

1 A bill to be entitled
2 An act relating to insurance; providing a short title;
3 amending s. 626.171, F.S.; requiring that an applicant for
4 licensure as an insurance agent, customer representative,
5 adjuster, service representative, managing general agent,
6 or reinsurance intermediary provide to the Department of
7 Financial Services his or her contact and business
8 telephone numbers and e-mail address; amending s.
9 626.2815, F.S.; requiring persons licensed to solicit or
10 sell life insurance to complete a specified number of
11 hours in continuing education on the subject of
12 suitability in annuity and life insurance transactions;
13 amending s. 626.551, F.S.; requiring that a licensee
14 notify the department within 60 days after a change in
15 contact or business telephone numbers or e-mail address;
16 amending s. 626.9521, F.S.; providing for administrative
17 fines and criminal penalties for offenses involving
18 misleading representations or fraudulent comparisons or
19 omissions, the generation of unlawful fees and
20 commissions, or the use of fraudulent signatures; limiting
21 the aggregate amounts of fines; providing for other
22 administrative fines to supersede the administrative fines
23 and penalties provided by the act under certain
24 conditions; amending s. 626.9541, F.S.; revising the
25 elements of the offense known as "churning" to include
26 direct or indirect purchases made for the purpose of
27 earning fees or commissions; providing that the submission
28 of certain fraudulent signatures or the misrepresentation

29 of a licensee's qualifications constitute an unfair method
30 of competition and an unfair or deceptive act or practice;
31 amending s. 626.99, F.S.; revising requirements for life
32 insurance or annuity policies to increase the period of
33 time allowed for obtaining an unconditional refund;
34 requiring insurers for all types of annuities to provide a
35 buyer's guide and a policy summary to the buyer; amending
36 s. 627.0655, F.S.; expanding application of policyholder
37 loss or expense-related premium discounts; amending s.
38 627.4554, F.S.; revising the regulation of recommendations
39 relating to the sale of annuities to senior consumers;
40 redefining the term "annuity"; requiring that an agent
41 obtain financial and other information concerning the
42 senior consumer before executing a purchase or exchange of
43 an annuity; requiring that the agent perform a suitability
44 analysis relative to the investment he or she recommends
45 and document the analysis in writing; requiring an agent
46 to provide a comparison of current and recommended
47 products if the transaction involves the replacement or
48 exchange of an annuity; requiring an agent to provide
49 information about any surrender charges and tax
50 consequences; authorizing the department and Financial
51 Services Commission to adopt rules; amending s. 627.805,
52 F.S.; providing for regulation of the issuance and sale of
53 variable and indeterminate value contracts by the
54 department, the Office of Insurance Regulation, and the
55 Office of Financial Regulation; authorizing the department
56 and the commission to adopt rules; providing an effective

57 date for such rulemaking authority; providing for
58 applicability of such rules; providing effective dates.

59
60 Be It Enacted by the Legislature of the State of Florida:

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62
63 Section 1. This act may be cited as the "John and Patricia
64 Seibel Act."

65 Section 2. Paragraph (a) of subsection (2) of section
66 626.171, Florida Statutes, is amended to read:

67 626.171 Application for license as an agent, customer
68 representative, adjuster, service representative, managing
69 general agent, or reinsurance intermediary.--

70 (2) In the application, the applicant shall set forth:

71 (a) His or her full name, age, social security number,
72 residence address, business address, ~~and~~ mailing address,
73 contact telephone numbers including a business telephone number,
74 and e-mail address.

75
76 However, the application must contain a statement that an
77 applicant is not required to disclose his or her race or
78 ethnicity, gender, or native language, that he or she will not
79 be penalized for not doing so, and that the department will use
80 this information exclusively for research and statistical
81 purposes and to improve the quality and fairness of the
82 examinations.

83 Section 3. Paragraph (k) is added to subsection (3) of
84 section 626.2815, Florida Statutes, to read:

85 626.2815 Continuing education required; application;
86 exceptions; requirements; penalties.--

87 (3)

88 (k) Effective January 1, 2009, and until January 1, 2010,
89 any person who holds a license to solicit or sell life insurance
90 in this state must complete a minimum of 3 hours in continuing
91 education, approved by the department, on the subject of
92 suitability in annuity and life insurance transactions. A
93 licensee may use the hours obtained under this paragraph to
94 satisfy the requirement for continuing education in ethics under
95 paragraph (a).

96 Section 4. Section 626.551, Florida Statutes, is amended
97 to read:

98 626.551 Notice of change of address, name.--Every licensee
99 shall notify the department in writing within 60 days after a
100 change of name, residence address, principal business street
101 address, ~~or~~ mailing address, contact telephone numbers including
102 a business telephone number, or e-mail address. ~~A~~ ~~Any~~ licensed
103 agent who has moved his or her residence from this state shall
104 have his or her license and all appointments immediately
105 terminated by the department. Failure to notify the department
106 within the required time period shall result in a fine not to
107 exceed \$250 for the first offense and, for subsequent offenses,
108 a fine of at least ~~not less than~~ \$500 or suspension or
109 revocation of the license pursuant to s. 626.611 or s. 626.621.

110 Section 5. Section 626.9521, Florida Statutes, is amended
111 to read:

112 626.9521 Unfair methods of competition and unfair or
113 deceptive acts or practices prohibited; penalties.--

114 (1) No person shall engage in this state in any trade
115 practice which is defined in this part as, or determined
116 pursuant to s. 626.951 or s. 626.9561 to be, an unfair method of
117 competition or an unfair or deceptive act or practice involving
118 the business of insurance.

119 (2) Except as provided in subsection (3), any person who
120 violates any provision of this part is ~~shall be~~ subject to a
121 fine in an amount not greater than \$2,500 for each nonwillful
122 violation and not greater than \$20,000 for each willful
123 violation. Fines under this subsection may not exceed an
124 aggregate amount of \$10,000 for all nonwillful violations
125 arising out of the same action or an aggregate amount of
126 \$100,000 for all willful violations arising out of the same
127 action. The fines ~~authorized by this subsection~~ may be imposed
128 in addition to any other applicable penalty.

129 (3) (a) If a person violates s. 626.9541(1) (l), the offense
130 known as "twisting," or violates s. 626.9541(1) (aa), the offense
131 known as "churning," the person commits a misdemeanor of the
132 second degree, punishable as provided in s. 775.082, and an
133 administrative fine not greater than \$5,000 shall be imposed for
134 each nonwillful violation or an administrative fine not greater
135 than \$30,000 shall be imposed for each willful violation.
136 However, if the victim of such offense is 65 years of age or
137 older or the agent knew or should have known the victim suffered
138 from a mental incapacity, the person commits a misdemeanor of
139 the first degree, punishable as provided in s. 775.082, and an

140 administrative fine not greater than \$5,000 shall be imposed for
141 each nonwillful violation or an administrative fine not greater
142 than \$30,000 shall be imposed for each willful violation. To
143 impose criminal penalties under this paragraph, the practice of
144 "churning" or "twisting" must involve fraudulent conduct.

145 (b) If a person violates s. 626.9541(1)(ee) by willfully
146 submitting fraudulent signatures on an application or policy-
147 related document, the person commits a felony of the third
148 degree, punishable as provided in s. 775.082, and an
149 administrative fine not greater than \$5,000 shall be imposed for
150 each nonwillful violation or an administrative fine not greater
151 than \$30,000 shall be imposed for each willful violation.

152 (c) Administrative fines under this subsection may not
153 exceed an aggregate amount of \$50,000 for all nonwillful
154 violations arising out of the same action or an aggregate amount
155 of \$250,000 for all willful violations arising out of the same
156 action.

157 Section 6. Any increase in the fines imposed under s.
158 626.9521, Florida Statutes, which exceeds the increase provided
159 by this act shall supersede the amendments made to that section
160 by this act if such increase is enacted during the 2008
161 legislative session and becomes law, and the amendments to s.
162 626.9521, Florida Statutes, made by this act shall not take
163 effect.

164 Section 7. Paragraph (aa) of subsection (1) of section
165 626.9541, Florida Statutes, is amended, and paragraphs (ee) and
166 (ff) are added to that subsection, to read:

167 626.9541 Unfair methods of competition and unfair or
168 deceptive acts or practices defined.--

169 (1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE
170 ACTS.--The following are defined as unfair methods of
171 competition and unfair or deceptive acts or practices:

172 (aa) Churning.--

173 1. Churning is the practice whereby policy values in an
174 existing life insurance policy or annuity contract, including,
175 but not limited to, cash, loan values, or dividend values, and
176 in any riders to that policy or contract, are directly or
177 indirectly used ~~utilized~~ to purchase another insurance policy or
178 annuity contract with that same insurer for the purpose of
179 earning additional premiums, fees, commissions, or other
180 compensation:

181 a. Without an objectively reasonable basis for believing
182 that the replacement or extraction will result in an actual and
183 demonstrable benefit to the policyholder;

184 b. In a fashion that is fraudulent, deceptive, or
185 otherwise misleading or that involves a deceptive omission;

186 c. When the applicant is not informed that the policy
187 values including cash values, dividends, and other assets of the
188 existing policy or contract will be reduced, forfeited, or used
189 ~~utilized~~ in the purchase of the replacing or additional policy
190 or contract, if this is the case; or

191 d. Without informing the applicant that the replacing or
192 additional policy or contract will not be a paid-up policy or
193 that additional premiums will be due, if this is the case.

194

195 Churning by an insurer or an agent is an unfair method of
 196 competition and an unfair or deceptive act or practice.

197 2. Each insurer shall comply with sub-subparagraphs 1.c.
 198 and 1.d. by disclosing to the applicant at the time of the offer
 199 on a form designed and adopted by rule by the commission if,
 200 how, and the extent to which the policy or contract values
 201 (including cash value, dividends, and other assets) of a
 202 previously issued policy or contract will be used to purchase a
 203 replacing or additional policy or contract with the same
 204 insurer. The form must ~~shall~~ include disclosure of the premium,
 205 the death benefit of the proposed replacing or additional
 206 policy, and the date when the policy values of the existing
 207 policy or contract will be insufficient to pay the premiums of
 208 the replacing or additional policy or contract.

209 3. Each insurer shall adopt written procedures to
 210 reasonably avoid churning of policies or contracts that it has
 211 issued, and failure to adopt written procedures sufficient to
 212 reasonably avoid churning shall be an unfair method of
 213 competition and an unfair or deceptive act or practice.

214 (ee) Fraudulent signatures on an application or policy-
 215 related document.--Willfully submitting to an insurer on behalf
 216 of a consumer an insurance application or policy-related
 217 document bearing a false or fraudulent signature.

218 (ff) Unlawful use of designations; misrepresentation of
 219 agent qualifications.--

220 1. A licensee may not, in any sales presentation or
 221 solicitation for insurance, use a designation or title in such a
 222 way as to falsely imply that the licensee:

223 a. Possesses special financial knowledge or has obtained
 224 specialized financial training; or

225 b. Is certified or qualified to provide specialized
 226 financial advice to senior citizens.

227 2. A licensee may not use terms such as "financial
 228 advisor" in such a way as to falsely imply that the licensee is
 229 licensed or qualified to discuss, sell, or recommend financial
 230 products other than insurance products.

231 3. A licensee may not, in any sales presentation or
 232 solicitation for insurance, falsely imply that he or she is
 233 qualified to discuss, recommend, or sell securities or other
 234 investment products in addition to insurance products.

235 4. A licensee who also holds a designation as a certified
 236 financial planner (CFP), chartered life underwriter (CLU),
 237 chartered financial consultant (ChFC), life underwriter training
 238 council fellow (LUTC), or the appropriate license to sell
 239 securities from the Financial Industry Regulatory Authority
 240 (FINRA) may inform the customer of those licenses or
 241 designations and make recommendations in accordance with those
 242 licenses or designations, and in so doing does not violate this
 243 paragraph.

244 Section 8. Paragraph (a) of subsection (4) of section
 245 626.99, Florida Statutes, is amended to read:

246 626.99 Life insurance solicitation.--

247 (4) DISCLOSURE REQUIREMENTS.--

248 (a) The insurer shall provide to each prospective
 249 purchaser a buyer's guide and a policy summary prior to
 250 accepting the ~~any~~ applicant's initial premium or premium

251 deposit, unless the policy for which application is made
 252 provides ~~contains a provision for~~ an unconditional refund for a
 253 period of at least 14 ~~10~~ days, or unless the policy summary
 254 contains an offer of such an unconditional refund, in which
 255 event the buyer's guide and policy summary must be delivered
 256 with the policy or prior to delivery of the policy. With respect
 257 to ~~fixed~~ annuities, the insurer shall provide to each
 258 prospective purchaser a buyer's guide to annuities and a
 259 contract summary as provided in the National Association of
 260 Insurance Commissioners (NAIC) Model Annuity and Deposit Fund
 261 Regulation and the policy must provide ~~shall contain a provision~~
 262 ~~for~~ an unconditional refund for a period of at least 14 ~~10~~ days.

263 Section 9. Section 627.0655, Florida Statutes, is amended
 264 to read:

265 627.0655 Policyholder loss or expense-related premium
 266 discounts.--An insurer or person authorized to engage in the
 267 business of insurance in this state may include, in the premium
 268 charged an insured for any policy, contract, or certificate of
 269 insurance, a discount based on the fact that another policy,
 270 contract, or certificate of any type has been purchased by the
 271 insured from the same insurer or insurer group, the Citizens
 272 Property Insurance Corporation created under s. 627.351(6) if
 273 the same insurance agent is servicing both policies, or an
 274 insurer that has removed the policy from the Citizens Property
 275 Insurance Corporation if the same insurance agent is servicing
 276 both policies.

277 Section 10. Section 627.4554, Florida Statutes, is amended
 278 to read:

279 | 627.4554 Annuity investments by seniors.--

280 | (1) PURPOSE; CONSTRUCTION.--

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

286 | (b) A violation of ~~Nothing in~~ this section does not shall
287 | ~~be construed to~~ create or imply a private cause of action ~~for a~~
288 | ~~violation of this section.~~

289 | (c) Nothing in this section shall subject an insurer to
290 | criminal or civil liability for the acts of independent
291 | individuals not affiliated with that insurer for selling its
292 | products, when such sales are made in a way not authorized by
293 | the insurer.

294 | (2) APPLICATION.--This section applies to any
295 | recommendation to purchase or exchange an annuity made to a
296 | senior consumer by an insurance agent, or an insurer where no
297 | agent is involved, and which, ~~that~~ results in the purchase or
298 | exchange recommended.

299 | (3) DEFINITIONS.--For purposes of this section, the term:

300 | (a) "Annuity contract" means a fixed annuity, fixed equity
301 | indexed annuity, or variable annuity that is individually
302 | solicited, whether the product is classified as an individual
303 | annuity or a group annuity.

304 | (b) "Recommendation" means advice provided by an insurance
305 | agent, or an insurer if no insurance agent is involved, to an

306 individual senior consumer which results in a purchase or
 307 exchange of an annuity in accordance with that advice.

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

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

313 (a) In recommending to a senior consumer the purchase or
 314 exchange of an annuity that ~~or the exchange of an annuity that~~
 315 results in another insurance transaction or series of insurance
 316 transactions, an insurance agent, or an insurer if no insurance
 317 agent is involved, must ~~shall~~ have an objectively reasonable
 318 basis ~~grounds~~ for believing that the recommendation is suitable
 319 for the senior consumer based ~~on the basis of~~ the facts
 320 disclosed by the senior consumer as to his or her investments
 321 and other insurance products and as to his or her financial
 322 situation and needs.

323 (b) Before executing a purchase or exchange of an annuity
 324 resulting from a recommendation to a senior consumer, an
 325 insurance agent, or an insurer if no insurance agent is
 326 involved, shall make reasonable efforts to obtain information
 327 concerning the suitability of ~~senior consumer's financial~~
 328 ~~status, tax status, and investment objectives and such other~~
 329 ~~information used or considered to be reasonable by the insurance~~
 330 ~~agent, or the insurer if no agent is involved, in making the~~
 331 recommendation. The information shall include, at a minimum:

332 1. Personal information, including the age and sex of the
 333 parties to the annuity and the ages and number of any

- 334 dependents;
 335 2. Tax status of the consumer;
 336 3. Investment objectives of the consumer;
 337 4. The source of the funds to be used to purchase the
 338 annuity;
 339 5. The applicant's annual income;
 340 6. Intended use of the annuity;
 341 7. The applicant's existing assets, including investment
 342 holdings;
 343 8. The applicant's liquid net worth and liquidity needs;
 344 9. The applicant's financial situation and needs;
 345 10. The applicant's risk tolerance; and
 346 11. Such other information used or considered to be
 347 relevant by the insurance agent or insurer in making
 348 recommendations to the consumer regarding the purchase or
 349 exchange of an annuity contract.

350
 351 This information shall be collected on a form adopted by rule by
 352 the department and completed and signed by the applicant and
 353 agent. Questions requesting this information must be presented
 354 in at least 12-point type and be sufficiently clear so as to be
 355 readily understandable by both the agent and the consumer. A
 356 true and correct executed copy of the form shall be provided by
 357 the agent to the insurer, or the third party that has contracted
 358 with such insurer pursuant to subparagraph (f)3., within 10 days
 359 after execution of the form, and shall be provided to the
 360 consumer no later than the date of delivery of the contract or
 361 contracts.

362 (c)1. Except as provided under subparagraph 2., an
363 insurance agent, or an insurer if no insurance agent is
364 involved, has no ~~shall not have any~~ obligation to a senior
365 consumer under paragraph (a) related to any recommendation if
366 the senior consumer:

367 a. Refuses to provide relevant information requested by
368 the insurer or insurance agent;

369 b. Decides to enter into an insurance transaction that is
370 not based on a recommendation of the insurer or insurance agent;
371 or

372 c. Fails to provide complete or accurate information.

373 2. An insurer or insurance agent's recommendation subject
374 to subparagraph 1. shall be objectively reasonable under all the
375 circumstances actually known to the insurer or insurance agent
376 at the time of the recommendation.

377 3. If the consumer refuses to provide relevant information
378 requested by the insurance agent or insurer, before the
379 execution of the sale the insurance agent or insurer shall
380 obtain a signed verification from the senior consumer on a form
381 adopted by rule by the department that he or she refuses to
382 provide the requested information and may be limiting
383 protections afforded by this section regarding the suitability
384 of the sale.

385 (d) In addition to the information required by paragraph
386 (b), before the execution of a replacement or exchange of an
387 annuity contract resulting from a recommendation, the insurance
388 agent shall also provide, on a form adopted by rule by the
389 department, information concerning differences between each

390 existing annuity contract and the annuity contract being
 391 recommended in order to determine the suitability of the
 392 recommendation and its benefit to the consumer. A true and
 393 correct executed copy of this form shall be provided by the
 394 agent to the insurer, or the third party that has contracted
 395 with such insurer pursuant to subparagraph (f)3., within 10 days
 396 after execution of the form, and shall be provided to the
 397 consumer no later than the date of delivery of the contract or
 398 contracts. The information shall include, at a minimum:

399 1. A comparison of the benefits, terms, and limitations
 400 between the annuity contracts.

401 2. A comparison of any fees and charges between the
 402 annuity contracts.

403 3. A written basis for the recommended exchange, including
 404 the overall advantages and disadvantages to the consumer if the
 405 recommendation is followed.

406 4. Such other information used or considered to be
 407 relevant by the insurance agent or the insurer in making
 408 recommendations to the consumer regarding the replacement or
 409 exchange of an annuity contract.

410 (e) Prior to the execution of a purchase or exchange of an
 411 annuity contract resulting from a recommendation, an agent shall
 412 also disclose to the consumer that such purchase or exchange may
 413 have tax consequences and that the applicant should contact his
 414 or her tax advisor for more information.

415 (f)-(d)1. An insurer or insurance agent ~~must~~ shall ensure
 416 that a system to supervise recommendations, which is reasonably
 417 designed to achieve compliance with this section, is established

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

- 421 a. Maintaining written procedures.
- 422 b. Conducting periodic reviews of its records that are
- 423 reasonably designed to assist in detecting and preventing
- 424 violations of this section.

425 2. A managing general agent and an insurance agency shall
 426 adopt a system established by an insurer to supervise
 427 recommendations of its insurance agents which is reasonably
 428 designed to achieve compliance with this section or shall
 429 establish and maintain such a system, including, but not limited
 430 to:

- 431 a. Maintaining written procedures.
- 432 b. Conducting periodic reviews of records that are
- 433 reasonably designed to assist in detecting and preventing
- 434 violations of this section.

435 3. An insurer may contract with a third party, including a
 436 managing general agent or an insurance agency, to establish and
 437 maintain a system of supervision as required by subparagraph 1.
 438 with respect to insurance agents under contract with or employed
 439 by the third party.

440 4. An insurer shall make reasonable inquiry to ensure that
 441 such third party contracting under subparagraph 3. is performing
 442 the functions required under subparagraph 1. and shall take such
 443 action as is reasonable under the circumstances to enforce the
 444 contractual obligation to perform the functions. An insurer may
 445 comply with its obligation to make reasonable inquiry by:

446 a. Annually obtaining a certification from a third party
 447 senior manager who has responsibility for the delegated
 448 functions that the manager has a reasonable basis to represent,
 449 and does represent, that the third party is performing the
 450 required functions.

451 b. Based on reasonable selection criteria, periodically
 452 selecting third parties contracting under subparagraph 3. for a
 453 review to determine whether the third parties are performing the
 454 required functions. The insurer shall perform any procedures
 455 necessary to conduct the review which are reasonable under the
 456 circumstances.

457 5. An insurer that contracts with a third party pursuant
 458 to subparagraph 3. and complies with the requirements specified
 459 in subparagraph 4. is deemed to have fulfilled its
 460 responsibilities under subparagraph 1.

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

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

465 b. Include in its system of supervision an insurance
 466 agent's recommendations to senior consumers of products other
 467 than the annuities offered by the insurer, managing general
 468 agent, or insurance agency.

469 7. A managing general agent or insurance agency
 470 contracting with an insurer pursuant to subparagraph 3. shall
 471 promptly, when requested by the insurer pursuant to subparagraph
 472 4., provide a certification as described in subparagraph 4. or

473 provide a clear statement that the managing general agent or
474 insurance agency is unable to meet the certification criteria.

475 8. A person may not provide a certification under sub-
476 subparagraph 4.a. unless the person is a senior manager with
477 responsibility for the delegated functions and has a reasonable
478 basis for making the certification.

479 (5) MITIGATION OF RESPONSIBILITY.--

480 (a) The office may order an insurer to take reasonably
481 appropriate corrective action, including rescission of the
482 policy or contract and a full refund of the premiums paid or the
483 accumulation value, whichever is greater, for any senior
484 consumer harmed by a violation of this section by the insurer or
485 the insurer's insurance agent.

486 (b) The department may order:

487 1. An insurance agent to take reasonably appropriate
488 corrective action for any senior consumer harmed by a violation
489 of this section by the insurance agent.

490 2. A managing general agency or insurance agency that
491 employs or contracts with an insurance agent to sell or solicit
492 the sale of annuities to senior consumers to take reasonably
493 appropriate corrective action for any senior consumer harmed by
494 a violation of this section by the insurance agent.

495 (c) Any applicable penalty under the Florida Insurance
496 Code for a violation of paragraph (4)(a), paragraph (4)(b), or
497 subparagraph (4)(c)2. may be reduced or eliminated, according to
498 a schedule adopted by the office or the department, as
499 appropriate, if corrective action for the senior consumer was
500 taken promptly after a violation was discovered.

501 (6) RECORDKEEPING.--

502 (a) Insurers, managing general agents, insurance agencies,
 503 and insurance agents shall each maintain or ~~be able to~~ make
 504 available from the entity or entities responsible for
 505 maintaining the records pursuant to paragraph (4)(f), to the
 506 department or office, as appropriate, records of the information
 507 collected from the senior consumer and other information used in
 508 making the recommendations that were the basis for insurance
 509 transactions for 5 years after the insurance transaction is
 510 completed by the insurer. An insurer is permitted, but shall not
 511 be required, to maintain documentation on behalf of an insurance
 512 agent.

513 (b) Records required to be maintained by this subsection
 514 ~~regulation~~ may be maintained in paper, photographic,
 515 microprocess, magnetic, mechanical, or electronic media, or by
 516 any process that accurately reproduces the actual document.

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

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

522 (b) Contracts used to fund:

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

525 2. A plan described by s. 401(a), s. 401(k), s. 403(b), s.
 526 408(k), or s. 408(p) of the Internal Revenue Code of 1986, as
 527 amended, if established or maintained by an employer;

528 3. A government or church plan defined in s. 414 of the
 529 Internal Revenue Code of 1986, as amended, a government or
 530 church welfare benefit plan, or a deferred compensation plan of
 531 a state or local government or tax-exempt organization under s.
 532 457 of the Internal Revenue Code of 1986, as amended;

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

535 5. Settlements of or assumptions of liabilities associated
 536 with personal injury litigation or any dispute or claim
 537 resolution process; or

538 6. Prepaid funeral contracts.

539 (8) APPLICATION TO VARIABLE ANNUITIES.--Compliance with
 540 the Financial Industry Regulatory Authority ~~National Association~~
 541 of ~~Securities Dealers~~ Conduct Rules in effect on May 5, 2008
 542 January 1, 2004, shall satisfy the requirements under this
 543 section for the recommendation of variable annuities. This
 544 section does not limit the department's ability to enforce the
 545 provisions of this section with respect to insurance agents,
 546 insurance agencies, and managing general agents, or the office's
 547 ability to enforce the provisions of this section with respect
 548 to insurers.

549 (9) RULES.--The department and commission may adopt rules
 550 to administer this section.

551 Section 11. Section 627.805, Florida Statutes, is amended
 552 to read:

553 627.805 Regulation of variable and indeterminate value
 554 contracts; rules.--The Department of Financial Services and the
 555 Office of Insurance Regulation office, notwithstanding any other

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556 ~~provision of law,~~ shall have the sole authority to regulate the
557 issuance and sale of variable and indeterminate value contracts
558 pursuant to their respective authority as conferred by state
559 law. The Office of Financial Regulation shall regulate the sale
560 of variable and indeterminate value contracts pursuant to its
561 authority under chapter 517. The Department of Financial
562 Services and, when applicable, the Financial Services
563 Commission, may, ~~and the commission has authority to~~ adopt rules
564 pursuant to ss. 120.536(1) and 120.54 to implement ~~the~~
565 ~~provisions of~~ this part.

566 Section 12. The Department of Financial Services may adopt
567 rules to implement this act effective upon the act becoming a
568 law. Section 10 of this act and such implementing rules shall
569 take effect 60 days after the date on which the final rule is
570 adopted or January 1, 2009, whichever is later.

571 Section 13. Except as otherwise expressly provided by this
572 act, this act shall take effect January 1, 2009.