

CHAMBER ACTION

1 The Committee on Insurance recommends the following:

2
3 **Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

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

HB 965

2004
CS

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

25

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

28 627.4554 Annuity investments by seniors.--

29 (1) PURPOSE; CONSTRUCTION.--

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

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

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

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

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

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

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

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

56 (a) In recommending to a senior consumer the purchase of
 57 an annuity or the exchange of an annuity that results in another
 58 insurance transaction or series of insurance transactions, an
 59 insurance agent, or an insurer if no insurance agent is
 60 involved, shall have reasonable grounds for believing that the
 61 recommendation is suitable for the senior consumer on the basis
 62 of the facts disclosed by the senior consumer as to his or her
 63 investments and other insurance products and as to his or her
 64 financial situation and needs.

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

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

HB 965

2004
CS

78 | a. Refuses to provide relevant information requested by
79 | the insurer or insurance agent;

80 | b. Decides to enter into an insurance transaction that is
81 | not based on a recommendation of the insurer or insurance agent;
82 | or

83 | c. Fails to provide complete or accurate information.

84 | 2. An insurer or insurance agent's recommendation subject
85 | to subparagraph 1. shall be reasonable under all the
86 | circumstances actually known to the insurer or insurance agent
87 | at the time of the recommendation.

88 | (d)1. An insurer or insurance agent shall ensure that a
89 | system to supervise recommendations that is reasonably designed
90 | to achieve compliance with this section is established and
91 | maintained by complying with subparagraphs 3., 4., and 5., or
92 | shall establish and maintain such a system, including, but not
93 | limited to:

94 | a. Maintaining written procedures.

95 | b. Conducting periodic reviews of its records that are
96 | reasonably designed to assist in detecting and preventing
97 | violations of this section.

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

104 | a. Maintaining written procedures.

105 b. Conducting periodic reviews of records that are
 106 reasonably designed to assist in detecting and preventing
 107 violations of this section.

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

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

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

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

130 5. An insurer that contracts with a third party pursuant
 131 to subparagraph 3. and complies with the requirements specified

132 in subparagraph 4. is deemed to have fulfilled its
 133 responsibilities under subparagraph 1.

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

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

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

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

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

152 (5) MITIGATION OF RESPONSIBILITY.--

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

157 (b) The department may order:

158 1. An insurance agent to take reasonably appropriate
 159 corrective action for any senior consumer harmed by a violation
 160 of this section by the insurance agent.

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

166 (c) Any applicable penalty under the Florida Insurance
 167 Code for a violation of paragraph (4)(a), paragraph (4)(b), or
 168 subparagraph (4)(c)2. may be reduced or eliminated, according to
 169 a schedule adopted by the office or department, as appropriate,
 170 if corrective action for the senior consumer was taken promptly
 171 after a violation was discovered.

172 (6) RECORDKEEPING.--

173 (a) Insurers, managing general agents, insurance agencies,
 174 and insurance agents shall maintain or be able to make available
 175 to the department or office, as appropriate, records of the
 176 information collected from the senior consumer and other
 177 information used in making the recommendations that were the
 178 basis for insurance transactions for 5 years after the insurance
 179 transaction is completed by the insurer. An insurer is
 180 permitted, but shall not be required, to maintain documentation
 181 on behalf of an insurance agent.

182 (b) Records required to be maintained by this regulation
 183 may be maintained in paper, photographic, microprocess,
 184 magnetic, mechanical or electronic media, or by any process that
 185 accurately reproduces the actual document.

186 (7) EXEMPTIONS.--Unless otherwise specifically included,
 187 this section shall not apply to recommendations involving:
 188 (a) Direct-response solicitations where there is no
 189 recommendation based on information collected from the senior
 190 consumer pursuant to this section.
 191 (b) Contracts used to fund:
 192 1. An employee pension or welfare benefit plan that is
 193 covered by the Employee Retirement and Income Security Act;
 194 2. A plan described by Sections 401(a), 401(k), 403(b),
 195 408(k), or 408(p) of the Internal Revenue Code of 1986, as
 196 amended, if established or maintained by an employer;
 197 3. A government or church plan defined in Section 414 of
 198 the Internal Revenue Code of 1986, as amended, a government or
 199 church welfare benefit plan, or a deferred compensation plan of
 200 a state or local government or tax-exempt organization under
 201 Section 457 of the Internal Revenue Code of 1986, as amended;
 202 4. A nonqualified deferred compensation arrangement
 203 established or maintained by an employer or plan sponsor;
 204 5. Settlements of or assumptions of liabilities associated
 205 with personal injury litigation or any dispute or claim
 206 resolution process; or
 207 6. Prepaid funeral contracts.
 208 (8) Compliance with the Conduct Rules of the National
 209 Association of Securities Dealers in effect on January 1, 2004,
 210 satisfies the requirements under this section for the
 211 recommendation of variable annuities. This section does not
 212 limit the department's ability to enforce the provisions of this
 213 section with respect to insurance agents, insurance agencies,

HB 965

2004
CS

214 | and managing general agents, or the office's ability to enforce
215 | the provisions of this section with respect to insurers.

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