

By the Committee on Banking and Insurance; and Senator Atwater

311-2120-04

1 A bill to be entitled
 2 An act relating to annuity investments by
 3 seniors; creating s. 627.4554, F.S.; providing
 4 a purpose; providing application; providing
 5 definitions; specifying duties of insurers and
 6 insurance agents relating to making annuity
 7 investment recommendations to senior consumers;
 8 providing requirements; limiting responsibility
 9 of insurers or insurance agents under certain
 10 circumstances; requiring a system of compliance
 11 and supervision; providing for enforcement by
 12 the Office of Insurance Regulation and the
 13 Department of Financial Services; authorizing
 14 the office and the department to issue orders
 15 to mitigate certain responsibilities of
 16 insurers or insurance agents; providing for
 17 reduction or elimination of certain penalties
 18 under certain circumstances; providing
 19 recordkeeping requirements; providing an
 20 exemption from application for variable
 21 annuities; providing an effective date.

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

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 25 Section 1. Section 627.4554, Florida Statutes, is
 26 created to read:

27 627.4554 Annuity investments by seniors.--

28 (1) PURPOSE; CONSTRUCTION.--

29 (a) The purpose of this section is to set forth
 30 standards and procedures for recommendations to senior
 31 consumers which result in a transaction involving annuity

1 products to appropriately address the insurance needs and
2 financial objectives of senior consumers at the time of the
3 transaction.

4 (b) Nothing in this section shall be construed to
5 create or imply a private cause of action for a violation of
6 this section.

7 (2) APPLICATION.--This section applies to any
8 recommendation to purchase or exchange an annuity made to a
9 senior consumer by an insurance agent, or an insurer where no
10 agent is involved, that results in the purchase or exchange
11 recommended.

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

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

16 (b) "Recommendation" means advice provided by an
17 insurance agent, or an insurer if no insurance agent is
18 involved, to an individual senior consumer which results in a
19 purchase or exchange of an annuity in accordance with that
20 advice.

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

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

26 (a) In recommending to a senior consumer the purchase
27 of an annuity or the exchange of an annuity that results in
28 another insurance transaction or series of insurance
29 transactions, an insurance agent, or an insurer if no
30 insurance agent is involved, shall have reasonable grounds for
31 believing that the recommendation is suitable for the senior

1 consumer on the basis of the facts disclosed by the senior
2 consumer as to his or her investments and other insurance
3 products and as to his or her financial situation and needs.

4 (b) Before executing a purchase or exchange of an
5 annuity resulting from a recommendation to a senior consumer,
6 an insurance agent, or an insurer if no insurance agent is
7 involved, shall make reasonable efforts to obtain information
8 concerning the senior consumer's financial status, tax status,
9 and investment objectives and such other information used or
10 considered to be reasonable by the insurance agent, or the
11 insurer if no agent is involved, in making the recommendation.

12 (c)1. Except as provided under subparagraph 2., an
13 insurance agent, or an insurer if no insurance agent is
14 involved, shall not have any obligation to a senior consumer
15 under paragraph (a) related to any recommendation if the
16 senior consumer:

17 a. Refuses to provide relevant information requested
18 by the insurer or insurance agent;

19 b. Decides to enter into an insurance transaction that
20 is not based on a recommendation of the insurer or insurance
21 agent; or

22 c. Fails to provide complete or accurate information.

23 2. An insurer or insurance agent's recommendation
24 subject to subparagraph 1. shall be reasonable under all the
25 circumstances actually known to the insurer or insurance agent
26 at the time of the recommendation.

27 (d)1. An insurer or insurance agent shall ensure that
28 a system to supervise recommendations which is reasonably
29 designed to achieve compliance with this section is
30 established and maintained by complying with subparagraphs 3.,
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1 4., and 5., or shall establish and maintain such a system,
2 including, but not limited to:
3 a. Maintaining written procedures.
4 b. Conducting periodic reviews of its records that are
5 reasonably designed to assist in detecting and preventing
6 violations of this section.
7 2. A managing general agent and an insurance agency
8 shall adopt a system established by an insurer to supervise
9 recommendations of its insurance agents which is reasonably
10 designed to achieve compliance with this section or shall
11 establish and maintain such a system, including, but not
12 limited to:
13 a. Maintaining written procedures.
14 b. Conducting periodic reviews of records that are
15 reasonably designed to assist in detecting and preventing
16 violations of this section.
17 3. An insurer may contract with a third party,
18 including a managing general agent or an insurance agency, to
19 establish and maintain a system of supervision as required by
20 subparagraph 1. with respect to insurance agents under
21 contract with or employed by the third party.
22 4. An insurer shall make reasonable inquiry to ensure
23 that such third party contracting under subparagraph 3. is
24 performing the functions required under subparagraph 1. and
25 shall take such action as is reasonable under the
26 circumstances to enforce the contractual obligation to perform
27 the functions. An insurer may comply with its obligation to
28 make reasonable inquiry by:
29 a. Annually obtaining a certification from a third
30 party senior manager who has responsibility for the delegated
31 functions that the manager has a reasonable basis to

1 represent, and does represent, that the third party is
2 performing the required functions.

3 b. Based on reasonable selection criteria,
4 periodically selecting third parties contracting under
5 subparagraph 3. for a review to determine whether the third
6 parties are performing the required functions. The insurer
7 shall perform any procedures necessary to conduct the review
8 which are reasonable under the circumstances.

9 5. An insurer that contracts with a third party
10 pursuant to subparagraph 3. and complies with the requirements
11 specified in subparagraph 4. is deemed to have fulfilled its
12 responsibilities under subparagraph 1.

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

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

18 b. Include in its system of supervision an insurance
19 agent's recommendations to senior consumers of products other
20 than the annuities offered by the insurer, managing general
21 agent, or insurance agency.

22 7. A managing general agent or insurance agency
23 contracting with an insurer pursuant to subparagraph 3. shall
24 promptly, when requested by the insurer pursuant to
25 subparagraph 4., provide a certification as described in
26 subparagraph 4. or provide a clear statement that the managing
27 general agent or insurance agency is unable to meet the
28 certification criteria.

29 8. A person may not provide a certification under
30 sub-subparagraph 4.a. unless the person is a senior manager
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1 with responsibility for the delegated functions and has a
2 reasonable basis for making the certification.

3 (5) MITIGATION OF RESPONSIBILITY.--

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

8 (b) The department may order:

9 1. An insurance agent to take reasonably appropriate
10 corrective action for any senior consumer harmed by a
11 violation of this section by the insurance agent.

12 2. A managing general agency or insurance agency that
13 employs or contracts with an insurance agent to sell or
14 solicit the sale of annuities to senior consumers to take
15 reasonably appropriate corrective action for any senior
16 consumer harmed by a violation of this section by the
17 insurance agent.

18 (c) Any applicable penalty under the Florida Insurance
19 Code for a violation of paragraph (4)(a), paragraph (4)(b), or
20 subparagraph (4)(c)2. may be reduced or eliminated, according
21 to a schedule adopted by the office or the department, as
22 appropriate, if corrective action for the senior consumer was
23 taken promptly after a violation was discovered.

24 (6) RECORDKEEPING.--

25 (a) Insurers, managing general agents, insurance
26 agencies, and insurance agents shall maintain or be able to
27 make available to the department or office, as appropriate,
28 records of the information collected from the senior consumer
29 and other information used in making the recommendations that
30 were the basis for insurance transactions for 5 years after
31 the insurance transaction is completed by the insurer. An

1 insurer is permitted, but shall not be required, to maintain
2 documentation on behalf of an insurance agent.

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

7 (7) EXEMPTIONS.--Unless otherwise specifically
8 included, this section does not apply to recommendations
9 involving:

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

13 (b) Contracts used to fund:

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

16 2. A plan described by Sections 401(a), 401(k),
17 403(b), 408(k), or 408(p) of the Internal Revenue Code of
18 1986, as amended, if established or maintained by an employer;

19 3. A government or church plan defined in Section 414
20 of the Internal Revenue Code of 1986, as amended, a government
21 or church welfare benefit plan, or a deferred compensation
22 plan of a state or local government or tax-exempt organization
23 under Section 457 of the Internal Revenue Code of 1986, as
24 amended;

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

27 5. Settlements of or assumptions of liabilities
28 associated with personal injury litigation or any dispute or
29 claim resolution process; or

30 6. Prepaid funeral contracts.

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1 (8) APPLICATION TO VARIABLE ANNUITIES.--Compliance
2 with the National Association of Securities Dealers Conduct
3 Rules in effect on January 1, 2004, shall satisfy the
4 requirements under this section for the recommendation of
5 variable annuities. This section does not limit the
6 department's ability to enforce the provisions of this section
7 with respect to insurance agents, insurance agencies, and
8 managing general agents, or the office's ability to enforce
9 the provisions of this section with respect to insurers.

10 Section 2. This act shall take effect February 1,
11 2005.

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13 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
14 COMMITTEE SUBSTITUTE FOR
15 Senate Bill 2280

16 Defines a senior consumer as an individual 65 years or older
17 to conform to the National Association of Insurance
18 Commissioner's (NAIC) model.

18 Deletes the word "chapter" and inserts the "Florida Insurance
19 Code" in order to apply all penalty provisions of the Code to
20 applicable violations under the bill.

20 Conforms to the NAIC model regulation by providing that
21 compliance with the National Association of Securities Dealers
22 (NASD) Conduct Rules will satisfy the requirements under the
23 bill as to recommendations by agents and insurers of variable
24 annuities.