

Amendment No. (for drafter's use only)

CHAMBER ACTION

Senate

House

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1 Representative Llorente offered the following:

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3 **Amendment (with title amendment)**

4 Between lines 202 and 203, insert:

5 Section 4. Section 627.4554, Florida Statutes, is created
6 to read:

7 627.4554 Annuity investments by seniors.--

8 (1) PURPOSE; CONSTRUCTION.--

9 (a) The purpose of this section is to set forth standards
10 and procedures for recommendations to senior consumers that
11 result in a transaction involving annuity products to
12 appropriately address the insurance needs and financial
13 objectives of senior consumers at the time of the transaction.

14 (b) Nothing in this section shall be construed to create
15 or imply a private cause of action for a violation of this
16 section.

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17 (2) APPLICATION.--This section applies to any
18 recommendation to purchase or exchange an annuity made to a
19 senior consumer by an insurance agent, or an insurer where no
20 agent is involved, that results in the purchase or exchange
21 recommended.

22 (3) DEFINITIONS.--For purposes of this section:

23 (a) "Annuity" means a fixed annuity or variable annuity
24 that is individually solicited, whether the product is
25 classified as an individual annuity or a group annuity.

26 (b) "Recommendation" means advice provided by an insurance
27 agent, or an insurer if no insurance agent is involved, to an
28 individual senior consumer that results in a purchase or
29 exchange of an annuity in accordance with that advice.

30 (c) "Senior consumer" means a person 65 years of age or
31 older. In the event of a joint purchase by more than one party,
32 a purchaser is considered to be a senior consumer if any of the
33 parties is age 65 or older.

34 (4) DUTIES OF INSURERS AND INSURANCE AGENTS.--

35 (a) In recommending to a senior consumer the purchase of
36 an annuity or the exchange of an annuity that results in another
37 insurance transaction or series of insurance transactions, an
38 insurance agent, or an insurer if no insurance agent is
39 involved, shall have reasonable grounds for believing that the
40 recommendation is suitable for the senior consumer on the basis
41 of the facts disclosed by the senior consumer as to his or her
42 investments and other insurance products and as to his or her
43 financial situation and needs.

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44 (b) Before executing a purchase or exchange of an annuity
45 resulting from a recommendation to a senior consumer, an
46 insurance agent, or an insurer if no insurance agent is
47 involved, shall make reasonable efforts to obtain information
48 concerning the senior consumer's financial status, tax status,
49 and investment objectives and such other information used or
50 considered to be reasonable by the insurance agent, or the
51 insurer if no agent is involved, in making the recommendation.

52 (c)1. Except as provided under subparagraph 2., an
53 insurance agent, or an insurer if no insurance agent is
54 involved, shall not have any obligation to a senior consumer
55 under paragraph (a) related to any recommendation if the senior
56 consumer:

57 a. Refuses to provide relevant information requested by
58 the insurer or insurance agent;

59 b. Decides to enter into an insurance transaction that is
60 not based on a recommendation of the insurer or insurance agent;
61 or

62 c. Fails to provide complete or accurate information.

63 2. An insurer or insurance agent's recommendation subject
64 to subparagraph 1. shall be reasonable under all the
65 circumstances actually known to the insurer or insurance agent
66 at the time of the recommendation.

67 (d)1. An insurer or insurance agent shall ensure that a
68 system to supervise recommendations that is reasonably designed
69 to achieve compliance with this section is established and
70 maintained by complying with subparagraphs 3., 4., and 5., or

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71 shall establish and maintain such a system, including, but not
72 limited to:

73 a. Maintaining written procedures.

74 b. Conducting periodic reviews of its records that are
75 reasonably designed to assist in detecting and preventing
76 violations of this section.

77 2. A managing general agent and an insurance agency shall
78 adopt a system established by an insurer to supervise
79 recommendations of its insurance agents that is reasonably
80 designed to achieve compliance with this section or shall
81 establish and maintain such a system, including, but not limited
82 to:

83 a. Maintaining written procedures.

84 b. Conducting periodic reviews of records that are
85 reasonably designed to assist in detecting and preventing
86 violations of this section.

87 3. An insurer may contract with a third party, including a
88 managing general agent or an insurance agency, to establish and
89 maintain a system of supervision as required by subparagraph 1.
90 with respect to insurance agents under contract with or employed
91 by the third party.

92 4. An insurer shall make reasonable inquiry to ensure that
93 such third party contracting under subparagraph 3. is performing
94 the functions required under subparagraph 1. and shall take such
95 action as is reasonable under the circumstances to enforce the
96 contractual obligation to perform the functions. An insurer may
97 comply with its obligation to make reasonable inquiry by:

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98 a. Annually obtaining a certification from a third party
99 senior manager who has responsibility for the delegated
100 functions that the manager has a reasonable basis to represent,
101 and does represent, that the third party is performing the
102 required functions.

103 b. Based on reasonable selection criteria, periodically
104 selecting third parties contracting under subparagraph 3. for a
105 review to determine whether the third parties are performing the
106 required functions. The insurer shall perform any procedures
107 necessary to conduct the review that are reasonable under the
108 circumstances.

109 5. An insurer that contracts with a third party pursuant
110 to subparagraph 3. and complies with the requirements specified
111 in subparagraph 4. is deemed to have fulfilled its
112 responsibilities under subparagraph 1.

113 6. An insurer, managing general agent, or insurance agency
114 is not required by subparagraph 1. or subparagraph 2. to:

115 a. Review or provide for review of all transactions
116 solicited by an insurance agent; or

117 b. Include in its system of supervision an insurance
118 agent's recommendations to senior consumers of products other
119 than the annuities offered by the insurer, managing general
120 agent, or insurance agency.

121 7. A managing general agent or insurance agency
122 contracting with an insurer pursuant to subparagraph 3. shall
123 promptly, when requested by the insurer pursuant to subparagraph
124 4., give a certification as described in subparagraph 4. or give

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125 a clear statement that the managing general agent or insurance
126 agency is unable to meet the certification criteria.

127 8. A person may not provide a certification under sub-
128 subparagraph 4.a. unless the person is a senior manager with
129 responsibility for the delegated functions and has a reasonable
130 basis for making the certification.

131 (5) MITIGATION OF RESPONSIBILITY.--

132 (a) The office may order an insurer to take reasonably
133 appropriate corrective action for any senior consumer harmed by
134 a violation of this section by the insurer or the insurer's
135 insurance agent.

136 (b) The department may order:

137 1. An insurance agent to take reasonably appropriate
138 corrective action for any senior consumer harmed by a violation
139 of this section by the insurance agent.

140 2. A managing general agency or insurance agency that
141 employs or contracts with an insurance agent to sell or solicit
142 the sale of annuities to senior consumers to take reasonably
143 appropriate corrective action for any senior consumer harmed by
144 a violation of this section by the insurance agent.

145 (c) Any applicable penalty under the Florida Insurance
146 Code for a violation of paragraph (4)(a), paragraph (4)(b), or
147 subparagraph (4)(c)2. may be reduced or eliminated, according to
148 a schedule adopted by the office or department, as appropriate,
149 if corrective action for the senior consumer was taken promptly
150 after a violation was discovered.

151 (6) RECORDKEEPING.--

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152 (a) Insurers, managing general agents, insurance agencies,
153 and insurance agents shall maintain or be able to make available
154 to the department or office, as appropriate, records of the
155 information collected from the senior consumer and other
156 information used in making the recommendations that were the
157 basis for insurance transactions for 5 years after the insurance
158 transaction is completed by the insurer. An insurer is
159 permitted, but shall not be required, to maintain documentation
160 on behalf of an insurance agent.

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

165 (7) EXEMPTIONS.--Unless otherwise specifically included,
166 this section shall not apply to recommendations involving:

167 (a) Direct-response solicitations where there is no
168 recommendation based on information collected from the senior
169 consumer pursuant to this section.

170 (b) Contracts used to fund:

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

173 2. A plan described by Sections 401(a), 401(k), 403(b),
174 408(k), or 408(p) of the Internal Revenue Code of 1986, as
175 amended, if established or maintained by an employer;

176 3. A government or church plan defined in Section 414 of
177 the Internal Revenue Code of 1986, as amended, a government or
178 church welfare benefit plan, or a deferred compensation plan of

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179 a state or local government or tax-exempt organization under
180 Section 457 of the Internal Revenue Code of 1986, as amended;

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

183 5. Settlements of or assumptions of liabilities associated
184 with personal injury litigation or any dispute or claim
185 resolution process; or

186 6. Prepaid funeral contracts.

187 (8) APPLICATION TO VARIABLE ANNUITIES.-- Compliance with
188 the Conduct Rules of the National Association of Securities
189 Dealers in effect on January 1, 2004, satisfies the requirements
190 under this section for the recommendation of variable annuities.
191 This section does not limit the department's ability to enforce
192 the provisions of this section with respect to insurance agents,
193 insurance agencies, and managing general agents, or the office's
194 ability to enforce the provisions of this section with respect
195 to insurers.

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198 ===== T I T L E A M E N D M E N T =====

199 Remove line 25 and insert:

200 an insured; providing criteria and limitations; creating s.
201 627.4554, F.S.; providing a purpose; providing application;
202 providing definitions; specifying duties of insurers and
203 insurance agents relating to making annuity investment
204 recommendations to senior consumers; providing requirements;
205 limiting responsibility of insurers or insurance agents under
206 certain circumstances; requiring a system of compliance and

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HOUSE AMENDMENT

Bill No. HB 1643 CS

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207 | supervision; providing for enforcement by the Office of
208 | Financial Regulation and the Department of Financial Services;
209 | authorizing the office and department to issue orders to
210 | mitigate certain responsibilities of insurers or insurance
211 | agents; providing for reduction or elimination of certain
212 | penalties under certain circumstances; providing recordkeeping
213 | requirements; providing exemption from application for variable
214 | annuities; providing

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