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1
2 An act relating to insurance; amending s. 30.2905,
3 F.S.; providing for interpretation of provisions
4 relating to workers' compensation benefits for certain
5 services performed by off-duty deputy sheriffs;
6 authorizing sheriffs to include certain proportionate
7 costs of workers' compensation premiums for off-duty
8 deputy sheriffs providing certain services; amending
9 s. 112.18, F.S.; providing conditions under which a
10 law enforcement officer, correctional officer, or
11 correctional probation officer who suffers from a
12 specified medical condition and has materially
13 departed from the prescribed treatment for that
14 condition shall lose a specified presumption for
15 workers' compensation claims made on or after a
16 specified date; defining the term "prescribed course
17 of treatment"; providing for independent medical
18 examinations in certain situations; providing that
19 only claims made before or within a specified period
20 after leaving employment are eligible for a specified
21 presumption; creating s. 624.46223, F.S.; prohibiting
22 an association, fund, or pool created for the purpose
23 of forming or managing a risk management mechanism or
24 providing self-insurance for a public entity from
25 requiring its members to give more than 60 days'
26 notice of the member's intention to withdraw from the
27 association, fund, or pool; amending s. 627.062, F.S.;
28 exempting certain categories or types of insurance and
29 types of commercial lines risks from certain rate

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30 requirements; requiring that insurers or rating
31 organizations establish and use rates, rating
32 schedules, or rating manuals allowing for a reasonable
33 rate of return on certain insurance and risks;
34 requiring that an insurer notify the Office of
35 Insurance Regulation of any changes to rates for
36 certain insurance and risks; requiring that such
37 notice contain certain information; requiring that an
38 insurer maintain certain information; providing that
39 such information is subject to examination by the
40 office; requiring that the office consider certain
41 rate factors and standards when examining such
42 information for the purpose of determining whether the
43 rate is excessive, inadequate, or unfairly
44 discriminatory; requiring that a rating organization
45 provide notice to the office of any changes to loss
46 cost for certain types of insurance within a specified
47 period after such change; providing requirements for
48 such notification; requiring that a rating
49 organization maintain certain information; providing
50 that such information is subject to examination by the
51 office; requiring that specified rate factors and
52 standards be used in such examination; authorizing the
53 office, when reviewing a rate, to require that an
54 insurer provide certain information at the insurer's
55 expense; amending s. 627.0651, F.S.; exempting
56 commercial motor vehicle insurance from certain motor
57 vehicle insurance rate requirements; prohibiting
58 certain insurance rates from being excessive,

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59 inadequate, or unfairly discriminatory; requiring that
60 insurers or rating organizations establish and use
61 rates, rating schedules, or rating manuals allowing
62 for a reasonable rate of return on certain insurance
63 and risks; requiring that an insurer notify the office
64 of any changes to rates for certain insurance and
65 risks; requiring that such notice contain certain
66 information; requiring that an insurer maintain
67 certain information; providing that such information
68 is subject to examination by the office; requiring
69 that the office consider certain rate factors and
70 standards when examining such information for the
71 purpose of determining whether the rate is excessive,
72 inadequate, or unfairly discriminatory; requiring that
73 a rating organization provide notice to the office of
74 any changes to loss cost for certain types of
75 insurance within a specified period after such change;
76 providing requirements for such notification;
77 requiring that a rating organization maintain certain
78 information; providing that such information is
79 subject to examination by the office; requiring that
80 specified rate factors and standards be used in such
81 examination; authorizing the office, when reviewing a
82 rate, to require that an insurer provide certain
83 information at the insurer's expense; amending s.
84 626.9541, F.S.; prohibiting construction to prevent a
85 Medicare supplement insurer from granting a premium
86 credit to insureds under certain circumstances;
87 amending s. 627.6741, F.S.; specifying absence of a

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88 prohibition against certain Medicare supplement policy
89 insurers from entering into agreements through a
90 network with certain facilities; specifying absence of
91 a requirement to file certain contracts with the
92 Office of Insurance Regulation; amending s. 627.6745,
93 F.S.; requiring certain insurers to factor certain
94 deductibles and premium credits into loss-ratio
95 calculation and policy premiums; amending s. 628.4615,
96 F.S., relating to specialty insurers; conforming a
97 cross-reference; amending s. 634.011, F.S.; revising
98 the definition of the term "motor vehicle service
99 agreement"; amending s. 634.031, F.S.; providing
100 penalties for certain licensure violations; amending
101 s. 634.041, F.S., relating to qualifications for
102 licensure; conforming cross-references; amending s.
103 634.095, F.S.; prohibiting service agreement companies
104 from issuing certain deceptive advertisements,
105 operating without a subsisting license, or remitting
106 premiums to a person other than the obligated service
107 agreement company; amending s. 634.121, F.S.; deleting
108 a requirement that certain service agreement forms be
109 approved by the Office of Insurance Regulation of the
110 Financial Services Commission; requiring the service
111 agreements to include certain written disclosures;
112 amending s. 634.1213, F.S.; authorizing the office to
113 order a service agreement company to stop using forms
114 that do not comply with specified requirements;
115 amending s. 634.137, F.S.; deleting a schedule for the
116 submissions of certain reports; amending s. 634.141,

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117 F.S.; providing guidelines for the office to use in
118 determining whether to examine a company; amending s.
119 634.1815, F.S.; requiring certain rebates to be
120 approved by the company issuing a service agreement;
121 amending s. 634.282, F.S.; clarifying provisions
122 relating to the refund of excess premiums or charges;
123 requiring that a consumer receive a sample copy of the
124 service agreement prior to the sale of a service
125 agreement; amending s. 634.301, F.S.; revising certain
126 definitions relating home warranties; amending s.
127 634.303, F.S.; providing that it is a first-degree
128 misdemeanor for a person without a subsisting license
129 to provide or offer to provide home warranties;
130 amending s. 634.308, F.S.; providing an exception to
131 certain grounds for licensure suspension or
132 revocation; amending s. 634.312, F.S.; deleting a
133 requirement that certain home warranty agreement forms
134 be approved by the office; requiring the home warranty
135 contracts to include certain written disclosures;
136 amending s. 634.3123, F.S.; authorizing the office to
137 order a home warranty association to stop using forms
138 that do not comply with specified requirements;
139 amending s. 634.314, F.S.; providing guidelines for
140 the office to use in determining whether to examine an
141 association; amending s. 634.3205, F.S.; requiring
142 certain rebates to be approved by the association
143 issuing a service agreement; amending s. 634.336,
144 F.S.; requiring that a consumer receive a sample copy
145 of the service agreement prior to the sale of a

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146 service agreement; amending s. 634.344, F.S.;

147 prohibiting certain coercive actions relating to the

148 sale of a home warranty in connection with the lending

149 of money; amending s. 634.401, F.S.; redefining the

150 term "indemnify"; amending s. 634.403, F.S.; providing

151 that it is a first-degree misdemeanor for a person

152 without a subsisting license to provide or offer to

153 provide service warranties; amending s. 634.406, F.S.,

154 relating to financial requirements; conforming a

155 cross-reference; amending s. 634.414, F.S.; deleting a

156 requirement that certain service warranty forms be

157 approved by the office; deleting certain requirements

158 relating to the display of the issuing association's

159 name on literature; requiring the service warranty

160 contracts to include certain written disclosures;

161 amending s. 634.4145, F.S.; authorizing the office to

162 order a service warranty association to stop using

163 forms that do not comply with specified requirements;

164 amending s. 634.415, F.S.; deleting a requirement that

165 associations file certain quarterly statements and

166 special reports; amending s. 634.416, F.S.; providing

167 guidelines for the office to use in determining

168 whether to examine an service warranty association;

169 amending s. 634.4225, F.S.; requiring certain rebates

170 to be approved by the association issuing a service

171 warranty; amending s. 634.436, F.S.; requiring that a

172 consumer receive a sample copy of the service

173 agreement prior to the sale of a service agreement;

174 amending s. 634.136, F.S.; deleting certain provisions

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175 requiring records to be maintained by motor vehicle
176 service contract companies; amending s. 634.313, F.S.;
177 deleting certain requirements for reports relating to
178 taxes on premiums; repealing ss. 634.1216 and
179 634.3126, F.S., relating to required rate filings;
180 providing a short title; amending s. 624.310, F.S.;
181 expanding the definition of "affiliated party" to
182 include certain third-party marketers; creating s.
183 624.46223, F.S.; prohibiting a self-insurance
184 association, fund, or pool from requiring its members
185 to provide more than a specified maximum period of
186 notice of any member's intent to withdraw; amending s.
187 626.221, F.S.; expanding the list of individuals who
188 are exempt from the requirement to pass an examination
189 before being issued a license as an agent, customer
190 representative, or adjuster; amending s. 626.025,
191 F.S.; including family members of insurance agents in
192 a prohibition related to the transaction of life
193 insurance; amending s. 626.2815, F.S.; providing an
194 exemption from certain continuing education
195 requirements to certain agents; authorizing the
196 department to take certain action in applying such
197 exemption; amending s. 626.621, F.S.; expanding
198 grounds for discretionary refusal, suspension, or
199 revocation of certain licenses; amending s. 626.641,
200 F.S.; prohibiting the Department of Financial Services
201 from issuing certain licenses in certain
202 circumstances; amending s. 626.798, F.S.; prohibiting
203 a family member of a life insurance agent from being a

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204 beneficiary of certain policies; prohibiting an agent
205 or a family member of such agent from being designated
206 as a trustee or guardian or being granted power of
207 attorney unless he or she is a family member of the
208 policy owner or insured, or is a bank or trust company
209 duly authorized to act as a fiduciary; amending s.
210 626.9521, F.S.; increasing the administrative fine
211 that may be imposed for each willful violation of the
212 offenses of twisting and churning; increasing the
213 administrative fine that may be imposed for each
214 willful violation of the offense of submitting
215 fraudulent signatures on an application or policy-
216 related document; requiring that a licensee make a
217 reasonable effort to ascertain a customer's age at the
218 time of completion of an insurance application;
219 authorizing the use of video depositions in certain
220 circumstances; amending s. 626.99, F.S.; requiring
221 that the buyer's guide for fixed annuities be in the
222 form provided by the National Association of Insurance
223 Commissioners Annuity Disclosure Model Regulation;
224 authorizing the use of a policy summary for variable
225 annuities until the NAIC or the department develops a
226 buyer's guide; extending the unconditional refund
227 period for fixed annuity contracts and variable or
228 market value annuity contracts for customers 65 years
229 of age or older; requiring that the unconditional
230 refund amount for a variable or market value annuity
231 contract be equal to the cash surrender value provided
232 in the contract, plus any fees or charges deducted

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233 from the premiums or imposed under the contract;
234 providing for applicability of certain provisions;
235 requiring that an insurer provide a prospective
236 purchaser of an annuity policy with a buyer's guide to
237 annuities; requiring that such buyer's guide contain
238 certain information; requiring that an insurer attach
239 a cover page to an annuity policy informing the
240 purchaser of the unconditional refund period;
241 requiring that the cover page provide other specified
242 information; amending s. 627.4554, F.S.; defining the
243 term "accredited investor"; authorizing the Department
244 of Financial Services to order an insurance agent to
245 pay monetary restitution to a senior consumer under
246 certain circumstances; limiting the amount of such
247 restitution; prohibiting an annuity contract issued to
248 a senior consumer from containing a surrender or
249 deferred sales charge for withdrawal of funds from an
250 annuity in excess of a specified maximum amount;
251 providing for the periodic reduction of such charge;
252 providing effective dates.

253

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

255

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

258 30.2905 Program to contract for employment of off-duty
259 deputies for security services.—

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

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262 deputy sheriff while performing services for that employer while
263 off duty, including workers' compensation benefits.

264 (b) However, for the workers' compensation purposes of this
265 section:~~7~~

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

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

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

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

278 112.18 Firefighters and law enforcement or correctional
279 officers; special provisions relative to disability.-

280 (1) (a) Any condition or impairment of health of any Florida
281 state, municipal, county, port authority, special tax district,
282 or fire control district firefighter or any law enforcement
283 officer, ~~or~~ correctional officer, or correctional probation
284 officer as defined in s. 943.10(1), (2), or (3) caused by
285 tuberculosis, heart disease, or hypertension resulting in total
286 or partial disability or death shall be presumed to have been
287 accidental and to have been suffered in the line of duty unless
288 the contrary be shown by competent evidence. However, any such
289 firefighter or law enforcement officer must ~~shall~~ have
290 successfully passed a physical examination upon entering into

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291 any such service as a firefighter or law enforcement officer,
292 which examination failed to reveal any evidence of any such
293 condition. Such presumption does ~~shall~~ not apply to benefits
294 payable under or granted in a policy of life insurance or
295 disability insurance, unless the insurer and insured have
296 negotiated for such additional benefits to be included in the
297 policy contract.

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

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

312 b. Was previously compensated pursuant to this section and
313 chapter 440 for tuberculosis, heart disease, or hypertension and
314 thereafter sustains and reports a new compensable workers'
315 compensation claim under this section and chapter 440, and the
316 law enforcement officer, correctional officer, or correctional
317 probation officer has departed in a material fashion from the
318 prescribed course of treatment of an authorized physician for
319 the preexisting workers' compensation claim and the departure is

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320 demonstrated to have resulted in a significant aggravation of
321 the tuberculosis, heart disease, or hypertension resulting in
322 disability or increasing the disability or need for medical
323 treatment.

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

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

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

344 (2) This section authorizes each governmental entity
345 specified in subsection (1) shall be construed to authorize the
346 above governmental entities to negotiate policy contracts for
347 life and disability insurance to include accidental death
348 benefits or double indemnity coverage which shall include the

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349 presumption that any condition or impairment of health of any
350 firefighter, law enforcement officer, or correctional officer
351 caused by tuberculosis, heart disease, or hypertension resulting
352 in total or partial disability or death was accidental and
353 suffered in the line of duty, unless the contrary be shown by
354 competent evidence.

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

357 624.46223 Notice of intent to withdraw.—An association,
358 fund, or pool authorized under Florida law and created for the
359 purpose of forming or managing a risk management mechanism or
360 providing self-insurance for a public entity in this state may
361 not require its members, as a prerequisite for withdrawing from
362 the association, fund, or pool, to give more than 60 days'
363 notice of the member's intention to withdraw from the
364 association, fund, or pool.

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

367 627.062 Rate standards.—

368 (3)

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

372 a. Excess or umbrella.

373 b. Surety and fidelity.

374 c. Boiler and machinery and leakage and fire extinguishing
375 equipment.

376 d. Errors and omissions.

377 e. Directors and officers, employment practices, and

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378 management liability.

379 f. Intellectual property and patent infringement liability.

380 g. Advertising injury and Internet liability insurance.

381 h. Property risks rated under a highly protected risks
382 rating plan.

383 i. Any other commercial lines categories or kinds of
384 insurance or types of commercial lines risks that the office
385 determines should not be subject to paragraph (2) (a) or
386 paragraph (2) (f) because of the existence of a competitive
387 market for such insurance, similarity of such insurance to other
388 categories or kinds of insurance not subject to paragraph (2) (a)
389 or paragraph (2) (f), or to improve the general operational
390 efficiency of the office.

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

395 3. An insurer must notify the office of any changes to
396 rates for insurance and risks described in subparagraph 1. no
397 later than 30 days after the effective date of the change. The
398 notice must include the name of the insurer, the type or kind of
399 insurance subject to rate change, total premium written during
400 the immediately preceding year by the insurer for the type or
401 kind of insurance subject to the rate change, and the average
402 statewide percentage change in rates. Underwriting files,
403 premiums, losses, and expense statistics with regard to
404 insurance and risks described in subparagraph 1. written by an
405 insurer shall be maintained by the insurer and subject to
406 examination by the office. Upon examination, the office shall,

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407 in accordance with generally accepted and reasonable actuarial
408 techniques, consider the rate factors in paragraphs (2)(b), (c),
409 and (d) and the standards in paragraph (2)(e) to determine if
410 the rate is excessive, inadequate, or unfairly discriminatory.

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

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

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

435 627.0651 Making and use of rates for motor vehicle

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436 insurance.—

437 (14) (a) Commercial motor vehicle insurance covering a fleet
438 of 20 or more self-propelled vehicles is not subject to
439 subsection (1), subsection (2), or subsection (9) or s.
440 627.0645.

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

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

448 (d) An insurer must notify the office of any changes to
449 rates for type of insurance described in this subsection no
450 later than 30 days after the effective date of the change. The
451 notice shall include the name of the insurer, the type or kind
452 of insurance subject to rate change, total premium written
453 during the immediately preceding year by the insurer for the
454 type or kind of insurance subject to the rate change, and the
455 average statewide percentage change in rates. Underwriting
456 files, premiums, losses, and expense statistics for the type of
457 insurance described in this subsection shall be maintained by
458 the insurer and subject to examination by the office. Upon
459 examination, the office shall, in accordance with generally
460 accepted and reasonable actuarial techniques, consider the
461 factors in paragraphs (2) (a)-(1) and apply subsections (3)-(8)
462 to determine if the rate is excessive, inadequate, or unfairly
463 discriminatory.

464 (e) A rating organization must notify the office of any

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465 changes to loss cost for the type of insurance described in this
466 subsection no later than 30 days after the effective date of the
467 change. The notice shall include the name of the rating
468 organization, the type or kind of insurance subject to a loss
469 cost change, loss costs during the immediately preceding year
470 for the type or kind of insurance subject to the loss cost
471 change, and the average statewide percentage change in loss
472 cost. Loss and exposure statistics with regard to risks
473 applicable to loss costs for a rating organization not subject
474 to subsection (1), subsection (2), or subsection (9) shall be
475 maintained by the rating organization and are subject to
476 examination by the office. Upon examination, the office shall,
477 in accordance with generally accepted and reasonable actuarial
478 techniques, consider the rate factors in paragraphs (2)(a)-(1)
479 and apply subsections (3)-(8) to determine if the rate is
480 excessive, inadequate, or unfairly discriminatory.

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

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

488 626.9541 Unfair methods of competition and unfair or
489 deceptive acts or practices defined.—

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

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

496 627.6741 Issuance, cancellation, nonrenewal, and
497 replacement.—

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

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

507 627.6745 Loss ratio standards; public rate hearings.—

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

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

515 628.4615 Specialty insurers; acquisition of controlling
516 stock, ownership interest, assets, or control; merger or
517 consolidation.—

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

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

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

526 634.011 Definitions.—As used in this part, the term:

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

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

549 (b) For payment of vehicle protection expenses.

550 1.a. "Vehicle protection expenses" means a preestablished
551 flat amount payable for the loss of or damage to a vehicle or

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552 expenses incurred by the service agreement holder for loss or
553 damage to a covered vehicle, including, but not limited to,
554 applicable deductibles under a motor vehicle insurance policy;
555 temporary vehicle rental expenses; expenses for a replacement
556 vehicle that is at least the same year, make, and model of the
557 stolen motor vehicle; sales taxes or registration fees for a
558 replacement vehicle that is at least the same year, make, and
559 model of the stolen vehicle; or other incidental expenses
560 specified in the agreement.

561 b. "Vehicle protection product" means a product or system
562 installed or applied to a motor vehicle or designed to prevent
563 the theft of the motor vehicle or assist in the recovery of the
564 stolen motor vehicle.

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

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

576 a. Reimburse a service agreement holder for the following
577 expenses, at a minimum: deductibles applicable to comprehensive
578 coverage under the service agreement holder's motor vehicle
579 insurance policy; temporary vehicle rental expenses; sales taxes
580 and registration fees on a replacement vehicle that is at least

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581 the same year, make, and model of the stolen motor vehicle; and
582 the difference between the benefits paid to the service
583 agreement holder for the stolen vehicle under the service
584 agreement holder's comprehensive coverage and the actual cost of
585 a replacement vehicle that is at least the same year, make, and
586 model of the stolen motor vehicle; or

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

589

590 Payments shall not duplicate any benefits or expenses paid to
591 the service agreement holder by the insurer providing
592 comprehensive coverage under a motor vehicle insurance policy
593 covering the stolen motor vehicle; however, the payment of
594 vehicle protection expenses at a preestablished flat amount of
595 \$5,000 or less does not duplicate any benefits or expenses
596 payable under any comprehensive motor vehicle insurance policy;
597 or

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

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

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

609 634.031 License required.—

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

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

616 634.041 Qualifications for license.—To qualify for and hold
617 a license to issue service agreements in this state, a service
618 agreement company must be in compliance with this part, with
619 applicable rules of the commission, with related sections of the
620 Florida Insurance Code, and with its charter powers and must
621 comply with the following:

622 (8)

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

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

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

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

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

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

654
655 All funds or premiums remitted to an insurer by a motor vehicle
656 service agreement company under this part shall remain in the
657 care, custody, and control of the insurer and shall be counted
658 as an asset of the insurer; provided, however, this requirement
659 does not apply when the insurer and the motor vehicle service
660 agreement company are affiliated companies and members of an
661 insurance holding company system. If the motor vehicle service
662 agreement company chooses to comply with this paragraph but also
663 maintains a reserve to pay claims, such reserve shall only be
664 considered an asset of the covered motor vehicle service
665 agreement company and may not be simultaneously counted as an
666 asset of any other entity.

667 (11)

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668 (b) Notwithstanding any other requirement of this part, a
669 service agreement company maintaining an unearned premium
670 reserve on all service agreements in accordance with paragraph
671 (8) (a) may offer service agreements providing vehicle protection
672 expenses if it maintains contractual liability insurance only on
673 all service agreements providing vehicle protection expenses and
674 continues to maintain the 50-percent reserve for all service
675 agreements not providing vehicle protection expenses. A service
676 agreement company maintaining contractual liability insurance
677 for all service agreements providing vehicle protection expenses
678 and the 50-percent reserve for all other service agreements
679 must, in the service agreement register as required under s.
680 634.136~~(2)(4)~~, distinguish between insured service agreements
681 providing vehicle protection expenses and service agreements not
682 providing vehicle protection expenses.

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

687 634.095 Prohibited acts.—Any service agreement company or
688 salesperson that engages in one or more of the following acts
689 is, in addition to any applicable denial, suspension,
690 revocation, or refusal to renew or continue any appointment or
691 license, guilty of a misdemeanor of the second degree,
692 punishable as provided in s. 775.082 or s. 775.083:

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

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

696 1. The service agreement company's affiliation with a motor

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697 vehicle manufacturer;

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

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

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

707 (7) Remitting premiums received on motor vehicle service
708 agreements sold to any person other than the licensed service
709 agreement company that is obligated to perform under such
710 agreement, if the agreement between such company and the
711 salesperson requires that premiums be submitted directly to the
712 service agreement company.

713 Section 14. Effective upon this act becoming a law, section
714 634.121, Florida Statutes, is amended to read:

715 634.121 ~~Filing of~~ Forms, required procedures, provisions.—

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

725 ~~(a) After an application has been approved, a licensee is~~

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726 ~~not required to submit brochures or advertisement to the office~~
727 ~~for approval; however, a licensee may not have published, and a~~
728 ~~person may not publish, any brochure or advertisement which is~~
729 ~~untrue, deceptive, or misleading or which contains~~
730 ~~misrepresentations or omissions of material fact.~~

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

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

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755 ~~(2) Every filing required under this section must be made~~
756 ~~not less than 30 days in advance of issuance or use. At the~~
757 ~~expiration of 30 days from the date of filing, a form so filed~~
758 ~~becomes approved unless prior thereto it has been affirmatively~~
759 ~~disapproved by written notice of the office. The office may~~
760 ~~extend by not more than an additional 15 days the period within~~
761 ~~which it may affirmatively approve or disapprove any form by~~
762 ~~giving notice of extension before the expiration of the initial~~
763 ~~30-day period. At the expiration of any period as so extended~~
764 ~~and in the absence of prior affirmative disapproval, the form~~
765 ~~becomes approved.~~

766 (1)~~(3)~~ Before the sale of any service agreement, written
767 notice must be given to the prospective purchaser by the service
768 agreement company or its agent or salesperson, ~~on an office-~~
769 ~~approved form,~~ that purchase of the service agreement is not
770 required in order to purchase or obtain financing for a motor
771 vehicle.

772 (2)~~(4)~~ All motor vehicle service agreements are assignable
773 in a consumer transaction and must contain a statement in
774 conspicuous, boldfaced type, informing the purchaser of the
775 service agreement of her or his right to assign it to a
776 subsequent retail purchaser of the motor vehicle covered by the
777 service agreement and all conditions on such right of transfer.
778 The assignment must occur within a period of time specified in
779 the agreement, which period may not expire earlier than 15 days
780 after the date of the sale or transfer of the motor vehicle. The
781 service agreement company may charge an assignment fee not to
782 exceed \$40.

783 (3)~~(5)~~ (a) Each service agreement must contain a

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784 cancellation provision. Any service agreement is cancelable by
785 the purchaser within 60 days after purchase. The refund must be
786 100 percent of the gross premium paid, less any claims paid on
787 the agreement. A reasonable administrative fee may be charged
788 not to exceed 5 percent of the gross premium paid by the
789 agreement holder.

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

793 1. There has been a material misrepresentation or fraud at
794 the time of sale of the service agreement;

795 2. The agreement holder has failed to maintain the motor
796 vehicle as prescribed by the manufacturer;

797 3. The odometer has been tampered with or disabled and the
798 agreement holder has failed to repair the odometer; or

799 4. For nonpayment of premium by the agreement holder, in
800 which case the service agreement company shall provide the
801 agreement holder notice of cancellation by certified mail.

802
803 If the service agreement is canceled by the insurer or service
804 agreement company, the return of premium must not be less than
805 100 percent of the paid unearned pro rata premium, less any
806 claims paid on the agreement. If, after 60 days, the service
807 agreement is canceled by the service agreement holder, the
808 insurer or service agreement company shall return directly to
809 the agreement holder not less than 90 percent of the unearned
810 pro rata premium, less any claims paid on the agreement. The
811 service agreement company remains responsible for full refunds
812 to the consumer on canceled service agreements. However, the

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813 salesperson and agent are responsible for the refund of the
814 unearned pro rata commission. A service agreement company may
815 effectuate refunds through the issuing salesperson or agent.

816 (4)~~(6)~~ If the service agreement is canceled, pursuant to an
817 order of liquidation, the salesperson or agent is responsible
818 for refunding, and must refund, to the receiver the unearned pro
819 rata commission.

820 (5)~~(7)~~ If a service agreement company violates any lawful
821 order of the office or fails to meet its contractual obligations
822 under this part, upon notice from the office, the sales
823 representative or agent must refund to the service agreement
824 holder the unearned pro rata commission, unless the sales
825 representative or agent has made other arrangements,
826 satisfactory to the office, with the service agreement holder.

827 (6)~~(8)~~ Each service agreement, which includes a copy of the
828 application form, must be mailed or delivered to the agreement
829 holder within 45 days after the date of purchase.

830 (7)~~(9)~~ Each service agreement form must contain in
831 conspicuous, boldfaced type any statement or clause that places
832 restrictions or limitations on the benefits offered or disclose
833 such restrictions or limitations in regular type in a section of
834 the service agreement containing a conspicuous, boldfaced type
835 heading.

836 (8)~~(10)~~ If an insurer or service agreement company intends
837 to use or require the use of remanufactured or used replacement
838 parts, each service agreement form as well as all service
839 agreement brochures must contain in conspicuous, boldfaced type
840 a statement to that effect.

841 (9)~~(11)~~ Each service agreement form as well as all service

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842 agreement company sales brochures must clearly identify the
843 name, address, and Florida license number of the licensed
844 insurer or service agreement company.

845 (10)~~(12)~~ If a service agreement contains a rental car
846 provision, it must disclose the terms and conditions of this
847 benefit in conspicuous, boldfaced type or disclose such
848 restrictions or limitations in regular type in a section of the
849 service agreement containing a conspicuous, boldfaced type
850 heading.

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

858 Section 15. Effective upon this act becoming a law, section
859 634.1213, Florida Statutes, is amended to read:

860 634.1213 Noncompliant forms ~~Grounds for disapproval.~~—The
861 office may order a service agreement company to stop using
862 ~~disapprove any service agreement form that or service agreement~~
863 ~~company sales brochures filed under s. 634.121, or withdraw any~~
864 ~~previous approval thereof, if the form or brochure:~~

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

868 (2) Contains or incorporates by reference when such
869 incorporation is otherwise permissible, any inconsistent,
870 ambiguous, or misleading clauses, or exceptions and conditions

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871 which deceptively affect the risk purported to be assumed in the
872 general coverage of the service agreement.

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

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

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

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

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

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

888 634.137 Financial and statistical reporting requirements.-

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

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

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

896 ~~(c) Reports for a period ending June 30 are due by August~~
897 ~~15.~~

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

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900 Section 17. Effective upon this act becoming a law, section
901 634.141, Florida Statutes, is amended to read:

902 634.141 Examination of companies.—

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

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

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

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

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

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

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

922 634.1815 Rebating; when allowed.—

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

925 (b) The rebate shall be in accordance with a rebating
926 schedule filed with and approved by the ~~salesperson with the~~
927 service agreement company issuing the service agreement to which
928 the rebate applies. The service agreement company shall maintain

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929 a copy of all rebating schedules for a period of 3 years.

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

933 634.282 Unfair methods of competition and unfair or
934 deceptive acts or practices defined.—The following methods,
935 acts, or practices are defined as unfair methods of competition
936 and unfair or deceptive acts or practices:

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

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

945 (b) Knowingly collecting as a premium or charge for a motor
946 vehicle service agreement any sum in excess of or less than the
947 premium or charge applicable to such motor vehicle service
948 agreement, ~~in accordance with the applicable classifications and~~
949 ~~rates as filed with the office, and as specified in the motor~~
950 vehicle service agreement. However, there is no violation of
951 this subsection if excess premiums or charges are refunded to
952 the service agreement holder within 45 days after receipt of the
953 agreement by the service agreement company or if the licensed
954 sales representative's commission is reduced by the amount of
955 any premium undercharge.

956 (17) FAILURE TO PROVIDE TERMS AND CONDITIONS PRIOR TO
957 SALE.—Failing to provide a consumer with a complete sample copy

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958 of the terms and conditions of the service agreement prior to
959 the time of sale upon a request for the same by the consumer. A
960 service agreement company may comply with this subsection by
961 providing the consumer with a sample copy of the terms and
962 conditions of the service agreement or by directing the consumer
963 to a website that displays a complete sample of the terms and
964 conditions of the service agreement.

965
966 No provision of this section shall be deemed to prohibit a
967 service agreement company or a licensed insurer from giving to
968 service agreement holders, prospective service agreement
969 holders, and others for the purpose of advertising, any article
970 of merchandise having a value of not more than \$25.

971 Section 20. Effective upon this act becoming a law, section
972 634.301, Florida Statutes, as amended by section 1 of chapter
973 2007-235, Laws of Florida, is amended to read:

974 634.301 Definitions.—As used in this part, the term:

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

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

984 (2)(3) "Home warranty" or "warranty" means any contract or
985 agreement.

986 ~~(a) Offered in connection with the sale of residential~~

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987 ~~property;~~

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

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

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

999
1000 whereby a person undertakes to indemnify the warranty holder
1001 against the cost of repair or replacement, or actually furnishes
1002 repair or replacement, of any structural component or appliance
1003 of a home, necessitated by wear and tear or an inherent defect
1004 of any such structural component or appliance or necessitated by
1005 the failure of an inspection to detect the likelihood of any
1006 such loss. However, this part does not prohibit the giving of
1007 usual performance guarantees by either the builder of a home or
1008 the manufacturer or seller of an appliance, as long as no
1009 identifiable charge is made for such guarantee. This part does
1010 not permit the provision of indemnification against
1011 consequential damages arising from the failure of any structural
1012 component or appliance of a home, which practice constitutes the
1013 transaction of insurance subject to all requirements of the
1014 insurance code. This part does not apply to service contracts
1015 entered into between consumers and nonprofit organizations or

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1016 cooperatives the members of which consist of condominium
1017 associations and condominium owners and which perform repairs
1018 and maintenance for appliances or maintenance of the residential
1019 property. This part does not apply to a contract or agreement
1020 offered ~~in connection with a sale of residential property~~ by a
1021 warranty association in compliance with part III, provided such
1022 contract or agreement only relates to the systems and appliances
1023 of the covered residential property and does not cover any
1024 structural component of the residential property.

1025 (3)~~(4)~~ "Home warranty association" means any corporation or
1026 any other organization, other than an authorized insurer,
1027 issuing home warranties.

1028 (4)~~(5)~~ "Impaired" means having liabilities in excess of
1029 assets.

1030 (5)~~(6)~~ "Insolvent" means the inability of a corporation to
1031 pay its debts as they become due in the usual course of its
1032 business.

1033 (6)~~(7)~~ "Insurance code" means the Florida Insurance Code.

1034 (7)~~(8)~~ "Insurer" means any property or casualty insurer
1035 duly authorized to transact such business in this state.

1036 (8)~~(9)~~ "Listing period" means the period of time
1037 residential property is listed for sale with a licensed real
1038 estate broker, beginning on the date the residence is first
1039 listed for sale and ending on either the date the sale of the
1040 residence is closed, the date the residence is taken off the
1041 market, or the date the listing contract with the real estate
1042 broker expires.

1043 (9)~~(10)~~ "Net assets" means the amount by which the total
1044 statutory assets of an association exceed the total liabilities

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1045 of the association.

1046 (10)~~(11)~~ "Person" includes an individual, company,
1047 corporation, association, insurer, agent, and every other legal
1048 entity.

1049 (11)~~(12)~~ "Premium" means the total consideration received,
1050 or to be received, by an insurer or home warranty association
1051 for or related to the issuance and delivery of any binder or
1052 warranty, including any charges designated as assessments or
1053 fees for policies, surveys, inspections, or service or any other
1054 charges.

1055 (12)~~(13)~~ "Sales representative" means any person with whom
1056 an insurer or home inspection or warranty association has a
1057 contract and who is utilized by such insurer or association for
1058 the purpose of selling or issuing home warranties. The term
1059 includes all employees of an insurer or association engaged
1060 directly in the sale or issuance of home warranties.

1061 (13)~~(14)~~ "Structural component" means the roof, plumbing
1062 system, electrical system, foundation, basement, walls,
1063 ceilings, or floors of a home.

1064 Section 21. Effective upon this act becoming a law,
1065 subsection (4) is added to section 634.303, Florida Statutes, to
1066 read:

1067 634.303 License required.—

1068 (4) Any person who provides, offers to provide, or holds
1069 oneself out as providing or offering to provide home warranties
1070 in this state or from this state without holding a subsisting
1071 license commits, in addition to any other violation, a
1072 misdemeanor of the first degree, punishable as provided in s.
1073 775.082 or s. 775.083.

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1074 Section 22. Effective upon this act becoming a law,
1075 paragraph (f) of subsection (2) of section 634.308, Florida
1076 Statutes, is amended to read:

1077 634.308 Grounds for suspension or revocation of license.—

1078 (2) The license of any home warranty association shall be
1079 suspended, revoked, or not renewed if it is determined that such
1080 association:

1081 (f) Has issued warranty contracts which renewal contracts
1082 provide that the cost of renewal exceeds the then-current cost
1083 for new warranty contracts, unless the increase is supported by
1084 the claims history or claims cost data, or impose a fee for
1085 inspection of the premises.

1086 Section 23. Effective upon this act becoming a law, section
1087 634.312, Florida Statutes, is amended to read:

1088 634.312 Forms; required provisions and procedures Filing;
1089 approval of forms.—

1090 ~~(1) No warranty form or related form shall be issued or~~
1091 ~~used in this state unless it has been filed with and approved by~~
1092 ~~the office. Also upon application for a license, the office~~
1093 ~~shall require the applicant to submit for approval each~~
1094 ~~brochure, pamphlet, circular, form letter, advertisement, or~~
1095 ~~other sales literature or advertising communication addressed or~~
1096 ~~intended for distribution. Approval of the application~~
1097 ~~constitutes approval of such documents, unless the applicant has~~
1098 ~~consented otherwise in writing. The office shall disapprove any~~
1099 ~~document which is untrue, deceptive, or misleading or which~~
1100 ~~contains misrepresentations or omissions of material facts.~~

1101 ~~(a) After an application has been approved, a licensee is~~
1102 ~~not required to submit brochures or advertisement to the office~~

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1103 ~~for approval; however, a licensee may not have published, and a~~
1104 ~~person may not publish, any brochure or advertisement which is~~
1105 ~~untrue, deceptive, or misleading or which contains~~
1106 ~~misrepresentations or omissions of material fact.~~

1107 ~~(b) For purposes of this section, brochures and advertising~~
1108 ~~includes, but is not limited to, any report, circular, public~~
1109 ~~announcement, certificate, or other printed matter or~~
1110 ~~advertising material which is designed or used to solicit or~~
1111 ~~induce any persons to enter into any home warranty agreement.~~

1112 ~~(2) Every such filing shall be made not less than 30 days~~
1113 ~~in advance of issuance or use. At the expiration of 30 days from~~
1114 ~~date of filing, a form so filed shall be deemed approved unless~~
1115 ~~prior thereto it has been affirmatively approved or disapproved~~
1116 ~~by written order of the office.~~

1117 ~~(3) The office shall not approve any such form that imposes~~
1118 ~~a fee for inspection of the premises.~~

1119 (1)~~(4)~~ All home warranty contracts are assignable in a
1120 consumer transaction and must contain a statement informing the
1121 purchaser of the home warranty of her or his right to assign it,
1122 at least within 15 days from the date the home is sold or
1123 transferred, to a subsequent retail purchaser of the home
1124 covered by the home warranty and all conditions on such right of
1125 transfer. The home warranty company may charge an assignment fee
1126 not to exceed \$40. Home warranty assignments include, but are
1127 not limited to, the assignment from a home builder who purchased
1128 the home warranty to a subsequent home purchaser.

1129 (2)~~(5)~~ Subject to the insurer's or home warranty
1130 association's requirement as to payment of premium, every home
1131 warranty shall be mailed or delivered to the warranty holder not

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1132 later than 45 days after the effectuation of coverage, and the
1133 application is part of the warranty contract document.

1134 (3)~~(6)~~ All home warranty contracts must state in
1135 conspicuous, boldfaced type that the home warranty may not
1136 provide listing period coverage free of charge.

1137 (4)~~(7)~~ All home warranty contracts must disclose any
1138 exclusions, restrictions, or limitations on the benefits offered
1139 or the coverage provided by the home warranty contract in
1140 boldfaced type, and must contain, in boldfaced type, a statement
1141 on the front page of the contract substantially similar to the
1142 following: "Certain items and events are not covered by this
1143 contract. Please refer to the exclusions listed on page of
1144 this document."

1145 (5)~~(8)~~ Each home warranty contract shall contain a
1146 cancellation provision. Any home warranty agreement may be
1147 canceled by the purchaser within 10 days after purchase. The
1148 refund must be 100 percent of the gross premium paid, less any
1149 claims paid on the agreement. A reasonable administrative fee
1150 may be charged, not to exceed 5 percent of the gross premium
1151 paid by the warranty agreement holder. After the home warranty
1152 agreement has been in effect for 10 days, if the contract is
1153 canceled by the warranty holder, a return of premium shall be
1154 based upon 90 percent of unearned pro rata premium less any
1155 claims that have been paid. If the contract is canceled by the
1156 association for any reason other than for fraud or
1157 misrepresentation, a return of premium shall be based upon 100
1158 percent of unearned pro rata premium, less any claims paid on
1159 the agreement.

1160 (6) By July 1, 2011, each home warranty contract sold in

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1161 this state must be accompanied by a written disclosure to the
1162 consumer that the rate charged for the contract is not subject
1163 to regulation by the office. A home warranty association may
1164 comply with this requirement by including such disclosure in its
1165 home warranty contract form or in a separate written notice
1166 provided to the consumer at the time of sale.

1167 Section 24. Effective upon this act becoming a law, section
1168 634.3123, Florida Statutes, is amended to read:

1169 634.3123 Noncompliant ~~Grounds for disapproval of forms.~~—The
1170 office may order a home warranty association to stop using any
1171 contract shall disapprove any form that filed under s. 634.312
1172 ~~or withdraw any previous approval if the form:~~

1173 (1) Is in violation of or does not comply with this part.

1174 (2) Contains or incorporates by reference, when such
1175 incorporation is otherwise permissible, any inconsistent,
1176 ambiguous, or misleading clauses or exceptions or conditions
1177 which deceptively affect the risk purported to be assumed in the
1178 general coverage of the contract.

1179 (3) Has any title, heading, or other indication of its
1180 provisions which is misleading.

1181 (4) Is printed or otherwise reproduced in such a manner as
1182 to render any material provision of the form illegible.

1183 (5) Provides that the cost of renewal exceeds the then-
1184 current cost for new warranty contracts, unless the increase is
1185 supported by the claims history or claims cost data, or impose a
1186 fee for inspection of the premises.

1187 Section 25. Effective upon this act becoming a law, section
1188 634.314, Florida Statutes, is amended to read:

1189 634.314 Examination of associations.—

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1190 (1) Home warranty associations licensed under this part may
1191 ~~shall~~ be subject to periodic examinations by the office, in the
1192 same manner and subject to the same terms and conditions as
1193 apply to insurers under part II of chapter 624 of the insurance
1194 code.

1195 (2) The office shall determine whether to conduct an
1196 examination of a home warranty association by considering:

1197 (a) The amount of time that the association has been
1198 continuously licensed and operating under the same management
1199 and control.

1200 (b) The association's history of compliance with applicable
1201 law.

1202 (c) The number of consumer complaints against the
1203 association.

1204 (d) The financial condition of the association,
1205 demonstrated by the financial reports submitted pursuant to s.
1206 634.313.

1207 Section 26. Effective upon this act becoming a law,
1208 paragraph (b) of subsection (1) of section 634.3205, Florida
1209 Statutes, is amended to read:

1210 634.3205 Rebating; when allowed.—

1211 (1) No sales representative shall rebate any portion of his
1212 or her commission except as follows:

1213 (b) The rebate shall be in accordance with a rebating
1214 schedule filed with and approved by the ~~sales representative~~
1215 ~~with the~~ home warranty association issuing the home warranty to
1216 which the rebate applies. The home warranty association shall
1217 maintain a copy of all rebating schedules for a period of 3
1218 years.

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1219 Section 27. Effective upon this act becoming a law,
1220 subsection (8) of section 634.336, Florida Statutes, is amended,
1221 and subsection (9) is added to that section, to read:

1222 634.336 Unfair methods of competition and unfair or
1223 deceptive acts or practices defined.—The following methods,
1224 acts, or practices are defined as unfair methods of competition
1225 and unfair or deceptive acts or practices:

1226 (8) COERCION OF DEBTORS.—When a home warranty is sold ~~as~~
1227 ~~authorized by s. 634.301(3)(b):~~

1228 (a) Requiring, as a condition precedent or condition
1229 subsequent to the lending of the money or the extension of the
1230 credit or any renewal thereof, that the person to whom such
1231 credit is extended purchase a home warranty; or

1232 (b) Failing to provide the advice required by s. 634.344.

1233 (9) FAILURE TO PROVIDE TERMS AND CONDITIONS PRIOR TO SALE.—
1234 Failing to provide a consumer with a complete sample copy of the
1235 terms and conditions of the home warranty contract prior to the
1236 time of sale upon a request for the same by the consumer. A home
1237 warranty association may comply with this subsection by
1238 providing the consumer with a sample copy of the terms and
1239 conditions of the home warranty contract or by directing the
1240 consumer to a website that displays a complete sample of the
1241 terms and conditions of the contract.

1242 Section 28. Effective upon this act becoming a law, section
1243 634.344, Florida Statutes, is amended to read:

1244 634.344 Coercion of debtor prohibited.—

1245 (1) When a home warranty is sold in connection with the
1246 lending of money ~~as authorized by s. 634.301(3)(b)~~, a ~~no~~ person
1247 may not require, as a condition precedent or condition

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1248 subsequent to the lending of the money or the extension of the
1249 credit or any renewal thereof, that the person to whom such
1250 money or credit is extended purchase a home warranty.

1251 (2) When a home warranty is purchased in connection with
1252 the lending of money ~~as authorized by s. 634.301(3)(b)~~, the
1253 insurer or home warranty association or the sales representative
1254 of the insurer or home warranty association shall advise the
1255 borrower or purchaser in writing that Florida law prohibits the
1256 lender from requiring the purchase of a home warranty as a
1257 condition precedent or condition subsequent to the making of the
1258 loan.

1259 Section 29. Effective upon this act becoming a law,
1260 subsection (5) of section 634.401, Florida Statutes, is amended
1261 to read:

1262 634.401 Definitions.—As used in this part, the term:

1263 (5) "Indemnify" means to undertake repair or replacement of
1264 a consumer product, or pay compensation for such repair or
1265 replacement by cash, check, store credit, gift card, or other
1266 similar means, in return for the payment of a segregated
1267 premium, when such consumer product suffers operational failure.

1268 Section 30. Effective upon this act becoming a law,
1269 subsection (5) is added to section 634.403, Florida Statutes, to
1270 read:

1271 634.403 License required.—

1272 (5) Any person who provides, offers to provide, or holds
1273 oneself out as providing or offering to provide a service
1274 warranty in this state or from this state without holding a
1275 subsisting license commits, in addition to any other violation,
1276 a misdemeanor of the first degree, punishable as provided in s.

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1277 775.082 or s. 775.083.

1278 Section 31. Effective upon this act becoming a law,
1279 paragraph (e) of subsection (3) of section 634.406, Florida
1280 Statutes, is amended to read:

1281 634.406 Financial requirements.—

1282 (3) An association will not be required to establish an
1283 unearned premium reserve if it has purchased contractual
1284 liability insurance which demonstrates to the satisfaction of
1285 the office that 100 percent of its claim exposure is covered by
1286 such policy. The contractual liability insurance shall be
1287 obtained from an insurer that holds a certificate of authority
1288 to do business within the state. For the purposes of this
1289 subsection, the contractual liability policy shall contain the
1290 following provisions:

1291 (e) In the event the issuer of the contractual liability
1292 policy is fulfilling the service warranty covered by policy and
1293 in the event the service warranty holder cancels the service
1294 warranty, it is the responsibility of the contractual liability
1295 policy issuer to effectuate a full refund of unearned premium to
1296 the consumer. This refund shall be subject to the cancellation
1297 fee provisions of s. 634.414~~(3)~~. The salesperson or agent shall
1298 refund to the contractual liability policy issuer the unearned
1299 pro rata commission.

1300 Section 32. Effective upon this act becoming a law, section
1301 634.414, Florida Statutes, is amended to read:

1302 634.414 Forms; required provisions ~~Filing; approval of~~
1303 ~~forms.~~—

1304 ~~(1) No service warranty form or related form shall be~~
1305 ~~issued or used in this state unless it has been filed with and~~

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1306 approved by the office. Upon application for a license, the
1307 office shall require the applicant to submit for approval each
1308 brochure, pamphlet, circular, form letter, advertisement, or
1309 other sales literature or advertising communication addressed or
1310 intended for distribution. The office shall disapprove any
1311 document which is untrue, deceptive, or misleading or which
1312 contains misrepresentations or omissions of material facts.

1313 (a) After an application has been approved, a licensee is
1314 not required to submit brochures or advertisement to the office
1315 for approval; however, a licensee may not have published, and a
1316 person may not publish, any brochure or advertisement which is
1317 untrue, deceptive, or misleading or which contains
1318 misrepresentations or omissions of material fact.

1319 (b) For purposes of this section, brochures and advertising
1320 includes, but is not limited to, any report, circular, public
1321 announcement, certificate, or other printed matter or
1322 advertising material which is designed or used to solicit or
1323 induce any persons to enter into any service warranty agreement.

1324 (2) Each filing shall be made not less than 30 days in
1325 advance of its issuance or use. At the expiration of 30 days
1326 from date of filing, a form so filed shall be deemed approved
1327 unless prior thereto it has been affirmatively disapproved by
1328 written order of the office.

1329 (1) ~~(3)~~ Each service warranty contract shall contain a
1330 cancellation provision. If ~~In the event~~ the contract is canceled
1331 by the warranty holder, return of premium shall be based upon no
1332 less than 90 percent of unearned pro rata premium less any
1333 claims that have been paid or less the cost of repairs made on
1334 behalf of the warranty holder. If ~~In the event~~ the contract is

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1335 canceled by the association, return of premium shall be based
1336 upon 100 percent of unearned pro rata premium, less any claims
1337 paid or the cost of repairs made on behalf of the warranty
1338 holder.

1339 (2) By July 1, 2011, each service warranty contract sold in
1340 this state must be accompanied by a written disclosure to the
1341 consumer that the rate charged for the contract is not subject
1342 to regulation by the office. A service warranty association may
1343 comply with this requirement by including such disclosure in its
1344 service warranty contract form or in a separate written notice
1345 provided to the consumer at the time of sale.

1346 ~~(4) The name of the service warranty association issuing~~
1347 ~~the contract must be more prominent than any other company name~~
1348 ~~or program name on the service warranty form or sales brochure.~~

1349 Section 33. Effective upon this act becoming a law, section
1350 634.4145, Florida Statutes, is amended to read:

1351 634.4145 Noncompliant Grounds for disapproval of forms.—The
1352 office may order a service warranty association to stop using
1353 any contract shall disapprove any form that filed under s.
1354 ~~634.414 if the form:~~

1355 (1) Violates this part;

1356 (2) Is misleading in any respect;

1357 (3) Is reproduced so that any material provision is
1358 substantially illegible; or

1359 (4) Contains provisions which are unfair or inequitable or
1360 which encourage misrepresentation.

1361 Section 34. Effective upon this act becoming a law, section
1362 634.415, Florida Statutes, is amended to read:

1363 634.415 Tax on premiums; annual statement; reports~~†~~

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1364 ~~quarterly statements.-~~

1365 (1) In addition to the license fees provided in this part
1366 for service warranty associations and license taxes as provided
1367 in the insurance code as to insurers, each such association and
1368 insurer shall, annually on or before March 1, file with the
1369 office its annual statement, in the form prescribed by the
1370 commission, showing all premiums or assessments received by it
1371 in connection with the issuance of service warranties in this
1372 state during the preceding calendar year and using accounting
1373 principles which will enable the office to ascertain whether the
1374 financial requirements set forth in s. 634.406 have been
1375 satisfied.

1376 (2) The gross amount of premiums and assessments is subject
1377 to the sales tax imposed by s. 212.0506.

1378 (3) The office may levy a fine of up to \$100 a day for each
1379 day an association neglects to file the annual statement in the
1380 form and within the time provided by this part. The amount of
1381 the fine shall be established by rules adopted by the
1382 commission. The office shall deposit all sums collected by it
1383 under this section to the credit of the Insurance Regulatory
1384 Trust Fund.

1385 ~~(4) In addition to an annual statement, the office may~~
1386 ~~require of licensees, under oath and in the form prescribed by~~
1387 ~~it, quarterly statements or special reports which it deems~~
1388 ~~necessary to the proper supervision of licensees under this~~
1389 ~~part. For manufacturers as defined in s. 634.401, the office~~
1390 ~~shall require only the annual audited financial statements of~~
1391 ~~the warranty operations and corporate reports as filed by the~~
1392 ~~manufacturer with the Securities and Exchange Commission,~~

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1393 ~~provided that the office may require additional reporting by~~
1394 ~~manufacturers upon a showing by the office that annual reporting~~
1395 ~~is insufficient to protect the interest of purchasers of service~~
1396 ~~warranty agreements in this state or fails to provide sufficient~~
1397 ~~proof of the financial status required by this part.~~

1398 (4) ~~(5)~~ The office may suspend or revoke the license of a
1399 service warranty association failing to file its annual
1400 statement ~~or quarterly report~~ when due.

1401 (5) ~~(6)~~ The commission may by rule require each service
1402 warranty association to submit to the office, as the commission
1403 may designate, all or part of the information contained in the
1404 financial statements and reports required by this section in a
1405 computer-readable form compatible with the electronic data
1406 processing system specified by the office.

1407 Section 35. Effective upon this act becoming a law, section
1408 634.416, Florida Statutes, is amended to read:

1409 634.416 Examination of associations.—

1410 (1) (a) Service warranty associations licensed under this
1411 part may be ~~are~~ subject to periodic examination by the office,
1412 in the same manner and subject to the same terms and conditions
1413 that apply to insurers under part II of chapter 624.

1414 (b) The office shall determine whether to conduct an
1415 examination of a service warranty association by considering:

1416 1. The amount of time that the association has been
1417 continuously licensed and operating under the same management
1418 and control.

1419 2. The association's history of compliance with applicable
1420 law.

1421 3. The number of consumer complaints against the

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1422 association.

1423 4. The financial condition of the association, demonstrated
1424 by the financial reports submitted pursuant to s. 634.313.

1425 (2) However, The rate charged a service warranty
1426 association by the office for examination may be adjusted to
1427 reflect the amount collected for the Form 10-K filing fee as
1428 provided in this section.

1429 (3) On or before May 1 of each year, an association may
1430 submit to the office the Form 10-K, as filed with the United
1431 States Securities and Exchange Commission pursuant to the
1432 Securities Exchange Act of 1934, as amended. Upon receipt and
1433 review of the most current Form 10-K, the office may waive the
1434 examination requirement; if the office determines not to waive
1435 the examination, such examination will be limited to that
1436 examination necessary to ensure compliance with this part. The
1437 Form 10-K shall be accompanied by a filing fee of \$2,000 to be
1438 deposited into the Insurance Regulatory Trust Fund.

1439 (4)~~(2)~~ The office is not required to examine an association
1440 that has less than \$20,000 in gross written premiums as
1441 reflected in its most recent annual statement. The office may
1442 examine such an association if it has reason to believe that the
1443 association may be in violation of this part or is otherwise in
1444 an unsound financial condition. If the office examines an
1445 association that has less than \$20,000 in gross written
1446 premiums, the examination fee may not exceed 5 percent of the
1447 gross written premiums of the association.

1448 Section 36. Effective upon this act becoming a law,
1449 paragraph (b) of subsection (1) of section 634.4225, Florida
1450 Statutes, is amended to read:

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1451 634.4225 Rebating; when allowed.—

1452 (1) No sales representative shall rebate any portion of his
1453 or her commission except as follows:

1454 (b) The rebate shall be in accordance with a rebating
1455 schedule filed with and approved by the ~~sales representative~~
1456 ~~with the~~ association issuing the service warranty to which the
1457 rebate applies. The association shall maintain a copy of all
1458 rebating schedules for a period of 3 years.

1459 Section 37. Effective upon this act becoming a law,
1460 subsection (9) is added to section 634.436, Florida Statutes, to
1461 read:

1462 634.436 Unfair methods of competition and unfair or
1463 deceptive acts or practices defined.—The following methods,
1464 acts, or practices are defined as unfair methods of competition
1465 and unfair or deceptive acts or practices:

1466 (9) FAILURE TO PROVIDE TERMS AND CONDITIONS PRIOR TO SALE.—
1467 Failing to provide a consumer with a complete sample copy of the
1468 terms and conditions of the service warranty prior to before the
1469 time of sale upon a request for the same by the consumer. A
1470 service warranty association may comply with this subsection by
1471 providing the consumer with a sample copy of the terms and
1472 conditions of the warranty contract or by directing the consumer
1473 to a website that displays a complete sample of the terms and
1474 conditions of the contract.

1475 Section 38. Effective upon this act becoming a law,
1476 subsections (2), (3), (4), and (5) of section 634.136, Florida
1477 Statutes, are amended to read:

1478 634.136 Office records required.—Each licensed motor
1479 vehicle service contract company, as a minimum requirement for

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1480 permanent office records, shall maintain:

1481 ~~(2) Memorandum journals showing the blank service agreement~~
1482 ~~forms issued to the company salespersons and recording the~~
1483 ~~delivery of the forms to the dealer.~~

1484 ~~(3) Memorandum journals showing the service contract forms~~
1485 ~~received by the motor vehicle dealers and indicating the~~
1486 ~~disposition of the forms by the dealer.~~

1487 (2)~~(4)~~ A detailed service agreement register, in numerical
1488 order by service agreement number, of agreements in force, which
1489 register shall include the following information: service
1490 agreement number, date of issue, issuing dealer, name of
1491 agreement holder, whether the agreement is covered by
1492 contractual liability insurance or the unearned premium reserve
1493 account, description of motor vehicle, service agreement period
1494 and mileage, gross premium, commission to salespersons,
1495 commission to dealer, and net premium.

1496 (3)~~(5)~~ A detailed claims register, in numerical order by
1497 service agreement number, which register shall include the
1498 following information: service agreement number, date of issue,
1499 date of claim, type of claim, issuing dealer, amount of claim,
1500 date claim paid, and, if applicable, disposition other than
1501 payment and reason therefor.

1502 Section 39. Effective upon this act becoming a law,
1503 subsections (4) and (5) of section 634.313, Florida Statutes,
1504 are amended to read:

1505 634.313 Tax on premiums; annual statement; reports.—

1506 ~~(4) In addition to an annual statement, the office may~~
1507 ~~require of licensees, under oath and in the form prescribed by~~
1508 ~~it, such additional regular or special reports as it may deem~~

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1509 ~~necessary to the proper supervision of licensees under this~~
1510 ~~part.~~

1511 (4)~~(5)~~ The commission may by rule require each home
1512 warranty association to submit to the office, as the commission
1513 may designate, all or part of the information contained in the
1514 financial reports required by this section in a computer-
1515 readable form compatible with the electronic data processing
1516 system specified by the office.

1517 Section 40. Effective upon this act becoming a law,
1518 sections 634.1216 and 634.3126, Florida Statutes, are repealed.

1519 Section 41. This act may be cited as the "Safeguard Our
1520 Seniors Act."

1521 Section 42. Paragraph (a) of subsection (1) of section
1522 624.310, Florida Statutes, is amended to read:

1523 624.310 Enforcement; cease and desist orders; removal of
1524 certain persons; fines.-

1525 (1) DEFINITIONS.-For the purposes of this section, the
1526 term:

1527 (a) "Affiliated party" means any person who directs or
1528 participates in the conduct of the affairs of a licensee and who
1529 is:

1530 1. A director, officer, employee, trustee, committee
1531 member, or controlling stockholder of a licensee or a subsidiary
1532 or service corporation of the licensee, other than a controlling
1533 stockholder which is a holding company, or an agent of a
1534 licensee or a subsidiary or service corporation of the licensee;

1535 2. A person who has filed or is required to file a
1536 statement or any other information required to be filed under s.
1537 628.461 or s. 628.4615;

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1538 3. A stockholder, other than a stockholder that is a
1539 holding company of the licensee, who participates in the conduct
1540 of the affairs of the licensee; ~~or~~

1541 4. An independent contractor who:

1542 a. Renders a written opinion required by the laws of this
1543 state under her or his professional credentials on behalf of the
1544 licensee, which opinion is reasonably relied on by the
1545 department or office in the performance of its duties; or

1546 b. Affirmatively and knowingly conceals facts, through a
1547 written misrepresentation to the department or office, with
1548 knowledge that such misrepresentation:

1549 (I) Constitutes a violation of the insurance code or a
1550 lawful rule or order of the department, commission, or office;
1551 and

1552 (II) Directly and materially endangers the ability of the
1553 licensee to meet its obligations to policyholders; or.

1554 5. A third-party marketer who aids or abets a licensee in a
1555 violation of the insurance code relating to the sale of an
1556 annuity to a person 65 years of age or older.

1557
1558 For the purposes of this subparagraph, any representation of
1559 fact made by an independent contractor on behalf of a licensee,
1560 affirmatively communicated as a representation of the licensee
1561 to the independent contractor, shall not be considered a
1562 misrepresentation by the independent contractor.

1563 Section 43. Section 624.46223, Florida Statutes, is created
1564 to read:

1565 624.46223 Notice of intent to withdraw.—Any association,
1566 fund, or pool authorized by state law and created for the

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1567 purpose of forming a risk-management mechanism or providing self
1568 insurance for public entities in this state may not require its
1569 members to provide more than 45 days' notice of the member's
1570 intention to withdraw as a prerequisite for withdrawing from the
1571 association, fund, or pool.

1572 Section 44. Paragraph (j) of subsection (2) of section
1573 626.221, Florida Statutes, is amended to read:

1574 626.221 Examination requirement; exemptions.—

1575 (2) However, no such examination shall be necessary in any
1576 of the following cases:

1577 (j) An applicant for license as a customer representative
1578 who has earned the designation of Accredited Advisor in
1579 Insurance (AAI) from the Insurance Institute of America, the
1580 designation of Certified Insurance Counselor (CIC) from the
1581 Society of Certified Insurance Service Counselors, the
1582 designation of Accredited Customer Service Representative (ACSR)
1583 from the Independent Insurance Agents of America, the
1584 designation of Certified Professional Service Representative
1585 (CPSR) from the National Foundation for Certified Professional
1586 Service Representatives, the designation of Certified Insurance
1587 Service Representative (CISR) from the Society of Certified
1588 Insurance Service Representatives, or the designation of
1589 Certified Insurance Representative (CIR) from the National
1590 Association of Christian Catastrophe Insurance Adjusters. Also,
1591 an applicant for license as a customer representative who has
1592 earned an associate degree or bachelor's degree from an
1593 accredited college or university with at least 9 academic hours
1594 of property and casualty insurance curriculum, or the
1595 equivalent, or has earned the designation of Certified Customer

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1596 Service Representative (CCSR) from the Florida Association of
1597 Insurance Agents, or the designation of Registered Customer
1598 Service Representative (RCSR) from a regionally accredited
1599 postsecondary institution in this state, or the designation of
1600 Professional Customer Service Representative (PCSR) from the
1601 Professional Career Institute, whose curriculum has been
1602 approved by the department and whose curriculum includes
1603 comprehensive analysis of basic property and casualty lines of
1604 insurance and testing at least equal to that of standard
1605 department testing for the customer representative license. The
1606 department shall adopt rules establishing standards for the
1607 approval of curriculum.

1608 Section 45. Subsection (13) of section 626.025, Florida
1609 Statutes, is amended to read:

1610 626.025 Consumer protections.—To transact insurance, agents
1611 shall comply with consumer protection laws, including the
1612 following, as applicable:

1613 (13) The prohibition against the designation of a life
1614 insurance agent or his or her family member as the beneficiary
1615 of life insurance policy sold to an individual other than a
1616 family member under s. 626.798.

1617 Section 46. Paragraph (k) of subsection (3) of section
1618 626.2815, Florida Statutes, is amended to read:

1619 626.2815 Continuing education required; application;
1620 exceptions; requirements; penalties.—

1621 (3)

1622 (k) Any person who holds a license to solicit or sell life
1623 insurance in this state must complete a minimum of 3 hours in
1624 continuing education, approved by the department, on the subject

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1625 of suitability in annuity and life insurance transactions. This
1626 requirement does not apply to an agent who does not have any
1627 active life insurance or annuity contracts. In applying this
1628 exemption, the department may require the filing of a
1629 certification attesting that the agent has not sold life
1630 insurance or annuities during the continuing education
1631 compliance cycle in question and does not have any active life
1632 insurance or annuity contracts. A licensee may use the hours
1633 obtained under this paragraph to satisfy the requirement for
1634 continuing education in ethics under paragraph (a).

1635 Section 47. Subsection (13) is added to section 626.621,
1636 Florida Statutes, to read:

1637 626.621 Grounds for discretionary refusal, suspension, or
1638 revocation of agent's, adjuster's, customer representative's,
1639 service representative's, or managing general agent's license or
1640 appointment.—The department may, in its discretion, deny an
1641 application for, suspend, revoke, or refuse to renew or continue
1642 the license or appointment of any applicant, agent, adjuster,
1643 customer representative, service representative, or managing
1644 general agent, and it may suspend or revoke the eligibility to
1645 hold a license or appointment of any such person, if it finds
1646 that as to the applicant, licensee, or appointee any one or more
1647 of the following applicable grounds exist under circumstances
1648 for which such denial, suspension, revocation, or refusal is not
1649 mandatory under s. 626.611:

1650 (13) Has been the subject of or has had a license, permit,
1651 appointment, registration, or other authority to conduct
1652 business subject to any decision, finding, injunction,
1653 suspension, prohibition, revocation, denial, judgment, final

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1654 agency action, or administrative order by any court of competent
1655 jurisdiction, administrative law proceeding, state agency,
1656 federal agency, national securities, commodities, or option
1657 exchange, or national securities, commodities, or option
1658 association involving a violation of any federal or state
1659 securities or commodities law or any rule or regulation adopted
1660 thereunder, or a violation of any rule or regulation of any
1661 national securities, commodities, or options exchange or
1662 national securities, commodities, or options association.

1663 Section 48. Subsection (3) of section 626.641, Florida
1664 Statutes, is amended to read:

1665 626.641 Duration of suspension or revocation.—

1666 (3)(a) If any of an individual's licenses as an agent or
1667 customer representative, or the eligibility to hold such license
1668 or licenses has same, as to the same individual have been
1669 revoked at two separate times, the department may shall not
1670 thereafter grant or issue any license under this code as to such
1671 individual.

1672 (b) If a license as an agent or customer representative or
1673 the eligibility to hold such a license has been revoked
1674 resulting from the solicitation or sale of an insurance product
1675 to a person 65 years of age or older, the department may not
1676 thereafter grant or issue any license under this code to such
1677 individual.

1678 Section 49. Section 626.798, Florida Statutes, is amended
1679 to read:

1680 626.798 Life agent as beneficiary; prohibition.—No life
1681 agent shall, with respect to the placement of life insurance
1682 coverage with a life insurer covering the life of a person who

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1683 is not a family member of the agent, handle in his or her
1684 capacity as a life agent the placement of such coverage when the
1685 agent placing the coverage or a family member of such agent
1686 ~~receives a commission therefor and~~ is the named beneficiary
1687 under the life insurance policy, unless the life agent or family
1688 member has an insurable interest in the life of such person.
1689 However, the agent or a family member of such agent may not be
1690 designated as a trustee or guardian or be granted power of
1691 attorney unless he or she is a family member of the policy owner
1692 or insured, or is a bank or trust company duly authorized to act
1693 as a fiduciary. For the purposes of this section, the phrase
1694 "not a family member," with respect to a life agent, means an
1695 individual who is not related to the life agent as father,
1696 mother, son, daughter, brother, sister, grandfather,
1697 grandmother, uncle, aunt, first cousin, nephew, niece, husband,
1698 wife, father-in-law, mother-in-law, brother-in-law, sister-in-
1699 law, stepfather, stepmother, stepson, stepdaughter, stepbrother,
1700 stepsister, half brother, or half sister. For the purposes of
1701 this section, the term "insurable interest" means that the life
1702 agent has an actual, lawful, and substantial economic interest
1703 in the safety and preservation of the life of the insured or a
1704 reasonable expectation of benefit or advantage from the
1705 continued life of the insured.

1706 Section 50. Paragraphs (a) and (b) of subsection (3) of
1707 section 626.9521, Florida Statutes, are amended, and subsections
1708 (4) and (5) are added to that section, to read:

1709 626.9521 Unfair methods of competition and unfair or
1710 deceptive acts or practices prohibited; penalties.—

1711 (3) (a) If a person violates s. 626.9541(1) (1), the offense

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1712 known as "twisting," or violates s. 626.9541(1)(aa), the offense
1713 known as "churning," the person commits a misdemeanor of the
1714 first degree, punishable as provided in s. 775.082, and an
1715 administrative fine not greater than \$5,000 shall be imposed for
1716 each nonwillful violation or an administrative fine not greater
1717 than \$75,000 ~~\$40,000~~ shall be imposed for each willful
1718 violation. To impose an administrative fine for a willful
1719 violation ~~criminal penalties~~ under this paragraph, the practice
1720 of "churning" or "twisting" must involve fraudulent conduct.

1721 (b) If a person violates s. 626.9541(1)(ee) by willfully
1722 submitting fraudulent signatures on an application or policy-
1723 related document, the person commits a felony of the third
1724 degree, punishable as provided in s. 775.082, and an
1725 administrative fine not greater than \$5,000 shall be imposed for
1726 each nonwillful violation or an administrative fine not greater
1727 than \$75,000 ~~\$40,000~~ shall be imposed for each willful
1728 violation.

1729 (4) A licensee must make all reasonable efforts to
1730 ascertain the consumer's age at the time an insurance
1731 application is completed.

1732 (5) If a consumer who is a senior citizen is a victim, a
1733 video deposition of the victim may be used for any purpose in
1734 any administrative proceeding conducted pursuant to chapter 120
1735 if all parties are given proper notice of the deposition in
1736 accordance with the Florida Rules of Civil Procedure.

1737 Section 51. Subsection (4) of section 626.99, Florida
1738 Statutes, is amended to read:

1739 626.99 Life insurance solicitation.—

1740 (4) DISCLOSURE REQUIREMENTS.—

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1741 (a) The insurer shall provide to each prospective purchaser
1742 a buyer's guide and a policy summary prior to accepting the
1743 applicant's initial premium or premium deposit, unless the
1744 policy for which application is made provides an unconditional
1745 refund for a period of at least 14 days, or unless the policy
1746 summary contains an offer of such an unconditional refund. In
1747 these instances, ~~which event~~ the buyer's guide and policy
1748 summary must be delivered with the policy or prior to delivery
1749 of the policy.

1750 (b) With respect to fixed and variable annuities, ~~the~~
1751 ~~insurer shall provide to each prospective purchaser a buyer's~~
1752 ~~guide to annuities and a contract summary as provided in the~~
1753 ~~National Association of Insurance Commissioners (NAIC) Model~~
1754 ~~Annuity and Deposit Fund Regulation and the policy must provide~~
1755 ~~an unconditional refund for a period of at least 14 days. For~~
1756 ~~fixed annuities, the buyer's guide shall be in the form as~~
1757 ~~provided by the National Association of Insurance Commissioners~~
1758 ~~(NAIC) Annuity Disclosure Model Regulation, until such time as a~~
1759 ~~buyer's guide is developed by the department, at which time the~~
1760 ~~department guide must be used. For variable annuities, a policy~~
1761 ~~summary may be used, which may be contained in a prospectus,~~
1762 ~~until such time as a buyer's guide is developed by NAIC or the~~
1763 ~~department, at which time one of those guides must be used. If~~
1764 ~~the prospective owner of an annuity contract is 65 years of age~~
1765 ~~or older:~~

1766 1. An unconditional refund of premiums paid for a fixed
1767 annuity contract, including any contract fees or charges, must
1768 be available for a period of 21 days; and

1769 2. An unconditional refund for variable or market value

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1770 annuity contracts must be available for a period of 21 days. The
1771 unconditional refund shall be equal to the cash surrender value
1772 provided in the annuity contract, plus any fees or charges
1773 deducted from the premiums or imposed under the contract. This
1774 subparagraph does not apply if the prospective owner is an
1775 accredited investor, as defined in Regulation D as adopted by
1776 the United States Securities and Exchange Commission.

1777 (c) The insurer shall attach a cover page to any annuity
1778 policy informing the purchaser of the unconditional refund
1779 period prescribed in paragraph (b). The cover page must also
1780 provide contact information for the issuing company and the
1781 selling agent, the department's toll-free help line, and any
1782 other information required by the department by rule. The cover
1783 page is part of the policy and is subject to review by the
1784 office pursuant to s. 627.410.

1785 (d)~~(b)~~ The insurer shall provide a buyer's guide and a
1786 policy summary to any prospective purchaser upon request.

1787 Section 52. Subsections (3) and (5) of section 627.4554,
1788 Florida Statutes, as amended by section 9 of chapter 2008-237,
1789 Laws of Florida, are amended, present subsection (9) of that
1790 section is renumbered as subsection (10), and a new subsection
1791 (9) is added to that section, to read:

1792 627.4554 Annuity investments by seniors.—

1793 (3) DEFINITIONS.—For purposes of this section, the term:

1794 (a) "Annuity contract" means a fixed annuity, equity
1795 indexed annuity, fixed equity indexed annuity, or variable
1796 annuity that is individually solicited, whether the product is
1797 classified as an individual annuity or a group annuity.

1798 (b) "Accredited investor" means any person who comes within

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1799 any of the following categories, or who the issuer reasonably
1800 believes comes within any of the following categories, at the
1801 time of the sale of an annuity to that person:

1802 1. The person's net worth or joint net worth with his or
1803 her spouse, at the time of the purchase, exceeds \$1 million; or

1804 2. The person had an individual income in excess of
1805 \$200,000 in each of the 2 most recent years, or joint income
1806 with his or her spouse in excess of \$300,000 in each of those
1807 years, and has a reasonable expectation of reaching the same
1808 income level in the current year.

1809 (c)~~(b)~~ "Recommendation" means advice provided by an
1810 insurance agent, or an insurer if no insurance agent is
1811 involved, to an individual senior consumer which results in a
1812 purchase or exchange of an annuity in accordance with that
1813 advice.

1814 (d)~~(e)~~ "Senior consumer" means a person 65 years of age or
1815 older. In the event of a joint purchase by more than one party,
1816 a purchaser is considered to be a senior consumer if any of the
1817 parties is age 65 or older.

1818 (5) MITIGATION OF RESPONSIBILITY.—

1819 (a) The office may order an insurer to take reasonably
1820 appropriate corrective action, including rescission of the
1821 policy or contract and a full refund of the premiums paid or the
1822 accumulation value, whichever is greater, for any senior
1823 consumer harmed by a violation of this section by the insurer or
1824 the insurer's insurance agent.

1825 (b) The department may order:

1826 1. An insurance agent to take reasonably appropriate
1827 corrective action, including monetary restitution of penalties

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1828 or fees incurred by the senior consumer, for any senior consumer
1829 harmed by a violation of this section by the insurance agent.

1830 2. A managing general agency or insurance agency that
1831 employs or contracts with an insurance agent to sell or solicit
1832 the sale of annuities to senior consumers to take reasonably
1833 appropriate corrective action for any senior consumer harmed by
1834 a violation of this section by the insurance agent.

1835 (c) The department shall, in addition to any other penalty
1836 authorized under chapter 626, order an insurance agent to pay
1837 restitution to any senior consumer who has been deprived of
1838 money by the agent's misappropriation, conversion, or unlawful
1839 withholding of monies belonging to the senior consumer in the
1840 course of a transaction involving annuities. The amount of
1841 restitution required to be paid pursuant to this paragraph may
1842 not exceed the amount misappropriated, converted, or unlawfully
1843 withheld. This paragraph does not limit or restrict a person's
1844 right to seek other remedies as provided by law.

1845 (d)~~(e)~~ Any applicable penalty under the Florida Insurance
1846 Code for a violation of paragraph (4) (a), paragraph (4) (b), or
1847 subparagraph (4) (c)2. may be reduced or eliminated, according to
1848 a schedule adopted by the office or the department, as
1849 appropriate, if corrective action for the senior consumer was
1850 taken promptly after a violation was discovered.

1851 (9) PROHIBITED CHARGES.—An annuity contract issued to a
1852 senior consumer may not contain a surrender or deferred sales
1853 charge for a withdrawal of money from an annuity exceeding 10
1854 percent of the amount withdrawn. The charge shall be reduced so
1855 that no surrender or deferred sales charge exists after the end
1856 of the 10th policy year or 10 years after the premium is paid,

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1857 whichever is later. This subsection does not apply to annuities
1858 purchased by an accredited investor or to those annuities
1859 specified in paragraph (7) (b).

1860 Section 53. Except as otherwise expressly provided in this
1861 act and except for this section, which shall take effect
1862 becoming a law, this act shall take effect January 1, 2011.