

## HOUSE OF REPRESENTATIVES STAFF ANALYSIS

**BILL #:** HB 965 w/CS Annuity Investments by Seniors  
**SPONSOR(S):** Murzin & others  
**TIED BILLS:** None **IDEN./SIM. BILLS:** SB 2280

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REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Insurance	22 Y, 0 N w/CS	Cheek	Cooper
2) Public Safety & Crime Prevention		Cole	De La Paz
3) Commerce			
4) Commerce & Local Affairs Apprs. (Sub)			
5) Appropriations			

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### SUMMARY ANALYSIS

The bill mirrors the National Association of Insurance Commissioners (NAIC) Model Regulation on Suitability of Annuity Sales to Seniors. The bill creates a new section, s. 627.4554, F.S., that mirrors the NAIC Model regulation on Suitability of Annuity Sales by Seniors. The bill requires insurance companies and agents that offer annuity products to seniors to obtain from prospective buyers their financial and tax status and investment objectives. The bill intends that, by requiring insurance companies and their agents offering these products to conduct an assessment of a senior's financial circumstances, the annuity will more likely meet the consumer's needs. The bill establishes standards and procedures for insurers and insurance marketers that ensure:

- A reasonable determination has been made that the annuity transaction is indeed *suitable* for the senior consumer, based on the financial information disclosed by the consumer;
- A reasonable effort has been made to obtain information about the senior consumer's financial situation, tax status, investment objectives as to whether the recommendations being considered fit into the consumer's needs;
- The actions of the insurer will be considered reasonable on the basis of information provided at the time, if a senior consumer refuses to provide relevant information to an insurer, but insists on entering into an annuity transaction regardless of the insurer recommendation, or if the consumer fails to provide complete or accurate information to the insurer;
- An insurer is required to actively supervise its compliance with the provisions of this law, either through internal means or contracting with a third party to assure necessary oversight;
- Information records that formed the basis for the recommendation of an annuity transaction must be kept on file for review by the Office of Insurance Regulation (OIR) and/or the Department of Financial Services; and
- Corrective action may be ordered by the OIR and/or the Department of Financial Services upon determination that a senior consumer has been harmed by a violation of this regulation.

The bill also provides that compliance with the National Association of Security Dealer (NASD) Conduct Rules will satisfy certain requirements of the bill.

The bill does not appear to have a substantial fiscal impact.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0965b.ps.doc  
**DATE:** March 23, 2004

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. DOES THE BILL:

- |                                      |                              |  |   |
|--------------------------------------|------------------------------|--|---|
| 1. Reduce government?                | Yes <input type="checkbox"/> | No <input checked="" type="checkbox"/> | N/A <input type="checkbox"/>            |
| 2. Lower taxes?                      | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 3. Expand individual freedom?        | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 4. Increase personal responsibility? | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |
| 5. Empower families?                 | Yes <input type="checkbox"/> | No <input type="checkbox"/>            | N/A <input checked="" type="checkbox"/> |

For any principle that received a "no" above, please explain:

The bill specifies duties of insurers and insurance agents regarding making annuity investment recommendations to senior consumers; limits responsibility of insurers or insurance agents under certain circumstances; and provides for enforcement by Financial Regulation Office of Financial Services Commission.

#### B. EFFECT OF PROPOSED CHANGES:

##### Background

Florida is home to more than 2.9 million Floridians over the age of 65. As the senior population continues to grow, many will consider investing in annuities. Annuities can be an effective investment tool for many Floridians wanting to ensure a steady stream of income for retirement and to achieve certain tax benefits. However, for some seniors, an annuity is not suitable for their financial needs and objectives. Due to the wide range and complexity of annuity products available, even a well-intended sale of these products without an adequate assessment of the consumer's financial circumstances can prove harmful to a senior investor.

The Department of Financial Services (DFS) has heard from hundreds of seniors and their families who say they were convinced to liquidate certificates of deposit (CDs), stocks, and savings accounts to fund annuities only to discover these actions were unsuitable and costly. Some examples include individuals whose income and assets were such that no tax benefits could be realized. Other consumers have told the department they placed a majority of their liquid assets into annuities, only to be forced to pay high surrender charges when they needed cash for unexpected expenses.

##### Major Changes to Current Law

The bill creates s. 627.4554, F.S., that mirrors the NAIC Model regulation on Suitability of Annuity Sales by Seniors. The bill provides that insurance companies and agents offering annuity products be required to obtain the financial status, tax status, and investment objectives from seniors considering the purchase of an annuity. It is the intention that by requiring insurance companies and their agents offering these products to conduct an assessment of a senior's financial circumstances, the annuity will be more likely to meet the consumer's needs. Specifically, the bill establishes standards and procedures for insurers and insurance marketers that ensure:

- A reasonable determination has been made that the annuity transaction is indeed *suitable* for the senior consumer, based on the financial information disclosed by the consumer;
- A reasonable effort has been made to obtain information about the senior consumer's financial situation, tax status, investment objectives as to whether the recommendations being considered fit into the consumer's needs;

- The actions of the insurer will be considered reasonable on the basis of information provided at the time, if a senior consumer refuses to provide relevant information to an insurer, but insists on entering into an annuity transaction regardless of the insurer recommendation, or if the consumer fails to provide complete or accurate information to the insurer;
- An insurer is required to actively supervise its compliance with the provisions of this law, either through internal means or contracting with a third party to assure necessary oversight;
- Information records that formed the basis for the recommendation of an annuity transaction must to be kept on file for review by the Office of Insurance Regulation (OIR) and/or the Department of Financial Services; and
- Corrective action may be ordered by the OIR and/or the Department of Financial Services upon determination that a senior consumer has been harmed by a violation of this regulation.

The bill also provides that compliance with the National Association of Security Dealer (NASD) Conduct Rules will satisfy certain requirements the bill.

C. SECTION DIRECTORY:

Section 1: Creates s. 627.4554, F.S., relating to *Annuity investments by seniors*

Section 2: Provides an effective date of October 1, 2004.

**II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

There is an indeterminate administrative cost to life insurance companies that will be required to train agents and develop procedures for keeping necessary documentation on annuity sale recommendations made to senior clients.

Unsuitable sales to seniors may be curbed, possibly avoiding costly financial decision making by this vulnerable population.

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

**Other Issues:**

The differences between the Model Regulation and the bill are as follows:

- The bill defines a senior as an individual 64 years or older rather than 65 years as in the model. This is to provide consistency with other sections in that part of the code, which also use age 64.
- The bill includes an authorization for rule making. An example of the need for this is provided in the next and final difference between the model and the bill.
- The bill does not include the following phrase from the model:

*"Compliance with the National Association of Securities Dealers Conduct Rules pertaining to suitability shall satisfy the requirements under this section for the recommendation of variable annuities. However, nothing in this subsection shall limit the insurance commissioner's ability to enforce the provisions of this regulation."*

### IV. AMENDMENTS/COMMITTEE SUBSTITUTE CHANGES

On March 11, 2004, the Committee on Insurance adopted four amendments, which have been engrossed into HB 965 w/CS. The amendments are summarized as the follows:

- Defines the word "senior consumer" a person 65 years of age or older.
- Corrects a technical deficiency that referred to specific "chapter" rather than the entire "insurance code".
- Makes a technical correction to refer to the "office or the department", rather than just the "office".

- Provides that compliance with the National Association of Security Dealer (NASD) Conduct Rules will satisfy certain requirements the bill and removes the authority for the department and commission to adopt rules.