

## CHAPTER 2023-130

### Committee Substitute for Committee Substitute for House Bill No. 1185

An act relating to consumer protection; amending s. 494.001, F.S.; revising the definition of the term “branch office”; defining the term “remote location”; authorizing a licensee under ch. 494, F.S., to allow loan originators to work from remote locations if specified conditions are met; amending s. 494.0067, F.S.; specifying that mortgage lenders may transact business from branch offices and remote locations; providing a requirement for operating remote locations; creating s. 501.2042, F.S.; defining terms; providing requirements for organizers of crowd-funding campaigns related to disasters and for crowd-funding platforms; amending s. 520.23, F.S.; revising disclosure requirements for agreements governing the sale or lease of a distributed energy generation system; amending s. 560.111, F.S.; providing a criminal penalty; amending s. 560.309, F.S.; prohibiting a licensee under ch. 560, F.S., from cashing corporate checks for certain payees where the aggregate face amount exceeds a specified amount; amending s. 626.602, F.S.; providing applicability of provisions relating to the disapproval of insurance agency names to adjusting firm names; revising grounds on which such names may be disapproved by the department; deleting an obsolete provision; amending s. 626.854, F.S.; revising the definition of the term “public adjuster”; prohibiting public adjusters from contracting with anyone other than the named insured without the insured’s written consent; specifying a penalty for noncompliance; specifying timeframes in which an insured or a claimant may cancel a public adjuster’s contract without penalty or contract under certain circumstances; revising requirements for public adjusters’ contracts; specifying limitations on commissions received by public adjusters; amending s. 626.875, F.S.; revising recordkeeping requirements for appointed independent adjusters and licensed public adjusters; amending s. 626.8796, F.S.; revising requirements for public adjuster contracts; specifying requirements for and prohibitions on public adjusters relating to such contracts; providing construction; authorizing the department to adopt rules; amending s. 626.8797, F.S.; revising a fraud statement requirement in proof-of-loss statements; amending s. 626.9541, F.S.; adding an unfair or deceptive insurance act relating to health insurance policies; amending s. 627.4025, F.S.; revising the definition of the term “hurricane,” and defining the term “hurricane deductible,” as used in policies providing residential coverage; amending s. 627.4133, F.S.; revising conditions that apply to a specified notice requirement for, and a limitation on, the cancellation or termination of certain insurance policies; authorizing the Citizens Property Insurance Corporation to cancel certain policies of insurers placed in receivership; amending s. 627.4554, F.S.; revising legislative purpose; revising applicability; revising and defining terms; revising and specifying duties of insurers and agents relating to the recommendation and sale of annuity

investments; specifying comparable standards that comply with such requirements; specifying agent training requirements; providing and revising construction; authorizing the department to adopt certain forms by rule; amending s. 634.041, F.S.; specifying authorized methods of paying claims for motor vehicle service agreements; amending s. 634.401, F.S.; revising the definition of the term “manufacturer” for purposes of part III of ch. 634, F.S.; amending s. 634.406, F.S.; deleting a debt obligation rating requirement for certain service warranty associations or parent corporations; providing an effective date.

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

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

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

(3) “Branch office” means a location, other than a mortgage broker’s or mortgage lender’s principal place of business or remote location:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

494.0067 Requirements of mortgage lenders.—

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

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

501.2042 Unlawful acts and practices by online crowd-funding campaigns.—

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

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

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

(c) “Disaster” has the same meaning as 252.34(2).

(d) “Organizer” means a person who:

1. Resides or is domiciled in this state; and

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

a. For crowd-funding campaigns related to and arising out of a declared disaster, a crowd-funding platform must:

(I) Collect and retain, for one year after the date of the declared disaster, the name, e-mail address, phone number, and state of residence of the organizer.

(II) Require the organizer to indicate, on the crowd-funding campaign, the state in which they are located.

(III) Cooperate with any investigation by or in partnership with law enforcement.

(IV) Clearly display and direct donors to fundraisers that comply with the crowd-funding platform’s terms of service.

b. When an organizer arranges a crowd-funding campaign related to and arising out of a declared disaster, the organizer must attest that:

(I) All information provided in connection with a crowd-funding campaign is accurate, complete, and not likely to deceive users.

(II) All donations contributed to the crowd-funding campaign will be used solely as described in the materials the organizer posts or provides on the crowd-funding platform.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(11)~~(10) A statement notifying the buyer whether the distributed energy generation system is being financed and, if so, a statement in substantially

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

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

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

(14)~~(13)~~ A description of the distributed energy generation system design assumptions, including the make and model of the major components, system size, estimated first-year energy production, and estimated annual energy production decreases, including the overall percentage degradation over the estimated life of the distributed energy generation system, and the status of utility compensation for excess energy generated by the system at the time of contract signing. A seller who provides a warranty or guarantee of the energy production output of the distributed energy generation system may provide a description of such warranty or guarantee in lieu of a description of the system design and components.

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

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

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

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

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

~~(20)~~(19) A disclosure as to whether any warranty or maintenance obligations related to the distributed energy generation system may be sold or transferred by the seller to a third party and, if so, a statement in substantially the following form: “Your contract may be assigned, sold, or transferred without your consent to a third party who will be bound to all the terms of the contract. If a transfer occurs, you will be notified if this will change the address or phone number to use for system maintenance or repair requests.”

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

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

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

~~(24)~~ A statement in substantially the following form: “You should consider the age and remaining life of your roof prior to installing a distributed energy generation system. Replacement of your roof may require reinstallment of the distributed energy generation system.”

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

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

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

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

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

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

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

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

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

Section 5. Subsection (6) of section 560.111, Florida Statutes, is amended to read:

560.111 Prohibited acts.—

(6) A person who knowingly and willfully violates s. 560.309(11) or s. 560.310(2)(d) commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

Section 6. Subsection (11) is added to section 560.309, Florida Statutes, to read:

560.309 Conduct of business.—

(11) A licensee may not cash corporate checks where the aggregate face amount of all corporate checks cashed for each payee exceeds 200 percent of the payee's workers' compensation policy payroll amount during the same dates as the workers' compensation policy coverage period.

Section 7. Section 626.602, Florida Statutes, is amended to read:

626.602 Insurance agency and adjusting firm names; disapproval.—The department may disapprove the use of any true or fictitious name, other

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

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

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

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

(4) The name contains the word “Medicare” or “Medicaid.” ~~An insurance agency whose name contains the word “Medicare” or “Medicaid” but which is licensed as of July 1, 2021, may continue to use that name until June 30, 2023, provided that the agency’s license remains valid. If the agency’s license expires or is suspended or revoked, the agency may not be relicensed using that name.~~ Licenses for agencies with names containing either of these words automatically expire on July 1, 2023, unless these words are removed from the name.

Section 8. Section 626.854, Florida Statutes, is amended to read:

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

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

(2) This definition does not apply to:

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

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

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

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

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

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

(6) When entering a contract for adjuster services after July 1, 2023, a public adjuster:

(a) May not collect a fee for services on payments made to a named insured unless they have a written contract with the named insured, or the named insured’s legal representative.

(b) May not contract for services to be provided by a third party on behalf of the named insured or in pursuit of settlement of the named insureds claim, if the cost of those services is to be borne by the named insured, unless the named insured agrees in writing to procure these services and such agreement is entered into subsequent to the date of the contract for public adjusting services.

(c) If a public adjuster contracts with a third-party service provider to assist with the settlement of the named insured’s claim, without first obtaining the insured’s written consent, payment of the third party’s fees must be made by the public adjuster and may not be charged back to the named insured.

(d) If a public adjuster represents anyone other than the named insured in a claim, the public adjuster fees shall be paid by the third party and may not be charged back to the named insured.

(7)(6) An insured or claimant may cancel a public adjuster's contract to adjust a claim without penalty or obligation within 10 days after the date on which the contract is executed. If the contract was entered into based on events that are the subject of a declaration of a state of emergency by the Governor, an insured or claimant may cancel the public adjuster's contract to adjust a claim without penalty or obligation within 30 days after the date of loss or 10 days after the date on which the contract is executed, whichever is longer. The public adjuster's contract must contain the following language in minimum 18-point bold type immediately before the space reserved in the contract for the signature of the insured or claimant:

"You, the insured, may cancel this contract for any reason without penalty or obligation to you within 10 days after the date of this contract. If this contract was entered into based on events that are the subject of a declaration of a state of emergency by the Governor, you may cancel this contract for any reason without penalty or obligation to you within 30 days after the date of loss or 10 days after the date on which the contract is executed, whichever is longer. You may also cancel the contract without penalty or obligation to you if I, as your public adjuster, fail to provide you and your insurer a copy of a written estimate within 60 days of the execution of the contract, unless the failure to provide the estimate within 60 days is caused by factors beyond my control, in accordance with s. 627.70131(5)(a)2., Florida Statutes. The 60-day cancellation period for failure to provide a written estimate shall cease on the date I have provided you with the written estimate." The by providing notice of cancellation shall be provided to ... (name of public adjuster)..., submitted in writing and sent by certified mail, return receipt requested, or other form of mailing that provides proof thereof, at the address specified in the contract.

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

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

1. A statement or representation that invites an insured policyholder to submit a claim when the policyholder does not have covered damage to insured property.
2. A statement or representation that invites an insured policyholder to submit a claim by offering monetary or other valuable inducement.
3. A statement or representation that invites an insured policyholder to submit a claim by stating that there is "no risk" to the policyholder by submitting such claim.

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

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

**“THIS IS A SOLICITATION FOR BUSINESS. IF YOU HAVE HAD A CLAIM FOR AN INSURED PROPERTY LOSS OR DAMAGE AND YOU ARE SATISFIED WITH THE PAYMENT BY YOUR INSURER, YOU MAY DISREGARD THIS ADVERTISEMENT.”**

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

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

~~(11)~~~~(a)~~~~(10)~~~~(a)~~ If a public adjuster enters into a contract with an insured or claimant to reopen a claim or file a supplemental claim that seeks additional payments for a claim that has been previously paid in part or in full or settled by the insurer, the public adjuster may not charge, agree to, or accept from any source compensation, payment, commission, fee, or any other thing of value based on a previous settlement or previous claim payments by the insurer for the same cause of loss. The charge, compensation, payment, commission, fee, or any other thing of value must be based only on the claim payments or settlements paid to the insured, exclusive of attorney fees and costs, obtained through the work of the public adjuster after entering into the contract with the insured or claimant. Compensation for the reopened or supplemental claim may not exceed 20 percent of the reopened or supplemental claim payment. In no event shall the contracts described in this paragraph exceed the limitations in paragraph (b).

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

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

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

3. One percent of the amount of insurance claim payments or settlements, paid to the insured by the insurer for any coverage part of the policy where the claim payment or written agreement by the insurer to pay is equal to or greater than the policy limit for that part of the policy, if the payment or written commitment to pay is provided within 14 days after the date of loss or within 10 days after the date on which the public adjusting contract is executed, whichever is later.

4. Zero percent of the amount of insurance claim payments or settlements, paid to the insured by the insurer for any coverage part of the policy where the claim payment or written agreement by the insurer to pay occurs before the date on which the public adjusting contract is executed.

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

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

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

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

~~(12)(a)(11)~~ Each public adjuster must provide to the claimant or insured a written estimate of the loss to assist in the submission of a proof of loss or any other claim for payment of insurance proceeds within 60 days after the date of the contract. The written estimate must include an itemized, per-unit estimate of the repairs, including itemized information on equipment,

materials, labor, and supplies, in accordance with accepted industry standards. The public adjuster shall retain such written estimate for at least 5 years and shall make the estimate available to the claimant or insured, the insurer, and the department upon request.

(b) An insured may cancel the contract with no additional penalties or fees charged by the public adjuster if such an estimate is not provided within 60 days after executing the contract, subject to the cancellation notice requirement in this section, unless the failure to provide the estimate within 60 days is caused by factors beyond the control of the public adjuster. The cancellation period shall cease on the date the public adjuster provides the written estimate to the insured.

~~(13)~~(12) A public adjuster, public adjuster apprentice, or any person acting on behalf of a public adjuster or apprentice may not accept referrals of business from any person with whom the public adjuster conducts business if there is any form or manner of agreement to compensate the person, directly or indirectly, for referring business to the public adjuster. A public adjuster may not compensate any person, except for another public adjuster, directly or indirectly, for the principal purpose of referring business to the public adjuster.

~~(14)~~(13) A company employee adjuster, independent adjuster, attorney, investigator, or other persons acting on behalf of an insurer that needs access to an insured or claimant or to the insured property that is the subject of a claim must provide at least 48 hours' notice to the insured or claimant, public adjuster, or legal representative before scheduling a meeting with the claimant or an onsite inspection of the insured property. The insured or claimant may deny access to the property if the notice has not been provided. The insured or claimant may waive the 48-hour notice.

~~(15)~~(14) The public adjuster must ensure that prompt notice is given of the claim to the insurer, the public adjuster's contract is provided to the insurer, the property is available for inspection of the loss or damage by the insurer, and the insurer is given an opportunity to interview the insured directly about the loss and claim. The insurer must be allowed to obtain necessary information to investigate and respond to the claim.

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

(b) A public adjuster may not restrict or prevent an insurer, company employee adjuster, independent adjuster, attorney, investigator, or other person acting on behalf of the insurer from having reasonable access at

reasonable times to any insured or claimant or to the insured property that is the subject of a claim.

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

~~(16)~~<sup>(15)</sup> A licensed contractor under part I of chapter 489, or a subcontractor of such licensee, may not advertise, solicit, offer to handle, handle, or perform public adjuster services as provided in subsection (1) unless licensed and compliant as a public adjuster under this chapter. The prohibition against solicitation does not preclude a contractor from suggesting or otherwise recommending to a consumer that the consumer consider contacting his or her insurer to determine if the proposed repair is covered under the consumer's insurance policy, except as it relates to solicitation prohibited in s. 489.147. In addition, the contractor may discuss or explain a bid for construction or repair of covered property with the residential property owner who has suffered loss or damage covered by a property insurance policy, or the insurer of such property, if the contractor is doing so for the usual and customary fees applicable to the work to be performed as stated in the contract between the contractor and the insured.

~~(17)~~<sup>(16)</sup> A public adjuster shall not acquire any interest in salvaged property, except with the written consent and permission of the insured through a signed affidavit.

~~(18)~~<sup>(17)</sup> A public adjuster, a public adjuster apprentice, or a person acting on behalf of an adjuster or apprentice may not enter into a contract or accept a power of attorney that vests in the public adjuster, the public adjuster apprentice, or the person acting on behalf of the adjuster or apprentice the effective authority to choose the persons or entities that will perform repair work in a property insurance claim or provide goods or services that will require the insured or third-party claimant to expend funds in excess of those payable to the public adjuster under the terms of the contract for adjusting services.

~~(19)~~<sup>(18)</sup> Subsections ~~(5)-(18)~~ ~~(5)-(17)~~ apply only to residential property insurance policies and condominium unit owner policies as described in s. 718.111(11).

~~(20)~~<sup>(19)</sup> Except as otherwise provided in this chapter, no person, except an attorney at law or a licensed public adjuster, may for money, commission, or any other thing of value, directly or indirectly:

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

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

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

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

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

~~(21)~~(20) The department may take administrative actions and impose fines against any persons performing claims adjusting, soliciting, or any other services described in this section without the licensure required under this section or s. 626.112.

~~(22)~~(21) A public adjuster, public adjuster apprentice, or public adjusting firm that solicits a claim and does not enter into a contract with an insured or a third-party claimant pursuant to paragraph ~~(11)(a)~~ ~~(10)(a)~~ may not charge an insured or a third-party claimant or receive payment by any other source for any type of service related to the insured or third-party claimant's claim.

~~(23)(a)~~~~(22)(a)~~ Any following act by a public adjuster, a public adjuster apprentice, or a person acting on behalf of a public adjuster or public adjuster apprentice is prohibited and shall result in discipline as applicable under this part:

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

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

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

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

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

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

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

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

Section 9. Section 626.875, Florida Statutes, is amended to read:

626.875 Office and records.—

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

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

(2) The records of the adjuster relating to a particular claim or loss shall be so retained in the adjuster's place of business for a period of not less than 5 years after completion of the adjustment and shall be available for inspection by the department between the hours of 8 a.m. and 5 p.m., Monday through Friday, excluding state holidays. This provision shall not be deemed to prohibit return or delivery to the insurer or insured of documents furnished to or prepared by the adjuster and required by the insurer or insured to be returned or delivered thereto. At a minimum, the following records must be maintained for a period of not less than 5 years:

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

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

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

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

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

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

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

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

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

Section 10. Section 626.8796, Florida Statutes, is amended to read:

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

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

(2) A public adjuster contract relating to a property and casualty claim must contain the full name, permanent business address, phone number, e-mail address, and license number of the public adjuster; the full name of the public adjusting firm; and the insured’s full name, and street address, phone number, and e-mail address, together with a brief description of the loss. The contract must state the percentage of compensation for the public adjuster’s services in minimum 18-point bold type before the space reserved in the contract for the signature of the insured; the type of claim, including an emergency claim, nonemergency claim, or supplemental claim; the initials of the named insured on each page that does not contain the insured’s signature; the signatures of the public adjuster and all named insureds; and the signature date. If all of the named insureds’ signatures are not available, the public adjuster must submit an affidavit signed by the available named insureds attesting that they have authority to enter into the contract and settle all claim issues on behalf of the named insureds. An unaltered copy of the executed contract must be remitted to the insured at the time of execution and to the insurer, or the insurer’s representative within 7 ~~30~~ days after execution. A public adjusting firm that adjusts claims

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

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

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

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

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

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

(3) The public adjuster shall not receive compensation for services provided before the date the insured receives an unaltered copy of the executed contract or the date executed contract is submitted to the insurer. Proof of receipt by the insured and proof of submission to the insurer must be maintained by the public adjuster for not less than 5 years.

(4) The insured may rescind the contract for public adjuster services if the public adjuster has not submitted a written estimate to the insurer within 60 days after executing the contract, unless the failure to provide the written estimate within 60 days is caused by factors beyond the public adjuster's control.

(5) The cancellation period for failure to provide a written estimate terminates on the date the estimate is provided.

(6) Before the signing of the contract, the public adjuster shall provide the insured with a separate disclosure document to be signed by the insured, on a form adopted by the department, regarding the claim process which accomplishes the following:

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

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

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

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

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

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

(g) Explains that if the contract was entered into based on events that are the subject of a declaration of a state of emergency by the Governor, an insured or a claimant may cancel the public adjuster's contract to adjust a claim without penalty or obligation within 30 days after the date of loss or 10 days after the date on which the contract is executed, whichever is longer.

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

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

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

Section 11. Section 626.8797, Florida Statutes, is amended to read:

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

Section 12. Paragraph (a) of subsection (1) of section 626.9541, Florida Statutes, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

Section 13. Paragraph (c) of subsection (2) of section 627.4025, Florida Statutes, is amended, and paragraph (d) is added to that subsection, to read:

627.4025 Residential coverage and hurricane coverage defined.—

(2) As used in policies providing residential coverage:

(c) "Hurricane" for purposes of paragraphs (a) and (b) means a storm system that has been declared to be a hurricane by the National Hurricane

Center of the National Weather Service. The duration of the hurricane includes the time period, in Florida:

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

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

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

(d) “Hurricane deductible” means the deductible applicable to loss caused by a hurricane.

Section 14. Paragraph (b) of subsection (1) and paragraph (b) of subsection (2) of section 627.4133, Florida Statutes, are amended, and paragraph (d) is added to subsection (1) and paragraph (c) is added to subsection (2) of that section, to read:

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

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

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

1. When cancellation is for nonpayment of premium, at least 10 days’ written notice of cancellation accompanied by the reason therefor shall be given. As used in this subparagraph and s. 440.42(3), the term “nonpayment of premium” means failure of the named insured to discharge when due any of her or his obligations in connection with the payment of premiums on a policy or any installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under any premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. “Nonpayment of premium” also means the failure of a financial institution to honor an insurance applicant’s check after delivery to a licensed agent for payment of a premium, even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations shall be void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or

registered mail, and if the contract is void, any premium received by the insurer from a third party shall be refunded to that party in full; and

2. When such cancellation or termination occurs during the first ~~60~~ 90 days during which the insurance is in force and the insurance is canceled or terminated for reasons other than nonpayment of premium, at least 20 days' written notice of cancellation or termination accompanied by the reason therefor shall be given except where there has been a material misstatement or misrepresentation or failure to comply with the underwriting requirements established by the insurer.

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

(d) Notwithstanding subparagraph (b), Citizens Property Insurance Corporation in underwriting risks that, prior to the date of the application, were most recently insured by an insurer that has been placed in receivership under chapter 631, may immediately cancel a policy insuring such risk that has been in effect for 90 days or less for material misrepresentation or failure to comply with underwriting requirements established before the effectuation of coverage.

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

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

1. If cancellation is for nonpayment of premium, at least 10 days' written notice of cancellation accompanied by the reason therefor must be given. As used in this subparagraph, the term "nonpayment of premium" means failure of the named insured to discharge when due her or his obligations for paying the premium on a policy or an installment of such premium, whether the premium is payable directly to the insurer or its agent or indirectly under a premium finance plan or extension of credit, or failure to maintain membership in an organization if such membership is a condition precedent to insurance coverage. The term also means the failure of a financial institution to honor an insurance applicant's check after delivery to a

licensed agent for payment of a premium even if the agent has previously delivered or transferred the premium to the insurer. If a dishonored check represents the initial premium payment, the contract and all contractual obligations are void ab initio unless the nonpayment is cured within the earlier of 5 days after actual notice by certified mail is received by the applicant or 15 days after notice is sent to the applicant by certified mail or registered mail. If the contract is void, any premium received by the insurer from a third party must be refunded to that party in full.

2. If cancellation or termination occurs during the first 60 ~~90~~ days the insurance is in force and the insurance is canceled or terminated for reasons other than nonpayment of premium, at least 20 days' written notice of cancellation or termination accompanied by the reason therefor must be given unless there has been a material misstatement or misrepresentation or a failure to comply with the underwriting requirements established by the insurer.

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

4. After a policy or contract has been in effect for more than 60 ~~90~~ days, the insurer may not cancel or terminate the policy or contract based on credit information available in public records.

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

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

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

(c) Notwithstanding subparagraph (b), Citizens Property Insurance Corporation in underwriting risks that, prior to the date of the application, were most recently insured by an insurer that has been placed in receivership under chapter 631, may immediately cancel a policy insuring such risk that has been in effect for 90 days or less for material misrepresentation or failure to comply with underwriting requirements established before the effectuation of coverage.

Section 15. Effective January 1, 2024, section 627.4554, Florida Statutes, is amended to read:

627.4554 Suitability in annuity transactions investments.—

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

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

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

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

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

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

(d) “Consumer profile information” means information that is reasonably appropriate to determine whether a recommendation addresses the consumer’s financial situation, insurance needs, and financial objectives, including, at a minimum, the following:

1. Age.
2. Annual income.
3. Financial situation and needs, including debts and other obligations.
4. Financial experience.
5. Insurance needs.
6. Financial objectives.
7. Intended use of the annuity.
8. Financial time horizon.
9. Existing assets or financial products, including investment, annuity, and insurance holdings.
10. Liquidity needs.
11. Liquid net worth.
12. Risk tolerance, including, but not limited to, willingness to accept nonguaranteed elements in the annuity.
13. Financial resources used to fund the annuity.
14. Tax status.

(e)(e) “FINRA” means the Financial Industry Regulatory Authority or a succeeding agency.

(f)(d) “Insurer” has the same meaning as provided in s. 624.03.

(g) “Intermediary” means an entity contracted directly with an insurer or with another entity contracted with an insurer to facilitate the sale of the insurer’s annuities by agents.

(h) “Material conflict of interest” means a financial interest of the agent in the sale of an annuity which a reasonable person would expect to influence the impartiality of a recommendation. The term does not include cash compensation or noncash compensation.

(i) “Noncash compensation” means any form of compensation that is not cash compensation, including, but not limited to, health insurance, office rent, office support, and retirement benefits.

(j) “Nonguaranteed elements” means the premiums; credited interest rates, including any bonus; benefits; values; dividends; noninterest-based credits; charges; or elements of formulas used to determine any of these, which are subject to company discretion and are not guaranteed at issue. An

element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

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

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

1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;
2. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value due to the use of nonforfeiture benefits or other policy values;
3. Amended so as to effect a reduction in benefits or the term for which coverage would otherwise remain in force or for which benefits would be paid;
4. Reissued with a reduction in cash value; or
5. Used in a financed purchase.

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

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

- ~~1. Age;~~
- ~~2. Annual income;~~
- ~~3. Financial situation and needs, including the financial resources used for funding the annuity;~~
- ~~4. Financial experience;~~
- ~~5. Financial objectives;~~
- ~~6. Intended use of the annuity;~~

- ~~7. Financial time horizon;~~
- ~~8. Existing assets, including investment and life insurance holdings;~~
- ~~9. Liquidity needs;~~
- ~~10. Liquid net worth;~~
- ~~11. Risk tolerance; and~~
- ~~12. Tax status.~~

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

(a) Direct-response solicitations where there is no recommendation based on information collected from the consumer pursuant to this section;

(b) Contracts used to fund:

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

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

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

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

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

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

(5) DUTIES OF INSURERS AND AGENTS.—

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

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

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

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

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

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

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

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

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

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

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

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

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

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

g. Sub-subparagraph a. does not require the agent to have ongoing monitoring obligations under the care obligation, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment, advising, or financial planning agreement between the consumer and the agent.

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

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

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

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

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

2.a. Before the recommendation or sale of an annuity, the agent shall prominently disclose to the consumer, on a form substantially similar to that posted on the office website as Appendix A, related to an insurance agent disclosure for annuities:

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

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

(A) Fixed annuities.

(B) Fixed indexed annuities.

(C) Variable annuities.

(D) Life insurance.

(E) Mutual funds.

(F) Stocks and bonds.

(G) Certificates of deposit.

(III) An affirmative statement describing the insurers for which the agent is authorized, contracted, or appointed, or otherwise able to sell insurance products, using the following descriptions:

(A) From one insurer;

(B) From two or more insurers; or

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

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

(V) A notice of the consumer’s right to request additional information regarding cash compensation described in sub-subparagraph b.

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

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

(II) Whether the cash compensation is a one-time or multiple occurrence amount; and if a multiple occurrence amount, the frequency and amount of the occurrence, which may be stated as a range of amounts or percentages. When recommending the purchase or exchange of an annuity to a consumer which results in an insurance transaction or series of insurance transactions, the agent, or the insurer where no agent is involved, must have reasonable grounds for believing that the recommendation is suitable for the consumer, based on the consumer’s suitability information, and that there is a reasonable basis to believe all of the following:

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

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

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

4. An agent shall at the time of the recommendation or sale:

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

b. Obtain a consumer-signed statement on a form substantially similar to that posted on the office website as Appendix B, related to a consumer's refusal to provide information, documenting:

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

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

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

5. Any requirement applicable to an agent under this subsection applies to every agent who has exercised material control or influence in the making of a recommendation and has received direct compensation as a result of the recommendation or sale, regardless of whether the agent has had any direct contact with the consumer. Activities such as providing or delivering marketing or education materials, product wholesaling or other back office product support, and general supervision of an agent do not, in and of themselves, constitute material control or influence.

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

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

~~a. Will incur a surrender charge; be subject to the commencement of a new surrender period; lose existing benefits, such as death, living, or other~~

~~contractual benefits; or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;~~

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

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

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

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

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

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

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

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

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

~~2. An insurer’s issuance of an annuity subject to subparagraph 1. must be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.~~

~~(c)1. Except as permitted under paragraph (b), an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to~~

believe the annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives based on the consumer's consumer profile information.

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

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

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

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

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

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

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

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

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

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

~~d. The insurer shall establish and maintain Maintaining procedures for the review of each recommendation before issuance of an annuity which are designed to ensure that there is a reasonable basis to determine the~~

recommended annuity would effectively address the particular consumer’s financial situation, insurance needs, and financial objectives for determining that a recommendation is suitable. Such review procedures may use a screening system for identifying selected transactions for additional review and may be accomplished electronically or through other means, including, but not limited to, physical review. Such electronic or other system may be designed to require additional review only of those transactions identified for additional review using established selection criteria.;

e. The insurer shall establish and maintain ~~Maintaining~~ reasonable procedures to detect recommendations that are not in compliance with paragraphs (a), (b), (d), and (e). This may include, but is not limited to, suitable, such as confirmation of consumer profile suitability information, systematic customer surveys, agent and consumer interviews, confirmation letters, agent statements or attestations, and internal monitoring programs. This sub-subparagraph does not prevent an insurer from using sampling procedures or from confirming the consumer profile suitability information after the issuance or delivery of the annuity.; ~~and~~

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

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

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

i.f. The insurer shall annually provide ~~providing~~ a written report to senior managers, including the senior manager who is responsible for audit functions, which details a review, along with appropriate testing, which is reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

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

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

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

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

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

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

(II) Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, ~~for representing that the function is being properly performed.~~

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

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

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

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

2. Subparagraph 1. does not limit the insurer's obligation to comply with subparagraph (c)1., although the insurer may base its analysis on

information received from either the financial professional or the entity supervising the financial professional.

3. For subparagraph 1. ~~this paragraph~~ to apply, an insurer must:

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

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

4. For purposes of this paragraph, the term:

a. "Comparable standards" means:

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

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

(III) With respect to plan fiduciaries or fiduciaries, the duties, obligations, prohibitions, and all other requirements attendant to such status under the Employee Retirement Income Security Act of 1974 or the Internal Revenue Code and any amendments or successor statutes thereto.

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

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

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

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

(6) AGENT TRAINING.—

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

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

b. Agents who hold a life insurance line of authority on January 1, 2024, and who desire to sell annuities shall complete the requirements of this subsection by July 1, 2024. Individuals who obtain a life insurance line of authority after January 1, 2024, may not engage in the sale of annuities until the annuity training course required under this subsection has been completed.

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

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

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

b. Identification of the parties to an annuity.

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

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

e. The primary uses of annuities.

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

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

5. An agent who has completed an annuity training course before January 1, 2024, shall, by July 1, 2024, complete either:

a. A new 4-hour training course; or

b. An additional 1-hour training course on appropriate sales practices, replacement, and disclosure requirements under this section.

6. Annuity training courses may be conducted and completed by classroom or self-study methods.

7. Providers of annuity training shall issue certificates of completion.

8. The satisfaction of the training requirements of another state that are substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this state.

9. The satisfaction of the training requirements of any course or courses with components substantially similar to the provisions of this subsection shall be deemed to satisfy the training requirements of this subsection in this state.

10. An insurer shall verify that an agent has completed the annuity training course required under this subsection before allowing the agent to sell an annuity product for that insurer.

~~(7)~~(6) RECORDKEEPING.—

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

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

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

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

(b) The department may order:

1. An ~~insurance~~ agent to take reasonably appropriate corrective action for a consumer harmed by a violation of this section by the ~~insurance~~ agent,

including monetary restitution of penalties or fees incurred by the consumer, and impose appropriate penalties and sanctions.

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 consumers to take reasonably appropriate corrective action for a consumer harmed by a violation of this section by the insurance agent.

(c) In addition to any other penalty authorized under chapter 626, the department shall order an insurance agent to pay restitution to a consumer who has been deprived of money by the agent's misappropriation, conversion, or unlawful withholding of moneys belonging to the consumer in the course of a transaction involving annuities. The amount of restitution required to be paid 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) Any applicable penalty under the Florida Insurance Code for a violation of this section shall be reduced or eliminated according to a schedule adopted by the office or the department, as appropriate, if corrective action for the consumer was taken promptly after a violation was discovered.

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

~~(9)~~(8) PROHIBITED CHARGES.—An annuity contract issued to a senior consumer age 65 or older 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 date of each premium payment if multiple premiums are paid, whichever is later. This subsection does not apply to annuities purchased by an accredited investor, as defined in Regulation D as adopted by the United States Securities and Exchange Commission, or to those annuities specified in paragraph (4)(b).

~~(10)~~(9) RULES.—The department and the commission may adopt rules to administer this section. The department may adopt by rule the forms prescribed in the National Association of Insurance Commissioners Suitability in Annuity Transactions Model Regulation Appendix A - Insurance Agent (Producer) Disclosure for Annuities, Appendix B - Consumer Refusal to Provide Information, and Appendix C - Consumer Decision to Purchase an Annuity Not Based on a Recommendation.

Section 16. Paragraph (b) of subsection (8) of section 634.041, Florida Statutes, is 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 secures and maintains contractual liability insurance in accordance with the following:

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

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). 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.

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

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.

Section 17. Paragraphs (d), (e), and (f) of subsection (17) of section 634.401, Florida Statutes, are amended to read:

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

(17) “Manufacturer” means any entity or its affiliate which:

~~(d)—Maintains outstanding debt obligations, if any, rated in the top four rating categories by a recognized rating service;~~

~~(d)~~(e) Has and maintains at all times, a minimum net worth of at least ~~\$100~~ \$10 million as evidenced by certified financial statements prepared by an independent certified public accountant in accordance with generally accepted accounting principles; and

~~(e)~~(f) Is authorized to do business in this state.

Section 18. Paragraph (a) of subsection (7) of section 634.406, Florida Statutes, is amended to read:

634.406 Financial requirements.—

(7) An association licensed under this part and holding no other license under part I or part II of this chapter is not required to establish an unearned premium reserve or maintain contractual liability insurance and may allow its premiums to exceed the ratio to net assets limitation of this section if the association complies with the following:

(a) The association or, if the association is a direct or indirect wholly owned subsidiary of a parent corporation, its parent corporation has, and maintains at all times, a minimum net worth of at least \$100 million and provides the office with the following:

1. A copy of the association’s annual audited financial statements or the audited consolidated financial statements of the association’s parent corporation, prepared by an independent certified public accountant in accordance with generally accepted accounting principles, which clearly demonstrate the net worth of the association or its parent corporation to be \$100 million and a quarterly written certification to the office that such entity continues to maintain the net worth required under this paragraph.

2. The association’s, or its parent corporation’s, Form 10-K, Form 10-Q, or Form 20-F as filed with the United States Securities and Exchange Commission or such other documents required to be filed with a recognized stock exchange, which shall be provided on a quarterly and annual basis within 10 days after the last date each such report must be filed with the

Securities and Exchange Commission, the National Association of Security Dealers Automated Quotation system, or other recognized stock exchange.

Failure to timely file the documents required under this paragraph may, at the discretion of the office, subject the association to suspension or revocation of its license under this part. ~~An association or parent corporation demonstrating compliance with subparagraphs 1. and 2. must maintain outstanding debt obligations, if any, rated in the top four rating categories by a recognized rating service.~~

Section 19. Except as otherwise expressly provided in this act, this act shall take effect July 1, 2023.

Approved by the Governor May 24, 2023.

Filed in Office Secretary of State May 24, 2023.