

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1003

Annuity Products

SPONSOR(S): Ford

TIED BILLS:

IDEN./SIM. BILLS: SB 2082

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Financial Institutions</u>	<u>6 Y, 0 N</u>	<u>Holt/Bradford</u>	<u>Haug</u>
2) <u>Jobs & Entrepreneurship Council</u>	<u></u>	<u></u>	<u></u>
3) <u></u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
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SUMMARY ANALYSIS

HB1003 provides that any individual, 75 years or older, who purchases an annuity product may rescind that purchase for any reason, without penalty, provided the rescission occurs within one year of purchase. A senior consumer rescinding a contract or agreement must do so in writing. Upon receipt of the written rescission, the bill requires an insurer to fully refund a consumer any costs paid for the product or related services.

The bill requires an insurer licensed to write or sell annuities or annuity products in Florida include in its agreement provisions that allow a person 75 years or older to rescind the contract and obtain a full refund. Failure to include such provisions constitutes a violation of this code, subject to appropriate penalties.

The Department of Financial Services indicates a fiscal impact to the state in the amount of \$130,000 to update computer applications to allow for the one time education requirement in this bill. The department should be able to handle the technology related cost to this bill within existing resources. There is no fiscal impact to local governments or the private sector.

Although the Criminal Justice Impact Conference has not considered this bill at the time of the writing of this analysis, staff from the Office of Economic and Demographic research expects the fiscal impact to be insignificant.

This act shall take effect July 1, 2008.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families: Provides that senior consumers may rescind an annuity product within one year of purchase and obtain a full refund.

B. EFFECT OF PROPOSED CHANGES:

Background

Sales of annuities to seniors have risen dramatically over the past several years, and in turn, so have instances of deceptive sales practices. Seniors comprise a vital component of Florida's economy, and are frequently a prime target for fraud because of the lifetime of savings they have amassed.¹

Section 1: Subsection (9) is added to section 627.4554, F.S., Annuity investments by seniors.— The bill provides any person who purchases an annuity product in Florida and is 75 years of age or older at the time of purchase may rescind without penalty a contract for the sale of such annuity product for any reason within one (1) year of purchase.

Such rescission must be in writing and may be delivered to the insured or any agent of the insured selling annuity products. A person rescinding a contract or agreement for such annuity product shall receive from the insurer a full refund of costs paid upon receipt of the written notice of rescission.

Any insurer licensed to write or sell annuities or annuity products must include contractual provisions allowing a person 75 years of age or older who purchases an annuity product to rescind such agreement in accordance with this subsection. Moreover, an insurer is to provide a senior consumer a full refund. Failure to include such provisions constitutes a violation of this code, subject to the appropriate penalties.

Section2: This act shall take effect July 1, 2008.

C. SECTION DIRECTORY:

None

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The potential revenues from fines for “twisting,” and “churning” cannot be determined at this point in time.

2. Expenditures:

This bill requires that Life insurance agents complete a one-time course on suitability in annuity and life insurance transactions between January 1, 2009 and January 1, 2010. This course will count towards the agent's ethics continuing education requirement. The division's computer systems are currently programmed to require and enforce licensee's continuing education requirements on a biennial basis. The bill's education requirement sets a one-time continuing education requirement

¹ Florida Department of Financial Services : 2008 White Paper on Annuities: by Roxanne Rehm, Assistant General Counsel

within a one-year period. In order to implement the bill as written, the division will be required to make significant changes to the department's computer systems in order to enforce the one-time education requirement. The estimated cost for these changes is \$130,000. The division has proposed amended language that will require life agents to complete this education requirement within their normal biennial cycle. The result of this proposed amended language will extend the required date of completion of this course by one year, but will also result in minimal costs to change the division's computer systems. The department should be able to handle the technology related cost to this bill within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

None.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 20, 2008, the Committee on Financial Institutions voted to recommend a strike-all amendment to the Jobs & Entrepreneurship Council. The amendment:

- Cites the act as "John and Patricia Seibel Act."

- Requires an agent to provide the department with his/her home and business telephone numbers, and email address, and to notify the department 60 days of changes.
- Requires any person who holds a license to solicit or sell life insurance to complete 3 hours of department approved continuing education on suitability in annuity and life insurance transactions. (Effective 1/1/09-1/1/10)
- Increases fines for “twisting,” and “churning” and adds a prohibited practice of willfully submitting to an insurer on behalf of a consumer a document bearing a false signature. The fines for these practices are increased to:
 - ✓ \$5,000 for each non-willful violation (currently \$2,500), up to a maximum aggregate amount of \$20,000 (currently \$10,000).
 - ✓ \$30,000 for each willful violation (currently \$20,000), up to a maximum aggregate amount of \$150,000 (currently \$100,000).
- Provides that twisting or churning is a second degree felony if the agent shows a pattern or a practice and the victim is 65 years or older or is mentally disabled. A third degree felony is imposed if the acts are done to other victims. Willfully submitting a false signature of a consumer is also made a third degree felony.
- Applies the current annuity suitability requirements to life insurance.
- Requires an agent to have an objectively reasonable basis for believing that an annuity or a life insurance recommendation to a senior consumer is suitable.
- Requires an agent to obtain specified personal and financial information from the consumer relevant to the suitability of the recommendation, on a form adopted by the Department of Financial Services.
- Increases the free review period from 10 days to 14 days after purchase of a life insurance or annuity for the consumer to obtain a refund. This requirement applies to all annuities.
- Authorizes the Office of Insurance Regulation to order an insurer to rescind a life insurance policy or annuity and provide a full refund of the premiums paid or the accumulation value, whichever is greater, when a senior consumer is harmed by a violation of the suitability statute.
- Changes effective date to January 1, 2009.