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A bill to be entitled
 An act relating to annuity investments by seniors;
 creating s. 627.4554, F.S.; providing a purpose; providing
 application; providing definitions; specifying duties of
 insurers and insurance agents relating to making annuity
 investment recommendations to senior consumers; providing
 requirements; limiting responsibility of insurers or
 insurance agents under certain circumstances; requiring a
 system of compliance and supervision; providing for
 enforcement by the Office of Financial Regulation of the
 Financial Services Commission; authorizing the office to
 issue certain orders to mitigate certain responsibilities
 of insurers or insurance agents; providing for reduction
 or elimination of certain penalties under certain
 circumstances; providing recordkeeping requirements;
 providing exemptions from application; requiring the
 Department of Financial Services and the office to enforce
 compliance; authorizing the department and commission to
 adopt rules; providing an effective date.

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

Section 1. 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 that
 result in a transaction involving annuity products to

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30 appropriately address the insurance needs and financial
 31 objectives of senior consumers at the time of the transaction.

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

35 (2) APPLICATION.--This section applies to any
 36 recommendation to purchase or exchange an annuity made to a
 37 senior consumer by an insurance agent, or an insurer where no
 38 agent is involved, that results in the purchase or exchange
 39 recommended.

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

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

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

48 (c) "Senior consumer" means a person 64 years of age or
 49 older. In the event of a joint purchase by more than one party,
 50 a purchaser is considered to be a senior consumer if any of the
 51 parties is age 64 or older.

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

53 (a) In recommending to a senior consumer the purchase of
 54 an annuity or the exchange of an annuity that results in another
 55 insurance transaction or series of insurance transactions, an
 56 insurance agent, or an insurer if no insurance agent is
 57 involved, shall have reasonable grounds for believing that the
 58 recommendation is suitable for the senior consumer on the basis

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59 of the facts disclosed by the senior consumer as to his or her
 60 investments and other insurance products and as to his or her
 61 financial situation and needs.

62 (b) Before executing a purchase or exchange of an annuity
 63 resulting from a recommendation to a senior consumer, an
 64 insurance agent, or an insurer if no insurance agent is
 65 involved, shall make reasonable efforts to obtain information
 66 concerning the senior consumer's financial status, tax status,
 67 and investment objectives and such other information used or
 68 considered to be reasonable by the insurance agent, or the
 69 insurer if no agent is involved, in making the recommendation.

70 (c)1. Except as provided under subparagraph 2., an
 71 insurance agent, or an insurer if no insurance agent is
 72 involved, shall not have any obligation to a senior consumer
 73 under paragraph (a) related to any recommendation if the senior
 74 consumer:

75 a. Refuses to provide relevant information requested by
 76 the insurer or insurance agent;

77 b. Decides to enter into an insurance transaction that is
 78 not based on a recommendation of the insurer or insurance agent;
 79 or

80 c. Fails to provide complete or accurate information.

81 2. An insurer or insurance agent's recommendation subject
 82 to subparagraph 1. shall be reasonable under all the
 83 circumstances actually known to the insurer or insurance agent
 84 at the time of the recommendation.

85 (d)1. An insurer or insurance agent shall ensure that a
 86 system to supervise recommendations that is reasonably designed
 87 to achieve compliance with this section is established and

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88 maintained by complying with subparagraphs 3., 4., and 5., or
 89 shall establish and maintain such a system, including, but not
 90 limited to:

91 a. Maintaining written procedures.

92 b. Conducting periodic reviews of its records that are
 93 reasonably designed to assist in detecting and preventing
 94 violations of this section.

95 2. A managing general agent and an insurance agency shall
 96 adopt a system established by an insurer to supervise
 97 recommendations of its insurance agents that is reasonably
 98 designed to achieve compliance with this section or shall
 99 establish and maintain such a system, including, but not limited
 100 to:

101 a. Maintaining written procedures.

102 b. Conducting periodic reviews of records that are
 103 reasonably designed to assist in detecting and preventing
 104 violations of this section.

105 3. An insurer may contract with a third party, including a
 106 managing general agent or an insurance agency, to establish and
 107 maintain a system of supervision as required by subparagraph 1.
 108 with respect to insurance agents under contract with or employed
 109 by the third party.

110 4. An insurer shall make reasonable inquiry to ensure that
 111 such third party contracting under subparagraph 3. is performing
 112 the functions required under subparagraph 1. and shall take such
 113 action as is reasonable under the circumstances to enforce the
 114 contractual obligation to perform the functions. An insurer may
 115 comply with its obligation to make reasonable inquiry by:

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116 a. Annually obtaining a certification from a third party
117 senior manager who has responsibility for the delegated
118 functions that the manager has a reasonable basis to represent,
119 and does represent, that the third party is performing the
120 required functions.

121 b. Based on reasonable selection criteria, periodically
122 selecting third parties contracting under subparagraph 3. for a
123 review to determine whether the third parties are performing the
124 required functions. The insurer shall perform any procedures
125 necessary to conduct the review that are reasonable under the
126 circumstances.

127 5. An insurer that contracts with a third party pursuant
128 to subparagraph 3. and complies with the requirements specified
129 in subparagraph 4. is deemed to have fulfilled its
130 responsibilities under subparagraph 1.

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

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

135 b. Include in its system of supervision an insurance
136 agent's recommendations to senior consumers of products other
137 than the annuities offered by the insurer, managing general
138 agent, or insurance agency.

139 7. A managing general agent or insurance agency
140 contracting with an insurer pursuant to subparagraph 3. shall
141 promptly, when requested by the insurer pursuant to subparagraph
142 4., give a certification as described in subparagraph 4. or give
143 a clear statement that the managing general agent or insurance
144 agency is unable to meet the certification criteria.

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145 8. A person may not provide a certification under sub-
 146 subparagraph 4.a. unless the person is a senior manager with
 147 responsibility for the delegated functions and has a reasonable
 148 basis for making the certification.

149 (5) MITIGATION OF RESPONSIBILITY.--

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

154 (b) The department may order:

155 1. An insurance agent to take reasonably appropriate
 156 corrective action for any senior consumer harmed by a violation
 157 of this section by the insurance agent.

158 2. A managing general agency or insurance agency that
 159 employs or contracts with an insurance agent to sell or solicit
 160 the sale of annuities to senior consumers to take reasonably
 161 appropriate corrective action for any senior consumer harmed by
 162 a violation of this section by the insurance agent.

163 (c) Any applicable penalty under this chapter for a
 164 violation of paragraph (4)(a), paragraph (4)(b), or subparagraph
 165 (4)(c)2. may be reduced or eliminated, according to a schedule
 166 adopted by the office, if corrective action for the senior
 167 consumer was taken promptly after a violation was discovered.

168 (6) RECORDKEEPING.--

169 (a) Insurers, managing general agents, insurance agencies,
 170 and insurance agents shall maintain or be able to make available
 171 to the department or office, as appropriate, records of the
 172 information collected from the senior consumer and other
 173 information used in making the recommendations that were the

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174 basis for insurance transactions for 5 years after the insurance
 175 transaction is completed by the insurer. An insurer is
 176 permitted, but shall not be required, to maintain documentation
 177 on behalf of an insurance agent.

178 (b) Records required to be maintained by this regulation
 179 may be maintained in paper, photographic, microprocess,
 180 magnetic, mechanical or electronic media, or by any process that
 181 accurately reproduces the actual document.

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

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

187 (b) Contracts used to fund:

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

190 2. A plan described by Sections 401(a), 401(k), 403(b),
 191 408(k), or 408(p) of the Internal Revenue Code of 1986, as
 192 amended, if established or maintained by an employer;

193 3. A government or church plan defined in Section 414 of
 194 the Internal Revenue Code of 1986, as amended, a government or
 195 church welfare benefit plan, or a deferred compensation plan of
 196 a state or local government or tax-exempt organization under
 197 Section 457 of the Internal Revenue Code of 1986, as amended;

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

200 5. Settlements of or assumptions of liabilities associated
 201 with personal injury litigation or any dispute or claim
 202 resolution process; or

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203 6. Prepaid funeral contracts.

204 (8)(a) The department shall enforce compliance with this
 205 section by insurance agents, insurance agencies, and managing
 206 general agents and may adopt rules to implement this section and
 207 apply this section to insurance agents and managing general
 208 agents.

209 (b) The office shall enforce compliance with this section
 210 by insurers. The commission may adopt rules to implement this
 211 section and apply this section to insurers.

212 Section 2. This act shall take effect October 1, 2004.