premium reserve if it has purchased contractual liability insurance which demonstrates to the satisfaction of the office that 100 percent of its claim exposure is covered by such policy. The contractual liability insurance shall be obtained from an insurer that holds a certificate of authority to do business within the state. For the purposes of this subsection, the contractual liability policy shall contain the following provisions:

(e) In the event the issuer of the contractual liability policy is fulfilling the service warranty covered by policy and in the event the service warranty holder cancels the service warranty, it is the responsibility of the contractual liability policy issuer to effectuate a full refund of unearned premium to the consumer. This refund shall be subject to the cancellation fee provisions of s. 634.414(3). The salesperson or agent shall refund to the contractual liability policy issuer the unearned pro rata commission.

Section 32. Effective upon this act becoming a law, section 634.414, Florida Statutes, is amended to read:

634.414 Forms; required provisions ~~Filing; approval of forms.~~—

~~(1) No service warranty form or related form shall be issued or used in this state unless it has been filed with and approved by the office. Upon application for a license, the office shall require the applicant to submit for approval each brochure, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution. The office shall disapprove any document which is untrue, deceptive, or misleading or which contains misrepresentations or omissions of material facts.~~

~~(a) After an application has been approved, a licensee is not required to submit brochures or advertisement to the office for approval; however, a licensee may not have published, and a person may not publish, any brochure or advertisement which is untrue, deceptive, or misleading or which contains misrepresentations or omissions of material fact.~~

~~(b) For purposes of this section, brochures and advertising includes, but is not limited to, any report, circular, public announcement, certificate, or other printed matter or advertising material which is designed or used to solicit or induce any persons to enter into any service warranty agreement.~~

~~(2) Each filing shall be made not less than 30 days in advance of its issuance or use. At the expiration of 30 days from date of filing, a form so filed shall be deemed approved unless prior thereto it has been affirmatively disapproved by written order of the office.~~

~~(1)(3)~~ Each service warranty contract shall contain a cancellation provision. ~~If In the event~~ the contract is canceled by the warranty holder, return of premium shall be based upon no less than 90 percent of unearned pro rata premium less any claims that have been paid or less the cost of

repairs made on behalf of the warranty holder. ~~If In the event the contract is canceled by the association, return of premium shall be based upon 100 percent of unearned pro rata premium, less any claims paid or the cost of repairs made on behalf of the warranty holder.~~

(2) By July 1, 2011, each service warranty contract sold in this state must be accompanied by a written disclosure to the consumer that the rate charged for the contract is not subject to regulation by the office. A service warranty association may comply with this requirement by including such disclosure in its service warranty contract form or in a separate written notice provided to the consumer at the time of sale.

~~(4) The name of the service warranty association issuing the contract must be more prominent than any other company name or program name on the service warranty form or sales brochure.~~

Section 33. Effective upon this act becoming a law, section 634.4145, Florida Statutes, is amended to read:

634.4145 Noncompliant ~~Grounds for disapproval of forms.~~—The office may order a service warranty association to stop using any contract shall disapprove any form that filed under s. 634.414 if the form:

- (1) Violates this part;
- (2) Is misleading in any respect;
- (3) Is reproduced so that any material provision is substantially illegible;
or
- (4) Contains provisions which are unfair or inequitable or which encourage misrepresentation.

Section 34. Effective upon this act becoming a law, section 634.415, Florida Statutes, is amended to read:

634.415 Tax on premiums; annual statement; reports; ~~quarterly state-ments.~~—

(1) In addition to the license fees provided in this part for service warranty associations and license taxes as provided in the insurance code as to insurers, each such association and insurer shall, annually on or before March 1, file with the office its annual statement, in the form prescribed by the commission, showing all premiums or assessments received by it in connection with the issuance of service warranties in this state during the preceding calendar year and using accounting principles which will enable the office to ascertain whether the financial requirements set forth in s. 634.406 have been satisfied.

(2) The gross amount of premiums and assessments is subject to the sales tax imposed by s. 212.0506.

(3) The office may levy a fine of up to \$100 a day for each day an association neglects to file the annual statement in the form and within the time provided by this part. The amount of the fine shall be established by rules adopted by the commission. The office shall deposit all sums collected by it under this section to the credit of the Insurance Regulatory Trust Fund.

~~(4) In addition to an annual statement, the office may require of licensees, under oath and in the form prescribed by it, quarterly statements or special reports which it deems necessary to the proper supervision of licensees under this part. For manufacturers as defined in s. 634.401, the office shall require only the annual audited financial statements of the warranty operations and corporate reports as filed by the manufacturer with the Securities and Exchange Commission, provided that the office may require additional reporting by manufacturers upon a showing by the office that annual reporting is insufficient to protect the interest of purchasers of service warranty agreements in this state or fails to provide sufficient proof of the financial status required by this part.~~

~~(4)(5) The office may suspend or revoke the license of a service warranty association failing to file its annual statement or quarterly report when due.~~

~~(5)(6) The commission may by rule require each service warranty association to submit to the office, as the commission may designate, all or part of the information contained in the financial statements and reports required by this section in a computer-readable form compatible with the electronic data processing system specified by the office.~~

Section 35. Effective upon this act becoming a law, section 634.416, Florida Statutes, is amended to read:

634.416 Examination of associations.—

(1)(a) Service warranty associations licensed under this part may be are subject to periodic examination by the office, in the same manner and subject to the same terms and conditions that apply to insurers under part II of chapter 624.

(b) The office shall determine whether to conduct an examination of a service warranty association by considering:

1. The amount of time that the association has been continuously licensed and operating under the same management and control.

2. The association's history of compliance with applicable law.

3. The number of consumer complaints against the association.

4. The financial condition of the association, demonstrated by the financial reports submitted pursuant to s. 634.313.

(2) However, The rate charged a service warranty association by the office for examination may be adjusted to reflect the amount collected for the Form 10-K filing fee as provided in this section.

(3) On or before May 1 of each year, an association may submit to the office the Form 10-K, as filed with the United States Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934, as amended. Upon receipt and review of the most current Form 10-K, the office may waive the examination requirement; if the office determines not to waive the examination, such examination will be limited to that examination necessary to ensure compliance with this part. The Form 10-K shall be accompanied by a filing fee of \$2,000 to be deposited into the Insurance Regulatory Trust Fund.

(4)(2) The office is not required to examine an association that has less than \$20,000 in gross written premiums as reflected in its most recent annual statement. The office may examine such an association if it has reason to believe that the association may be in violation of this part or is otherwise in an unsound financial condition. If the office examines an association that has less than \$20,000 in gross written premiums, the examination fee may not exceed 5 percent of the gross written premiums of the association.

Section 36. Effective upon this act becoming a law, paragraph (b) of subsection (1) of section 634.4225, Florida Statutes, is amended to read:

634.4225 Rebating; when allowed.—

(1) No sales representative shall rebate any portion of his or her commission except as follows:

(b) The rebate shall be in accordance with a rebating schedule filed with and approved by the sales representative ~~with the~~ association issuing the service warranty to which the rebate applies. The association shall maintain a copy of all rebating schedules for a period of 3 years.

Section 37. Effective upon this act becoming a law, subsection (9) is added to section 634.436, Florida Statutes, to read:

634.436 Unfair methods of competition and unfair or deceptive acts or practices defined.—The following methods, acts, or practices are defined as unfair methods of competition and unfair or deceptive acts or practices:

(9) FAILURE TO PROVIDE TERMS AND CONDITIONS PRIOR TO SALE.—Failing to provide a consumer with a complete sample copy of the terms and conditions of the service warranty prior to before the time of sale upon a request for the same by the consumer. A service warranty association may comply with this subsection by providing the consumer with a sample copy of the terms and conditions of the warranty contract or by directing the consumer to a website that displays a complete sample of the terms and conditions of the contract.

Section 38. Effective upon this act becoming a law, subsections (2), (3), (4), and (5) of section 634.136, Florida Statutes, are amended to read:

634.136 Office records required.—Each licensed motor vehicle service contract company, as a minimum requirement for permanent office records, shall maintain:

~~(2) Memorandum journals showing the blank service agreement forms issued to the company salespersons and recording the delivery of the forms to the dealer.~~

~~(3) Memorandum journals showing the service contract forms received by the motor vehicle dealers and indicating the disposition of the forms by the dealer.~~

~~(2)(4)~~ A detailed service agreement register, in numerical order by service agreement number, of agreements in force, which register shall include the following information: service agreement number, date of issue, issuing dealer, name of agreement holder, whether the agreement is covered by contractual liability insurance or the unearned premium reserve account, description of motor vehicle, service agreement period and mileage, gross premium, commission to salespersons, commission to dealer, and net premium.

~~(3)(5)~~ A detailed claims register, in numerical order by service agreement number, which register shall include the following information: service agreement number, date of issue, date of claim, type of claim, issuing dealer, amount of claim, date claim paid, and, if applicable, disposition other than payment and reason therefor.

Section 39. Effective upon this act becoming a law, subsections (4) and (5) of section 634.313, Florida Statutes, are amended to read:

634.313 Tax on premiums; annual statement; reports.—

~~(4) In addition to an annual statement, the office may require of licensees, under oath and in the form prescribed by it, such additional regular or special reports as it may deem necessary to the proper supervision of licensees under this part.~~

~~(4)(5)~~ The commission may by rule require each home warranty association to submit to the office, as the commission may designate, all or part of the information contained in the financial reports required by this section in a computer-readable form compatible with the electronic data processing system specified by the office.

Section 40. Effective upon this act becoming a law, sections 634.1216 and 634.3126, Florida Statutes, are repealed.

Section 41. This act may be cited as the “Safeguard Our Seniors Act.”

Section 42. Paragraph (a) of subsection (1) of section 624.310, Florida Statutes, is amended to read:

624.310 Enforcement; cease and desist orders; removal of certain persons; fines.—

(1) DEFINITIONS.—For the purposes of this section, the term:

(a) “Affiliated party” means any person who directs or participates in the conduct of the affairs of a licensee and who is:

1. A director, officer, employee, trustee, committee member, or controlling stockholder of a licensee or a subsidiary or service corporation of the licensee, other than a controlling stockholder which is a holding company, or an agent of a licensee or a subsidiary or service corporation of the licensee;

2. A person who has filed or is required to file a statement or any other information required to be filed under s. 628.461 or s. 628.4615;

3. A stockholder, other than a stockholder that is a holding company of the licensee, who participates in the conduct of the affairs of the licensee; ~~or~~

4. An independent contractor who:

a. Renders a written opinion required by the laws of this state under her or his professional credentials on behalf of the licensee, which opinion is reasonably relied on by the department or office in the performance of its duties; or

b. Affirmatively and knowingly conceals facts, through a written misrepresentation to the department or office, with knowledge that such misrepresentation:

(I) Constitutes a violation of the insurance code or a lawful rule or order of the department, commission, or office; and

(II) Directly and materially endangers the ability of the licensee to meet its obligations to policyholders; or—

5. A third-party marketer who aids or abets a licensee in a violation of the insurance code relating to the sale of an annuity to a person 65 years of age or older.

For the purposes of this subparagraph, any representation of fact made by an independent contractor on behalf of a licensee, affirmatively communicated as a representation of the licensee to the independent contractor, shall not be considered a misrepresentation by the independent contractor.

Section 43. Section 624.46223, Florida Statutes, is created to read:

624.46223 Notice of intent to withdraw.—Any association, fund, or pool authorized by state law and created for the purpose of forming a risk-

management mechanism or providing self insurance for public entities in this state may not require its members to provide more than 45 days' notice of the member's intention to withdraw as a prerequisite for withdrawing from the association, fund, or pool.

Section 44. Paragraph (j) of subsection (2) of section 626.221, Florida Statutes, is amended to read:

626.221 Examination requirement; exemptions.—

(2) However, no such examination shall be necessary in any of the following cases:

(j) An applicant for license as a customer representative who has earned the designation of Accredited Advisor in Insurance (AAI) from the Insurance Institute of America, the designation of Certified Insurance Counselor (CIC) from the Society of Certified Insurance Service Counselors, the designation of Accredited Customer Service Representative (ACSR) from the Independent Insurance Agents of America, the designation of Certified Professional Service Representative (CPSR) from the National Foundation for Certified Professional Service Representatives, the designation of Certified Insurance Service Representative (CISR) from the Society of Certified Insurance Service Representatives, or the designation of Certified Insurance Representative (CIR) from the National Association of Christian Catastrophe Insurance Adjusters. Also, an applicant for license as a customer representative who has earned an associate degree or bachelor's degree from an accredited college or university with at least 9 academic hours of property and casualty insurance curriculum, or the equivalent, or has earned the designation of Certified Customer Service Representative (CCSR) from the Florida Association of Insurance Agents, or the designation of Registered Customer Service Representative (RCSR) from a regionally accredited postsecondary institution in this state, or the designation of Professional Customer Service Representative (PCSR) from the Professional Career Institute, whose curriculum has been approved by the department and whose curriculum includes comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard department testing for the customer representative license. The department shall adopt rules establishing standards for the approval of curriculum.

Section 45. Subsection (13) of section 626.025, Florida Statutes, is amended to read:

626.025 Consumer protections.—To transact insurance, agents shall comply with consumer protection laws, including the following, as applicable:

(13) The prohibition against the designation of a life insurance agent or his or her family member as the beneficiary of life insurance policy sold to an individual other than a family member under s. 626.798.

Section 46. Paragraph (k) of subsection (3) of section 626.2815, Florida Statutes, is amended to read:

626.2815 Continuing education required; application; exceptions; requirements; penalties.—

(3)

(k) Any person who holds a license to solicit or sell life insurance in this state must complete a minimum of 3 hours in continuing education, approved by the department, on the subject of suitability in annuity and life insurance transactions. This requirement does not apply to an agent who does not have any active life insurance or annuity contracts. In applying this exemption, the department may require the filing of a certification attesting that the agent has not sold life insurance or annuities during the continuing education compliance cycle in question and does not have any active life insurance or annuity contracts. A licensee may use the hours obtained under this paragraph to satisfy the requirement for continuing education in ethics under paragraph (a).

Section 47. Subsection (13) is added to section 626.621, Florida Statutes, to read:

626.621 Grounds for discretionary refusal, suspension, or revocation of agent's, adjuster's, customer representative's, service representative's, or managing general agent's license or appointment.—The department may, in its discretion, deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, adjuster, customer representative, service representative, or managing general agent, and it may suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611:

(13) Has been the subject of or has had a license, permit, appointment, registration, or other authority to conduct business subject to any decision, finding, injunction, suspension, prohibition, revocation, denial, judgment, final agency action, or administrative order by any court of competent jurisdiction, administrative law proceeding, state agency, federal agency, national securities, commodities, or option exchange, or national securities, commodities, or option association involving a violation of any federal or state securities or commodities law or any rule or regulation adopted thereunder, or a violation of any rule or regulation of any national securities, commodities, or options exchange or national securities, commodities, or options association.

Section 48. Subsection (3) of section 626.641, Florida Statutes, is amended to read:

626.641 Duration of suspension or revocation.—

(3)(a) If any of an individual's licenses as an agent or customer representative, or the eligibility to hold such license or licenses has same, ~~as to the same individual have been revoked at two separate times, the department may shall not thereafter grant or issue any license under this code as to such individual.~~

(b) If a license as an agent or customer representative or the eligibility to hold such a license has been revoked resulting from the solicitation or sale of an insurance product to a person 65 years of age or older, the department may not thereafter grant or issue any license under this code to such individual.

Section 49. Section 626.798, Florida Statutes, is amended to read:

626.798 Life agent as beneficiary; prohibition.—No life agent shall, with respect to the placement of life insurance coverage with a life insurer covering the life of a person who is not a family member of the agent, handle in his or her capacity as a life agent the placement of such coverage when the agent placing the coverage or a family member of such agent receives a commission therefor ~~and is the named beneficiary under the life insurance policy, unless the life agent or family member has an insurable interest in the life of such person. However, the agent or a family member of such agent may not be designated as a trustee or guardian or be granted power of attorney unless he or she is a family member of the policy owner or insured, or is a bank or trust company duly authorized to act as a fiduciary.~~ For the purposes of this section, the phrase “not a family member,” with respect to a life agent, means an individual who is not related to the life agent as father, mother, son, daughter, brother, sister, grandfather, grandmother, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half brother, or half sister. For the purposes of this section, the term “insurable interest” means that the life agent has an actual, lawful, and substantial economic interest in the safety and preservation of the life of the insured or a reasonable expectation of benefit or advantage from the continued life of the insured.

Section 50. Paragraphs (a) and (b) of subsection (3) of section 626.9521, Florida Statutes, are amended, and subsections (4) and (5) are added to that section, to read:

626.9521 Unfair methods of competition and unfair or deceptive acts or practices prohibited; penalties.—

(3)(a) If a person violates s. 626.9541(1)(l), the offense known as “twisting,” or violates s. 626.9541(1)(aa), the offense known as “churning,” the person commits a misdemeanor of the first degree, punishable as provided in s. 775.082, and an administrative fine not greater than \$5,000 shall be imposed for each nonwillful violation or an administrative fine not

greater than \$75,000 ~~\$40,000~~ shall be imposed for each willful violation. To impose an administrative fine for a willful violation ~~criminal penalties~~ under this paragraph, the practice of “churning” or “twisting” must involve fraudulent conduct.

(b) If a person violates s. 626.9541(1)(ee) by willfully submitting fraudulent signatures on an application or policy-related document, the person commits a felony of the third degree, punishable as provided in s. 775.082, and an administrative fine not greater than \$5,000 shall be imposed for each nonwillful violation or an administrative fine not greater than \$75,000 ~~\$40,000~~ shall be imposed for each willful violation.

(4) A licensee must make all reasonable efforts to ascertain the consumer’s age at the time an insurance application is completed.

(5) If a consumer who is a senior citizen is a victim, a video deposition of the victim may be used for any purpose in any administrative proceeding conducted pursuant to chapter 120 if all parties are given proper notice of the deposition in accordance with the Florida Rules of Civil Procedure.

Section 51. Subsection (4) of section 626.99, Florida Statutes, is amended to read:

626.99 Life insurance solicitation.—

(4) DISCLOSURE REQUIREMENTS.—

(a) The insurer shall provide to each prospective purchaser a buyer’s guide and a policy summary prior to accepting the applicant’s initial premium or premium deposit, unless the policy for which application is made provides an unconditional refund for a period of at least 14 days, or unless the policy summary contains an offer of such an unconditional refund. In these instances, which event the buyer’s guide and policy summary must be delivered with the policy or prior to delivery of the policy.

(b) With respect to fixed and variable annuities, the insurer shall provide to each prospective purchaser a buyer’s guide to annuities and a contract summary as provided in the National Association of Insurance Commissioners (NAIC) Model Annuity and Deposit Fund Regulation and the policy must provide an unconditional refund for a period of at least 14 days. For fixed annuities, the buyer’s guide shall be in the form as provided by the National Association of Insurance Commissioners (NAIC) Annuity Disclosure Model Regulation, until such time as a buyer’s guide is developed by the department, at which time the department guide must be used. For variable annuities, a policy summary may be used, which may be contained in a prospectus, until such time as a buyer’s guide is developed by NAIC or the department, at which time one of those guides must be used. If the prospective owner of an annuity contract is 65 years of age or older:

1. An unconditional refund of premiums paid for a fixed annuity contract, including any contract fees or charges, must be available for a period of 21 days; and

2. An unconditional refund for variable or market value annuity contracts must be available for a period of 21 days. The unconditional refund shall be equal to the cash surrender value provided in the annuity contract, plus any fees or charges deducted from the premiums or imposed under the contract. This subparagraph does not apply if the prospective owner is an accredited investor, as defined in Regulation D as adopted by the United States Securities and Exchange Commission.

(c) The insurer shall attach a cover page to any annuity policy informing the purchaser of the unconditional refund period prescribed in paragraph (b). The cover page must also provide contact information for the issuing company and the selling agent, the department's toll-free help line, and any other information required by the department by rule. The cover page is part of the policy and is subject to review by the office pursuant to s. 627.410.

(d)(b) The insurer shall provide a buyer's guide and a policy summary to any prospective purchaser upon request.

Section 52. Subsections (3) and (5) of section 627.4554, Florida Statutes, as amended by section 9 of chapter 2008-237, Laws of Florida, are amended, present subsection (9) of that section is renumbered as subsection (10), and a new subsection (9) is added to that section, to read:

627.4554 Annuity investments by seniors.—

(3) DEFINITIONS.—For purposes of this section, the term:

(a) “Annuity contract” means a fixed annuity, equity indexed annuity, fixed equity indexed annuity, or variable annuity that is individually solicited, whether the product is classified as an individual annuity or a group annuity.

(b) “Accredited investor” means any person who comes within any of the following categories, or who the issuer reasonably believes comes within any of the following categories, at the time of the sale of an annuity to that person:

1. The person's net worth or joint net worth with his or her spouse, at the time of the purchase, exceeds \$1 million; or

2. The person had an individual income in excess of \$200,000 in each of the 2 most recent years, or joint income with his or her spouse in excess of \$300,000 in each of those years, and has a reasonable expectation of reaching the same income level in the current year.

(c)(b) “Recommendation” means advice provided by an insurance agent, or an insurer if no insurance agent is involved, to an individual senior

consumer which results in a purchase or exchange of an annuity in accordance with that advice.

(d)(e) “Senior consumer” means a person 65 years of age or older. In the event of a joint purchase by more than one party, a purchaser is considered to be a senior consumer if any of the parties is age 65 or older.

(5) MITIGATION OF RESPONSIBILITY.—

(a) The office may order an insurer to take reasonably appropriate corrective action, including rescission of the policy or contract and a full refund of the premiums paid or the accumulation value, whichever is greater, for any senior consumer harmed by a violation of this section by the insurer or the insurer’s insurance agent.

(b) The department may order:

1. An insurance agent to take reasonably appropriate corrective action, including monetary restitution of penalties or fees incurred by the senior consumer, for any senior consumer harmed by a violation of this section by the insurance agent.

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

(c) The department shall, in addition to any other penalty authorized under chapter 626, order an insurance agent to pay restitution to any senior consumer who has been deprived of money by the agent’s misappropriation, conversion, or unlawful withholding of monies belonging to the senior consumer in the course of a transaction involving annuities. The amount of restitution required to be paid pursuant to this paragraph may not exceed the amount misappropriated, converted, or unlawfully withheld. This paragraph does not limit or restrict a person’s right to seek other remedies as provided by law.

(d)(e) Any applicable penalty under the Florida Insurance Code for a violation of paragraph (4)(a), paragraph (4)(b), or subparagraph (4)(c)2. may be reduced or eliminated, according to a schedule adopted by the office or the department, as appropriate, if corrective action for the senior consumer was taken promptly after a violation was discovered.

(9) PROHIBITED CHARGES.—An annuity contract issued to a senior consumer may not contain a surrender or deferred sales charge for a withdrawal of money from an annuity exceeding 10 percent of the amount withdrawn. The charge shall be reduced so that no surrender or deferred sales charge exists after the end of the 10th policy year or 10 years after the premium is paid, whichever is later. This subsection does not apply to annuities purchased by an accredited investor or to those annuities specified in paragraph (7)(b).

Section 53. Except as otherwise expressly provided in this act and except for this section, which shall take effect becoming a law, this act shall take effect January 1, 2011.

Approved by the Governor June 1, 2010.

Filed in Office Secretary of State June 1, 2010.