

Bill No. CS for CS for SB 2994, 1st Eng.

Amendment No. ____ Barcode 835440

CHAMBER ACTION

Senate

House

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Senator Atwater moved the following amendment:

Senate Amendment (with title amendment)

On page 166, between lines 14 and 15,

insert:

Section 146. Section 627.4554, Florida Statutes, is created to read:

627.4554 Annuity investments by seniors.--

(1) PURPOSE; CONSTRUCTION.--

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

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

(2) APPLICATION.--This section applies to any recommendation to purchase or exchange an annuity made to a

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1 senior consumer by an insurance agent, or an insurer where no
2 agent is involved, that results in the purchase or exchange
3 recommended.

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

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

8 (b) "Recommendation" means advice provided by an
9 insurance agent, or an insurer if no insurance agent is
10 involved, to an individual senior consumer which results in a
11 purchase or exchange of an annuity in accordance with that
12 advice.

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

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

18 (a) In recommending to a senior consumer the purchase
19 of an annuity or the exchange of an annuity that results in
20 another insurance transaction or series of insurance
21 transactions, an insurance agent, or an insurer if no
22 insurance agent is involved, shall have reasonable grounds for
23 believing that the recommendation is suitable for the senior
24 consumer on the basis of the facts disclosed by the senior
25 consumer as to his or her investments and other insurance
26 products and as to his or her financial situation and needs.

27 (b) Before executing a purchase or exchange of an
28 annuity resulting from a recommendation to a senior consumer,
29 an insurance agent, or an insurer if no insurance agent is
30 involved, shall make reasonable efforts to obtain information
31 concerning the senior consumer's financial status, tax status,

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1 and investment objectives and such other information used or
2 considered to be reasonable by the insurance agent, or the
3 insurer if no agent is involved, in making the recommendation.

4 (c)1. Except as provided under subparagraph 2., an
5 insurance agent, or an insurer if no insurance agent is
6 involved, shall not have any obligation to a senior consumer
7 under paragraph (a) related to any recommendation if the
8 senior consumer:

9 a. Refuses to provide relevant information requested
10 by the insurer or insurance agent;

11 b. Decides to enter into an insurance transaction that
12 is not based on a recommendation of the insurer or insurance
13 agent; or

14 c. Fails to provide complete or accurate information.

15 2. An insurer or insurance agent's recommendation
16 subject to subparagraph 1. shall be reasonable under all the
17 circumstances actually known to the insurer or insurance agent
18 at the time of the recommendation.

19 (d)1. An insurer or insurance agent shall ensure that
20 a system to supervise recommendations which is reasonably
21 designed to achieve compliance with this section is
22 established and maintained by complying with subparagraphs 3.,
23 4., and 5., or shall establish and maintain such a system,
24 including, but not limited to:

25 a. Maintaining written procedures.

26 b. Conducting periodic reviews of its records that are
27 reasonably designed to assist in detecting and preventing
28 violations of this section.

29 2. A managing general agent and an insurance agency
30 shall adopt a system established by an insurer to supervise
31 recommendations of its insurance agents which is reasonably

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1 designed to achieve compliance with this section or shall
2 establish and maintain such a system, including, but not
3 limited to:

- 4 a. Maintaining written procedures.
- 5 b. Conducting periodic reviews of records that are
6 reasonably designed to assist in detecting and preventing
7 violations of this section.

8 3. An insurer may contract with a third party,
9 including a managing general agent or an insurance agency, to
10 establish and maintain a system of supervision as required by
11 subparagraph 1. with respect to insurance agents under
12 contract with or employed by the third party.

13 4. An insurer shall make reasonable inquiry to ensure
14 that such third party contracting under subparagraph 3. is
15 performing the functions required under subparagraph 1. and
16 shall take such action as is reasonable under the
17 circumstances to enforce the contractual obligation to perform
18 the functions. An insurer may comply with its obligation to
19 make reasonable inquiry by:

- 20 a. Annually obtaining a certification from a third
21 party senior manager who has responsibility for the delegated
22 functions that the manager has a reasonable basis to
23 represent, and does represent, that the third party is
24 performing the required functions.

25 b. Based on reasonable selection criteria,
26 periodically selecting third parties contracting under
27 subparagraph 3. for a review to determine whether the third
28 parties are performing the required functions. The insurer
29 shall perform any procedures necessary to conduct the review
30 which are reasonable under the circumstances.

31 5. An insurer that contracts with a third party

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1 pursuant to subparagraph 3. and complies with the requirements
2 specified in subparagraph 4. is deemed to have fulfilled its
3 responsibilities under subparagraph 1.

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

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

9 b. Include in its system of supervision an insurance
10 agent's recommendations to senior consumers of products other
11 than the annuities offered by the insurer, managing general
12 agent, or insurance agency.

13 7. A managing general agent or insurance agency
14 contracting with an insurer pursuant to subparagraph 3. shall
15 promptly, when requested by the insurer pursuant to
16 subparagraph 4., provide a certification as described in
17 subparagraph 4. or provide a clear statement that the managing
18 general agent or insurance agency is unable to meet the
19 certification criteria.

20 8. A person may not provide a certification under
21 sub-subparagraph 4.a. unless the person is a senior manager
22 with responsibility for the delegated functions and has a
23 reasonable basis for making the certification.

24 (5) MITIGATION OF RESPONSIBILITY.--

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

29 (b) The department may order:

30 1. An insurance agent to take reasonably appropriate
31 corrective action for any senior consumer harmed by a

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1 violation of this section by the insurance agent.

2 2. A managing general agency or insurance agency that
3 employs or contracts with an insurance agent to sell or
4 solicit the sale of annuities to senior consumers to take
5 reasonably appropriate corrective action for any senior
6 consumer harmed by a violation of this section by the
7 insurance agent.

8 (c) Any applicable penalty under the Florida Insurance
9 Code for a violation of paragraph (4)(a), paragraph (4)(b), or
10 subparagraph (4)(c)2. may be reduced or eliminated, according
11 to a schedule adopted by the office or the department, as
12 appropriate, if corrective action for the senior consumer was
13 taken promptly after a violation was discovered.

14 (6) RECORDKEEPING.--

15 (a) Insurers, managing general agents, insurance
16 agencies, and insurance agents shall maintain or be able to
17 make available to the department or office, as appropriate,
18 records of the information collected from the senior consumer
19 and other information used in making the recommendations that
20 were the basis for insurance transactions for 5 years after
21 the insurance transaction is completed by the insurer. An
22 insurer is permitted, but shall not be required, to maintain
23 documentation on behalf of an insurance agent.

24 (b) Records required to be maintained by this
25 regulation may be maintained in paper, photographic,
26 microprocess, magnetic, mechanical, or electronic media, or by
27 any process that accurately reproduces the actual document.

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

31 (a) Direct-response solicitations where there is no

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1 recommendation based on information collected from the senior
2 consumer pursuant to this section.

3 (b) Contracts used to fund:

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

6 2. A plan described by Sections 401(a), 401(k),
7 403(b), 408(k), or 408(p) of the Internal Revenue Code of
8 1986, as amended, if established or maintained by an employer;

9 3. A government or church plan defined in Section 414
10 of the Internal Revenue Code of 1986, as amended, a government
11 or church welfare benefit plan, or a deferred compensation
12 plan of a state or local government or tax-exempt organization
13 under Section 457 of the Internal Revenue Code of 1986, as
14 amended;

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

17 5. Settlements of or assumptions of liabilities
18 associated with personal injury litigation or any dispute or
19 claim resolution process; or

20 6. Prepaid funeral contracts.

21 (8) APPLICATION TO VARIABLE ANNUITIES.--Compliance
22 with the National Association of Securities Dealers Conduct
23 Rules in effect on January 1, 2004, shall satisfy the
24 requirements under this section for the recommendation of
25 variable annuities. This section does not limit the
26 department's ability to enforce the provisions of this section
27 with respect to insurance agents, insurance agencies, and
28 managing general agents, or the office's ability to enforce
29 the provisions of this section with respect to insurers.

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

2 And the title is amended as follows:

3 On page 13, line 10, after the semicolon,

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5 insert:

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

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