§ 2123. Misrepresentations, misleading statements and incomplete comparisons. (a) (1) No agent or representative of any insurer or health maintenance organization authorized to transact life, accident or health insurance or health maintenance organization business in this state, insurance broker, person who has received a grant from and has been certified by the health benefit exchange established pursuant to section 1311 of the Affordable Care Act, 42 U.S.C. § 18031, to act as a navigator, including any person employed by a certified navigator, or other person, firm, association or corporation, shall issue or circulate or cause or permit to be issued or circulated, any illustration, circular, statement or memorandum misrepresenting the terms, benefits or advantages of any policy or contract of life, accident or health insurance, any annuity contract or any health maintenance organization contract, delivered or issued for delivery or to be delivered or issued for delivery, in this state, or shall make any misleading estimate as to the dividends or share of surplus or additional amounts to be received in the future on such policy or contract, or shall make any false or misleading statement as to the dividends or share of surplus or additional amounts previously paid by any such insurer or health maintenance organization on similar policies or contracts, or shall make any misleading representation, or any misrepresentation, as to the financial condition of any such insurer or health maintenance organization, or as to the legal reserve system upon which such insurer or health maintenance organization operates.

(2) No such person, firm, association or corporation shall make to any person or persons any incomplete comparison of any such policies or contracts of any insurer, insurers, or health maintenance organization, for the purpose of inducing, or tending to induce, such person or persons to lapse, forfeit or surrender any insurance policy or health maintenance organization contract.

(3) Any replacement of individual life insurance policies or individual annuity contracts of an insurer by an agent, representative of the same or different insurer or broker shall conform to standards promulgated by regulation by the superintendent. Such regulation shall:

(A) specify what constitutes the replacement of a life insurance policy or annuity contract and the proper disclosure and notification procedures to replace a policy or contract;

(B) require notification of the proposed replacement to the insurer whose policies or contracts are intended to be replaced;

(C) require the timely exchange of illustrative and cost information required by section three thousand two hundred nine of this chapter and necessary for completion of a comparison of the proposed and replaced coverage; and

(D) provide for a sixty-day period following issuance of the replacement policies or contracts during which the policy or contract owner may return the policies or contracts and reinstate the replaced policies or contracts.

(b) Any comparison of the policies or contracts of any such insurer, insurers or health maintenance organization shall be deemed to be an incomplete comparison if it does not conform to all the requirements for comparisons established by regulation.

(c) In the determination, judicial or otherwise, of the incompleteness or misleading character of any such comparison, it shall not be presumed that the insured knew or knows of any of the provisions, terms or benefits contained in any insurance policy or health maintenance organization contract.

(d) Any agent or representative of an insurer or health maintenance organization, insurance broker, person who has received a grant from and has been certified by the health benefit exchange established pursuant to section 1311 of the affordable care act, 42 U.S.C. § 18031, to act as a navigator, including any person employed by a certified navigator, or any other person, firm, association or corporation who, or which, shall violate any of the provisions of this section and shall knowingly receive any compensation or commission for the solicitation, sale or negotiation of any insurance policy, health maintenance organization or annuity contract induced by a violation of this section shall also be liable for a civil penalty in the amount received by such violator as compensation or commission, which penalty may be sued for and recovered for his, her, or its own use and benefit by any person induced to purchase an insurance policy, health maintenance organization or annuity contract by such violation. In addition, such agent, representative, broker, person, firm, association or corporation violating this section shall be liable for a civil penalty in the amount of any compensation or commission lost by any agent, representative or broker as a result of a

violation of this section or the making of such false or misleading statement, which penalty may be sued for and recovered for his, her, or its own use and benefit by such agent, representative or broker.

* (e) Except with respect to a credit unemployment insurance policy, group credit life insurance policy, a group credit health, group credit accident or group credit health and accident policy, or similar group credit insurance covering the person of the insured, state chartered banking institutions, federally chartered banking institutions and any person soliciting the purchase of or selling insurance on the premises thereof, must disclose or cause to be disclosed in writing, where practicable, in clear and concise language, to their customers and prospective customers who are solicited therefor, that any insurance offered or sold:

(1) is not a deposit;

(2) is not insured by the federal deposit insurance corporation or the national credit union share insurance fund, as applicable; and

(3) is not guaranteed by the state chartered banking institution or the federally chartered banking institution.

* NB Repealed September 10, 2029

* (f) For the purposes of this section, the terms "state chartered banking institutions" and "federally chartered banking institutions" shall have the same meanings as set forth in subdivision one of section twelve-a of the banking law.

* NB Repealed September 10, 2029