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# TABLE OF CONTENTS

About the Author .............................................................................................................. 3  

**CHAPTER 1  REGULATORY AWARENESS** ........................................................................ 9

- Overview and Learning Objective ...................................................................................... 9
- The Florida Department of Financial Services .......................................................... 9
  - Jurisdiction and Duties of the DFS ........................................................................... 9
  - Chief Financial Officer (CFO) ................................................................................. 10
- The Financial Services Commission ............................................................................. 11
  - Office of Financial Regulation .................................................................................. 11
  - Office of Insurance Regulation ................................................................................. 12
- Licensing Requirements ................................................................................................. 13
  - Background ............................................................................................................... 13
  - Application for License ............................................................................................. 14
  - Qualifications for License ......................................................................................... 14
- Appointment ..................................................................................................................... 15
  - Payment of Fees and Taxes ....................................................................................... 15
  - Appointment Renewal Notification and Termination ............................................... 15
  - Expiration of License and Appointment ................................................................... 15
  - License or Appointment Transferability ................................................................... 16
  - Appointment of Agent or Other Representative ....................................................... 16
  - Continuation of Appointment of Agent or Other Representative ............................. 17
  - Reasons for Termination ........................................................................................... 17
  - Procedure for Refusal, Suspension, or Revocation of License ......................................... 17
  - Failure to Complete CE Requirements ..................................................................... 18
  - Fees ........................................................................................................................... 18
  - Effective Date of Termination of Appointment ........................................................ 18
- Contact Information .......................................................................................................... 18
  - Notice of Change of Address or Name ..................................................................... 19
- Insurance Agency Licensing ............................................................................................. 19
  - License and Appointment Required ........................................................................... 20
  - Application for Insurance Agency License ................................................................ 21
  - Continuation, Expiration of License; Insurance Agencies ........................................ 23
  - Insurance Agency Names; Disapproval .................................................................... 23
  - Branch Agencies ....................................................................................................... 23
  - Transfer of License from Another State ................................................................... 24
  - Expiration of License and Appointment ................................................................... 24
  - License or Appointment Transferability ................................................................... 25
  - Duration of Suspension or Revocation ..................................................................... 25
  - Surrender of License ................................................................................................. 26
- Grounds for Compulsory Refusal, Suspension, or Revocation of License ....................... 26
- Procedure for Refusal, Suspension, or Revocation of License ......................................... 27
  - Duration of Suspension or Revocation .................................................................... 27
  - Effect of Suspension or Revocation upon Associated Agencies ............................... 28
  - Duties of Licensed vs. Unlicensed Personnel ........................................................... 28
- Agency Personnel Powers, Duties, and Limitations ......................................................... 28
  - Expiration of License and Appointment ................................................................... 29
<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prohibition Against Unlicensed Transactions of Life Insurance</td>
<td>29</td>
</tr>
<tr>
<td>Other Requirements</td>
<td>30</td>
</tr>
<tr>
<td>Advertising</td>
<td>30</td>
</tr>
<tr>
<td>Unfair Methods of Competition and Unfair or Deceptive Acts or Practices</td>
<td>30</td>
</tr>
<tr>
<td>Recordkeeping</td>
<td>33</td>
</tr>
<tr>
<td>Advertising Files</td>
<td>33</td>
</tr>
<tr>
<td>Department Communication</td>
<td>33</td>
</tr>
<tr>
<td>MyProfile</td>
<td>34</td>
</tr>
<tr>
<td>Websites</td>
<td>34</td>
</tr>
<tr>
<td>Florida State Guaranty Association</td>
<td>36</td>
</tr>
<tr>
<td>Members and Assessments</td>
<td>37</td>
</tr>
<tr>
<td>Powers and Duties of the Association</td>
<td>37</td>
</tr>
<tr>
<td>FLAHIGA Coverage of Liabilities</td>
<td>38</td>
</tr>
<tr>
<td>Examinations and Annual Reports</td>
<td>38</td>
</tr>
<tr>
<td>Prohibited Advertising of Association</td>
<td>38</td>
</tr>
<tr>
<td>Review Questions</td>
<td>39</td>
</tr>
<tr>
<td>CHAPTER 2 INSURANCE LAW AND UPDATES</td>
<td>41</td>
</tr>
<tr>
<td>Overview and Learning Objectives</td>
<td>41</td>
</tr>
<tr>
<td>New Florida Law Updates</td>
<td>41</td>
</tr>
<tr>
<td>Change of Address Notification</td>
<td>41</td>
</tr>
<tr>
<td>Proof of Pre-Licensing Education</td>
<td>41</td>
</tr>
<tr>
<td>Beneficiary Designation of Non-Probate Assets in Divorce</td>
<td>41</td>
</tr>
<tr>
<td>Continuing Education Requirements</td>
<td>42</td>
</tr>
<tr>
<td>Other Licensing Changes</td>
<td>43</td>
</tr>
<tr>
<td>Federal Law Review Pertinent to Florida Licensed Insurance Professionals</td>
<td>43</td>
</tr>
<tr>
<td>Role of the Federal Government</td>
<td>44</td>
</tr>
<tr>
<td>McCarron-Ferguson Act</td>
<td>44</td>
</tr>
<tr>
<td>The Federal Insurance Office</td>
<td>44</td>
</tr>
<tr>
<td>Scope and Functions</td>
<td>45</td>
</tr>
<tr>
<td>Powers</td>
<td>45</td>
</tr>
<tr>
<td>Reports</td>
<td>45</td>
</tr>
<tr>
<td>SEC/FINRA Insurance Regulation</td>
<td>45</td>
</tr>
<tr>
<td>FINRA</td>
<td>46</td>
</tr>
<tr>
<td>FINRA Rule 2090 Know Your Customer Rule</td>
<td>46</td>
</tr>
<tr>
<td>FINRA Rule 2111</td>
<td>47</td>
</tr>
<tr>
<td>FINRA Rule 2330</td>
<td>48</td>
</tr>
<tr>
<td>Review Questions</td>
<td>49</td>
</tr>
<tr>
<td>CHAPTER 3 ETHICAL REQUIREMENTS</td>
<td>51</td>
</tr>
<tr>
<td>Overview and Learning Objective</td>
<td>51</td>
</tr>
<tr>
<td>Ethical Guidelines</td>
<td>51</td>
</tr>
<tr>
<td>Florida Code of Ethics</td>
<td>51</td>
</tr>
<tr>
<td>Misrepresentation</td>
<td>52</td>
</tr>
<tr>
<td>Twisting</td>
<td>52</td>
</tr>
<tr>
<td>Rebating</td>
<td>53</td>
</tr>
<tr>
<td>Defamation</td>
<td>53</td>
</tr>
<tr>
<td>Use of Professional Designations</td>
<td>53</td>
</tr>
<tr>
<td>Penalties</td>
<td>53</td>
</tr>
</tbody>
</table>
CHAPTER 1

REGULATORY AWARENESS

Overview and Learning Objective

Insurance is a highly regulated industry. It is regulated to protect the public interest and to make sure insurance is available on an equitable basis. Regulation of the insurance industry is undertaken from several perspectives and is divided among a number of authorities (entities). In the State of Florida, the Department of Financial Services (DFS) and the Office of Insurance Regulation (OIR) each play a major role in regulating the insurance industry. The DFS is primarily responsible for regulating agents, combating insurance fraud, and protecting consumers, while the OIR is responsible for overseeing the conduct and licensing of insurance companies. In addition, the Office of Financial Regulation (OFR) is responsible for administering the state’s banking and securities laws. If you combine all of these entities, DFS, OIR and OFR, they ensure that agents and agencies, and insurers are licensed properly and conduct insurance business in accordance with the Florida Insurance Code.

Upon completion of this chapter, you will have an understanding of the jurisdiction of duties and responsibilities of each of these entities in the regulation of insurance in the state of Florida and will review the requirements agents must comply with to maintain their licenses. Most importantly, you’ll learn about the appointment procedures, continuing education requirements, recordkeeping requirements, and advertising rules that apply to agents, as well as the penalties for noncompliance. And finally, you’ll have an understanding of the role and responsibilities of the Florida Life and Health Insurance Guaranty Association (FLHIGA).

The Florida Department of Financial Services

Pursuant to F.S. § 20.121(1) and F.S. § 20.121(2), the Florida Department of Financial Services, hereinafter referred to as the DFS, is a state agency headquartered in Tallahassee. In 1988, as recommended by the Constitutional Revision Commission, and passed into law by voters, the Florida Legislature carried out an amendment to the state’s constitution by merging the Department of Insurance, Treasury, State Fire Marshal and the Department of Banking and Finance into the DFS effective January 2003.

Jurisdiction and Duties of the DFS

The DFS regulates the state’s banking, securities, insurance, mortgage lending and funeral and cemetery businesses. The DFS is comprised of the following 14 divisions which are required to carry out the statutory duties of the state of Florida. They are:

- Accounting and Auditing
Support Divisions include the following:

- Administration
- Information Systems
- Legal Services

Several of these divisions have a role in regulating insurance including the Divisions of Agents and Agency Services, Insurance Fraud, and Consumer Services.

- **Agents and Agency Services** – regulates the licensing of individuals and entities that transact insurance business in the state of Florida. The Bureau of Licensing and the Bureau of Investigations are located with this division: The Licensing Bureau ensures that licenses are issued only to individuals who meet the state’s licensing requirements, while the Bureau of Investigations investigates possible violations of the Florida Insurance Code.

- **Insurance Fraud** – a law enforcement agency that protects Florida citizens and businesses from all types of financial and insurance fraud, including claims fraud, workers' compensation fraud, unauthorized insurance entity fraud, and insurance agent crimes, along with viatical application fraud. The Division of Insurance Fraud also issues public information announcements and provides training for insurers to help prevent and fight fraud.

- **Consumer Services** – provides information and educational materials to consumers to help them make informed insurance and financial decisions. Consumers can contact this division’s insurance specialist with insurance-related questions and to request consumer guides about topics such as buying annuities, shopping for mortgages, purchasing long-term care and health insurance, and dealing with debt collectors.

**Chief Financial Officer (CFO)**

Pursuant to F.S. Chapter 17, the Chief Financial Officer (CFO) of Florida is a statewide elected official and officer of the Florida Cabinet who is elected to a four-year term. The office was created in 2002 following the reorganization of the Florida Cabinet back in 1998 which combined the former offices of the Comptroller, Treasurer, Insurance Commissioner and Fire Marshal.
The CFO is the chief fiscal officer of the state and heads the Florida Department of Financial Services. The CFO is responsible for overseeing the state's finances, collecting revenue, paying state bills, auditing state agencies, regulating cemeteries and funerals, handling fires and arsons.

**The Financial Services Commission**

The Financial Insurance Commission is comprised of four members: the Governor, the Attorney General, the Chief Financial Officer and the Commissioner of Agriculture. The two offices within the Commission are the Office of Financial Regulation (OFR), which regulates the banking, finance and securities industries in Florida, and the Office of Insurance Regulation (OIR), which regulates insurance companies. Both offices are headed by commissioners who are appointed by the Financial Services Commission. The Financial Services Commission is responsible for final approval of rules developed by each office. All regulatory decisions are vested with the offices.

### Financial Services Commission

(Members: Governor, Attorney General, Chief Financial Officer, and the Commissioner of Agriculture)

#### Office of Financial Regulation (OFR)

#### Office of Insurance Regulation (OIR)

Let’s review each of these two offices, the Office of Financial Regulation and the Office of Insurance Regulation in greater detail.

**Office of Financial Regulation**

Pursuant to F.S. § 20.121(3)(a)2, the mission of the Office of Financial Regulation, (OFR) is to protect the citizens of Florida by carrying out the banking, securities, and financial laws of the state efficiently and effectively, and to provide regulation of businesses that promote the sound growth and development of Florida’s economy.

The OFR was created in 2003 as the result of the Cabinet Reorganization Act of 2002. Although the OFR is a relatively new agency, it began as a banking, consumer finance, and securities regulator back in the mid-1800s with the creation of the former Comptroller’s Office. The OFR reports to the Financial Services Commission. The head of the OIR is the Commissioner of Insurance Regulation.

The OFR reviews consumer complaints involving illegal financial activities, reviews business applications to conduct financial services, and reviews individual license applications and may impose licensing restrictions or denial of licensure. The OFR may
conduct financial investigations into allegations of suspected illegal activities within its jurisdiction.

The OFR performs these functions through four divisions. They are:

- **Consumer Finance** - The Division of Consumer Finance licenses and regulates non-depository financial service industries and individuals and conducts examinations and complaint investigations for licensed entities to determine compliance with Florida law.
- **Financial Institutions** - The Division of Financial Institutions ensures that each state-chartered financial institution meets state and federal requirements for safety and soundness.
- **Securities** - The Division of Securities regulates the sale of securities in, to or from Florida by firms (securities dealers, issuer dealers and investment advisers), branch offices and individuals affiliated with these firms to determine compliance with Florida law; and
- **Bureau of Financial Investigations** - The Bureau of Financial Investigations (Bureau) is a criminal justice agency with investigative teams located in Tallahassee, Orlando, Tampa, West Palm Beach and Miami. The Bureau generally conducts complex investigations involving securities and mortgage fraud. Cases are prioritized and resources are typically devoted to matters that significantly impact the citizens of Florida. The Bureau also participates in joint investigations with local, state and federal law enforcement agencies.

The head of the OFR is the Director, who may also be known as the Commissioner of Financial Regulation. For additional information about the OFR you can view OFR Fast Facts at: http://www.flofr.com/StaticPages/documents/OFRFastFactsebooklet.pdf

### Office of Insurance Regulation

Pursuant to F.S. § 20.121(3)(a)1, the Office of Insurance Regulation (OIR) ensures that insurance companies licensed to do business in Florida are financially viable, operating with the laws and regulations governing the industry, and offering insurance policy products at fair and adequate rates that do not unfairly discriminate against the public.

The OIR has responsibility for the regulation, compliance and enforcement of statutes related to insurance and the monitoring of industry markets. These regulatory functions are performed primarily through the units listed below.

- **Company Admissions Section** – receives company applications and coordinates the review of these applications to determine whether to license companies to sell insurance in Florida.
- **Life and Health Financial Oversight Unit**- monitors the solvency of life and health insurers by obtaining and reviewing periodic financial statements. The unit also monitors the financial condition of managed care entities by conducting actuarial reviews and field examinations and analyzing financial statements.
• **Life and Health Product Review Unit** – which reviews and approves health insurance rates and life and health policies that are to be issued to Florida residents.

• **Market Investigations Unit** - examines and investigates business practices and alleged violations of the Florida Insurance Code.

• **Market Research and Technology Unity** – collects and distributes information and resource materials relating to the oversight and development of Florida’s insurance markets. The unit also provides analysis and discussion at both the national and international levels regarding insurance issues important to Florida.

• **Property and Casualty Financial Oversight Unit** – monitors the financial stability of insurers by obtaining and reviewing financial statements and conducting on-site financial examinations.

• **Property and Casualty Product Review Unit** – reviews property and casualty rules, forms, and rate filings for homeowners, auto workers’ compensation, liability, and other personal and commercial property and casualty lines of coverage to ensure compliance with the Florida Insurance Code.

• **Specialty Product Administration Unit** – provides regulation and oversight to insurance administrators, continuing care retirement communities, motor vehicle service agreement companies, home warranty associations, service warranty associations, insurance premium finance companies, donor annuities, legal expense corporations, viatical settlement providers, third party administrators, and title insurance agents and insurers. The unit licenses and monitors the quality of company assets, adequacy of stated liabilities, general operating results and market conduct of these entities to assure compliance with the Florida Insurance Code.

The OIR regulates and provides oversight for all insurance companies and insurance-related entities licensed to do business in Florida as described above. Additionally, the OIR provides oversight to all residual markets and joint underwriting associations, which were created by the Legislature to provide insurance to consumers who are unable to obtain coverage in the private market. Examples of these entities include the Florida Patients’ Compensation Fund and the Florida Automobile Joint Underwriting Association.

**Licensing Requirements**

Licensing insurance producers and insurers helps protect the insurance consumer and allows the state’s Insurance Departments to maintain standards of uniformity. By licensing individual insurance producers and insurers, the state can provide some level of assurance to the consumer that their needs will be met by an individual capable of offering guidance and competency and be protected by a regulated insurer.

**Background**
Insurance producers must be licensed properly to sell insurance in the jurisdictions where they conduct business. A resident license is required for selling within the state where the producer resides; if a producer sells in another state, he or she must obtain a non-resident license to do so. In many states, additional licenses may be required to sell variable products, such as variable life or variable annuities. The sale of products other than life insurance, such as property and casualty or investments, also requires a separate license. It is the responsibility of every insurance producer to comply fully with the state regulations regarding their licensing requirements for all activities in which he or she engages.

Application for License

Pursuant to F.S. § 626.171, the DFS will not issue a license to anyone except when an application filed with the DFS, meeting the qualifications for the license applied for, and payment in advance of all applicable fees. The application must be made under the oath of the applicant and be signed by the applicant.

An applicant may permit a third party to complete, submit, and sign an application on the applicant’s behalf, but is responsible for ensuring that the information on the application is true and correct and is accountable for any misstatements or misrepresentations. The DFS may accept the uniform application for nonresident agent licensing.

Qualifications for License

Pursuant to F.S. § 626.785, the DFS will not grant or issue a license as life agent to any individual found to be untrustworthy or incompetent, or who does not meet the following qualifications:

- Must be a natural person of at least 18 years of age.
- Must be a United States citizen or legal alien who possesses work authorization from the United States Bureau of Citizenship and Immigration Services and a bona fide resident of this state.
- Must not be an employee of the United States Department of Veterans Affairs or state service office.
- Must not be a funeral director, direct disposer, employee or representative, have an office in, or in connection with, a funeral establishment, except that a funeral establishment may contract with a life insurance agent to sell a preneed contract. Excluding other provisions of this chapter, an agent may sell limited policies of insurance covering the expense of final disposition or burial of an insured in the amount of $12,500, plus an annual percentage increase based on the Annual Consumer Price Index compiled by the United States Department of Labor, beginning with the Annual Consumer Price Index announced by the United States Department of Labor for the year 2003.
- Must take and pass any examination for license required.
- Must be qualified in knowledge, experience, or instruction in the business of insurance and meet all other requirements.
Appointments

Pursuant to F.S. § 626.112, no person may be, act as, advertise, or act as an insurance agent, insurance adjuster, or customer representative unless he or she is currently licensed by the DFS and appointed by an appropriate appointing entity or person.

All applicants must be submitted electronically through eAppoint, the state’s electronic appointment system that is used for original and renewal appointments as well as appointment terminations.

Payment of Fees and Taxes

Pursuant to F.S. § 626.371, all initial appointments must be submitted to the DFS on a monthly basis no later than 45 days after the date of appointment and becomes effective on the date requested on the appointment form.

Failure to notify the DFS within the required time period will result in the appointing entity being assessed a delinquent fee of $250 per appointee. Delinquent fees must be paid by the appointing entity and may not be charged to the appointee. Failure to timely renew an appointment by an appointing entity prior to the expiration date of the appointment will result in the appointing entity being assessed late filing, continuation, and reinstatement fees. Such fees must be paid by the appointing entity and cannot be charged back to the appointee.

Appointment Renewal Notification and Termination

Pursuant to F.S. § 626.381, the appointment of an appointee will continue in force until suspended, revoked, or otherwise terminated, but subject to a renewal request filed by the appointing entity in the appointee’s birth month as to natural persons or license date as to entities and every 24 months thereafter, accompanied by payment of the renewal appointment fee and taxes.

Each appointing entity must file with the DFS the lists, statements, and information as to appointees whose appointments are being renewed or terminated, accompanied by payment of the applicable renewal fees and taxes as by a date set forth by the DFS following the month during which the appointments will expire.

Expiration of License and Appointment

Pursuant to F.S. § 626.43, upon the expiration of any person’s appointment, the person will be without any authority and must not engage or attempt to engage in any activity requiring an appointment.

When a licensee’s last appointment for a particular class of insurance has been terminated or not renewed, the DFS must notify the licensee that his or her eligibility for
appointment as such an appointee will expire unless he or she is appointed prior to expiration of the 48-month period referred to in subsection.

An individual who fails to maintain an appointment with an appointing entity writing the class of business listed on his or her license during any 48-month period will not be granted an appointment for that class of insurance until he or she qualifies as a first-time applicant.

**License or Appointment Transferability**

Pursuant to F.S. § 626.441, a license or appointment issued under this part is valid only as to the person named and is not transferable to another person. No licensee or appointee can allow any other person to transact insurance by utilizing the license or appointment issued to such licensee or appointee.

**Appointment of Agent or Other Representative**

Pursuant to F.S. § 626.451, each appointing entity or person designated by the DFS to administer the appointment process appointing an agent, adjuster, service representative, customer representative, or managing general agent in this state must file the appointment with the DFS and, at the same time, pay the applicable appointment fee and taxes. Every appointment will be subject to the prior issuance of the appropriate agent’s, adjuster’s, service representative’s, customer representative’s, or managing general agent’s license.

By authorizing the effectuation of an appointment for a licensee, the appointing entity is thereby certifying to the DFS that an investigation of the licensee has been made and that in the appointing entity’s opinion and to the best of its knowledge and belief, the licensee is of good moral character and reputation, and is fit to engage in the insurance business. The appointing entity must provide to the DFS any other information the DFS may reasonably require relative to the proposed appointee.

Each appointing entity must advise the DFS in writing within 15 days after it or its general agent, officer, or other official becomes aware that an appointee has pleaded guilty or nolo contendere to or has been found guilty of a felony after being appointed.

Any law enforcement agency or state attorney’s office that is aware that an agent, adjuster, service representative, customer representative, or managing general agent has pleaded guilty or nolo contendere to or has been found guilty of a felony must notify the DFS of such fact.

Each licensee must advise the DFS in writing within 30 days after having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the laws of the United States, any state of the United States, or any other country, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.
Continuation of Appointment of Agent or Other Representative

Pursuant to F.S. § 626.461, subject to renewal or continuation by the appointing entity, the appointment of the agent, adjuster, service representative, customer representative, or managing general agent will continue in effect until the person’s license is revoked or otherwise terminated, unless written notice of earlier termination of the appointment is filed with the DFS or person designated by the DFS to administer the appointment process by either the appointing entity or the appointee.

Reasons for Termination

Pursuant to F.S. § 626.441, any insurer terminating the appointment of an agent; any general lines agent terminating the appointment of a customer representative or a crop hail or multiple-peril crop insurance agent; and any employer terminating the appointment of an adjuster, service representative, or managing general agent, whether such termination is by direct action of the appointing insurer, agent, or employer or by failure to renew or continue the appointment as provided, must file with the DFS a statement of the reasons, if any, for and the facts relative to such termination. In the case of termination of the appointment of an agent, such information may be filed by the insurer or by the general agent of the insurer.

In the case of terminations by failure to renew or continue the appointment, the information required must be filed with the DFS as soon as possible and at all events within 30 days, after the date notice of intention not to so renew or continue was filed with the DFS. In all other cases, the information required will be filed with the DFS at the time, or at all events within 10 days after, notice of the termination was filed with the DFS.

Procedure for Refusal, Suspension, or Revocation of License

Pursuant to F.S. § 626.441, if any licensee is convicted by a court of a violation of the Florida Insurance Code or a felony, the licenses and appointments will be immediately revoked by the DFS. The licensee may subsequently request a hearing and the DFS will expedite any such requested hearing. The sole issue at such hearing will be whether the revocation should be rescinded because such person was not in fact convicted of a violation of this code or a felony.

The papers, documents, reports, or evidence of the DFS relative to a hearing for revocation or suspension of a license or appointment pursuant to the provisions of this Chapter and Chapter 120 are confidential and exempt from the provisions of F.S. § 119.07(1) until after the same have been published at the hearing. However, such papers, documents, reports, or items of evidence are subject to discovery in a hearing for revocation or suspension of a license or appointment.
Failure to Complete CE Requirements

Pursuant to F.S. § 626.2815(10), the DFS may immediately terminate or refuse to renew the appointment of an agent or adjuster who has been notified by the DFS that his or her continuing education requirements have not been certified, unless the agent or adjuster has been granted an extension or waiver by the DFS. The DFS may not issue a new appointment of the same or similar type to a licensee who was denied a renewal appointment for failing to complete continuing education as required until the licensee completes his or her continuing education requirement.

Fees

Pursuant to 69B-211.005 F.A.C., the DFS is authorized to charge certain fees payable by applicants and others, in amounts sufficient to cover the actual cost of the service provided. The DFS has determined the costs of the following services:

- Fingerprint processing fee for each fingerprint card submitted $64
- Exam fee for each exam scheduled $56

The fees listed in subsection above, will be made payable to the “Florida Department of Financial Services.” The fees are payable in advance of the service provided and are not refundable.

Effective Date of Termination of Appointment

Pursuant to 69B-211.007 F.A.C., when an appointing entity terminates the appointment of an appointee and files written notice of such termination with the DFS the DFS must terminate the appointment. The date of such termination on DFS records will be the effective date of such termination as indicated by the appointing entity in its filing with the DFS or, if no date is indicated, the date on which the DFS received the filing.

Contact Information

Pursuant to F.S. § 626.541, any licensed agent or adjuster doing business under a firm or corporate name or under any business name other than his or her own individual name must, within 30 days after the initial transaction of insurance under such business name, file with the DFS, on forms adopted and furnished by the DFS, a written statement of the firm, corporate, or business name being so used, the address of any office or offices or places of business making use of such name, and the name and social security number of each officer and director of the corporation and of each individual associated in such firm or corporation as to the insurance transactions thereof or in the use of such business name.

In the event of any change of such name, or of any of the officers and directors, or of any of such addresses, or in the personnel so associated, written notice of such change must
be filed with the DFS within 30 days by or on behalf of those licensees terminating any such firm, corporate, or business name or continuing to operate thereunder.

Any licensed insurance agency must, within 30 days after a change, notify the DFS of any change in the information contained in the application filed.

Notice of Change of Address or Name

Pursuant to F.S. § 626.551, a licensee must notify the DFS, in writing, within 30 days after a change of name, residence address, principal business street address, mailing address, contact telephone numbers, including a business telephone number, or e-mail address. A licensee who has moved his or her principal place of residence and principal place of business from this state must have his or her license and all appointments immediately terminated by the DFS. Failure to notify the DFS within the required time will result in a fine not to exceed $250 for the first offense and a fine of at least $500 or suspension or revocation of the license.

Insurance Agency Licensing

Pursuant to F.S. § 626.015, definitions include some of the following:

- “Agent” means a general lines agent, life agent, health agent, or title agent, or all such agents, as indicated by context. The term “agent” includes an insurance producer or producer, but does not include a customer representative, limited customer representative, or service representative.
- “Appointment” means the authority given by an insurer or employer to a licensee to transact insurance or adjust claims on behalf of an insurer or employer.
- “Health agent” means an agent representing a health maintenance organization or, as to health insurance only, an insurer transacting health insurance.
- “Home state” means the District of Columbia and any state or territory of the United States in which an insurance agent maintains his or her principal place of residence or principal place of business and is licensed to act as an insurance agent.
- “Insurance agency” means a business location at which an individual, firm, partnership, corporation, association, or other entity, other than an employee of the individual, firm, partnership, corporation, association, or other entity and other than an insurer as defined by s. 624.03 or an adjuster as defined by subsection (1), engages in any activity or employs individuals to engage in any activity which by law may be performed only by a licensed insurance agent.
- “License” means a document issued by the DFS authorizing a person to be appointed to transact insurance or adjust claims for the kind, line, or class of insurance identified in the document.
- “Life agent” means an individual representing an insurer as to life insurance and annuity contracts, or acting as a viatical settlement broker including agents
appointed to transact life insurance, fixed-dollar annuity contracts, or variable contracts by the same insurer.

- “Line of authority” means a kind, line, or class of insurance an agent is authorized to transact.
- “Managing general agent” means any person managing all or part of the insurance business of an insurer, including the management of a separate division, department, or underwriting office, and acting as an agent for that insurer, whether known as a managing general agent, manager, or other similar term, who, with or without authority, separately or together with affiliates, produces directly or indirectly, or underwrites an amount of gross direct written premium equal to or more than 5 percent of the policyholder surplus as reported in the last annual statement of the insurer in any single quarter or year and also does one or more of the following:
  - Adjusts or pays claims.
  - Negotiates reinsurance on behalf of the insurer.
- “Resident” means an individual whose home state is the State of Florida.
- “Uniform application” means the uniform application of the National Association of Insurance Commissioners for nonresident agent licensing, effective January 15, 2001, or subsequent versions adopted by rule by the DFS.

License and Appointment Required

Pursuant to F.S. § 626.015, no individual, firm, partnership, corporation, association, or any other entity can act in its own name or under a trade name as an insurance agency, unless it complies by having an insurance agency license for each place of business which may be performed only by a licensed insurance agent.

If an agency is required to be licensed but fails to file an application for licensure in accordance with this section, the DFS will impose on the agency an administrative penalty in an amount of up to $10,000.

If an agency is eligible for registration but fails to file an application for registration or an application for licensure in accordance with this section, the DFS will impose on the agency an administrative penalty in an amount of up to $5,000.

A registered insurance agency must, as a condition to continuing business, obtain an insurance agency license if the DFS finds that any majority owner, partner, manager, director, officer, or other person who manages or controls the agency, any person has:

- Been found guilty or has pleaded guilty or nolo contendere to, a felony in any state other state relating to the business of insurance or to an insurance agency, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of the cases.
- Employed any individual in a managerial capacity or in a capacity dealing with the public who is under an order of revocation or suspension issued by the DFS. An insurance agency may request verification of any person’s license status. If a request is mailed within 5 working days after an employee is hired, and the employee’s license is currently suspended or revoked, the agency will not be
required to obtain a license, if the unlicensed person’s employment is immediately terminated.

- With such frequency as to have made the operation of the agency hazardous to the insurance-buying public or other persons:
  - Solicited or handled controlled business.
  - Misappropriated, converted, or unlawfully withheld moneys belonging to insurers, insureds, beneficiaries, or others and received in the conduct of business under the license.
  - Unlawfully rebated, attempted to unlawfully rebate, or unlawfully divided or offered to divide commissions with another.
  - Misrepresented any insurance policy or annuity contract, or used deception with regard to any policy or contract, done either in person or by any form of dissemination of information or advertising.
  - Violated any provision of this code or any other law applicable to the business of insurance in the course of dealing under the license.
  - Violated any lawful order or rule of the DFS.
  - Failed or refused, upon demand, to pay over to any insurer he or she represents or has represented any money coming into his or her hands belonging to the insurer.
  - Violated the provision against twisting.
  - In the conduct of business, engaged in unfair methods of competition or in unfair or deceptive acts or practices.
  - Willfully over insured any property insurance risk.
  - Engaged in fraudulent or dishonest practices in the conduct of business arising out of activities related to insurance or the insurance agency.
  - Demonstrated lack of fitness or trustworthiness to engage in the business of insurance arising out of activities related to insurance or the insurance agency.
  - Authorized or knowingly allowed individuals to transact insurance who were not then licensed as required by this code.

- Knowingly employed any person who within the preceding 3 years has had his or her relationship with an agency terminated in accordance with paragraph (d).

- Willfully circumvented the requirements or prohibitions of this code.

Application for Insurance Agency License

Pursuant to F.S. § 626.172, the DFS may issue a license as an insurance agency to any person only after such person files a written application with the DFS and qualifies for such license.

An application for an insurance agency license must be signed by the owner or owners of the agency. If the agency is incorporated, the application must be signed by the president and secretary of the corporation. The application for an insurance agency license must include:

- The name of each majority owner, partner, officer, and director of the insurance agency.
The residence address of each person required to be listed in the application.
The name of the insurance agency and its principal business address.
The location of each agency office and the name under which each agency office conducts or will conduct business.
The name of each agent to be in full-time charge of an agency office and specification of which office.
The fingerprints of each of the following:
  o A sole proprietor;
  o Each partner;
  o Each owner of an unincorporated agency;
  o Each owner who directs or participates in the management or control of an incorporated agency whose shares are not traded on a securities exchange;
  o The president, senior vice presidents, treasurer, secretary, and directors of the agency; and
  o Any other person who directs or participates in the management or control of the agency, whether through the ownership of voting securities, by contract, or otherwise.
  o Fingerprints must be taken by a law enforcement agency or other entity approved by the DFS and must be accompanied by the fingerprint processing fee.

Such additional information as the DFS requires by rule to ascertain the trustworthiness and competence of persons required to be listed on the application and to ascertain that such persons meet the requirements of this code. However, the DFS may not require that credit or character reports be submitted for persons required to be listed on the application.
The DFS will accept the uniform application for nonresident agency licensure and may adopt revised versions.

The DFS will issue a registration as an insurance agency to any agency that files a written application with the DFS and qualifies for registration. The application for registration requires the agency to provide the same information required for an agency licensed, the agent identification number for each owner who is a licensed agent, proof that the agency qualifies for registration, and any other additional information that the DFS determines is necessary in order to demonstrate that the agency qualifies for registration. The application must be signed by the owner or owners of the agency. If the agency is incorporated, the application must be signed by the president and the secretary of the corporation. An agent who owns the agency need not file fingerprints with the DFS if the agent obtained a license under this chapter and the license is currently valid.

If an application for registration is denied, the agency must file an application for licensure no later than 30 days after the date of the denial of registration. A registered insurance agency must file an application for licensure no later than 30 days after the date that any person who is not a licensed and appointed agent in this state acquires any ownership interest in the agency. If an agency fails to file an application for licensure in compliance with this paragraph, the DFS will impose an administrative penalty in an amount of up to $5,000 on the agency.
The DFS will issue a license or registration to each agency upon approval of the application, and each agency must display the license or registration prominently in a manner that makes it clearly visible to any customer or potential customer who enters the agency.

**Continuation, Expiration of License; Insurance Agencies**

Pursuant to F.S. § 626.382, the license of any insurance agency will be issued for a period of 3 years and will continue in force until canceled, suspended, revoked, or otherwise terminated. A license may be renewed by submitting a renewal request to the DFS on a form adopted by DFS rule.

**Insurance Agency Names; Disapproval**

Pursuant to F.S. § 626.602, the DFS may disapprove the use of any true or fictitious name, other than the bona fide natural name of an individual, by any insurance agency on any of the following grounds:

- The name interferes with or is too similar to a name already filed and in use by another agency or insurer.
- The use of the name may mislead the public in any respect.
- The name states or implies that the agency is an insurer, motor club, hospital service plan, state or federal agency, charitable organization, or entity that primarily provides advice and counsel rather than sells or solicits insurance, or is entitled to engage in insurance activities not permitted under licenses held or applied for. This provision does not prohibit the use of the word “state” or “states” in the name of the agency. The use of the word “state” or “states” in the name of an agency does not imply that the agency is a state agency.

**Branch Agencies**

Pursuant to F.S. § 626.747, each branch place of business established by an agent or agency, firm, corporation, or association will be in the active full-time charge of a licensed general lines agent or life or health agent who is appointed to represent one or more insurers. Any agent or agency, firm, corporation, or association which has established one or more branch places of business will be required to have at least one licensed general lines agent who is appointed to represent one or more insurers at each location of the agency including its headquarters location.

The licensed agent in charge of an insurance agency may also be the agent in charge of additional branch office locations of the agency if insurance activities requiring licensure as an insurance agent do not occur at any location when the agent is not physically present and unlicensed employees at the location do not engage in any insurance activities requiring licensure as an insurance agent or customer service representative.

If the agent or agency establishes places of business in more than one county, additional county tax is payable.
Transfer of License from Another State

Pursuant to F.S. § 626.292, an individual licensed in good standing in another state may apply to the DFS to have the license transferred to this state to obtain a resident agent or all-lines adjuster license for the same lines of authority covered by the license in the other state.

To qualify for a license transfer, an individual applicant must meet the following requirements:

- The individual must become a resident of this state.
- The individual must have been licensed in another state for a minimum of 1 year immediately preceding the date the individual became a resident of this state.
- The individual must submit a completed application for this state which is received by the DFS within 90 days after the date the individual became a resident of this state, along with payment of the applicable fees and submission of the following documents:
  - A certification issued by the appropriate official of the applicant’s home state identifying the type of license and lines of authority under the license and stating that, at the time the license from the home state was canceled, the applicant was in good standing.
  - A set of the applicant’s fingerprints.
- The individual must satisfy pre-licensing education requirements in this state, unless the completion of pre-licensing education requirements was a prerequisite for licensure in the other state and the pre-licensing education requirements in the other state are substantially equivalent to the pre-licensing requirements of this state as determined by the DFS. This paragraph does not apply to all-lines adjusters.
- The individual must satisfy the examination requirement under s. 626.221, unless exempted.

An applicant satisfying the requirements for a license transfer under subsection will be approved for licensure in this state unless the DFS finds that grounds exist under for refusal, suspension, or revocation of a license.

Expiration of License and Appointment

Pursuant to F.S. § 626.431, upon the expiration of any person’s appointment, the person will be without any authority conferred by the appointment and will not engage or attempt to engage in any activity requiring an appointment.

When a licensee’s last appointment for a particular class of insurance has been terminated or not renewed, the DFS must notify the licensee that his or her eligibility for appointment as such an appointee will expire unless he or she is appointed prior to expiration of the 48-month period referred to in subsection.
An individual who fails to maintain an appointment with an appointing entity writing the class of business listed on his or her license during any 48-month period will not be granted an appointment for that class of insurance until he or she qualifies as a first-time applicant.

**License or Appointment Transferability**

Pursuant to F.S. § 626.441, a license or appointment issued is valid only to the person named and is not transferable to another person. No licensee or appointee will allow any other person to transact insurance by utilizing the license or appointment issued to such licensee or appointee.

**Duration of Suspension or Revocation**

Pursuant to F.S. § 626.641, the DFS may specify the period during which the suspension is to be in effect; but such period must not exceed 2 years. The license, appointment, or eligibility will remain suspended during the period so specified, subject, however, to any rescission or modification of the order by the DFS, or modification or reversal thereof by the court, prior to expiration of the suspension period. A license, appointment, or eligibility that has been suspended will not be reinstated except upon the filing and approval of an application for reinstatement and, in the case of a second suspension, completion of continuing education courses prescribed and approved by the DFS; but the DFS will not approve an application for reinstatement if it finds that the circumstance or circumstances for which the license, appointment, or eligibility was suspended still exist or are likely to recur. In addition, an application for reinstatement is subject to denial and subject to a waiting period prior to approval on the same grounds that apply to applications for licensure.

No person or appointee under any license or appointment revoked by the DFS, nor any person whose eligibility to hold same has been revoked by the DFS, will have the right to apply for another license or appointment under this code within 2 years from the effective date of such revocation or, if judicial review of such revocation is sought, within 2 years from the date of final court order or decree affirming the revocation. An applicant for another license or appointment pursuant to this subsection must apply and qualify for licensure in the same manner as a first-time applicant, and the application may be denied on the same grounds that apply to first-time applicants for licensure. In addition, the DFS will not grant a new license or appointment or reinstate eligibility to hold such license or appointment if it finds that the circumstance or circumstances for which the eligibility was revoked or for which the previous license or appointment was revoked still exist or are likely to recur; if an individual’s license as agent or customer representative or eligibility to hold same has been revoked upon the ground, the DFS will refuse to grant or issue any new license or appointment so applied for.

If any of an individual’s licenses as an agent or customer representative or the eligibility to hold such license or licenses has been revoked at two separate times, the DFS may not thereafter grant or issue any license under this code to such individual. If a license as an agent or customer representative or the eligibility to hold such a license has been revoked
resulting from the solicitation or sale of an insurance product to a person 65 years of age or older, the DFS may not thereafter grant or issue any license under this code to such individual.

During the period of suspension or revocation of a license or appointment, and until the license is reinstated or, if revoked, a new license issued, the former licensee or appointee may not engage in or attempt or profess to engage in any transaction or business for which a license or appointment is required under this code or directly or indirectly own, control, or be employed in any manner by an agent, agency, adjuster, or adjusting firm.

**Surrender of License**

Pursuant to F.S. § 626.661, though issued to a licensee, all licenses issued under this chapter are at all times the property of the State of Florida; and, upon notice of any suspension, revocation, refusal to renew, failure to renew, expiration, or other termination of the license, such license will no longer be in force and effect.

**Grounds for Compulsory Refusal, Suspension, or Revocation of License**

Pursuant to F.S. § 626.611, the DFS will deny an application, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, title agency, adjuster, customer representative, service representative, or managing general agent, and it will suspend or revoke the eligibility to hold a license or appointment of any person, if it finds any one or more of the following applicable grounds exist:

- Lack of one or more of the qualifications for the license or appointment
- Material misstatement, misrepresentation, or fraud in obtaining the license or appointment or in attempting to obtain the license or appointment.
- Failure to pass to the satisfaction of the DFS any examination required under this code.
- Fraudulent or dishonest practices in the conduct of business under the license or appointment.
- Misappropriation, conversion, or unlawful withholding of moneys belonging to insurers or insureds or beneficiaries or to others and received in conduct of business under the license or appointment.
- Unlawfully rebating, attempting to unlawfully rebate, or unlawfully dividing or offering to divide his or her commission with another.
- Having been found guilty of or having pleaded guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country which involves moral turpitude, without regard to whether a judgment of conviction has been entered by the court having jurisdiction of such cases.
The DFS will deny, suspend, revoke, or refuse to continue the license of any \textit{insurance agency} if it finds, as to any insurance agency or as to any majority owner, partner, manager, director, officer, or other person who manages or controls such agency, that any of the following applicable grounds exist:

- Lack by the agency of one or more of the qualifications for the license as specified in this code.
- Material misstatement, misrepresentation, or fraud in obtaining the license or in attempting to obtain the license.
- Denial, suspension, or revocation of a license to practice or conduct any regulated profession, business, or vocation relating to the business of insurance by this state, any other state, any nation, any possession or district of the United States, any court, or any lawful agency thereof. However, the existence of grounds for administrative action against a licensed agency does not constitute grounds for action against any other licensed agency, including an agency that owns, is under common ownership with, or is owned by, in whole or in part, the agency for which grounds for administrative action exist.

**Procedure for Refusal, Suspension, or Revocation of License**

Pursuant to F.S. § 626.631, If any licensee is convicted by a court of a violation of this code or a felony, the licenses and appointments of such person will be immediately revoked by the DFS. The licensee may subsequently request a hearing, and the DFS will expedite the hearing. The sole issue at such hearing will be whether the revocation should be rescinded because such person was not in fact convicted of a violation of this code or a felony.

The papers, documents, reports, or evidence of the DFS relative to a hearing for revocation or suspension of a license or appointment are confidential until after the same have been published at the hearing. However, such evidence is subject to discovery in a hearing for revocation or suspension of a license or appointment.

**Duration of Suspension or Revocation**

Pursuant to F.S § 626.641, the DFS must, in its order suspending a license or appointment or in its order suspending the eligibility of a person to hold or apply for such license or appointment, specify the period during which the suspension is to be in effect; but such period must not exceed 2 years. The license, appointment, or eligibility will remain suspended during the period so specified, subject, however, to any rescission or modification of the order by the DFS, or modification or reversal thereof by the court, prior to expiration of the suspension period. A license, appointment, or eligibility that has been suspended must not be reinstated except upon the filing and approval of an application for reinstatement and, in the case of a second suspension, completion of continuing education courses prescribed and approved by the DFS; but the DFS will not approve an application for reinstatement if it finds that the circumstance or circumstances for which the license, appointment, or eligibility was suspended still exist or are likely to
recur. In addition, an application for reinstatement is subject to denial and subject to a waiting period prior to approval on the same grounds that apply to applications for licensure.

**Effect of Suspension or Revocation upon Associated Agencies**

Pursuant to F.S. § 626.6515, upon suspension or revocation of the license of an insurance agency, the DFS may at the same time revoke, suspend, or refuse to continue the license of any other insurance agency under the management, ownership, control, or directorship of any person or persons who participated in activities which resulted in the suspension, revocation, or refusal to continue the initial license if acts occurred at that specific agency location which are grounds for refusal, suspension, or revocation of a license under this code. The DFS will not, during the period of revocation or suspension, grant any new license for the establishment of any additional agency not in operation at the time of suspension, revocation, or refusal to any agency under or proposed to be under substantially the same management, ownership, control, or directorship of individuals who directed or participated in activities which resulted in suspension, revocation, or refusal of an agency license.

**Duties of Licensed vs. Unlicensed Personnel**

An insurer, a managing general agent, an insurance agency, or an agent, directly or through a representative, may not furnish to an agent any blank forms, applications, stationery, or other supplies to be used in soliciting, negotiating, or effecting contracts of insurance on its behalf unless such blank forms, applications, stationery, or other supplies relate to a class of business for which the agent is licensed and appointed, whether for that insurer or another insurer.

An insurer, general agent, insurance agency, or agent who furnishes any of the supplies to an agent or prospective agent not appointed to represent the insurer and who accepts from or writes any insurance business for such agent or agency is subject to civil liability to an insured of such insurer to the same extent and manner as if such agent or prospective agent had been appointed or authorized by the insurer or such agent to act on its or his or her behalf.

**Agency Personnel Powers, Duties, and Limitations**

Pursuant to F.S. § 626.0428, an individual employed by an agent or agency on salary who devotes full time to clerical work, with incidental taking of insurance applications or quoting or receiving premiums on incoming inquiries in the office of the agent or agency, is not deemed to be an agent or customer representative if his or her compensation does not include in whole or in part any commissions on such business and is not related to the production of applications, insurance, or premiums.

An employee of an agent or agency may not bind insurance coverage unless licensed and appointed as an agent or customer representative.
An employee of an agent or agency may not initiate contact with any person for the purpose of soliciting insurance unless licensed and appointed as an agent or customer representative. As to title insurance, an employee of an agent or agency may not initiate contact with any individual proposed insured for the purpose of soliciting title insurance unless licensed as a title insurance agent or exempt from such licensure.

**Expiration of License and Appointment**

Upon the expiration of any person’s appointment, as provided in F.S.626.381, the person will be without any authority conferred by the appointment and will not engage or attempt to engage in any activity requiring an appointment.

When a licensee’s last appointment for a particular class of insurance has been terminated or not renewed, the DFS must notify the licensee that his or her eligibility for appointment as such an appointee will expire unless he or she is appointed prior to expiration of the 48-month period.

An individual who fails to maintain an appointment with an appointing entity writing the class of business listed on his or her license during any 48-month period will not be granted an appointment for that class of insurance until he or she qualifies as a first-time applicant.

**Prohibition Against Unlicensed Transactions of Life Insurance.**

Pursuant to F.S. § 626.7845, an individual may not solicit or sell variable life insurance, variable annuity contracts, or any other indeterminate value or variable contract unless the individual has successfully completed a licensure examination relating to variable annuity contracts authorized and approved by the DFS.

No individual can, unless licensed as a life agent:

- Solicit insurance or annuities or procure applications;
- In this state, engage or hold himself or herself out as engaging in the business of analyzing or abstracting insurance policies or of counseling or advising or giving opinions to persons relative to insurance or insurance contracts other than:
  - As a consulting actuary advising an insurer; or
  - As to the counseling and advising of labor unions, associations, trustees, employers, or other business entities, the subsidiaries and affiliates of each, relative to their interests and those of their members or employees under insurance benefit plans; or
- In this state, from this state, or with a resident of this state, offer or attempt to negotiate on behalf of another person, a viatical settlement contract.
Other Requirements

Agents must also be aware of other important rules and regulations that apply to their day-to-day insurance practices. The Florida Insurance Codes defines a number of guidelines that agents must follow when advertising products and services and with regard to keeping records.

Advertising

To protect consumers, Florida regulates the content of life and health insurance advertisements to ensure that the public receives clear and unambiguous information about the benefits, limitations, and exclusions of these insurance contracts. The Florida Insurance Code sets forth specific guidelines that insurers must follow to make sure that advertisements are accurate and not deceptive or misleading.

So what is considered advertising? The definition is fairly broad, and includes a wide used to solicit insurance, including the following, newspapers, magazines, and other publications as well as pamphlets, letters, and posters. Billboards, sales presentations, and television and radio advertisements are regulated as well. While the rules for using social media—such as Twitter, Facebook and LinkedIn—to promote insurance products are not as clearly defined, it would be in the best interest of agents and insurers to clearly monitor any statements made on such “social media” to avoid running afoul of the insurance rules prohibiting improper inducements, misleading representations, and deceptive advertising.

Unfair Methods of Competition and Unfair or Deceptive Acts or Practices

There are strict prohibitions against distributing an advertisements or announcement containing untrue, deceptive, or misleading statement regarding the producer, insurer, or insurance product. In Florida agents and insurers hat use advertisements that are untrue, deceptive or misleading will be guilty of an unfair method of competition and unfair or deceptive act.

Pursuant to F.S. § 626.9541(1)(a)(b), the following are unfair methods of competition and unfair or deceptive acts or practices:

- *Misrepresenting and false advertising of insurance policies.* Knowingly making, issuing, circulating, or causing to be made, issued, or circulated, any estimate, illustration, circular, statement, sales presentation, omission, or comparison, altered after being issued, which:
  - Misrepresenting the benefits, advantages, conditions, or terms of any insurance policy.
  - Misrepresenting the dividends or share of the surplus to be received on any insurance policy.
  - Making false or misleading statements as to the dividends or share of surplus previously paid on any insurance policy.
Misleading, or is a misrepresentation, as to the financial condition of any person or as to the legal reserve system upon which any life insurer operates.

- Using a name or title of any insurance policy or class of insurance policies misrepresenting the true nature thereof.
- Misrepresenting for the purpose of inducing, or tending to induce, the lapse, forfeiture, exchange, conversion, or surrender of any insurance policy.
- Misrepresenting for the purpose of affecting a pledge or assignment of, or affecting a loan against any insurance policy.
- Misrepresenting any insurance policy as being shares of stock or misrepresents ownership interest in the company.
- Using an advertisement that would mislead or otherwise cause a reasonable person to believe mistakenly that the state or the Federal Government is responsible for the insurance sales activities of any person or stands behind any person’s credit or that any person, the state, or the Federal Government guarantees any returns on insurance products or is a source of payment of any insurance obligation of or sold by any person.

- Using false information and advertising. Knowingly making, publishing, disseminating, circulating, or placing, or causing, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public:
  - In a newspaper, magazine, or other publication,
  - In the form of a notice, circular, pamphlet, letter, or poster,
  - Over any radio or television station, or
  - In any other way, an advertisement, announcement, or statement containing any assertion, representation, or statement with respect to the business of insurance, which is untrue, deceptive, or misleading.

### Advertising Gifts Permitted

Pursuant to F.S. § 626.9541(m), advertising gifts are permitted as long as the insurer or its agent makes a gift of merchandise having a value of less than $25.

### Approval by Insurer

Insurance companies are responsible for the content of all advertisements that directly or indirectly benefit them. An agent may use only such advertising pertaining to the business underwritten by an insurer as has been approved in writing by such insurer in advance of its use. Some types of advertisements—including those for long-term care and Medicare supplement insurance—must be filed with the Office of Insurance Regulation (OIR) before they can be used.

### Identification of Insurers, Agents, and Insurance Contracts

Advertising materials and other communications developed by insurers, or other risk bearing entities authorized under this code and approved by the OIR to do business in this state, regarding insurance products must clearly indicate that the communication relates
to insurance products. When soliciting or selling insurance products, agents must clearly indicate to prospective insureds that they are acting as insurance agents with regard to insurance products and identified insurers, or other risk bearing entities authorized under this code and approved by the office to do business in this state.

In addition, advertisements must clearly identify the insurer and that the policy advertised is a “health insurance policy,” “life insurance policy,” or “annuity contract.” An advertisement must also refer to the product’s generic names such as a “group term life,” “flexible premium life,” or “immediate annuity.” If an advertisement includes any statistics, it must disclose the source of the statistics.

The Florida Insurance Code also prohibits insurers from using marketing materials that give the impression that an insurer or its products are recommended or endorsed by a governmental entity, society, association, or other organization unless it is true.

Advertisements must disclose the policy provisions relating to renewability, cancelability and termination.

Advertisements cannot imply that claim settlements will be liberal or generous beyond the terms of the policy. They also cannot contain statements about an insurer’s assets, financial standing, or position in the insurance industry that are untrue or misleading.

Sometimes, advertisements may include testimonials from a spokesperson about different insurance products. While testimonials may be used, they must be genuine and represent the author’s current opinion. They also must be reproduced accurately and completely enough to avoid misleading prospective customers about the nature or scope of the endorsement. If a person is paid for an endorsement, this fact must be disclosed in the advertisement as well.

Advertisements also cannot use certain words or phrases that could be misleading, such as “no red tape” or “here is all you have to do to receive benefits.” Misleading awards, such as “safe driver awards,” cannot be used in advertisements for health insurance.

An advertisement cannot make unfair or incomplete comparisons of policies or benefits offered by other insurers. It cannot disparage competitors, their products, services, or business methods, and cannot disparage other methods of marketing insurance. Advertisements also cannot use certain words or phrases that could be misleading, such as “no red tape” or “here is all you have to do to receive benefits.” Misleading awards, such as “safe driver awards,” cannot be used in advertisements for health insurance.

Advertisements for group policies may not state or imply that prospective policyholders become group or quasi-group members and enjoy special rates or underwriting privileges, unless that is true.

And finally, an advertisement may not state or imply that a particular policy is an introductory, initial or special offer and that the applicant will receive advantages by accepting the offer, unless that is true.
Recordkeeping

Pursuant to F.S. § 626.748, it requires agents to keep records of policies transacted. These records include daily reports, applications, change endorsements, or documents signed or initialed by the insured concerning the policies. The records must be available to policyholders and the Department upon request. The records must be maintained in the agent's office or be readily by electronic or photographic means. Since the law does not provide a minimum limit as to how long the policy records must be maintained, it is recommended that they are maintained as long as the agent continues to transact insurance.

Agents are required to keep records of their books accounts, and records pertaining to premium payments for at least three years, per F.S. § 626.561(2). The F.S. law allows agent to maintain premium payment records by electronic or photographic means, as long as they are readily accessible in the agent’s office. The three (3) year requirement does not apply to insurance binders when no policy is ultimately issued and no premium is collected.

Somewhat longer recordkeeping requirements apply when life insurance and annuities are sold to consumers. In this case, insurers, insurance agencies, and agents must keep records of all of the information collected from the senior consumer that was used to make a product recommendation for five (5) years. This would include documents such as applications, questionnaires, illustrations, account review documents, and any correspondence between the insurer or agent and the client. Records can be kept in almost any form—paper, photographic, microprocess, magnetic, mechanical, or electrical.

Advertising Files

Insurers must keep a file in their home office that contains every advertisement used to market their individual and group insurance policies, along with information explaining how and to what extent the ads were distributed. Insurers must maintain files of advertisements for at least four (4) years or until their next regular examination, whichever period is longer. The OIR can examine an insurer’s advertising file at any time.

Department Communication

The DFS has taken a number of positive steps to make the licensing process faster, easier, and more secure for agents and insurance agencies. Online communications is now the predominant form of communication within the DFS through the Office of Communications.

The Office of Communications has the following duties and responsibilities:

- Write, edit and disseminate DFS communications and press releases
• Compose speeches and presentations
• Create various materials for employees, consumers and customers
• Coordinate community outreach programs
• Monitor the DFS social media outlets

As we discussed earlier, license applications and appointments must now be submitted online, continuing education requirements are reported electronically, and contact information must be updated through an agent’s MyProfile account. Agents doing business in Florida must therefore be aware of the different tools that have been made available to them from within the DFS to communicate to agents and insurers and with the Florida consumer.

**MyProfile**

MyProfile is the online Website for the Florida DFS’ Bureau of Licensing. Agents and agencies need to create a MyProfile account where they can do the following:

- View their licenses and appointments
- Verify name and address changes
- Apply for adjuster and agent licenses
- Apply for an agency license or update agency information
- View information about and any deficiencies in license applications
- Check their continuing education compliance status
- Print duplicate copies of their licenses
- Make payments

MyProfile also helps agents find approved continuing education courses for their specific lines of authority, and let’s insurance agencies terminate and make changes to the agent-in-charge, owner, and officer. Agents are also required to update the DFS about any changes to their phone numbers and home, business, or email addresses through their MyProfile account. To view go to: [http://www.myfloridacfo.com/Division/Agents/Licensure/myProfilehelp/#.U0FQ7U1OU5s](http://www.myfloridacfo.com/Division/Agents/Licensure/myProfilehelp/#.U0FQ7U1OU5s)

**Websites**

The DFS maintains websites at [www.myflorida.com](http://www.myflorida.com) where agents, consumers, and businesses can find information about DFS updates and news. The site also contains information about the specialized Divisions with the DFS, including the Agent and Agency Services and the Division of Insurance Fraud, and contains a link to each Division’s web page where agents can obtain more information about licensing requirements, industry alerts, and enforcement matters.

The DFS homepage includes the following links:

- Financial Guides for Seniors
• Updates about the CFO’s initiatives (e.g., transparency Florida, fraud and consumer protection)
• Information about unclaimed property in the state
• Press releases issued by the DFS
• The State’s annual financial report
• Resources for Florida residents, such as consumer guides and how to report fraud

In addition, the OIR also maintains websites at [www.floir.com](http://www.floir.com/) which contains important information about the Florida insurance industry, lists of companies that are authorized to transact insurance, and rate and form filings.

**Insurance Insights**

The DFS’s Division of Insurance Agent and Agency Services produce an online newsletter *Insurance Insights*, which provides information for agents, adjusters, and agencies about the latest trends and news in the insurance industry. It includes information about the DFS’ current legislature agenda, new initiatives the DFS is launching, changes in the Florida Insurance Code and rules, and continuing education updates. In addition, it also includes the following sections:

- *Compliance Corner* assists agents in keeping their insurance business in compliance. This section highlights various areas in which the DFS has noted a pattern of noncompliance among licensees. It features different rules that agents should be aware of to 626.90266 that they are conducting business in compliance Florida laws. For example, in the March 2014 issue it cleared up some confusion caused by an article in the February 2014 issue with regards to Retention for Agent, Adjuster, and Agency Records. Compliance corner also highlights the types of disciplinary action that may be taken for violating these laws.

- *Case Notes* summarizes the facts of various cases where licensees and other have violated the Florida Insurance code. It highlights the administrative action the DFS has taken against these agents, as well as whether the DFS referred any matters to the Division of Insurance Fraud for criminal investigation.

- *Enforcement Actions* lists the names of the individuals and businesses against whom disciplinary action has been taken, including license suspension, revocation, probations, and fines.

You can view current and archive Insurance Insight newsletters at: [http://www.myfloridacfo.com/Division/Agents/Newsletter/News.htm](http://www.myfloridacfo.com/Division/Agents/Newsletter/News.htm)

**Transparency Florida**

*Transparency Florida* allows consumers to track government spending and view finance reports, fund balances, state and local receipts and disbursements, and government contracts. The purpose of the website is to provide transparency regarding how the state government is managed and funded and to hold state legislatures accountable for how tax
dollars are spent. For more information you can visit:  
http://www.myfloridacfo.com/Transparency/

Financial Frontlines

Financial Frontlines provides information and resources to help Florida’s 58,000 military service members fight back against financial fraud and debt. This website contains information and videos that discuss the following topics:

- Identity Theft
- Servicemembers Civil Relief Act
- Credit Scoring
- Budgeting and Savings
- Predatory Lending
- Financial planning for marriage, retirement, health care, college, homeownership, and other financial events

For additional information and to view the website go to:  

On Guard for Seniors Website

On Guard for Seniors helps seniors, their families, and caregivers avoid becoming victims of fraud or misleading sales tactics. The site provides information about annuities, reverse mortgages, long-term care insurance, and identity theft. It lists key questions to ask when purchasing insurance and provides videos on how various insurance and financial products work. The website also includes a consumer alert section that highlights different financial schemes used to defraud seniors as well as success stories from seniors who sought help from the DF on these topics. To view the website you can go to:  
http://www.myfloridacfo.com/onguard/#.U0FPz01OU5s

Florida State Guaranty Association

Florida Life and Health Insurance Guaranty Association (FLAHIGA) is a statutory entity created in 1979 when the Florida legislature enacted the Florida Life and Health Insurance Guaranty Association Act pursuant to F.S. Chapter 631 Sections 631.711-631.737 and 631.811 - 631.828. The FLAHIGA Act can be accessed on-line at a site sponsored by the Florida Senate. Go to www.flsenate.gov. On the Home Page, look for the section titled Laws. Find the Florida Statutes and scan down to Chapter 631 Part III. You can also visit the FLHIGA website at: http://www.flahiga.org/
Members and Assessments

FLAHIGA is composed of all insurers licensed to sell direct life insurance, accident and health insurance, and certain annuities in the state of Florida. In the event that a member insurer is found to be insolvent and is ordered to be liquidated by a court, the FLAHIGA Act enables FLAHIGA to provide protection (up to the limits spelled out in the FLAHIGA Act-discussed below) to Florida residents who are holders of life and health insurance policies and certain annuities with the insolvent insurer.

Powers and Duties of the Association

Pursuant to F.S. § 631.717, if a domestic insurer is an impaired insurer, the association may, subject to the approval of the impaired insurer and the department:

- Guarantee or reinsurance, or cause to be guaranteed, assumed, or reinsured, any or all of the covered policies of the impaired insurer;
- Provide moneys, pledges, and guarantees, to assume payment of the insurer’s obligation; and
- Loan money to the impaired insurer.

If a member insurer becomes insolvent and is ordered to liquidate, a court will appoint a receiver to take over the insurer and wind up its affairs. FLAHIGA will then assume the liabilities of the to Florida policyholders and will service the policies, collect premiums, and pay valid claims that become due. FLAHIGA will also try to find another insurance company to take over the policies.

FLAHIGA has a number of other powers, including the right to:

- Enter into such contracts as are necessary or proper to carry out the provisions and purposes of this part.
- Sue or be sued, including the taking of any legal actions necessary or proper for the recovery of any unpaid assessments under F.S. § 631.718, provided that service of process shall be made upon the person registered with the department as agent for receipt of service of process.
- Borrow money to affect the purposes of this part. Any notes or other evidence of indebtedness of the association not in default shall be legal investments for domestic insurers and may be carried as admitted assets.
- Employ or retain such persons as are necessary to handle the financial transactions of the association and to perform such other functions as become necessary or proper under this part.
- Negotiate and contract with any liquidator, rehabilitator, conservator, or ancillary receiver to carry out the powers and duties of the association.
- Take such legal action as may be necessary to avoid payment of improper claims.
- Exercise, for the purposes of this part and to the extent approved by the department, the powers of a domestic life or health insurer, but in no case may the
association issue insurance policies or annuity contracts other than those issued to satisfy the contractual obligations of the impaired or insolvent insurer.

**FLAHIGA Coverage of Liabilities**

FLAHIGA’s liability for the contractual obligations of the insolvent insurer shall be as great as, but no greater than, the contractual obligations of the insurer in the absence of such insolvency, but the aggregate liability of the association shall not exceed the following:

- $300,000 in life insurance death benefits
- $100,000 in life insurance cash surrender value
- $300,000 for health insurance claims
- $250,000 in annuity cash surrender value
- $300,000 in annuity benefits.

In no event shall the association be liable for any penalties or interest.

**Examinations and Annual Reports**

The DFS is responsible for regulating and examining the association. By May 1 each year, the association’s board of directors must submit a financial report to the DFS, along with a report of its activities for the preceding year.

**Prohibited Advertising of Association**

It is important to remember that it will be an unfair trade practice for anyone to use the existence of the Florida Life and health Insurance Guaranty Association, or the protections the association offers, in order to sell insurance. However, insurers and agents are allowed to give policyholders and applicants written information prepared by the association that summarizes the claim, cash value, and annuity cash value limits of the association, if request.
Chapter 1
Review Questions

1. True or false. Among some of the responsibilities of the Chief Financial Officer are overseeing the state's finances, collecting revenue, paying state bills and auditing state agencies.

( ) A. True
( ) B. False

2. Which of the following divisions within the Department of Financial Services (DFS) have a role in regulating insurance in the State of Florida?

( ) A. Agents and Agency Services
( ) B. Insurance Fraud
( ) C. Consumer Affairs
( ) D. All of the above

3. Pursuant to F.S. § 626.551, any licensed agent doing business in the state of Florida under a firm or corporate name or under any business name other than his or her own individual name must, within how many days notify the DFS of any changes?

( ) A. 7 days
( ) B. 21 days
( ) C. 30 days
( ) D. 60 days

4. Which of the following provides regulatory oversight for Florida’s financial services industry?

( ) A. Office of Financial Regulation
( ) B. Office of Insurance Regulation
( ) C. Division of Insurance Fraud
( ) D. Division of Consumer Finance

5. Which of the following statements is true regarding advertising gifts?

( ) A. No gifts are permitted
( ) B. Gifts with a value less than $25 are permitted
( ) C. There are no gift limits
( ) D. Gifts with a value of less than $100 are permitted
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CHAPTER 2

INSURANCE LAW AND UPDATES

Overview and Learning Objectives

So what changes and or additions will we see in the Florida Insurance Code? And how will these changes affect the way an agent conducts his or her business in the state? As the saying goes “Change is the only constant.”

Upon completion of this chapter, you will have an understanding of the recent changes to Florida’s insurance laws that agents must understand, including new continuing education requirements, application procedures, and change of address reporting, among other matters. We will also examine the role of the federal government in the regulation of insurance industry.

New Florida Law Updates

The state of Florida has made several important changes to the insurance laws and rules discussed next, of which agents must be aware.

Change of Address Notification

As was discussed in Chapter 1, pursuant to F.S. § 626.551, licensees are required to notify the DFS of any name, address, phone, or email change within 30 days. Previously, licensees were required to notify the DFS within 60 days.

Proof of Pre-Licensing Education

Applicants for an agent’s application can now provide a statement in the application indicating what method they used to meet the required pre-licensing education experience, knowledge, or instructional requirements instead of submitting proof of completion of the required pre-licensing course. This change lets a person apply for a license while taking a pre-licensing course rather than having to wait to apply until after having completed the course. However, keep in mind, the DFS still cannot issue a license until the pre-licensing course is complete.

Beneficiary Designation of Non-Probate Assets in Divorce

Pursuant to F.S. § 732.703, upon divorce, dissolution, or invalidity of marriage a spouse who has been named the beneficiary under a non-probate assets, such as life insurance policy, TOD and POD accounts, annuities, IRAs, 401(k) plans, and other employee
benefit plans will become null and void. If the provisions of F.S. § 732.703 apply, an asset will pass as if the former spouse predeceased the decedent. The law does not void a beneficiary designation:

- To the extent that federal or state law provides otherwise
- If the ex-spouse was designated as an irrevocable beneficiary
- If a person designates an ex-spouse as beneficiary after the divorce is final
- If a court order requires a person to maintain the asset for the benefit of a former spouse
- If the person remarries an ex-spouse and they remain remarried until the person’s death
- If an asset is held jointly in two or more names (and the death of one co-owner vests ownership of the assets in the surviving co-owner(s)).

Note: State-administered retirement plans are exempt from F.S. § 732.703.

Continuing Education Requirements

Pursuant to F. S. § § 626.261 and 626.281, new continuing education requirements will apply to agents with a compliance period ending on or after October 31, 2014. Agents who have been licensed for less than six (6) years must still complete 24 hours of continuing education every two years. According to the new law, agents must complete a five-hour law and ethics update course as part of the 24-hour continuing education requirement. This course replaces the current ethics, law, premium discounts, and senior suitability requirements across the different license types. The new five-hour course must be specific to the agent’s license and must cover the following subject areas:

- Insurance law updates and other similar insurance related topics determined by DFS;
- Ethics for the insurance professional;
- Premium discounts;
- Determining suitability of products and services; and
- Disciplinary trends and case studies

Agents who have been licensed for six years or more must complete 15 hours of continuing education every two years, along with the five-hour law and ethics course update (for a total of 20 hours of continuing education every two years). A person who has been licensed for 25 years or more and is a CLU or a CPCU or has a Bachelor of Science degree in risk management or insurance with 18 or more semester hours in upper-level insurance related courses must complete five-hours or continuing education every two years. These individuals must also complete the five-hour law and ethics course update during each compliance period ending October 31, 2014, or later.

Agents may carry forward excess continuing education hours that they have earned during one compliance period to the next compliance period. However, credits cannot be carried over for more than one compliance period.
Agents will not be able to renew their appointments, reinstate old ones, or obtain new ones if they have not complied with the continuing education requirements. The DFS may grant an extension of up to one year to complete the continuing education requirements, if good cause is shown. Good cause might include events outside the agent’s control, such as a short-term disability, military duty, or illness. The DFS will impose a $250 fine for failure to comply with the continuing education requirement on a timely basis.

Note: Licensees who are on active military duty can request a waiver. Supporting documentation, such as written orders, must be submitted with the request. Agents should keep in mind that waivers will only be granted for the most recent compliance period and a new written request must be submitted for each additional period. Previously, there was no military waiver for continuing education.

Other Licensing Changes

Pursuant to F.S. § 626.536 and § 626.641, an agent whose license was suspended or revoked cannot transact business requiring an insurance license or own, control, or be employed by an insurance entity licensed by the DFS. This prohibition has been extended until an agent’s license has been reinstated or a new license has been issued.

Agents are also required to notify the DFS of any administrative actions taken against them by a Florida governmental agency or governmental agency in another state or jurisdiction. This requirement has been expanded so that agents must report any action taken against them by other regulatory agencies as well (in addition to actions taken by governmental agencies).

Federal Law Review Pertinent to Florida Licensed Insurance Professionals

Most regulation of the insurance industry is done at the state level. This practice was validated in 1869 in the United States Supreme Court case of Paul v. Virginia (8 Wall 168 (1869)). In Paul, the Court upheld a Virginia statute requiring out-of-state insurers and their agents to obtain a license before conducting business within the state. The Court held that insurance was not commerce within the meaning of the Commerce Clause, and therefore, states held exclusive regulatory authority over the business of insurance.

Role of the Federal Government

For 75 years following the Paul decision state authority over insurance regulation was unquestioned. The states created a vast and pervasive network of laws, regulations, taxes, and cooperative accounting practices. Many states enacted legislation based on model acts of the National Association of Insurance Commissioners (NAIC), an organization composed of the chief insurance regulatory officials of the 50 states, the
District of Columbia, and the U.S. territories. The states’ adoption of these model acts helped to establish a measure of uniformity in the states’ regulation of insurance. However, in 1944 the Supreme Court reviewed its decision in Paul in United States v. South-Eastern Underwriters Association (322 U.S. 543 (1944)). The South-Eastern Underwriters Association, a rate making organization, was charged with restraining commerce in violation of the Sherman Antitrust Act by fixing and enforcing arbitrary and noncompetitive premium rates. The Supreme Court rejected South-Eastern’s claim that the Sherman Anti-Trust Act did not apply because, under Paul, insurance is not commerce. The Court reversed its holdings in Paul and ruled that insurance is commerce, and when transacted across state lines, it is interstate commerce subject to federal law, including the Sherman Antitrust Act. As a result of (Paul), the constitutionality of all states statutes regulating the insurance business was called into question and a state of confusion reigned. Congress, unlike the states, had passed no laws specifically regulating the business of insurance.

McCarron-Ferguson Act

Then in 1945, Congress responded to the South-Eastern Underwriters Association case by enacting the McCarran-Ferguson Act of 1945, declaring in the Act “the continued regulation and taxation by the several States of the business of insurance is in the public interest.” The Act granted states the power to regulate the business of insurance, removing all Commerce Clause limitations on the states’ authority in this area. Congress’ authority to delegate this power to the states under the Commerce Clause was upheld by the Supreme Court in the 1946 case of Prudential Ins. Co. v. Benjamin

A provision in the McCarron-Ferguson Act would permit the federal government to resume control over the regulation of the business of insurance if state regulation becomes inadequate. The McCarron-Ferguson Act allows Congress to enact legislation invalidating, impairing, or superseding state law, if the legislation “specifically relates to the business of insurance (15 U.S.C. 1012 (b)). And that is what happened after the financial crisis in 2008. Congress passed the Dodd–Frank Wall Street Reform and Consumer Protection Act of 2010 which created the Federal Insurance Office (FIO).

The Federal Insurance Office

The Federal Insurance Office (FIO) was established by Title V of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA). The FIO is housed in the Department of the Treasury and is headed by a Director who is appointed by the Secretary of the Treasury. While the FIO serves an important role by providing necessary expertise and advice regarding insurance matters to the Treasury Department and other federal agencies, it is not a regulatory agency and its authorities do not displace the time-tested robust state insurance regulatory regime.
Scope and Functions

The FIO’s authorities extend to all lines of insurance other than health insurance, long-term care insurance (except that which is included with life or annuity insurance components) and crop insurance, which is governed by the Federal Crop Insurance Act. The FIO does not have supervisory or regulatory authority over the business of insurance. The FIO is charged with monitoring all aspects of the insurance sector, including identifying activities within the sector that could potentially contribute to a systemic crisis to the broader financial system, the extent to which under-served communities have access to affordable insurance products, and the sector’s regulation. The Director of the FIO serves as a non-voting member of the Financial Stability Oversight Council (FSOC). He also plays a role in the resolution of certain troubled insurance companies. The FIO advises the Secretary of the Treasury on major domestic and prudential international insurance matters. The FIO has authority to represent the U.S. federal government internationally at meetings of the International Association of Insurance Supervisors (IAIS) and other similar organizations. However, state insurance regulators, either directly or through their NAIC representatives, present the views of the insurance regulatory community internationally.

Powers

In order to carry out these functions, the FIO is authorized to receive and collect data and information on the insurance industry and can enter into information sharing agreements with state regulators. The FIO can also require an insurer or its affiliate to submit data to the office; however, the FIO must first determine whether any public or regulatory sources are available before requiring such information directly from an insurer. The law provides an exemption for small insurers that meet a minimum size threshold not yet defined by the FIO.

Reports

A primary function of the FIO is to issue several one-time reports as well as annual reports to Congress. In December 2013, the FIO’s released its study on “How to Modernize and Improve the System of Insurance Regulation in the United States.” A listing of available reports can be found on the U.S. Department of the Treasury/FIO Webpage.

SEC/FINRA Insurance Regulation

Some insurance products are regulated by both federal and state government. For example, the Securities Exchange Commission (SEC) and the Office of Financial Regulation Division of Securities (FINRA) regulate variable insurance contracts. Variable life insurance and variable annuity contracts are insurance company products, but these products present a degree of investment risk to the buyer and accordingly, they have also been identified as securities in accordance with SEC regulations.
With the proliferation of the sales of both variable life insurance and variable annuities over the past several years many state and federal regulators have been concerned about the sales of these variable products to unsuitable consumers. Recently, both the SEC and FINRA recommended new regulations to protect seniors (age 65 and older) from deceptive sales practices (unsuitability) of both fixed and variable annuities.

And of course as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act, specifically Title IX, subtitle I, Section 989a, relating to senior investment protections, it calls on the state’s to adopt suitability requirements that meet or exceed National Association of Insurance Commissioners’ Suitability in Annuity Transaction Model Requirements to be required for a state to participate in a program of grants to support enhanced protections of seniors against misleading marketing practices. Additionally, under the Dodd-Frank Title IX, subtitle I, Section 989J of the Dodd-Frank Act Florida’s adoption of at least the minimum requirements NAIC Suitability in Annuity Transactions Model is necessary for Florida’s continued jurisdiction over indexed securities.

FINRA

The Financial Industry Regulatory Authority (FINRA) is the largest non-governmental regulator for all securities firms doing business in the United States. All told, FINRA oversees nearly 5,000 brokerage firms, about 173,000 branch offices and approximately 659,000 registered securities representatives.

Created in July 2007 through the consolidation of NASD and the member regulation, enforcement and arbitration functions of the New York Stock Exchange, FINRA is dedicated to investor protection and market integrity through effective and efficient regulation and complementary compliance and technology-based services.

FINRA touches virtually every aspect of the securities business—from registering and educating industry participants to examining securities firms; writing rules; enforcing those rules and the federal securities laws; informing and educating the investing public; providing trade reporting and other industry utilities; and administering the largest dispute resolution forum for investors and registered firms. It also performs market regulation under contract for The NASDAQ Stock Market, the American Stock Exchange, the International Securities Exchange and the Chicago Climate Exchange.

Below we will review the new consolidated FINRA Rules approved by the SEC (Notice 09-25) to adopt rules governing know-your-customer (FINRA Rule 2090), suitability (FINRA Rule 2111) obligations for the consolidated FINRA rulebook, as well as FINRA Rule 2330 on the suitability sale of variable annuities.

FINRA Rule 2090 Know Your Customer Rule

In general, the new FINRA Rule 2090 (Know Your Customer) is modeled after former NYSE Rule 405(1) and requires firms to use “reasonable diligence,” in regard to the
opening and maintenance of every account, to know the “essential facts” concerning every customer. The rule explains that “essential facts” are “those required to:

- Effectively service the customer’s account,
- Act in accordance with any special handling instructions for the account,
- Understand the authority of each person acting on behalf of the customer, and
- Comply with applicable laws, regulations, and rules.”

The know-your-customer obligation arises at the beginning of the customer-broker relationship and does not depend on whether the broker has made a recommendation. Unlike former NYSE Rule 405, the new rule does not specifically address orders, supervision or account opening-areas that are explicitly covered by other rules.

**FINRA Rule 2111**

FINRA Rule 2111, is the new suitability rule, generally it is modeled after former NASD Rule 2310 and requires that a firm or associated person “have a reasonable basis to believe that a recommended transaction or investment strategy involving a security or securities is suitable for the customer, based on the information obtained through the reasonable diligence of the member or associated person to ascertain the customer’s investment profile.” The rule further explains that a “customer’s investment profile includes, but is not limited to:

- age,
- other investments,
- financial situation and needs,
- tax status,
- investment objectives,
- investment experience, investment time horizon,
- liquidity needs,
- risk tolerance, and
- information the customer may disclose to the member or associated person in connection with such recommendation.”

The new rule continues to use a broker’s “recommendation” as the triggering event for application of the rule and continues to apply a flexible “facts and circumstances” approach to determining what communications constitute such a recommendation. The new rule also applies to recommended investment strategies, clarifies the types of information that brokers must attempt to obtain and analyze, and discusses the three main suitability obligations (discussed below). Finally, the new rule modifies the institutional-investor exemption in a number of important ways.
FINRA Rule 2330

FINRA consolidated the old Rule 2821 on deferred variable annuities into FINRA Rule 2330. The new consolidated FINRA Rule 2330 establishes sales practice standards regarding recommended purchases and exchanges of deferred variable annuities.

The rule has the following six main sections:
- General considerations, such as the rule’s applicability;
- Recommendation requirements, including suitability and disclosure obligations;
- Principal review and approval obligations;
- Requirements for establishing and maintaining supervisory procedures;
- Training obligations; and
- Supplementary material that addresses a variety of issues ranging from the handling of customer funds and checks to information gathering and sharing.
Chapter 2
Review Questions

1. In the state of Florida, agents who have been licensed for less than six (6) years must still complete how many hours of continuing education credit every two years?

   ( ) A. 15 hours  
   ( ) B. 10 hours  
   ( ) C. 24 hours  
   ( ) D. 30 hours

2. Which of the following is exempt from F.S. § 732.703?

   ( ) A. Life insurance policy  
   ( ) B. State administered retirement plans  
   ( ) C. TOD account  
   ( ) D. Annuity

3. Pursuant to F. S. § § 626.261 the new 5-hour law and ethics continuing education requirements will apply to agents with a compliance period ending:

   ( ) A. On or after October 31, 2014  
   ( ) B. On or before October 31, 2014  
   ( ) C. On or after January 1, 2015  
   ( ) D. On or before January 1, 2015

4. Which type of insurance product is regulated by both federal and state government?

   ( ) A. Fixed annuities  
   ( ) B. Variable annuities  
   ( ) C. Variable life insurance  
   ( ) D. Both B and C

5. The new consolidated FINRA Rule 2330 establishes sales practice standards regarding recommended purchases and exchanges of which type of annuity?

   ( ) A. Variable annuity  
   ( ) B. Fixed Annuity  
   ( ) C. Index Annuity  
   ( ) D. All of the above
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CHAPTER 3

ETHICAL REQUIREMENTS

Overview and Learning Objective

It should be no surprise to anyone that over the past decade unethical marketing practices in the insurance industry, at both the corporate level and in the field, has come to the attention of both federal and state regulators. As insurance producers, we are responsible with the great duty of supporting and advancing the business of insurance through proper, principled, and ethical practices. It is important for you to remember that there is no other industry that depends more on trust than the insurance industry. Insurers and agents need to rebuild that trust.

Upon completion of this chapter, you will have an understanding of the ethical requirements for Florida licensed insurance professional in the marketing and sales of life insurance and annuity products. This chapter will also examine the new suitability requirements under the new Florida Suitability Law, as well as the Florida Unfair Marketing Practices of Competition and Unfair or Deceptive Acts, and examine the types of premium discounts that insurers may offer to applicants.

Ethical Guidelines

Let’s face it people would not be purchasing insurance contracts (life or annuity) if they did not trust that the insurance company would not be in business at a later date to pay out a guaranteed death to a beneficiary and/or a guaranteed stream of income to the annuitant. To earn and keep such trust, insurers and agents must embrace the principles of ethical marketing and ethical service standards. One way of doing that is to follow a code of ethics.

Florida Code of Ethics

The Florida Code of Ethics will apply standards of conduct designed to avoid the commission of acts or the existence of circumstances which would constitute grounds for suspension, revocation, or refusal of license, and to avoid the use of unfair trade practices and unfair methods of competition which would be in violation of state laws. All applicants for licenses as life agents must subscribe to the code of ethics.

Pursuant to F.S. § 626.797, and F. S. § 626.79, the DFS has set forth broad guidelines to govern the conduct of life agents in their relations with the public, other agents, and insurers.
To accomplish this goal, agents must:

- Understand and observe the laws governing life insurance;
- Accurately present facts that impact clients’ decisions;
- Be fair when working with colleagues and competitors; and
- Always place the policyholders’ interest first.

The Florida Code of Ethics addresses four main activities:

- Misrepresentation
- Twisting
- Rebating
- Defamation

Next let’s discuss each of these activities in greater detail.

**Misrepresentation**

According to the Florida Code of Ethics, it is unlawful for agents to make false or misleading statements about dividends paid on a policy or on similar policies, or to make false or misleading statements about the financial condition of an insurer.

It is also unlawful for agents to publish or circulate a false, deceptive, or misleading statement about the insurance business or about anyone involved in the insurance business. More specifically, this means that advertisements may not:

- Conceal the true identity of the insurer;
- Mislead the public as to the true role of the agent;
- Misrepresent the product as something other than insurance; or
- Provide incorrect information regarding a product’s features and benefits.

Certainly in many cases, an agent may unintentionally make a misrepresentation or fraudulent comparison and may believe he or she is being truthful. However, an agent’s ignorance of the facts or the law is not a defense against liability for misrepresentation.

To summarize, agents are responsible for the statements they make because they have an ethical duty to understand the products they sell and to present the policies truthfully.

**Twisting**

The Florida Code of Ethics also prohibits twisting, which involves making a misrepresentation or fraudulent comparison to induce a policyholder to lapse, forfeit, surrender, or terminate an insurance policy and take out a policy with another insurer. Of course, it is not illegal for agents to encourage clients to replace an existing policy with another if it is in the clients’ best interests to do so. However, inducing clients to change their insurance coverage based on misrepresentations or deception is unlawful.
Rebating

Under the Florida Code of Ethics, rebating is unethical and, as we will discuss later, is permitted in the state of Florida only in very limited circumstances and agents who are permitted to rebate must follow strict requirements. Insurers and agents generally cannot pay or offer to pay anything of value (up to $25) for someone to buy insurance, including a rebate of the premium, dividends, or stocks and securities. The also cannot pay or offer to pay anything of value that is not specified in the insurance contract, such as agreeing to give customers tickets or gift cards if they purchase insurance.

Defamation

Defamation is defined as publishing or circulating a false, deceptive, or misleading statement about—or a statement that is maliciously critical of or derogatory to—the financial condition of an insurer, when such a statement is designed to injure anyone in the insurance business. Defamation can include both written (spoken (slander) statements about a third party in the insurance industry.

Use of Professional Designations

The Florida Code of Ethics also regulates the use of certifications and professional designations when marketing, soliciting, and selling insurance to protect consumers from dishonest, deceptive, misleading, and fraudulent trade practices.

Agents doing business in the state of Florida can use designations only from an organization that maintains standards for assuring that its certificate holders (certificants) are competent on specific subject areas. In addition, agents cannot use professional designations if the following occurs:

- Designations if they have not actually earned them or are ineligible to use them
- Nonexistent or self-conferred designations
- Designations that indicate or imply that the person does not actually have

Penalties

If an agent in the state of Florida is found not to follow the Florida Code of Ethics his or her license may be suspended or revoked.

NAIFA Code of Ethics

The Florida Department of Financial Services encourages all licensed agents to embrace the code of ethics set forth by the National Association of Insurance and Financial Advisors (NAIFA). One of the oldest and largest trade organizations in the insurance field, NAIFA was founded on June 18, 1890 in Boston as the National Association of
Life Underwriters and today has over 70,000 members across the country. Serving to protect and promote the critical role of insurance and the role of professional agents and advisors, NAIFA advocates the following Code of Ethics and related responsibilities:

Those engaged in offering insurance and other related financial services occupy the unique position of liaison between the purchasers and suppliers of insurance and closely related financial products. Inherent in this role is the combination of professional duty to both the client and the company. Ethical balance is required to avoid any conflict between these two obligations.

Therefore, I Believe It To Be My Responsibility:

- To hold my profession in high esteem and strive to enhance its prestige.
- To fulfill the needs of my clients to the best of my ability.
- To maintain my clients' confidences.
- To render exemplary service to my clients and their beneficiaries.
- To adhere to professional standards of conduct in helping my clients to protect insurable obligations and attain their financial security objectives.
- To present accurately and honestly all facts essential to my clients' decisions.
- To perfect my skills and increase my knowledge through continuing education.
- To conduct my business in a way that might help raise the professional standards of those in my profession.
- To keep informed with respect to applicable laws and regulations and to observe them in the practice of my profession.
- To cooperate with others whose services are constructively related to meeting the needs of my clients.

Agents Ethics

As was discussed above, life insurance agents doing business in the state of Florida are bound by the Code of Ethics, which describes certain activities as unlawful in the insurance business. Agents are also encouraged to follow the NAIFA Code of Ethics, which imposes general ethical duties when working with clients and other in the profession. Ethical codes recognize that agents occupy positions of confidence and public trust, and must maintain high ethical standards at all times when interacting with clients.

In addition to the specific practices prohibited by these codes, insurance agents must also keep in mind the other general ethical practices, such as:

- Conducting business with clients, prospects, and other industry professionals according to high standards of honesty and fairness;
- Efficiently handling business, including complaints and disputes;
- Providing informed and client-focused service; and
- Engaging in fair competition and trade practices.
Agents Responsibilities to Clients

Insurance agents may owe a fiduciary duty to both to the companies they represent and to the insurance buying public. A fiduciary is a person in a position of financial trust. Attorneys, accountants, trust officers, pension plan trustees, stockbrokers and insurance agents are all considered fiduciaries. Agents who make recommendations to clients have an obligation to be knowledgeable about the features and provisions of the products they sell, as well as the prudent use of these products. Agents also must take the time to become acquainted with the client's financial needs, situation and objectives. Agents collect premiums on behalf of the insurers they represent, so they also have a fiduciary duty to submit those monies to the insurer promptly.

Insurance agents and brokers voluntarily accept this fiduciary responsibility and implicitly agree to carry out that duty in good faith. That has been interpreted by the courts to mean that fiduciaries must act reasonably to avoid negligence and to not favor anyone else's interest (including their own) over that of their clients or the companies that appointed them. Fiduciaries owe their principals (the person they represent):

- **Utmost Care** — one standard applied to fiduciaries is the "prudent man rule", which states that the fiduciary should behave as a "prudent person" would under the same circumstances. This can be a very vague standard, but it is one that courts have relied on over the years. Professionals are usually held to a higher standard of conduct — to exercise "utmost care". This higher standard is warranted because professionals are assumed to be more knowledgeable and experienced than an ordinary prudent person. One can argue that clients seek out and are willing to pay for professional advice precisely because of the added knowledge and experience the professional brings to the decision-making process — and therefore should be held to that higher standard.
- **Integrity** — this applies to the fiduciary's soundness of moral principle and character: the agent must act with fidelity to the principal's interest and with complete honesty.
- **Honesty and Duty of Full Disclosure** — of all material facts, either known, within the knowledge of or reasonably discoverable by the agent which could influence in any way the principal's decisions, actions or willingness to enter into a transaction.
- **Loyalty** — An obligation to refrain from acquiring any interest adverse to that of a principal without full and complete disclosure of all material facts and obtaining the principal's informed consent. This precludes the agent from personally benefiting from secret profits, competing with the principal or obtaining an advantage from the agency for personal benefit of any kind.
- **Duty of Good Faith** — includes total truthfulness, absolute integrity and total fidelity to the principal's interest. The duty of good faith prohibits taking advantage of the principal through the slightest misrepresentation, concealment, threat or adverse pressure of any kind.

In the case of conflicting interests, the agent must disclose the "dual agency" (acting for two parties at the same time) or risk being accused of fraud from either or both principals.
Most brokers are compensated by commissions. This, in itself, creates a difficulty since there is an inherent conflict of interest. It is common knowledge to most insurance purchasers that agents and brokers earn a sales commission, which may mitigate the conflict somewhat.

Florida courts addressed this commonly held knowledge in the case of Beardmore v. Abbott — ruling that a broker does have a fiduciary responsibility to his clients, but the broker's failure to disclose the full amount of his commission does not breach that duty. In this case, the client did not inquire as to the size of the commission at the time of the purchase, and broker did not volunteer the information. If the client had asked that question, presumably the courts would have ruled that the broker must honestly disclose that information as a matter of fiduciary trust. It should be noted that the client was very familiar with the insurance market, and knew that the broker would receive a commission — it was disclosure of the exact amount that was the crux in this case. Agents should, at least, make clients aware that they may receive a commission as part of an insurance/annuity transaction.

The fiduciary duty of insurance brokers was also addressed in another case: Moss v Appel. In this case, a broker helped a small business set up a pension funded with an annuity contract, and the broker was also hired to handle administrative paperwork for the pension plan. The broker received notice from the annuity company that it was in seeking additional capital to remain in business, but he did not alert the clients to that notice. The annuity company later became insolvent. The courts ruled that the broker owed a fiduciary responsibility to his clients based on the sale of the annuity and the ongoing consulting/administrative contract. As the court noted, "It is undisputed that [the broker] was acting as an insurance broker, not an insurance agent employed by a particular company, when he sold the plaintiffs the annuity." Presumably that distinction means that the broker should have placed the client's interests above any duty he may have felt to keep the contract in force with the troubled annuity company (even if it was the company that compensated him for the sale). In this case, there was a contract with the clients to administer the plan. The court did not indicate how that continuing relationship affected its ruling — or for how long after the annuity sale a broker (in the absence of a continuing relationship) owes that duty to his clients. These cases illustrate some of the problems that can arise for insurance brokers. As noted earlier, annuities are more likely to be "shopped around", which increases the likelihood that the sales person will be viewed as a broker, and not as an agent.

Understanding Industry Products & Suitability of Sales and Services

Suitability should be a concept that is familiar to all of us. Whether it is a routine purchase or a life decision, we are always assessing our choices based upon what best suits our needs. The topic is no different in the world of insurance.
When an insurance agent carefully aligns a client’s needs and objectives with a life insurance or annuity product, we can conclude that the sale is “suitable”. According to LIMRA’s (Life Insurance Marketing Research) *Producer Guide to Market Conduct*,

“a suitable life insurance or annuity sales is one that is appropriate for the customer in light of his or her total financial situation—one that balances adequate coverage with affordability.”

To determine suitability an insurance agent must strive to answer the following questions:

- What are the client’s needs?
- What product or products best met those needs?
- Does the client understand the product and its provisions?
- Does the client understand and accept the product’s limitations?
- Does the product service the client’s interest, and does the product advance the client’s objectives?

However, like any industry there will always be a few bad apples that try to take advantage of a situation and put their own interests first. Regretfully, because of these few rogue salespersons, the Florida legislature passed a number of bills to protect consumers from unsuitable sales of life insurance and annuity products. Many of the bills followed the Suitability Model Regulations developed by the National Association of Insurance Commissioners (NAIC).

Let’s review some of those regulations beginning with the first suitability law: The Florida Annuity Transaction Model Regulation: Senate Bill 2994.

**The Florida Annuity Transaction Model Regulation: Senate Bill 2994**

Back on July 1, 2004, the Florida legislators signed into law, Senate Bill 2994, which created F.S. § 627.4554, known as the Florida Annuity Suitability Model. The Bill provides standards and procedures, similar to the 2003 NAIC Suitability Model, that agents and insurers must follow when recommending purchases and or exchanges of annuity products to seniors (those citizens age 65 and above).

Under the Florida Annuity Suitability Model, the agent or insurer must make “reasonable efforts” to obtain the following information about the senior’s financial status, tax status, and objectives prior to completing the sale of an annuity. Additionally, the agent or insurer must have “reasonable grounds” for recommending the annuity based on facts disclosed by the senior consumer as to his or her investments, other insurance products, financial situation, and needs.

The DFS indicated that the “reasonable grounds” standard in Florida law is a subjective standard. It requires the DFS prove, by clear and convincing evidence, that an agent did not believe a transaction was suitable. The issue is not whether the investment advice was suitable on an objective basis but whether the agent believed it was. The DFS provides an example where an elderly couple living in Titusville, Florida, was convinced
to invest their entire liquid net worth of $40,000 into deferred annuity investments. The agent did not disclose the features of the investment, including the many years of surrender charges that would prevent the couple from having access to their funds for the rest of their natural lives. The agent was asked what his reasonable grounds were for believing the investment was suitable. The agent responded that he had made inquiry of the consumers at the time of the transaction and determined that their health and finances were stable, and therefore, had reasonably believed the investment transaction was suitable.

These kinds of complaints continued and the DFS during its fiscal year of 2006 through 2007 opened 351 investigations related to annuity transactions, a 41 percent increase over the prior year. In the first eight months of fiscal year 2007 to 2008, the Department of Financial Services opened 206 annuity-related investigations—a 12.5 percent increase since the 2005 to 2006 period.

The DFS petitioned the Florida legislature to review the current Suitability Model due to the number of complaints and investigations, and provide stricter standards to protect senior consumers from predatory marketing practices and unsuitable product recommendations. The result was Senate Bill 2082.

The John and Patricia Seibel Act: Senate Bill 2082

In 2008, Florida lawmakers reviewed Florida’s current version of the Suitability Model to see whether they should amend the Suitability Model to meet the amended 2006 NAIC Suitability Model. This Model set suitability requirements for agents and insurers to follow when selling annuities to consumers of any age, not just those ages 65 and older. Ultimately, the Florida legislators declined to adopt the NAIC new amendments. Rather, they enhanced the existing standards by which an agent must:

- Determine the suitability of annuity transactions with seniors,
- Convert a subjective measure to an objective standard for determining whether the agent properly applied these standards,
- Require that the agent’s suitability analysis be documented, and
- Invoke other procedures

The result was the unanimous passage of Senate Bill 2082, signed into law on June 30, 2008, by then Governor Charlie Crist as Chapter 2008-237 Laws of Florida, also known as the “John and Patricia Seibel Act”. Named after a Venice, Florida couple in their 80s who were sold $600,000 worth of annuities that could not be touched without large penalties for 15 years, the new law significantly modifies the Florida Insurance Code with regard to sales of life insurance and annuities. The final version of the bill became effective January 1, 2009. The intent of the “Seibel Act” was to strengthen the standards for making annuity recommendations to senior consumers (age 65 or older) and imposing suitability guidelines and increasing penalties.
Reasonable Grounds Basis vs. Objective Reasonable Basis

Prior to the enactment of the Seibel Act, the DFS indicated the “reasonable grounds” standard in the Florida Suitability Model law was a subjective standard. It required the DFS to prove by clear and convincing evidence, that an agent did not believe a transaction was suitable. Thus, the issue was not whether the investment advice was suitable on an objective basis but whether the agent believed it was.

As the DFS maintained and as legislators agreed, “reasonable grounds” proved to be difficult to prove, disprove, or counter. In turn, such subjectivity made enforcement measures difficult for the department. Consequently, the “Seibel Act” changed the wording of the law to impose an objective standard for suitability, which now provides agents and regulators with more precise guidelines by which recommendations can be made and evaluated. Pursuant § 627.4554(4)(a) F.S., the language of the Act now reads:

“In recommending to a senior consumer the purchase or exchange of an annuity that results in another insurance transaction or series of insurance transactions, an insurance agent, or an insurer if no insurance agent is involved, must have an objectively reasonable basis for believing that the recommendation is suitable for the senior consumer based on the facts disclosed by the senior consumer as to his or her investments and other insurance products and as to his or her financial situation and needs.”

The result, the law revised the standard for assessing suitability from “reasonable grounds” to an objective reasonable basis.

Other Key Provisions of SB 2082

Some of the other key provisions of Senate Bill 20182 include the following:

- Expanded the “free look” period in all cases from 10 to 14 days [Ch. 2008-237, Fla. Laws, Section 8].
- Life insurance policies can avoid the “free look” requirement if prospective purchasers receive “a buyer’s guide and contract summary” prior to the insurer’s acceptance of an initial premium deposit.
- Prospective purchasers of all annuities, not just fixed annuities, must be given the buyer’s guide and contract summary required by the NAIC
- All annuity purchasers must have the right to an unconditional refund “for a period of at 14 days.
- Persons licensed to solicit or sell life insurance in Florida on or after January 1, 2009, must complete a minimum of three (3) hours continuing education in life insurance and annuity suitability [Ch. 2008-237, Fla. Laws, Section 3.].
- Licensees are required to provide their telephone number or email address and to keep this information accurate or face a $500 fine.
- Section 11 of the Seibel Act amends Section 627.805, Fla. Stat., to provide that Florida’s securities regulator, namely the Office of Financial Regulation (“OFR”), “shall regulate the sale of variable and indeterminate value contracts” as
securities. As a result, life insurance agents in Florida must be registered as associated persons of a securities dealer in order to sell variable annuities (or any other insurance product deemed a “security”) “in or from offices in this state.”

- The Act especially in combination with Chapter 2008-66, Laws of Florida (CS/CS/SB 2860), the “Homeowner’s Bill of Rights Act,” Florida has significantly increased penalties for violations of the Florida Unfair Insurance Trade Practices Act. For example, an insurer can now face an administrative fine of $40,000 for a single willful violation up to an aggregate fine of a quarter of a million dollars, instead of $20,000 and $100,000 respectively under current law. After the effective date of the Seibel Act, insurers may face even greater administrative penalties under the new powers granted to order rescission.

- Agents are also subject to increased fines for specified violations: $5,000 for each non-willful violation (increased from $2,500), up to a maximum aggregate amount of $50,000 (increased from $10,000). Willful violations can be punished administratively by a fine of $30,000 for each offense (increased from $20,000), up to a maximum aggregate amount of $250,000 (increased from $100,000).

- The prohibited practices punishable by these enhanced penalties are “twisting,” “Churning” and two new offenses created by the Seibel Act. “Twisting” is prohibited by Section 626.9541(1)(l), Fla. Stat. It involves the use of misrepresentations, incomplete or fraudulent comparisons, and material omissions to sell insurance or to induce other actions. “Churning” is prohibited by Section 626.9541(1)(aa), Fla. Stat. It occurs when a policyholder is fraudulently induced to use the value of existing insurance to purchase another product from the same insurer, when this increases compensation of the agent, but does not benefit the policyholder.

Safeguard Our Seniors Act: Senate Bill 2176

Senate Bill 2176 entitled the Safeguard Our Seniors Act—strengthens regulations governing the sale of annuities to senior consumers. This bi-partisan achievement is the culmination of a three-year push by Florida’s CFO Alex Sink, to finally, put “alligator teeth” in Florida’s senior investor fraud laws to deter senior scammers. The law became effective January 1, 2011.

Summary of SB 2176

The Safeguard Our Seniors Act provides the following safeguards:

- Increased Penalty Provisions
  - Classifies as a third degree felony the commission of fraud, including the unfair insurance trade practices known as “twisting” and “churning,” in connection with the offer, sale or purchase of financial products when the victim is 65 years of age or older. The bill exempts a number of fraudulent practices that are already prohibited (see Chapter 7).
  - Pursuant to F. S. § 626.641(3)(b), it prohibits the DFS from issuing a license to a former licensee who has had his or her license revoked
resulting from the solicitation or sale of an insurance product to a senior consumer. If a licensee as an agent or customer representative or the eligibility to hold such a license has been revoked resulting from the solicitation or sale of an insurance product to a person 65 years of age or older, the DFS may not thereafter grant or issue any license under this code to such an individual.

- Pursuant to F.S. § 626.621, it authorizes the DFS from granting a license to an agent or customer representative whose license has been revoked due to the solicitation or sale of an insurance product to a person 65 years of age or older.
- Pursuant to F. S. § 627.4554(5)(b)(c), it authorizes the DFS to require an agent to make monetary restitution to a senior consumer harmed by a violation of the insurance code under certain circumstances. Also requires DFS to order payment of restitution to a senior consumer who is deprived of money by an insurance agent’s misappropriation, conversion, or unlawful withholding of the senior consumer’s money in the course of an annuity transaction.
- Classifies third-party marketers as affiliates of an agent if the marketer aids or abets the licensee in an insurance code violation involving the sale of an annuity to a senior.

**Regulation of Annuity Contracts**
- Requires an annuity contract to provide an unconditional refund period of at least 30 days to a purchaser 65 years of age or older who is not an accredited investor, and for the annuity contract to include a cover page concerning the refund provision.
- Limits deferred sales charges in an annuity contract issued to a person who is 65 years of age or older to 10 percent, and requires that the charge be reduced one percent each year to zero by the end of the tenth policy year.
- Prohibits designating a family member of an agent placing coverage as a beneficiary of a policy, unless the family member has an insurable interest in the insured.

**Other Provisions**
- Specifies that the failure of an agent to make reasonable efforts to ascertain a consumer’s age is not a defense to an unfair insurance trade practice violation.
- Permits the taking of a video deposition of a senior citizen who is the victim of an unfair trade practice violation, which may be used in F. S. Chapter 120, administrative hearings.

The bill substantially amends F.S. Sections 624.310, 626.025, 626.621, 626.641, 626.798, 626.9521, 626.99, and 627.4554, and creates F.S. Section 817.2351.
Florida 2010 NAIC Model Regulation: Senate Bill 166

On June 14, 2013, Governor Rick Scott signed into law, Senate Bill 166, which expands the application of annuity recommendation standards provided in F.S. § 627.4554 to all consumers. The bill also incorporates the 2010 NAIC Suitability in Annuity Transactions Model Regulation on annuity protections, broadens the scope of coverage to include all annuity transactions, and imposes additional duties on agents and insurers. The effective date of the bill is October 1, 2013. Key provisions of the bill are summarized below.

**Producer Training**

Florida's law requires insurers to establish standards for training producers in the insurer's annuity products. The insurer must verify that producers complete their product-features training before they present the insurers’ products to their clients.

**Suitability Information**

In recommending an annuity to a prospective purchaser, the insurance producer must have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed during the sale.

The insurance producer must analyze at least 12 points of suitability information about the purchaser, including:

- Age
- Annual income
- Financial situation and needs, including financial resources used for the funding of the annuity
- Financial experience
- Financial objectives
- Intended use of the annuity
- Financial time horizon
- Existing assets, including investment and life insurance holdings
- Liquidity needs
- Liquid net worth
- Risk tolerance
- Tax status

In performing a suitability analysis, producers must collect information on a state approved form H1-1980 Annuity Suitability Questionnaire. This form incorporates the client's financial situation with the 12 points of suitability information to help producers determine whether an annuity is a suitable purchase. In the case of a replacement, the form H1-1981 called “Disclosure and Comparison Form” must also be completed. Producers must submit both completed forms to the insurer with the application within ten (10) days of the sale, keep copies in their files, and provide copies to the client no later than the contract delivery date.
Producer's Belief an Annuity Is Suitable

As a result of the suitability analysis, the producer must have a reasonable basis to believe that all the following points are true:

- The consumer has been reasonably informed of the various features of the annuity, such as:
  - Surrender charge period and amounts
  - Potential tax penalties associated with a sale, exchange, surrender or annuitization of the annuity
  - Expenses and investment advisory fees
  - Features of and potential charges for riders
  - Limitations on interest returns
  - Insurance and investment components
  - Market risk
- The consumer would benefit from the annuity's features.
- The annuity as a whole, including any riders or product enhancements, is suitable for the consumer based on his or her suitability information. In the case of an exchange or replacement, the transaction as a whole is suitable.
- An exchange or replacement (if applicable) is suitable taking into consideration, among other factors, whether the consumer:
  - Will incur a surrender charge or be subject to the start of a new surrender period
  - Will lose existing contractual benefits
  - Will be subject to increased fees, investment advisory fees, or charges for riders and product enhancements
  - Will benefit from product enhancements and improvements
  - Has transacted another annuity exchange or replacement and, in particular, has had one within the preceding 36 months.

Insurers are required to review annuity applications for suitability and will not issue one unless they determine the recommendation is suitable. Annuity sales made in compliance with FINRA suitability requirements and supervised under FINRA rules satisfy the requirements of Florida's suitability law.

Annuity Surrender Charges

The surrender charge of an annuity contract issued to a senior consumer age 65 or older may not exceed ten (10) percent, and the surrender charge period may not exceed ten (10) years. This restriction does not apply to IRAs and qualified plans, or to consumers with annual incomes over $200,000 or net worth over a million dollars (Accredited Investors).

Recordkeeping

The producer must, at the time of sale, make a record of any recommendation made to a purchaser. The record must contain the information collected from the consumer and any other information used to make the recommendation. The producer must be able to provide. The insurer or the insurance commissioner with records for five years after the
transaction is completed or as long as the annuity is in force with the insurer, whichever is longer. Producers may not dissuade consumers from truthfully responding to an insurer's request for confirmation of suitability information, filing a complaint or cooperating with the investigation of a complaint.

**Insurer's Suitability Supervision**

Insurers must supervise the suitability of their producers' sales and may not issue an annuity unless there is a reasonable basis to believe it is suitable, based on the consumer's suitability information. Insurers must review the suitability of every recommendation, either in-house or by contracting with a third party. Insurers must also maintain procedures to detect – before or after policy issue and delivery – any unsuitable recommendations. This monitoring may include confirmation of consumer suitability information through customer interviews, confirmation letters or other means. The law requires every insurer to report annually to its senior management on the effectiveness of its suitability supervision system, the exceptions discovered, and any corrective action taken.

**Penalties**

The DFS may order an insurance company, agency or producer to take corrective action for any consumer harmed by the insurance producer's violation of this law. Penalties are determined by the DFS under Florida law. A producer who submits unsuitable annuity recommendations to the insurer may be subject to termination of his or her sales appointment with the insurer.

**The Unfair Marketing Practices of Competition and Unfair or Deceptive Acts**

There are a number of state insurance laws that cover the area of marketing and unfair insurance trade practices. These laws are made up of the model regulations passed by the National Association of Insurance Commissioners back in 1940, known as “*The Unfair Marketing Practices Model Regulations*,” since that time the NAIC has made several amendments and the Model Regulation with all of its amendments has become part of every state’s insurance code.

In Florida, you can find this regulation under F.S. 626.9541 and 626.9521, it is known as “Florida’s Unfair Methods of Competition and Unfair or Deceptive Acts.”

**Florida Unfair Trade Practices**

The state of Florida’s Unfair Insurance Trade Practices Act can be found in the Florida Statutes, Title XXXVII, Chapter 626.9521. Recently, with the passage of the “Seibel Act”, several new amendments to the Unfair Trade Practices Act were added.
Misrepresentation and False Advertising of Life Insurance

Pursuant to F.S. § 626.9541(1(a), misrepresentation is simply a false statement of fact; that is a lie. For many insurance producers, the biggest market conduct danger they may face is making a misrepresentation during a sales presentation. Sometimes, it is the result of over-enthusiasm of “selling” the benefits of a policy too strongly. It may also be the result of a willingness to stretch the advantages of a product and sidestep the disadvantages. While on the other hand, providing vague or elusive responses is just as serious a form of misrepresentation as is deliberately lying about a policy’s features and benefits or expected performance. Two forms of misrepresentation are “twisting” and “churning”.

Twisting

Pursuant to § 626.9541(l), F.S., Rule 69B-215.215 F.A.C, twisting is knowingly making any misleading representations or incomplete or fraudulent comparisons or fraudulent material omissions of or with respect to any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on or convert any insurance policy or to take out a policy of insurance with another insurer. It is both unethical and illegal.

Generally, “twisting” implies the deceptive replacement of one annuity product for another from the same insurer.

Churning

Pursuant to § 626.9541(aa), F.S., “Churning” is the practice whereby policy values in an existing life insurance policy or annuity contract, including, but not limited to, cash, loan values, or dividend values, and in any riders to that policy or contract, are directly or indirectly used to purchase another insurance policy or contract with that same insurer for the purpose of earning additional premiums, fees, commissions, or other compensation under the following conditions;

- Without an objectively reasonable basis for believing that the replacement or extraction will result in an actual and demonstrable benefit to the policyholder;
- In a fashion that is fraudulent, deceptive, or otherwise misleading or that involves a deceptive omission;
- When the applicant is not informed that the policy values including cash values, dividends, and other assets of the existing policy or contract will be reduced, forfeited, or used in the purchase of the replacing or additional policy or contract if this is the case, or
- Without informing the applicant that the replacing or additional policy or contract will not be a paid-up policy or that additional premiums will be due if this is the case.
This section also requires that all insurers must adopt written procedures to avoid churning policies or contracts that it has issued. Failure to do so will be an unfair method of competition and an unfair or deceptive act or practice.

In addition, the F.S. § 626.9541(1)(aa) was amended to prohibit specifically “indirect churning.” This occurs when a policy is surrendered, and the resulting funds are used to purchase both an immediate and a deferred annuity, thus creating a double commission for the agent.

**Fraudulent Signatures**

Pursuant to F.S. § 626.9541 (1)(ee), this section adds a prohibited practice of submitting to an insurer on behalf of a consumer a document bearing a false signature.

**Unlawful Use of Designations**

Pursuant to F.S. § 626.9541(1)(ff), this section prohibits an agent from using designations or titles that falsely imply they have special financial knowledge or training. Unlawful use of designations and misrepresentation of agent qualifications include the following:

- A licensee may not, in any sales presentation or solicitation for insurance, use a designation or title in such a way as to falsely imply that the licensee:
  - Possesses special financial knowledge or has obtained specialized financial training; or
  - Is certified or qualified to provide specialized financial advice to senior citizens.

- A licensee may not use terms such as “financial advisor” in such a way as to falsely imply that the licensee is licensed or qualified to discuss, sell, or recommend financial products other than insurance products.

- A licensee may not, in any sales presentation or solicitation for insurance, falsely imply that he or she is qualified to discuss, recommend, or sell securities or other investment products in addition to insurance products.

- A licensee who also holds a designation as a certified financial planner (CFP), chartered life underwriter (CLU), chartered financial consultant (ChFC), life underwriter training council fellow (LUTC), or the appropriate license to sell securities from the Financial Industry Regulatory Authority (FINRA) may inform the customer of those licenses or designations and make recommendations in accordance with those licenses or designations, and in so doing does not violate this paragraph.

**Consumer Protections**

Pursuant to F.S. § 626.025, to transact insurance, agents must comply with consumer protection laws, including the following, as applicable:

- The prohibition against the designation of a life insurance agent or his or her family member as the beneficiary of life insurance policy sold to an individual other than a family member under F.S. § 626.798.
Rebating

Splitting a commission or paying a client for his or her business is considered "rebating." Rebating occurs if the buyer of an insurance policy receives any part of the insurance producer's commission or anything else of significant value as an inducement to purchase the insurance product being sold by the insurance producer. Rebating is not illegal in the state of Florida:

- Florida (Rules specific to the allowance of rebating are found in the 2012 Florida Statutes, Title XXXVII, Section 626.572).

However, most insurers forbid their insurance producers to rebate even in jurisdictions where it is legal. It is acceptable to provide gifts of nominal value (pens, calendars, coffee mugs, etc.) to prospects and clients when those gifts are given regardless of whether or not you make a sale. If you provide a nominal gift, you must provide it to everyone you approach.

Penalties

Following an investigation and a hearing, if the DFS or OIR finds that any agent or insurer is engaged in any unfair marketing practices or unfair claims practice, the Commissioner may issue a **cease and desist order** prohibiting the agent or insurer from continuing the practice. Failure to comply with the cease and desist order can result in a substantial fine (usually $10,000). In addition, fines and loss of license may also be imposed for any agent or insurer guilty of violating the Unfair Marketing & Trade Practices Act.

The DFS may also issue a **consent order**, a disciplinary action in which the party at fault (the agent or insurer) agrees to discontinue a particular practice (usually an unfair marketing practice or claims practice), through a written agreement with the DFS. Usually the individual denies the allegations but consents to the action taken by the department. Consent orders (also known as consent decrees) may or may not involve a fine.

Pursuant to § 626.9521(2), F.S., unfair methods of competition and unfair or deceptive acts or practices prohibited; Penalties, any person who violates any provision of this part is subject to a fine in an amount not greater than $2,500 for each non-willful violation and not greater than $20,000 for each willful violation. Fines under this subsection may not exceed an aggregate amount of $10,000 for all non-willful violations arising out of the same action, or an aggregate amount of $100,000 for all willful violations arising out of the same action. The fines may be imposed, in addition to any other applicable.

Pursuant to F. S. § 626.9521(3)(b), if a person violates the offense of either” twisting” or “churning”, the person commits a misdemeanor of the first degree, punishable as provided in F.S. § 775.082, and an administrative fine not greater than $5,000 for each non-willful violation or an administrative fine, not greater than $75,000 for each willful
violation. To impose an administrative fine for a willful violation under this section, the practice of “twisting” or “churning” must involve fraudulent conduct.

Pursuant to F. S. § 626.9541(1)(ee), by willfully submitting fraudulent signatures on an application or policy-related document, the person commits a felony of the third degree, punishable as provided in F.S. § 775.082, and an administrative fine not greater than $5,000 for each non-willful violation or an administrative fine not greater than $75,000 for each willful violation. A licensee must make all reasonable efforts to ascertain the consumer’s age at the time an insurance application is completed.

Pursuant to F.S. § 626.9521(3)(c), administrative fines under this subsection may not exceed an aggregate amount of $50,000 for all non-willful violations arising out of the same action or an aggregate amount of $250,000 for all willful violations arising out of the same action.

The DFS has also developed a marketing campaign, “Verify Before You Buy.” Remember the saying if it is too good to be true, it probably is.

To check on the license status of a company, agents and consumers should visit http://www.myfloridacfo.com/Division/Consumers/PurchasingInsurance/VerifyBeforeYouBuy.htm, or call the DFS Helpline at 1-800-342-2762.

Insurance Fraud

One of the most serious problems facing the insurance industry today is insurance fraud. It is estimated that insurance fraud costs the United States $80 billion dollars or more a year, which are ultimately passed down to consumers. The Coalition Against Insurance Fraud (CAIF) estimates this fraud to cost approximately $950 per family.

In Florida, the Division of Insurance Fraud, since it was first established in 1976, enforces the state’s criminal laws with respect to insurance transactions. Investigators are certified law enforcement officers with the authority to bear arms and make arrests. The division serves and safeguards the public and businesses in Florida against acts of insurance fraud and the resulting impact of those crimes on taxpayers. According to its most recent report (FY 2012/2013), received 15,447 suspected fraud referrals, made 1,571 arrests, had 1,079 convictions, requested over $59 million in restitution, and received over $112 million in court ordered restitution. To view the report, go to: http://www.myfloridacfo.com/Division/Fraud/Resources/documents/2012-2013_AnnualReport.pdf

Pursuant to F.S. § 817.234, a person commits insurance fraud if he or she does the following:

- Makes a statement when submitting a claim that contains false, incomplete, or misleading information;
- Helps another person make a statement in connection with a claim that contains false, incomplete, or misleading information; or
• Knowingly submits an insurance application containing false, incomplete, or misleading information or conceals information that is material to the application.

To discourage fraud, all claims and application forms must contain the following statement:

“All persons who knowingly and with intent to injure, defraud, or deceive any insurer files a statement of claim or an application containing any false, incomplete, or misleading information is guilty of a felony in the third degree.”

If a person is found guilty of insurance fraud, the insurer may recover compensatory damages as well as its investigation and litigation expenses, including attorney’s fees, from such person.

**Understanding Required Premium Discounts**

In the life and health insurance arena, insurers are not legally required to offer premium discounts to applicants and policyholders. However, a history of good health may help applicants qualify for low (discounted) life insurance and health insurance premiums when they apply for coverage.

A number of life insurance companies now offer the opportunity to earn discounts through so called “Wellness for Life programs,” an optional rider made available on universal life and indexed universal life products. The concept is similar to saving on car insurance by being a safe driver, or saving on your health plan at work by participating in a company wellness program.

If an applicant chooses the rider, he or she will pay a one-time fee ($100-$150) and qualify for premium discounts or greater cash accumulation through the life of the policy by maintaining a healthy weight and having a physical examination at least every other year.

These health discounts for life and health insurance policies is part of a larger industry trend of monitoring customer behavior and providing discounts for healthy habits. Don’t be surprised to see life insurance companies someday offering discounts based on more complex data, such as cholesterol levels.

At this time the DFS does not have any regulations on these types of premium discounts.
Chapter 3
Review Questions

1. One of the reasons why professions develop a code of ethics is

   ( ) A. It is required by law
   ( ) B. To remind members of personal responsibility
   ( ) C. To address situations where conflicting views of what’s right are possible
   ( ) D. Both B and C

2. To determine suitability an insurance agent must strive to answer which of the following questions?

   ( ) A. What are the client’s needs?
   ( ) B. Does the client understand the product and its provisions?
   ( ) C. Does the client understand and accept the product's limitations?
   ( ) D. All of the above

3. In recommending an annuity, a minimum of how many points of suitability information must be analyzed?

   ( ) A. 3
   ( ) B. 10
   ( ) C. 12
   ( ) D. 21

4. Pursuant to F. S. § 626.9521(3)(b), if a person violates the offense of either “twisting” or “churning”, he or she will be subject to which of the following penalties?

   ( ) A. First degree misdemeanor
   ( ) B. First degree felony
   ( ) C. Third degree felony
   ( ) D. Third degree misdemeanor

5. When a policy is surrendered, and the resulting funds are used to purchase both an immediate and a deferred annuity, thus creating a double commission for the agent, this is known as:

   ( ) A. Churning
   ( ) B. Indirect Churning
   ( ) C. Sliding
   ( ) D. Twisting
CHAPTER 4

DISCIPLINARY AND INDUSTRY TRENDS

Overview and Learning Objectives

The overall objective of this course was to educate you on the new state and federal laws and regulations that impact the insurance industry as well as your ethical duties and responsibilities as an insurance producer doing business in the state of Florida. In addition, we reviewed the role and responsibilities of the DFS and OIR and the new initiatives they have taken to enhance communications with agents and insurers and to provide consumers with additional product information.

Upon completion of this chapter, you will have an understanding of the reasons for some recent enforcement actions taken by the DFS, the issues involved with the sale of unauthorized insurers selling phony insurance, and the penalties assessed to insurance professionals who sell those policies. This chapter will also review some key terminology that agents must understand in their day-to-day practices.

Recent Violations and Enforcement Actions

As was discussed in Chapter 1, in every edition of Insurance Insights, the DFS publishes a compendium of different cases involving agents, agencies, and unlicensed individuals who violate Florida’s insurance rules and regulations.

The DFS also publishes a monthly list on its Website of individuals and entities that have been subject to disciplinary proceedings, including fines and license suspension, revocation, and probation. The list includes licensees’ names, license numbers, lines of authority, city, and how the case was disposed. Copies of enforcement actions can be found on the Division of Legal Services database at: http://www.myfloridacfo.com/LegalServices/PublicRecords/DocView.aspx?id

Some of the most recent cases and enforcement actions are discussed below.

Misrepresentation

The DFS investigated a life, variable annuity, and health agent who was charged with submitting invalid information on insurance applications and failed to remit premiums to the insurer in a timely manner. In order to avoid formal litigation of this matter, the Respondent has determined that it is in his best interest to enter into a Settlement Stipulation Consent Order. The Respondent was placed on probation pursuant to F.S. § 626.691, for a period of one (1) year and pay an administrative penalty in the amount of $5,000 as authorized by F.S. § 626.681.
In another investigation, a life and health agent received two group applications from another agent and then submitted the two group applications as her own to an insurer. The agent forged the business owner's signatures on acceptance forms and forged each employee applicant's signature on the individual applications. In the agent signature area, the agent attested to "personally" contacting and verifying the information for the two groups. The agent was fined $6,000 and placed on probation for two years. The insurer canceled their contract with the agent.

Insurance Fraud

An investigation of a life & health agent revealed that he demonstrated a lack of fitness and trustworthiness to engage in the business of insurance after he submitted 326 fraudulent insurance applications using fictitious identities, resulting in unearned commissions of $47,864. The agents’ license was revoked and he was arrested by the Division of Insurance Fraud.

Unlicensed Activity

An investigation of a life, health, and variable annuity agent alleged that his license had been previously placed on probation for representing NFOA, an unauthorized insurer. Before and during the time his license was on probation, the agent obtained the trust of an elderly couple. Then over a period of time wrote numerous annuities with different companies. Of the annuities, about half were placed while he was on probation. He managed this by taking penalty free withdrawals from one company and writing a new annuity with another company. The consumers trusted him so much that they would sign blank papers and send them back to him for processing. Because they trusted him, one consumer agreed (without anything ever being explained) to a Roth IRA at age 78, which cost him more than $20,000 in tax penalties. The agents’ license was revoked and permanently barred.

In another case involving an unlicensed person, an investigation of a life, health, and general lines agent alleged that his insurance agency license expired yet he continued to transact insurance under the agency name despite being warned he may not do so. The agent was fined $4,000 and placed on probation for one year.

Sale of Unauthorized Insurance

An investigation of two life and health agents alleged they enrolled a consumer into a bogus health insurance product. The plan name was known by several different names including "AIM Health Plans", "Insurance Resource Group, Inc.", and "Integrated Insurance Marketing, Inc." Unfortunately for the consumer, there was no authorized insurer underwriting these health policies, and she incurred unpaid medical expenses in the process. The agent was placed on probation for one year, fined $1,000, and was ordered to reimburse costs to the affected consumer in the amount of $3,000.
Unauthorized Products and Entities Involved in Florida Commerce

Pursuant to F. S. § 626.901, the sale of insurance by an unlicensed entity is prohibited. These unauthorized entities and contracts are not subject to the safeguards built into state insurance laws. "Policies" issued by unauthorized "insurers" are not required to maintain adequate reserves to pay policyholder claims. In many cases, operators of these "unauthorized entities" embezzle the premium payments -- and when claims begin to mount, the house of cards simply collapses. Moreover, since the "insurers" were unlicensed, their policies are not covered by the state guarantee fund. Therefore, policyholders are left holding the bag — liable for expenses they thought would be reimbursed. This usually ruins their personal credit and has profound impacts on other aspects of their lives. In the case of phony health insurance, coverage by "unauthorized entities" means that duped policyholders do not have "continuous credible coverage" — a typical requirement for obtaining new group coverage. Even if "policyholders" do not suffer financial ruin due to unpaid claims, they may find it difficult or impossible to obtain new coverage once the scam is discovered.

What is an “unauthorized insurer? State Statute answers the question this way:

“…an “authorized” insurer is any insurer duly authorized by a certificate of authority issued by the department to transact insurance business in the state. An “unauthorized” insurer is one, which has no certificate of authority and is not so authorized.

During their investigations of unlicensed entities, DFS regulators have found that the operators of unauthorized entities would not have been able to reach potential buyers without the assistance of licensed agents. Both the insurance buying public and agents have been enticed by the low premiums unlicensed entities charge, but the rates are often not actuarially sound and money is not set aside for reserves. The DFS usually becomes aware of a plan's termination when policyholders began complaining about slow or no payment of claims -- but by that time, there is little the DFS can do to protect the "policyholders".

Any Florida-licensed insurance agents who sell unlicensed insurance could face a felony charge and lose their agent’s license. To make agents aware of the problems caused by unauthorized insurers, the new law requires a discussion of unauthorized entities in all insurance education courses.

Florida's Unauthorized Entities Law enhanced the penalty for selling unauthorized insurance from a second-degree misdemeanor to a third-degree felony, punishable by up to five years in prison and a $5,000 fine per count. In addition, Florida law requires anyone who solicits, negotiates or sells an insurance contract for an unauthorized insurer to be held financially responsible for unpaid claims.

The DFS offers a reward of up to $25,000 for information leading to a conviction. The DFS’ Bureau of Agent and Agency Investigations has 60 investigators to look into potential violations and take appropriate administrative action against an agent’s license.
The Division of Insurance Fraud has more than 100 sworn law-enforcement investigators who can file criminal charges. Further, the DFS has created an Unauthorized Entities Section dedicated to tracking and taking civil action against these phony plans.

Lately, known unauthorized entities International Water Safety Foundation (IWSF) and Water Safety Services (WSS), were the subject of an Immediate Final Offer issued on October 15, 2003, by the OIR. It ordered they “cease and desist from acting or holding itself out to be an insurer in this state, transacting any new or renewal insurance business in this state, and from collecting any premiums from Florida insureds.”

Also known as International Water Marine Safety Foundation and International Marine Safety Foundation, the entity is based in Canada and claims to have offices in England. IWSF claims to be the holder of a Master Policy issued by North American Marine & General Insurance Company Limited (NAMGiC). NAMGiC was also ordered to cease and desist in the same order above. IWSF offers insurance for all-terrain vehicles, personal watercraft, boats, and other specialty and commercial craft.

IWSF has left a trail of Florida consumers with unpaid claims. Several investigations have been opened on Florida-licensed agents for placing risks with IWSF and NAMGiC. In November 2010, a Canadian court issued a judgment against IWSF and WSS.

To summarize, possible consequences for acting as an insurer without a proper license or aiding and abetting an unauthorized insurer include:

- Conviction of a third-degree felony
- Liability for all unpaid claims
- Suspension or revocation of all insurance licenses

Here are several statutes from the Florida Unauthorized Insurance Law:

- F.S § 626.901, Representing or aiding unauthorized insurer prohibited. No person will, from offices or by personnel or facilities located in this state; or another state or county, directly or indirectly act as an agent for, or otherwise represent or aid another, any insurer not then authorized to transact such insurance in this state.
- F.S. § 626.902, Penalty for representing unauthorized insurer. This statute has been changed so that an agent who knowingly represents an unauthorized insurer has committed a third degree felony instead of a second-degree misdemeanor. Subsequent violations of this statute constitute a second-degree felony.
- In addition to any other penalties provided in the insurance code:
  - Any insurance agent licensed in this state who in this state knowingly represents an unauthorized insurer in violation of F.S. 626.901, commits a felony of the third degree.
  - In addition to the penalties, such violator will be personally, jointly and severally liable with any other person or persons liable.
- F. S. § 626.904, Unauthorized Insurers Process Law; short title; interpretation. F. S. § 626.904 - F. S. § 626.912 may be cited as the “Unauthorized Insurers Process
Law.” Such law will be so interpreted as to effectuate its general purpose to make uniform the law of those states which enact it.

- F.S. § 626.905, Purpose of Unauthorized Insurers Process Law. The purpose of the Unauthorized Insurers Process Law is to subject certain insurers and persons representing or aiding such insurers to the jurisdiction of courts of this state in suits by or on behalf of insured’s or beneficiaries under insurance contracts.

- F.S. § 626.909, Jurisdiction of department; service of process on Secretary of State. It is the obligation and the duty of the state to protect its residents and proceed under this obligation through the department in the courts of this state. It further declares that it is also the intent of the Legislature to subject unauthorized insurers and persons representing or aiding such insurers to the jurisdiction of the department in proceedings, examinations, or hearings before it as provided for in this code. The department will have the right to bring any action, suit, or proceeding in the name of the state or conduct any proceeding, examination, or hearing provided for in this code against any unauthorized insurer or person representing or aiding such insurer for violation of any lawful order of the department or any provision of this code.

- F.S § 626.910, Penalty for violation by unauthorized insurers and persons representing or aiding such insurers. Any unauthorized insurer or person representing or aiding such insurer transacting insurance in this state and subject to service of process will forfeit and pay to the state a civil penalty of not more than $1,000 for each non-willful violation, or not more than $10,000 for each willful violation, of any lawful order of the department or any provision of this code.

The DFS has also developed a marketing campaign, “Verify Before You Buy,” Remember the saying if it is too good to be true, it probably is.

To check on the license status of a company, agents and consumers should visit http://www.myfloridacfo.com/Division/Consumers/PurchasingInsurance/VerifyBeforeYouBuy.htm, or call the DFS Helpline at 1-800-342-2762.

**New and Other Important Terminology Applicable to Florida Licensed Insurance Professionals**

Now let’s review some of the important terms associated with your day-to-day activities as an insurance producer in the state of Florida.

**Agent**

In insurance, the person authorized to represent the insurer in negotiating, servicing, or effecting insurance policies.
**Authorized Insurer**

An authorized insurance company, known as an admitted company, is a company that is licensed and authorized to do business in the state of Florida.

**Buyer’s Guide and Contract Summary**

Under Florida's General Solicitation Law, a Buyer’s Guide and a Contract Summary must accompany sales of all types of annuities. The Buyer's Guide is a generic brochure designed to provide consumers with basic information regarding the purchase of insurance and annuities. The Contract Summary will summarize the details of the annuity contract, set forth in a format consistent with NAIC guidelines.

**Churning**

Churning is the practice whereby policy values in an existing life insurance policy or annuity contract, including, but not limited to, cash, loan values, or dividend values, and in any riders to that policy or contract, are directly or indirectly used to purchase another insurance policy or annuity contract with that same insurer for the purpose of earning additional premiums, fees, commissions, or other compensation. Churning is sometimes referred to as “internal twisting.” Churning by an insurer or an agent is an unfair method of competition and an unfair or deceptive act or practice.

**Free Look Period**

Prior to the Seibel Act, state law mandated a 10-day "Free Look" period for the sale of all life insurance products and fixed annuity contracts. The "free look" provision is designed to give purchasers an opportunity to review the terms of the contract, and if they choose, to return the contract within the first ten days for a full refund on the premiums. Issuers could avoid the "free look" refund provision by giving the prospective purchaser a Buyer's Guide and Policy Summary (for life insurance)/Contract Summary (for annuities) ten days prior to purchase. But if these documents are delivered at the time of purchase — as they usually are — the contract must include the refund provision. The Seibel Act extends the "Free Look" period from 10 days to 14 days. The Act also broadens the Free Look refund provision to include variable, as well as fixed, annuities.

**Indirect Churning**

The Seibel Act modifies the definition of “churning” to cover direct or indirect churning. Indirect churning occurs when a policy is surrendered and the resulting funds are used to purchase an immediate annuity (specifying payments to begin at once) which is then used to fund a deferred annuity or a life insurance policy. It is often done because the agent can receive a double commission for the immediate annuity and the deferred annuity or life insurance policy that it funds.
**Misrepresentation**

Misrepresentation in insurance applications is knowingly making a false or fraudulent written or oral statement or representation on, or relative to, an application or negotiation for an insurance policy for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual. In addition, knowingly making a material omission in the comparison of a life, health, or Medicare supplement insurance replacement policy with the policy it replaces for the purpose of obtaining a fee, commission, money, or other benefit from any insurer, agent, broker, or individual. A material omission includes the failure to advise the insured of the existence and operation of a preexisting condition clause in the replacement policy.

**Replacement**

Often a client will wish to replace or exchange an existing contract for a new one offered by the agent. While replacement is a legitimate activity, there have been problems in the past with agents who encourage contract exchanges as a way to generate commissions for themselves. Agents and insurers must make several disclosures when proposing a new contract if they know (or should now) that an existing policy or contract will lapse or be significantly reduced in value.

**Sliding**

Sliding is the act or practice of representing to the applicant that a specific ancillary coverage or product is required by law in conjunction with the purchase of insurance when such coverage or product is not required and representing to the applicant that a specific ancillary coverage or product is included in the policy applied for without an additional charge when such charge is required. In addition sliding is charging an applicant for a specific ancillary coverage or product, in addition to the cost of the insurance coverage applied for, without the informed consent of the applicant.

**Suitability**

Suitability refers to the appropriateness of recommend transactions when considering the risks and benefits associated with a transaction relative to a customer’s age, assets, current insurance holdings, financial goals and objectives.

**Twisting**

Twisting is knowingly making any misleading representations or incomplete or fraudulent comparisons or fraudulent material omissions of or with respect to any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance in another insurer.
Unauthorized Insurer

An unauthorized insurer is a company that is operating without a certificate of authority. It is unlawful for agents to place business with an unauthorized insurer. In Florida, an agent who represents an unauthorized insurer can be charged with a third-degree felony and held liable for any unpaid claims and refund of premiums.
Chapter 4
Review Questions

1. True or False. In every edition of Insurance Insights, the DFS publishes a compendium of different cases involving agents, agencies, and unlicensed individuals who violate Florida’s insurance rules and regulations.

( ) A. True
( ) B. False

2. The Seibel Act extended the "Free Look" period from 10 days to how many days?

( ) A. 21 days
( ) B. 14 days
( ) C. 30 days
( ) D. 60 days

3. What is sometimes referred to as “internal twisting?”

( ) A. Churning
( ) B. Sliding
( ) C. Replacement
( ) D. None of the above

4. Any unauthorized insurer or person representing or aiding such insurer transacting insurance in this state and subject to service of process will forfeit and pay to the state a civil penalty of not more than ___ for each non-willful violation, or not more than _____ for each willful violation.

( ) A. There are no fines
( ) B. $250/$25000
( ) C. $500/$5000
( ) D. $1,000/$10,000

5. Pursuant to F.S. § 626.902, any agent who solicits or sells for these or any unauthorized entity may be liable for losses sustained not paid by the unauthorized entity, and may be charged with which of the following crimes?

( ) A. Third degree misdemeanor
( ) B. First degree misdemeanor
( ) C. Third degree felony
( ) D. First degree felony
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# Chapter Review Answers

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<th>Chapter 1</th>
<th>Chapter 2</th>
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<tr>
<td>1. A</td>
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