

CHAPTER 2018-131

Committee Substitute for Committee Substitute for House Bill No. 465

An act relating to insurance; amending s. 625.151, F.S.; providing an exception from valuation rules for stocks in subsidiaries for certain foreign insurers under certain conditions; amending s. 625.325, F.S.; exempting foreign insurers from investment requirements relating to subsidiaries and corporations under certain conditions; amending s. 626.221, F.S.; providing an exception from an examination requirement for an all-lines adjuster license applicant with a specified designation; repealing s. 626.918(2)(a), F.S., relating to eligibility of certain surplus lines insurers; amending s. 626.9651, F.S.; revising requirements for rules adopted by the Department of Financial Services and the Financial Services Commission relating to the privacy of certain consumer information; amending s. 627.416, F.S.; revising requirements for execution of insurance policies; amending s. 627.43141, F.S.; revising the requirements for notice of change in policy terms; amending s. 627.7015, F.S.; authorizing insurers to participate in mediations requested by third parties; revising terminology; amending s. 627.728, F.S.; providing requirements for sufficient proof of notice for certain motor vehicle insurance notices; amending s. 628.4615, F.S.; revising the definition of the term “specialty insurer” to include viatical settlement providers; providing requirements and procedures for a person seeking to rebut a presumption of control in a specialty insurer; amending s. 628.8015, F.S.; revising the type of documents that are not admissible in evidence in a private civil action; amending s. 629.401, F.S.; revising reserve requirements for reciprocal insurers; amending s. 634.121, F.S.; providing definitions; providing that provisions relating to the delivery of insurance policy documents by insurers to policyholders apply to certain motor vehicle service agreements provided by motor vehicle service agreement companies; deleting specified methods for the delivery of such documents; amending s. 641.3107, F.S.; providing definitions; providing that provisions relating to the delivery of insurance policy documents by insurers to policyholders apply to delivery of such documents by health maintenance organizations to subscribers; providing effective dates.

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

Section 1. Paragraph (c) is added to subsection (3) of section 625.151, Florida Statutes, to read:

625.151 Valuation of other securities.—

(3) Stock of a subsidiary corporation of an insurer ~~may~~ shall not be valued at an amount in excess of the net value thereof as based upon those assets only of the subsidiary which would be eligible under part II for investment of the funds of the insurer directly.

(c) This subsection does not apply to stock of a subsidiary corporation or related entities of a foreign insurer that is permissible under the laws of its state of domicile if the state of domicile is a member of the National Association of Insurance Commissioners.

Section 2. Subsection (7) is added to section 625.325, Florida Statutes, to read:

625.325 Investments in subsidiaries and related corporations.—

(7) APPLICABILITY.—This section does not apply to a foreign insurer’s investments in its subsidiaries or related corporations if:

(a) The foreign insurer is domiciled in a state that is a member of the National Association of Insurance Commissioners.

(b) Such investments in the foreign insurer’s subsidiaries or related corporations are:

1. Permitted under the laws of the foreign insurer’s state of domicile.

2.a. Assigned a rating of 1, 2, or 3 by the Securities Valuation Office of the of the National Association of Insurance Commissioners; or

b. Qualify for the National Association of Insurance Commissioners’ filing exemption rule and assigned a rating by a nationally recognized statistical rating organization that would be equivalent to a rating of 1, 2, or 3 by the Securities Valuation Office.

Section 3. Paragraph (j) of subsection (2) of section 626.221, Florida Statutes, is amended to read:

626.221 Examination requirement; exemptions.—

(2) However, an examination is not necessary for any of the following:

(j) An applicant for license as an all-lines adjuster who has the designation of Accredited Claims Adjuster (ACA) from a regionally accredited postsecondary institution in this state, Associate in Claims (AIC) from the Insurance Institute of America, Professional Claims Adjuster (PCA) from the Professional Career Institute, Professional Property Insurance Adjuster (PPIA) from the HurriClaim Training Academy, Certified Adjuster (CA) from ALL LINES Training, Certified Claims Adjuster (CCA) from AE21 Incorporated, Claims Adjuster Certified Professional (CACP) from WebCE, Inc., or Universal Claims Certification (UCC) from Claims and Litigation Management Alliance (CLM) whose curriculum has been approved by the department and which includes comprehensive analysis of basic property and casualty lines of insurance and testing at least equal to that of standard department testing for the all-lines adjuster license. The department shall adopt rules establishing standards for the approval of curriculum.

Section 4. Paragraph (a) of subsection (2) of section 626.918, Florida Statutes, is repealed.

Section 5. Section 626.9651, Florida Statutes, is amended to read:

626.9651 Privacy.—The department and commission ~~must shall~~ each adopt rules consistent with other provisions of the Florida Insurance Code to govern the use of a consumer's nonpublic personal financial and health information. These rules must be based on, consistent with, and not more restrictive than the Privacy of Consumer Financial and Health Information Regulation, adopted September 26, 2000, by the National Association of Insurance Commissioners; however, the rules must permit the use and disclosure of nonpublic personal health information for scientific, medical, or public policy research, in accordance with federal law. In addition, these rules must be consistent with, and not more restrictive than, the standards contained in Title V of the Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, as amended in Title LXXV of the Fixing America's Surface Transportation (FAST) Act, Pub. L. No. 114-94. If the office determines that a health insurer or health maintenance organization is in compliance with, or is actively undertaking compliance with, the consumer privacy protection rules adopted by the United States Department of Health and Human Services, in conformance with the Health Insurance Portability and Affordability Act, that health insurer or health maintenance organization is in compliance with this section.

Section 6. Subsection (1) of section 627.416, Florida Statutes, is amended, and subsection (4) is added to that section, to read:

627.416 Execution of policies.—

(1) ~~Except as set forth in subsection (4), every insurance policy shall be executed in the name of and on behalf of the insurer by its officer, attorney in fact, employee, or representative duly authorized by the insurer.~~

(4) An insurer may elect to issue an insurance policy that is not executed by an officer, attorney in fact, employee, or representative, provided that such policy may not be rendered invalid by reason of the lack of execution thereof.

Section 7. Subsection (2) of section 627.43141, Florida Statutes, is amended to read:

627.43141 Notice of change in policy terms.—

(2) A renewal policy may contain a change in policy terms. If such change occurs, the insurer shall give the named insured advance written notice summarizing of the change, which may be enclosed along with the written notice of renewal premium required under ss. 627.4133 and 627.728 or sent separately within the timeframe required under the Florida Insurance Code for the provision of a notice of nonrenewal to the named insured for that line of insurance. The insurer must also provide a sample copy of the notice to the

named insured's insurance agent before or at the same time that notice is provided to the named insured. Such notice shall be entitled "Notice of Change in Policy Terms."

Section 8. Subsections (1), (3), (6), and (9) of section 627.7015, Florida Statutes, are amended to read:

627.7015 Alternative procedure for resolution of disputed property insurance claims.—

(1) This section sets forth a nonadversarial alternative dispute resolution procedure for a mediated claim resolution conference prompted by the need for effective, fair, and timely handling of property insurance claims. There is a particular need for an informal, nonthreatening forum for helping parties who elect this procedure to resolve their claims disputes because most homeowner and commercial residential insurance policies obligate policyholders to participate in a potentially expensive and time-consuming adversarial appraisal process before litigation. The procedure set forth in this section is designed to bring the parties together for a mediated claims settlement conference without any of the trappings or drawbacks of an adversarial process. Before resorting to these procedures, policyholders and insurers are encouraged to resolve claims as quickly and fairly as possible. This section is available with respect to claims under personal lines and commercial residential policies before commencing the appraisal process, or before commencing litigation. Mediation may be requested only by the policyholder, as a first-party claimant, a third-party, as an assignee of the policy benefits, or the insurer. However, an insurer is not required to participate in any mediation requested by a third-party assignee of the policy benefits. If requested by the policyholder, participation by legal counsel is permitted. Mediation under this section is also available to litigants referred to the department by a county court or circuit court. This section does not apply to commercial coverages, to private passenger motor vehicle insurance coverages, or to disputes relating to liability coverages in policies of property insurance.

(3) The costs of mediation ~~must shall~~ be reasonable, and the insurer ~~must shall~~ bear all of the cost of conducting mediation conferences, except as otherwise provided in this section. If ~~a policyholder an insured~~ fails to appear at the conference, the conference ~~must shall~~ be rescheduled upon the ~~policyholder's insured's~~ payment of the costs of a rescheduled conference. If the insurer fails to appear at the conference, the insurer ~~must shall~~ pay the ~~policyholder's insured's~~ actual cash expenses incurred in attending the conference if the insurer's failure to attend was not due to a good cause acceptable to the department. An insurer will be deemed to have failed to appear if the insurer's representative lacks authority to settle the full value of the claim. The insurer shall incur an additional fee for a rescheduled conference necessitated by the insurer's failure to appear at a scheduled conference. The fees assessed by the administrator ~~must shall~~ include a charge necessary to defray the expenses of the department related to its

duties under this section and must ~~shall~~ be deposited in the Insurance Regulatory Trust Fund.

(6) Mediation is nonbinding; however, if a written settlement is reached, the policyholder insured has 3 business days within which the policyholder insured may rescind the settlement unless the policyholder insured has cashed or deposited any check or draft disbursed to the policyholder insured for the disputed matters as a result of the conference. If a settlement agreement is reached and is not rescinded, it ~~is shall be~~ binding and acts ~~aet~~ as a release of all specific claims that were presented in that mediation conference.

(9) For purposes of this section, the term “claim” refers to any dispute between an insurer and a policyholder relating to a material issue of fact other than a dispute:

(a) With respect to which the insurer has a reasonable basis to suspect fraud;

(b) When ~~Where~~, based on agreed-upon facts as to the cause of loss, there is no coverage under the policy;

(c) With respect to which the insurer has a reasonable basis to believe that the policyholder has intentionally made a material misrepresentation of fact which is relevant to the claim, and the entire request for payment of a loss has been denied on the basis of the material misrepresentation;

(d) With respect to which the amount in controversy is less than \$500, unless the parties agree to mediate a dispute involving a lesser amount; or

(e) With respect to a windstorm or hurricane loss that does not comply with s. 627.70132.

Section 9. Subsection (5) of section 627.728, Florida Statutes, is amended to read:

627.728 Cancellations; nonrenewals.—

(5) United States postal proof of mailing, ~~or~~ certified or registered mailing, or other mailing using the Intelligent Mail barcode or other similar tracking method used or approved by the United States Postal Service of notice of cancellation, of intention not to renew, or of reasons for cancellation, or of the intention of the insurer to issue a policy by an insurer under the same ownership or management, to the first-named insured at the address shown in the policy, are ~~shall be~~ sufficient proof of notice.

Section 10. Subsections (11) through (14) of section 628.4615, Florida Statutes, are renumbered as subsections (12) through (15), respectively, subsections (1) and (7) of that section are amended, and a new subsection (11) is added to that section, 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:

(a) A motor vehicle service agreement company authorized to issue motor vehicle service agreements as those terms are defined in s. 634.011;

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

(c) A service warranty association authorized to issue “service warranties” as those terms are defined in s. 634.401(13) and (14);

(d) A prepaid limited health service organization authorized to issue prepaid limited health service contracts, as those terms are defined in chapter 636;

(e) An authorized health maintenance organization operating pursuant to s. 641.21;

(f) An authorized prepaid health clinic operating pursuant to s. 641.405;

(g) A legal expense insurance corporation authorized to engage in a legal expense insurance business pursuant to s. 642.021;

(h) A provider that is licensed to operate a facility that undertakes to provide continuing care as those terms are defined in s. 651.011;

(i) A multiple-employer welfare arrangement operating pursuant to ss. 624.436-624.446;

(j) A premium finance company authorized to finance insurance premiums pursuant to s. 627.828; ~~or~~

(k) A corporation authorized to accept donor annuity agreements pursuant to s. 627.481; or

(l) A viatical settlement provider authorized to do business in this state under part X of chapter 626.

(7) The office may disapprove any acquisition subject to the provisions of this section by any person or any affiliated person of such person who:

(a) Willfully violates this section;

(b) In violation of an order of the office issued pursuant to subsection (12) ~~(11)~~, fails to divest himself or herself of any stock or ownership interest obtained in violation of this section or fails to divest himself or herself of any direct or indirect control of such stock or ownership interest, within 25 days after such order; or

(c) In violation of an order issued by the office pursuant to subsection (12) (11), acquires an additional stock or ownership interest in a specialty insurer or controlling company or direct or indirect control of such stock or ownership interest, without complying with this section.

(11) A person may rebut a presumption of control by filing a disclaimer of control with the office on a form prescribed by the commission. The disclaimer must fully disclose all material relationships and bases for affiliation between the person and the specialty insurer as well as the basis for disclaiming the affiliation. In lieu of such form, a person or acquiring party may file with the office a copy of a Schedule 13G filed with the Securities and Exchange Commission pursuant to Rule 13d-1(b) or (c), 17 C.F.R. s. 240.13d-1, under the Securities Exchange Act of 1934, as amended. After a disclaimer has been filed, the specialty insurer is relieved of any duty to register or report under this section which may arise out of the specialty insurer's relationship with the person unless the office disallows the disclaimer.

Section 11. Subsection (4) of section 628.8015, Florida Statutes, is amended to read:

628.8015 Own-risk and solvency assessment; corporate governance annual disclosure.—

(4) CONFIDENTIALITY.—The required filings and related documents submitted pursuant to subsections (2) and (3) are privileged such that they may not be produced in response to a subpoena or other discovery directed to the office, and any such filings and related documents, ~~if obtained from the office,~~ are not admissible in evidence in any private civil action. However, the department or office may use these filings and related documents in the furtherance of any regulatory or legal action brought against an insurer as part of the official duties of the department or office. A waiver of any applicable claim of privilege in these filings and related documents may not occur because of a disclosure to the office under this section, because of any other provision of the Insurance Code, or because of sharing under s. 624.4212. The office or a person receiving these filings and related documents, while acting under the authority of the office, or with whom such filings and related documents are shared pursuant to s. 624.4212, is not permitted or required to testify in any private civil action concerning any such filings or related documents.

Section 12. Paragraph (b) of subsection (6) of section 629.401, Florida Statutes, is amended to read:

629.401 Insurance exchange.—

(6)

(b) In addition to the insurance laws specified in paragraph (a), the office shall regulate the exchange pursuant to the following powers, rights, and duties:

1. General examination powers.—The office shall examine the affairs, transactions, accounts, records, and assets of any security fund, exchange, members, and associate brokers as often as it deems advisable. The examination may be conducted by the accredited examiners of the office at the offices of the entity or person being examined. The office shall examine in like manner each prospective member or associate broker applying for membership in an exchange.

2. Office approval and applications of underwriting members.—No underwriting member shall commence operation without the approval of the office. Before commencing operation, an underwriting member shall provide a written application containing:

a. Name, type, and purpose of the underwriting member.

b. Name, residence address, business background, and qualifications of each person associated or to be associated in the formation or financing of the underwriting member.

c. Full disclosure of the terms of all understandings and agreements existing or proposed among persons so associated relative to the underwriting member, or the formation or financing thereof, accompanied by a copy of each such agreement or understanding.

d. Full disclosure of the terms of all understandings and agreements existing or proposed for management or exclusive agency contracts.

3. Investigation of underwriting member applications.—In connection with any proposal to establish an underwriting member, the office shall make an investigation of:

a. The character, reputation, financial standing, and motives of the organizers, incorporators, or subscribers organizing the proposed underwriting member.

b. The character, financial responsibility, insurance experience, and business qualifications of its proposed officers.

c. The character, financial responsibility, business experience, and standing of the proposed stockholders and directors, or owners.

4. Notice of management changes.—An underwriting member shall promptly give the office written notice of any change among the directors or principal officers of the underwriting member within 30 days after such change. The office shall investigate the new directors or principal officers of the underwriting member. The office's investigation shall include an investigation of the character, financial responsibility, insurance

experience, and business qualifications of any new directors or principal officers. As a result of the investigation, the office may require the underwriting member to replace any new directors or principal officers.

5. Alternate financial statement.—In lieu of any financial examination, the office may accept an audited financial statement.

6. Correction and reconstruction of records.—If the office finds any accounts or records to be inadequate, or inadequately kept or posted, it may employ experts to reconstruct, rewrite, post, or balance them at the expense of the person or entity being examined if such person or entity has failed to maintain, complete, or correct such records or accounts after the office has given him or her or it notice and reasonable opportunity to do so.

7. Obstruction of examinations.—Any person or entity who or which willfully obstructs the office or its examiner in an examination is guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

8. Filing of annual statement.—Each underwriting member shall file with the office a full and true statement of its financial condition, transactions, and affairs. The statement shall be filed on or before March 1 of each year, or within such extension of time as the office for good cause grants, and shall be for the preceding calendar year. The statement shall contain information generally included in insurer financial statements prepared in accordance with generally accepted insurance accounting principles and practices and in a form generally utilized by insurers for financial statements, sworn to by at least two executive officers of the underwriting member. The form of the financial statements shall be the approved form of the National Association of Insurance Commissioners or its successor organization. The commission may by rule require each insurer to submit any part of the information contained in the financial statement in a computer-readable form compatible with the office's electronic data processing system. In addition to information furnished in connection with its annual statement, an underwriting member must furnish to the office as soon as reasonably possible such information about its transactions or affairs as the office requests in writing. All information furnished pursuant to the office's request must be verified by the oath of two executive officers of the underwriting member.

9. Record maintenance.—Each underwriting member shall have and maintain its principal place of business in this state and shall keep therein complete records of its assets, transactions, and affairs in accordance with such methods and systems as are customary for or suitable to the kind or kinds of insurance transacted.

10. Examination of agents.—If the department has reason to believe that any agent, as defined in s. 626.015 or s. 626.914, has violated or is violating any provision of the insurance law, or upon receipt of a written complaint signed by any interested person indicating that any such violation may exist,

the department shall conduct such examination as it deems necessary of the accounts, records, documents, and transactions pertaining to or affecting the insurance affairs of such agent.

11. **Written reports of office.**—The office or its examiner shall make a full and true written report of any examination. The report shall contain only information obtained from examination of the records, accounts, files, and documents of or relative to the person or entity examined or from testimony of individuals under oath, together with relevant conclusions and recommendations of the examiner based thereon. The office shall furnish a copy of the report to the person or entity examined not less than 30 days prior to filing the report in its office. If such person or entity so requests in writing within such 30-day period, the office shall grant a hearing with respect to the report and shall not file the report until after the hearing and after such modifications have been made therein as the office deems proper.

12. **Admissibility of reports.**—The report of an examination when filed shall be admissible in evidence in any action or proceeding brought by the office against the person or entity examined, or against his or her or its officers, employees, or agents. The office or its examiners may at any time testify and offer other proper evidence as to information secured or matters discovered during the course of an examination, whether or not a written report of the examination has been either made, furnished, or filed in the office.

13. **Publication of reports.**—After an examination report has been filed, the office may publish the results of any such examination in one or more newspapers published in this state whenever it deems it to be in the public interest.

14. **Consideration of examination reports by entity examined.**—After the examination report of an underwriting member has been filed, an affidavit shall be filed with the office, not more than 30 days after the report has been filed, on a form furnished by the office and signed by the person or a representative of any entity examined, stating that the report has been read and that the recommendations made in the report will be considered within a reasonable time.

15. **Examination costs.**—Each person or entity examined by the office shall pay to the office the expenses incurred in such examination.

16. **Exchange costs.**—An exchange shall reimburse the office for any expenses incurred by it relating to the regulation of the exchange and its members, except as specified in subparagraph 15.

17. **Powers of examiners.**—Any examiner appointed by the office, as to the subject of any examination, investigation, or hearing being conducted by him or her, may administer oaths, examine and cross-examine witnesses, and receive oral and documentary evidence, and shall have the power to subpoena witnesses, compel their attendance and testimony, and require by

subpoena the production of books, papers, records, files, correspondence, documents, or other evidence which the examiner deems relevant to the inquiry. If any person refuses to comply with any such subpoena or to testify as to any matter concerning which he or she may be lawfully interrogated, the Circuit Court of Leon County or the circuit court of the county wherein such examination, investigation, or hearing is being conducted, or of the county wherein such person resides, on the office's application may issue an order requiring such person to comply with the subpoena and to testify; and any failure to obey such an order of the court may be punished by the court as a contempt thereof. Subpoenas shall be served, and proof of such service made, in the same manner as if issued by a circuit court. Witness fees and mileage, if claimed, shall be allowed the same as for testimony in a circuit court.

18. False testimony.—Any person willfully testifying falsely under oath as to any matter material to any examination, investigation, or hearing shall upon conviction thereof be guilty of perjury and shall be punished accordingly.

19. Self-incrimination.—

a. If any person asks to be excused from attending or testifying or from producing any books, papers, records, contracts, documents, or other evidence in connection with any examination, hearing, or investigation being conducted by the office or its examiner, on the ground that the testimony or evidence required of the person may tend to incriminate him or her or subject him or her to a penalty or forfeiture, and the person notwithstanding is directed to give such testimony or produce such evidence, he or she shall, if so directed by the office and the Department of Legal Affairs, nonetheless comply with such direction; but the person shall not thereafter be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he or she may have so testified or produced evidence, and no testimony so given or evidence so produced shall be received against him or her upon any criminal action, investigation, or proceeding; except that no such person so testifying shall be exempt from prosecution or punishment for any perjury committed by him or her in such testimony, and the testimony or evidence so given or produced shall be admissible against him or her upon any criminal action, investigation, or proceeding concerning such perjury, nor shall he or she be exempt from the refusal, suspension, or revocation of any license, permission, or authority conferred, or to be conferred, pursuant to the insurance law.

b. Any such individual may execute, acknowledge, and file with the office a statement expressly waiving such immunity or privilege in respect to any transaction, matter, or thing specified in such statement, and thereupon the testimony of such individual or such evidence in relation to such transaction, matter, or thing may be received or produced before any judge or justice, court, tribunal, grand jury, or otherwise; and if such testimony or evidence is so received or produced, such individual shall not be entitled to any

immunity or privileges on account of any testimony so given or evidence so produced.

20. Penalty for failure to testify.—Any person who refuses or fails, without lawful cause, to testify relative to the affairs of any member, associate broker, or other person when subpoenaed and requested by the office to so testify, as provided in subparagraph 17., shall, in addition to the penalty provided in subparagraph 17., be guilty of a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

21. Name selection.—No underwriting member shall be formed or authorized to transact insurance in this state under a name which is the same as that of any authorized insurer or is so nearly similar thereto as to cause or tend to cause confusion or under a name which would tend to mislead as to the type of organization of the insurer. Before incorporating under or using any name, the underwriting syndicate or proposed underwriting syndicate shall submit its name or proposed name to the office for the approval of the office.

22. Capitalization.—An underwriting member approved on or after July 2, 1987, shall provide an initial paid-in capital and surplus of \$3 million and thereafter shall maintain a minimum policyholder surplus of \$2 million in order to be permitted to write insurance. Underwriting members approved prior to July 2, 1987, shall maintain a minimum policyholder surplus of \$1 million. After June 29, 1988, underwriting members approved prior to July 2, 1987, must maintain a minimum policyholder surplus of \$1.5 million to write insurance. After June 29, 1989, underwriting members approved prior to July 2, 1987, must maintain a minimum policyholder surplus of \$1.75 million to write insurance. After December 30, 1989, all underwriting members, regardless of the date they were approved, must maintain a minimum policyholder surplus of \$2 million to write insurance. Except for that portion of the paid-in capital and surplus which shall be maintained in a security fund of an exchange, the paid-in capital and surplus shall be invested by an underwriting member in a manner consistent with ss. 625.301-625.340. The portion of the paid-in capital and surplus in any security fund of an exchange shall be invested in a manner limited to investments for life insurance companies under the Florida insurance laws.

23. Limitations on coverage written.—

a. Limit of risk.—No underwriting member shall expose itself to any loss on any one risk in an amount exceeding 10 percent of its surplus to policyholders. Any risk or portion of any risk which shall have been reinsured in an assuming reinsurer authorized or approved to do such business in this state shall be deducted in determining the limitation of risk prescribed in this section.

b. Restrictions on premiums written.—If the office has reason to believe that the underwriting member's ratio of actual or projected annual gross written premiums to policyholder surplus exceeds 8 to 1 or the underwriting

member's ratio of actual or projected annual net premiums to policyholder surplus exceeds 4 to 1, the office may establish maximum gross or net annual premiums to be written by the underwriting member consistent with maintaining the ratios specified in this sub-subparagraph.

(I) Projected annual net or gross premiums shall be based on the actual writings to date for the underwriting member's current calendar year, its writings for the previous calendar year, or both. Ratios shall be computed on an annualized basis.

(II) For purposes of this sub-subparagraph, the term "gross written premiums" means direct premiums written and reinsurance assumed.

c. Surplus as to policyholders.—For the purpose of determining the limitation on coverage written, surplus as to policyholders shall be deemed to include any voluntary reserves, or any part thereof, which are not required by or pursuant to law and shall be determined from the last sworn statement of such underwriting member with the office, or by the last report or examination filed by the office, whichever is more recent at the time of assumption of such risk.

24. Unearned premium reserves.—An underwriting member must at all times maintain an unearned premium reserve equal to 50 percent of the net written premiums of the subscribers on policies having 1 year or less to run, and pro rata on those for longer periods. All unearned premium reserves for business written on the exchange shall be calculated on a monthly or more frequent basis or on such other basis as determined by the office; except that all premiums on any marine or transportation insurance trip risk shall be deemed unearned until the trip is terminated. For the purpose of this subparagraph, the term "net written premiums" means the premium payments made by subscribers plus the premiums due from subscribers, after deducting the amounts specifically provided in the subscribers' agreements for expenses, including reinsurance costs and fees paid to the attorney in fact, provided that the power of attorney agreement contains an explicit provision requiring the attorney in fact to refund any unearned subscribers fees on a pro-rata basis for cancelled policies. If there is no such provision, the unearned premium reserve shall be calculated without any adjustment for fees paid to the attorney in fact. If the unearned premium reserves at any time do not amount to \$100,000, there shall be maintained on deposit at the exchange at all times additional funds in cash or eligible securities which, together with the unearned premium reserves, equal \$100,000. In calculating the foregoing reserves, the amount of the attorney's bond, as filed with the office and as required by s. 629.121, shall be included in such reserves. If at any time the unearned premium reserves is less than the foregoing requirements, the subscribers, or the attorney in fact, shall advance funds to make up the deficiency. Such advances shall only be repaid out of the surplus of the exchange and only after receiving written approval from the office.

25. Loss reserves.—All underwriting members of an exchange shall maintain loss reserves, including a reserve for incurred but not reported claims. The reserves shall be subject to review by the office, and, if loss experience shows that an underwriting member's loss reserves are inadequate, the office shall require the underwriting member to maintain loss reserves in such additional amount as is needed to make them adequate.

26. Distribution of profits.—An underwriting member shall not distribute any profits in the form of cash or other assets to owners except out of that part of its available and accumulated surplus funds which is derived from realized net operating profits on its business and realized capital gains. In any one year such payments to owners shall not exceed 30 percent of such surplus as of December 31 of the immediately preceding year, unless otherwise approved by the office. No distribution of profits shall be made that would render an underwriting member either impaired or insolvent.

27. Stock dividends.—A stock dividend may be paid by an underwriting member out of any available surplus funds in excess of the aggregate amount of surplus advanced to the underwriting member under subparagraph 29.

28. Dividends from earned surplus.—A dividend otherwise lawful may be payable out of an underwriting member's earned surplus even though the total surplus of the underwriting member is then less than the aggregate of its past contributed surplus resulting from issuance of its capital stock at a price in excess of the par value thereof.

29. Borrowing of money by underwriting members.—

a. An underwriting member may borrow money to defray the expenses of its organization, provide it with surplus funds, or for any purpose of its business, upon a written agreement that such money is required to be repaid only out of the underwriting member's surplus in excess of that stipulated in such agreement. The agreement may provide for interest not exceeding 15 percent simple interest per annum. The interest shall or shall not constitute a liability of the underwriting member as to its funds other than such excess of surplus, as stipulated in the agreement. No commission or promotion expense shall be paid in connection with any such loan. The use of any surplus note and any repayments thereof shall be subject to the approval of the office.

b. Money so borrowed, together with any interest thereon if so stipulated in the agreement, shall not form a part of the underwriting member's legal liabilities except as to its surplus in excess of the amount thereof stipulated in the agreement, nor be the basis of any setoff; but until repayment, financial statements filed or published by an underwriting member shall show as a footnote thereto the amount thereof then unpaid, together with any interest thereon accrued but unpaid.

30. Liquidation, rehabilitation, and restrictions.—The office, upon a showing that a member or associate broker of an exchange has met one or

more of the grounds contained in part I of chapter 631, may restrict sales by type of risk, policy or contract limits, premium levels, or policy or contract provisions; increase surplus or capital requirements of underwriting members; issue cease and desist orders; suspend or restrict a member's or associate broker's right to transact business; place an underwriting member under conservatorship or rehabilitation; or seek an order of liquidation as authorized by part I of chapter 631.

31. Prohibited conduct.—The following acts by a member, associate broker, or affiliated person shall constitute prohibited conduct:

- a. Fraud.
- b. Fraudulent or dishonest acts committed by a member or associate broker prior to admission to an exchange, if the facts and circumstances were not disclosed to the office upon application to become a member or associate broker.
- c. Conduct detrimental to the welfare of an exchange.
- d. Unethical or improper practices or conduct, inconsistent with just and equitable principles of trade as set forth in, but not limited to, ss. 626.951-626.9641 and 626.973.
- e. Failure to use due diligence to ascertain the insurance needs of a client or a principal.
- f. Misstatements made under oath or upon an application for membership on an exchange.
- g. Failure to testify or produce documents when requested by the office.
- h. Willful violation of any law of this state.
- i. Failure of an officer or principal to testify under oath concerning a member, associate broker, or other person's affairs as they relate to the operation of an exchange.
- j. Violation of the constitution and bylaws of the exchange.

32. Penalties for participating in prohibited conduct.—

a. The office may order the suspension of further transaction of business on the exchange of any member or associate broker found to have engaged in prohibited conduct. In addition, any member or associate broker found to have engaged in prohibited conduct may be subject to reprimand, censure, and/or a fine not exceeding \$25,000 imposed by the office.

b. Any member which has an affiliated person who is found to have engaged in prohibited conduct shall be subject to involuntary withdrawal or in addition thereto may be subject to suspension, reprimand, censure, and/or a fine not exceeding \$25,000.

33. Reduction of penalties.—Any suspension, reprimand, censure, or fine may be remitted or reduced by the office on such terms and conditions as are deemed fair and equitable.

34. Other offenses.—Any member or associate broker that is suspended shall be deprived, during the period of suspension, of all rights and privileges of a member or of an associate broker and may be proceeded against by the office for any offense committed either before or after the date of suspension.

35. Reinstatement.—Any member or associate broker that is suspended may be reinstated at any time on such terms and conditions as the office may specify.

36. Remittance of fines.—Fines imposed under this section shall be remitted to the office and shall be paid into the Insurance Regulatory Trust Fund.

37. Failure to pay fines.—When a member or associate broker has failed to pay a fine for 15 days after it becomes payable, such member or associate broker shall be suspended, unless the office has granted an extension of time to pay such fine.

38. Changes in ownership or assets.—In the event of a major change in the ownership or a major change in the assets of an underwriting member, the underwriting member shall report such change in writing to the office within 30 days of the effective date thereof. The report shall set forth the details of the change. Any change in ownership or assets of more than 5 percent shall be considered a major change.

39. Retaliation.—

a. When by or pursuant to the laws of any other state or foreign country any taxes, licenses, or other fees, in the aggregate, and any fines, penalties, deposit requirements, or other material obligations, prohibitions, or restrictions are or would be imposed upon an exchange or upon the agents or representatives of such exchange which are in excess of such taxes, licenses, and other fees, in the aggregate, or which are in excess of such fines, penalties, deposit requirements, or other obligations, prohibitions, or restrictions directly imposed upon similar exchanges or upon the agents or representatives of such exchanges of such other state or country under the statutes of this state, so long as such laws of such other state or country continue in force or are so applied, the same taxes, licenses, and other fees, in the aggregate, or fines, penalties, deposit requirements, or other material obligations, prohibitions, or restrictions of whatever kind shall be imposed by the office upon the exchanges, or upon the agents or representatives of such exchanges, of such other state or country doing business or seeking to do business in this state.

b. Any tax, license, or other obligation imposed by any city, county, or other political subdivision or agency of a state, jurisdiction, or foreign

country on an exchange, or on the agents or representatives on an exchange, shall be deemed to be imposed by such state, jurisdiction, or foreign country within the meaning of sub-subparagraph a.

40. Agents.—

a. Agents as defined in ss. 626.015 and 626.914 who are broker members or associate broker members of an exchange shall be allowed only to place on an exchange the same kind or kinds of business that the agent is licensed to place pursuant to Florida law. Direct Florida business as defined in s. 626.916 or s. 626.917 shall be written through a broker member who is a surplus lines agent as defined in s. 626.914. The activities of each broker member or associate broker with regard to an exchange shall be subject to all applicable provisions of the insurance laws of this state, and all such activities shall constitute transactions under his or her license as an insurance agent for purposes of the Florida insurance law.

b. Premium payments and other requirements.—If an underwriting member has assumed the risk as to a surplus lines coverage and if the premium therefor has been received by the surplus lines agent who placed such insurance, then in all questions thereafter arising under the coverage as between the underwriting member and the insured, the underwriting member shall be deemed to have received the premium due to it for such coverage; and the underwriting member shall be liable to the insured as to losses covered by such insurance, and for unearned premiums which may become payable to the insured upon cancellation of such insurance, whether or not in fact the surplus lines agent is indebted to the underwriting member with respect to such insurance or for any other cause.

41. Improperly issued contracts, riders, and endorsements.—

a. Any insurance policy, rider, or endorsement issued by an underwriting member and otherwise valid which contains any condition or provision not in compliance with the requirements of this section shall not be thereby rendered invalid, except as provided in s. 627.415, but shall be construed and applied in accordance with such conditions and provisions as would have applied had such policy, rider, or endorsement been in full compliance with this section. In the event an underwriting member issues or delivers any policy for an amount which exceeds any limitations otherwise provided in this section, the underwriting member shall be liable to the insured or his or her beneficiary for the full amount stated in the policy in addition to any other penalties that may be imposed.

b. Any insurance contract delivered or issued for delivery in this state governing a subject or subjects of insurance resident, located, or to be performed in this state which, pursuant to the provisions of this section, the underwriting member may not lawfully insure under such a contract shall be cancelable at any time by the underwriting member, any provision of the contract to the contrary notwithstanding; and the underwriting member shall promptly cancel the contract in accordance with the request of the

office therefor. No such illegality or cancellation shall be deemed to relieve the underwriting syndicate of any liability incurred by it under the contract while in force or to prohibit the underwriting syndicate from retaining the pro rata earned premium thereon. This provision does not relieve the underwriting syndicate from any penalty otherwise incurred by the underwriting syndicate.

42. Satisfaction of judgments.—

a. Every judgment or decree for the recovery of money heretofore or hereafter entered in any court of competent jurisdiction against any underwriting member shall be fully satisfied within 60 days from and after the entry thereof or, in the case of an appeal from such judgment or decree, within 60 days from and after the affirmance of the judgment or decree by the appellate court.

b. If the judgment or decree is not satisfied as required under sub-subparagraph a., and proof of such failure to satisfy is made by filing with the office a certified transcript of the docket of the judgment or the decree together with a certificate by the clerk of the court wherein the judgment or decree remains unsatisfied, in whole or in part, after the time provided in sub-subparagraph a., the office shall forthwith prohibit the underwriting member from transacting business. The office shall not permit such underwriting member to write any new business until the judgment or decree is wholly paid and satisfied and proof thereof is filed with the office under the official certificate of the clerk of the court wherein the judgment was recovered, showing that the judgment or decree is satisfied of record, and until the expenses and fees incurred in the case are also paid by the underwriting syndicate.

43. Tender and exchange offers.—No person shall conclude a tender offer or an exchange offer or otherwise acquire 5 percent or more of the outstanding voting securities of an underwriting member or controlling company or purchase 5 percent or more of the ownership of an underwriting member or controlling company unless such person has filed with, and obtained the approval of, the office and sent to such underwriting member a statement setting forth:

a. The identity of, and background information on, each person by whom, or on whose behalf, the acquisition is to be made; and, if the acquisition is to be made by or on behalf of a corporation, association, or trust, the identity of and background information on each director, officer, trustee, or other natural person performing duties similar to those of a director, officer, or trustee for the corporation, association, or trust.

b. The source and amount of the funds or other consideration used, or to be used, in making the acquisition.

c. Any plans or proposals which such person may have to liquidate such member, to sell its assets, or to merge or consolidate it.

d. The percentage of ownership which such person proposes to acquire and the terms of the offer or exchange, as the case may be.

e. Information as to any contracts, arrangements, or understandings with any party with respect to any securities of such member or controlling company, including, but not limited to, information relating to the transfer of any securities, option arrangements, or puts or calls or the giving or withholding of proxies, naming the party with whom such contract, arrangements, or understandings have been entered and giving the details thereof.

f. The office may disapprove any acquisition subject to the provisions of this subparagraph by any person or any affiliated person of such person who:

(I) Willfully violates this subparagraph;

(II) In violation of an order of the office issued pursuant to subparagraph j., fails to divest himself or herself of any stock obtained in violation of this subparagraph, or fails to divest himself or herself of any direct or indirect control of such stock, within 25 days after such order; or

(III) In violation of an order issued by the office pursuant to subparagraph j., acquires additional stock of the underwriting member or controlling company, or direct or indirect control of such stock, without complying with this subparagraph.

g. The person or persons filing the statement required by this subparagraph have the burden of proof. The office shall approve any such acquisition if it finds, on the basis of the record made during any proceeding or on the basis of the filed statement if no proceeding is conducted, that:

(I) Upon completion of the acquisition, the underwriting member will be able to satisfy the requirements for the approval to write the line or lines of insurance for which it is presently approved;

(II) The financial condition of the acquiring person or persons will not jeopardize the financial stability of the underwriting member or prejudice the interests of its policyholders or the public;

(III) Any plan or proposal which the acquiring person has, or acquiring persons have, made:

(A) To liquidate the insurer, sell its assets, or merge or consolidate it with any person, or to make any other major change in its business or corporate structure or management; or

(B) To liquidate any controlling company, sell its assets, or merge or consolidate it with any person, or to make any major change in its business or corporate structure or management which would have an effect upon the underwriting member

is fair and free of prejudice to the policyholders of the underwriting member or to the public;

(IV) The competence, experience, and integrity of those persons who will control directly or indirectly the operation of the underwriting member indicate that the acquisition is in the best interest of the policyholders of the underwriting member and in the public interest;

(V) The natural persons for whom background information is required to be furnished pursuant to this subparagraph have such backgrounds as to indicate that it is in the best interests of the policyholders of the underwriting member, and in the public interest, to permit such persons to exercise control over such underwriting member;

(VI) The officers and directors to be employed after the acquisition have sufficient insurance experience and ability to assure reasonable promise of successful operation;

(VII) The management of the underwriting member after the acquisition will be competent and trustworthy and will possess sufficient managerial experience so as to make the proposed operation of the underwriting member not hazardous to the insurance-buying public;

(VIII) The management of the underwriting member after the acquisition will not include any person who has directly or indirectly through ownership, control, reinsurance transactions, or other insurance or business relations unlawfully manipulated the assets, accounts, finances, or books of any insurer or underwriting member or otherwise acted in bad faith with respect thereto;

(IX) The acquisition is not likely to be hazardous or prejudicial to the underwriting member's policyholders or the public; and

(X) The effect of the acquisition of control would not substantially lessen competition in insurance in this state or would not tend to create a monopoly therein.

h. No vote by the stockholder of record, or by any other person, of any security acquired in contravention of the provisions of this subparagraph is valid. Any acquisition of any security contrary to the provisions of this subparagraph is void. Upon the petition of the underwriting member or controlling company, the circuit court for the county in which the principal office of such underwriting member is located may, without limiting the generality of its authority, order the issuance or entry of an injunction or other order to enforce the provisions of this subparagraph. There shall be a private right of action in favor of the underwriting member or controlling company to enforce the provisions of this subparagraph. No demand upon the office that it perform its functions shall be required as a prerequisite to any suit by the underwriting member or controlling company against any other person, and in no case shall the office be deemed a necessary party to

any action by such underwriting member or controlling company to enforce the provisions of this subparagraph. Any person who makes or proposes an acquisition requiring the filing of a statement pursuant to this subparagraph, or who files such a statement, shall be deemed to have thereby designated the Chief Financial Officer as such person's agent for service of process under this subparagraph and shall thereby be deemed to have submitted himself or herself to the administrative jurisdiction of the office and to the jurisdiction of the circuit court.

i. Any approval by the office under this subparagraph does not constitute a recommendation by the office for an acquisition, tender offer, or exchange offer. It is unlawful for a person to represent that the office's approval constitutes a recommendation. A person who violates the provisions of this sub-subparagraph is guilty of a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084. The statute-of-limitations period for the prosecution of an offense committed under this sub-subparagraph is 5 years.

j. Upon notification to the office by the underwriting member or a controlling company that any person or any affiliated person of such person has acquired 5 percent or more of the outstanding voting securities of the underwriting member or controlling company without complying with the provisions of this subparagraph, the office shall order that the person and any affiliated person of such person cease acquisition of any further securities of the underwriting member or controlling company; however, the person or any affiliated person of such person may request a proceeding, which proceeding shall be convened within 7 days after the rendering of the order for the sole purpose of determining whether the person, individually or in connection with any affiliated person of such person, has acquired 5 percent or more of the outstanding voting securities of an underwriting member or controlling company. Upon the failure of the person or affiliated person to request a hearing within 7 days, or upon a determination at a hearing convened pursuant to this sub-subparagraph that the person or affiliated person has acquired voting securities of an underwriting member or controlling company in violation of this subparagraph, the office may order the person and affiliated person to divest themselves of any voting securities so acquired.

k.(I) The office shall, if necessary to protect the public interest, suspend or revoke the certificate of authority of any underwriting member or controlling company:

(A) The control of which is acquired in violation of this subparagraph;

(B) That is controlled, directly or indirectly, by any person or any affiliated person of such person who, in violation of this subparagraph, has obtained control of an underwriting member or controlling company; or

(C) That is controlled, directly or indirectly, by any person who, directly or indirectly, controls any other person who, in violation of this subparagraph, acquires control of an underwriting member or controlling company.

(II) If any underwriting member is subject to suspension or revocation pursuant to sub-sub-subparagraph (I), the underwriting member shall be deemed to be in such condition, or to be using or to have been subject to such methods or practices in the conduct of its business, as to render its further transaction of insurance presently or prospectively hazardous to its policyholders, creditors, or stockholders or to the public.

1.(I) For the purpose of this sub-sub-subparagraph, the term “affiliated person” of another person means:

(A) The spouse of such other person;

(B) The parents of such other person and their lineal descendants and the parents of such other person’s spouse and their lineal descendants;

(C) Any person who directly or indirectly owns or controls, or holds with power to vote, 5 percent or more of the outstanding voting securities of such other person;

(D) Any person 5 percent or more of the outstanding voting securities of which are directly or indirectly owned or controlled, or held with power to vote, by such other person;

(E) Any person or group of persons who directly or indirectly control, are controlled by, or are under common control with such other person; or any officer, director, partner, copartner, or employee of such other person;

(F) If such other person is an investment company, any investment adviser of such company or any member of an advisory board of such company;

(G) If such other person is an unincorporated investment company not having a board of directors, the depositor of such company; or

(H) Any person who has entered into an agreement, written or unwritten, to act in concert with such other person in acquiring or limiting the disposition of securities of an underwriting member or controlling company.

(II) For the purposes of this section, the term “controlling company” means any corporation, trust, or association owning, directly or indirectly, 25 percent or more of the voting securities of one or more underwriting members.

m. The commission may adopt, amend, or repeal rules that are necessary to implement the provisions of this subparagraph, pursuant to chapter 120.

44. Background information.—The information as to the background and identity of each person about whom information is required to be furnished pursuant to sub-subparagraph 43.a. shall include, but shall not be limited to:

a. Such person's occupations, positions of employment, and offices held during the past 10 years.

b. The principal business and address of any business, corporation, or other organization in which each such office was held or in which such occupation or position of employment was carried on.

c. Whether, at any time during such 10-year period, such person was convicted of any crime other than a traffic violation.

d. Whether, during such 10-year period, such person has been the subject of any proceeding for the revocation of any license and, if so, the nature of such proceeding and the disposition thereof.

e. Whether, during such 10-year period, such person has been the subject of any proceeding under the federal Bankruptcy Act or whether, during such 10-year period, any corporation, partnership, firm, trust, or association in which such person was a director, officer, trustee, partner, or other official has been subject to any such proceeding, either during the time in which such person was a director, officer, trustee, partner, or other official, or within 12 months thereafter.

f. Whether, during such 10-year period, such person has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating any federal or state law regulating the business of insurance, securities, or banking, or from carrying out any particular practice or practices in the course of the business of insurance, securities, or banking, together with details of any such event.

45. Security fund.—All underwriting members shall be members of the security fund of any exchange.

46. Underwriting member defined.—Whenever the term “underwriting member” is used in this subsection, it shall be construed to mean “underwriting syndicate.”

47. Offsets.—Any action, requirement, or constraint imposed by the office shall reduce or offset similar actions, requirements, or constraints of any exchange.

48. Restriction on member ownership.—

a. Investments existing prior to July 2, 1987.—The investment in any member by brokers, agents, and intermediaries transacting business on the exchange, and the investment in any such broker, agent, or intermediary by any member, directly or indirectly, shall in each case be limited in the

aggregate to less than 20 percent of the total investment in such member, broker, agent, or intermediary, as the case may be. After December 31, 1987, the aggregate percent of the total investment in such member by any broker, agent, or intermediary and the aggregate percent of the total investment in any such broker, agent, or intermediary by any member, directly or indirectly, shall not exceed 15 percent. After June 30, 1988, such aggregate percent shall not exceed 10 percent and after December 31, 1988, such aggregate percent shall not exceed 5 percent.

b. Investments arising on or after July 2, 1987.—The investment in any underwriting member by brokers, agents, or intermediaries transacting business on the exchange, and the investment in any such broker, agent, or intermediary by any underwriting member, directly or indirectly, shall in each case be limited in the aggregate to less than 5 percent of the total investment in such underwriting member, broker, agent, or intermediary.

49. “Underwriting manager” defined.—“Underwriting manager” as used in this subparagraph includes any person, partnership, corporation, or organization providing any of the following services to underwriting members of the exchange:

a. Office management and allied services, including correspondence and secretarial services.

b. Accounting services, including bookkeeping and financial report preparation.

c. Investment and banking consultations and services.

d. Underwriting functions and services including the acceptance, rejection, placement, and marketing of risk.

50. Prohibition of underwriting manager investment.—Any direct or indirect investment in any underwriting manager by a broker member or any affiliated person of a broker member or any direct or indirect investment in a broker member by an underwriting manager or any affiliated person of an underwriting manager is prohibited. “Affiliated person” for purposes of this subparagraph is defined in subparagraph 43.

51. An underwriting member may not accept reinsurance on an assumed basis from an affiliate or a controlling company, nor may a broker member or management company place reinsurance from an affiliate or controlling company of theirs with an underwriting member. “Affiliate and controlling company” for purposes of this subparagraph is defined in subparagraph 43.

52. Premium defined.—“Premium” is the consideration for insurance, by whatever name called. Any “assessment” or any “membership,” “policy,” “survey,” “inspection,” “service” fee or charge or similar fee or charge in consideration for an insurance contract is deemed part of the premium.

53. Rules.—The commission shall adopt rules necessary for or as an aid to the effectuation of any provision of this section.

Section 13. Subsection (6) of section 634.121, Florida Statutes, is amended to read:

634.121 Forms, required procedures, provisions; delivery and definitions.—

(6)(a) Each service agreement, which includes a copy of the application form, must be mailed, delivered, or otherwise provided electronically transmitted to the agreement holder as provided in s. 627.421. As used in s. 627.421, the term:

1. “Insurance policies and endorsements,” “policy and endorsements,” “policy,” and “policy form and endorsement form” include a motor vehicle service agreement and related endorsement forms.

2. “Insured” includes a motor vehicle service agreement holder.

3. “Insurer” includes a motor vehicle service agreement company.

~~(b) If the motor vehicle service agreement company elects to post motor vehicle service agreements on its Internet website in lieu of mailing or delivery to agreement holders the motor vehicle service agreement company must comply with the requirements of s. 627.421(4) within 45 days after the date of purchase. Electronic transmission of a service agreement constitutes delivery to the agreement holder. The electronic transmission must notify the agreement holder of his or her right to receive the service agreement via United States mail rather than electronic transmission. If the agreement holder communicates to the service agreement company electronically or in writing that he or she does not agree to receipt by electronic transmission, a paper copy of the service agreement shall be provided to the agreement holder.~~

Section 14. Section 641.3107, Florida Statutes, is amended to read:

641.3107 Delivery of contract; definitions.—

~~(1) Unless delivered upon execution or issuance, A health maintenance contract, certificate of coverage, endorsements and riders, or member handbook shall be mailed, ~~or delivered, or otherwise provided~~ to the subscriber or, in the case of a group health maintenance contract, to the employer or other person who will hold the contract on behalf of the subscriber group, as provided in s. 627.421.~~

(2) As used in s. 627.421, the term:

(a) “Insurance policies and endorsements,” “policy and endorsements,” “policy,” and “policy form and endorsement form” include the health

maintenance contract, endorsement and riders, certificate of coverage, or member handbook.

(b) "Insured" includes a subscriber or, in the case of a group health maintenance contract, to the employer or other person who will hold the contract on behalf of the subscriber group.

(c) "Insurer" includes a health maintenance organization.

(3) If the health maintenance organization elects to post health maintenance contracts on its Internet website in lieu of mailing or delivery to subscribers or the person who will hold the contract on behalf of a subscriber group the health maintenance organization must comply with the requirements of s. 627.421(4) within 10 working days from approval of the enrollment form by the health maintenance organization or by the effective date of coverage, whichever occurs first. However, if the employer or other person who will hold the contract on behalf of the subscriber group requires retroactive enrollment of a subscriber, the organization shall deliver the contract, certificate, or member handbook to the subscriber within 10 days after receiving notice from the employer of the retroactive enrollment. This section does not apply to the delivery of those contracts specified in s. 641.31(13).

Section 15. Except as otherwise expressly provided in this act, this act shall take effect upon becoming a law.

Approved by the Governor March 30, 2018.

Filed in Office Secretary of State March 30, 2018.