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597-04992-08

Proposed Committee Substitute by the Committee on Banking and Insurance

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 home and office telephone  
8 numbers and e-mail address; amending s. 626.2815, F.S.;  
9 requiring persons licensed to solicit or sell life  
10 insurance to complete a specified number of hours in  
11 continuing education on the subject of suitability in  
12 annuity and life insurance transactions; amending s.  
13 626.551, F.S.; requiring that a licensee notify the  
14 department within 60 days after a change in home or  
15 business telephone numbers or e-mail address; amending s.  
16 626.9521, F.S.; providing enhanced penalties for offenses  
17 involving misleading representations or fraudulent  
18 comparisons or omissions, the generation of unlawful fees  
19 and commissions, or the use of fraudulent signatures;  
20 providing for other enhanced penalties to supersede the  
21 penalties provided by the act under certain conditions;  
22 amending s. 626.9541, F.S.; revising the elements of the  
23 offense known as "churning" to include direct or indirect  
24 purchases made for the purpose of earning fees or  
25 commissions; providing that the submission of certain  
26 fraudulent signatures or the misrepresentation of a  
27 licensee's qualifications constitute an unfair method of



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

55  
56 Be It Enacted by the Legislature of the State of Florida:  
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58           Section 1. This act may be cited as the "John and Patricia  
59 Seibel Act."

60           Section 2. Paragraph (a) of subsection (2) of section  
61 626.171, Florida Statutes, is amended to read:

62           626.171 Application for license as an agent, customer  
63 representative, adjuster, service representative, managing  
64 general agent, or reinsurance intermediary.--

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

66           (a) His or her full name, age, social security number,  
67 residence address, business address, ~~and~~ mailing address, home  
68 telephone number, business telephone number, and e-mail address.

69  
70 However, the application must contain a statement that an  
71 applicant is not required to disclose his or her race or  
72 ethnicity, gender, or native language, that he or she will not be  
73 penalized for not doing so, and that the department will use this  
74 information exclusively for research and statistical purposes and  
75 to improve the quality and fairness of the examinations.

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

78           626.2815 Continuing education required; application;  
79 exceptions; requirements; penalties.--

80           (3)

81           (k) Effective January 1, 2009, and until January 1, 2010,  
82 any person who holds a license to solicit or sell life insurance  
83 in this state must complete a minimum of 3 hours in continuing  
84 education, approved by the department, on the subject of  
85 suitability in annuity and life insurance transactions. A  
86 licensee may use the hours obtained under this paragraph to



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87 satisfy the requirement for continuing education in ethics under  
88 paragraph (a).

89 Section 4. Section 626.551, Florida Statutes, is amended to  
90 read:

91 626.551 Notice of change of address, name.--Every licensee  
92 shall notify the department in writing within 60 days after a  
93 change of name, residence address, principal business street  
94 address, ~~or~~ mailing address, home telephone number, business  
95 telephone number, or e-mail address. ~~A~~ Any licensed agent who has  
96 moved his or her residence from this state shall have his or her  
97 license and all appointments immediately terminated by the  
98 department. Failure to notify the department within the required  
99 time period shall result in a fine not to exceed \$250 for the  
100 first offense and, for subsequent offenses, a fine of at least  
101 ~~not less than~~ \$500 or suspension or revocation of the license  
102 pursuant to s. 626.611 or s. 626.621.

103 Section 5. Section 626.9521, Florida Statutes, is amended  
104 to read:

105 626.9521 Unfair methods of competition and unfair or  
106 deceptive acts or practices prohibited; penalties.--

107 (1) No person shall engage in this state in any trade  
108 practice which is defined in this part as, or determined pursuant  
109 to s. 626.951 or s. 626.9561 to be, an unfair method of  
110 competition or an unfair or deceptive act or practice involving  
111 the business of insurance.

112 (2) Except as provided in subsection (3), any person who  
113 violates any provision of this part is ~~shall be~~ subject to a fine  
114 in an amount not greater than \$2,500 for each nonwillful  
115 violation and not greater than \$20,000 for each willful  
116 violation. Fines under this subsection may not exceed an



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117 aggregate amount of \$10,000 for all nonwillful violations arising  
118 out of the same action or an aggregate amount of \$100,000 for all  
119 willful violations arising out of the same action. The fines  
120 ~~authorized by this subsection~~ may be imposed in addition to any  
121 other applicable penalty.

122 (3) (a) If a person violates s. 626.9541(1) (l), the offense  
123 known as "twisting," or violates s. 626.9541(1) (aa), the offense  
124 known as "churning," the person commits a felony of the third  
125 degree, punishable as provided in s. 775.082, and a fine not  
126 greater than \$5,000 shall be imposed for each nonwillful  
127 violation or a fine not greater than \$30,000 shall be imposed for  
128 each willful violation. However, if the victim of such offense is  
129 65 years of age or older or is mentally disabled, the person  
130 commits a felony of the second degree, punishable as provided in  
131 s. 775.082, and a fine not greater than \$5,000 shall be imposed  
132 for each nonwillful violation or a fine not greater than \$30,000  
133 shall be imposed for each willful violation.

134 (b) If a person violates s. 626.9541(1) (ee) by submitting  
135 fraudulent signatures on an application or policy-related  
136 document, the person commits a felony of the third degree,  
137 punishable as provided in s. 775.082, and a fine not greater than  
138 \$5,000 shall be imposed for each nonwillful violation or a fine  
139 not greater than \$30,000 shall be imposed for each willful  
140 violation.

141 (c) Fines under this subsection may not exceed an aggregate  
142 amount of \$20,000 for all nonwillful violations arising out of  
143 the same action or an aggregate amount of \$150,000 for all  
144 willful violations arising out of the same action.

145 Section 6. Any increase in the fines imposed under s.  
146 626.9521, Florida Statutes, which exceeds the increase provided



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147 by this act shall supersede the amendments made to that section  
148 by this act if such increase is enacted during the 2008  
149 legislative session and becomes law, and the amendments to s.  
150 626.9521, Florida Statutes, made by this act shall not take  
151 effect.

152 Section 7. Paragraph (aa) of subsection (1) of section  
153 626.9541, Florida Statutes, is amended, and paragraphs (ee) and  
154 (ff) are added to that subsection, to read:

155 626.9541 Unfair methods of competition and unfair or  
156 deceptive acts or practices defined.--

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

160 (aa) Churning.--

161 1. Churning is the practice whereby policy values in an  
162 existing life insurance policy or annuity contract, including,  
163 but not limited to, cash, loan values, or dividend values, and in  
164 any riders to that policy or contract, are directly or indirectly  
165 used ~~utilized~~ to purchase another insurance policy or annuity  
166 contract with that same insurer for the purpose of earning  
167 additional premiums, fees, commissions, or other compensation:

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

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

173 c. When the applicant is not informed that the policy  
174 values including cash values, dividends, and other assets of the  
175 existing policy or contract will be reduced, forfeited, or used



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176 ~~utilized~~ in the purchase of the replacing or additional policy or  
177 contract, if this is the case; or

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

181

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

184 2. Each insurer shall comply with sub-subparagraphs 1.c.  
185 and 1.d. by disclosing to the applicant at the time of the offer  
186 on a form designed and adopted by rule by the commission if, how,  
187 and the extent to which the policy or contract values (including  
188 cash value, dividends, and other assets) of a previously issued  
189 policy or contract will be used to purchase a replacing or  
190 additional policy or contract with the same insurer. The form  
191 must ~~shall~~ include disclosure of the premium, the death benefit  
192 of the proposed replacing or additional policy, and the date when  
193 the policy values of the existing policy or contract will be  
194 insufficient to pay the premiums of the replacing or additional  
195 policy or contract.

196 3. Each insurer shall adopt written procedures to  
197 reasonably avoid churning of policies or contracts that it has  
198 issued, and failure to adopt written procedures sufficient to  
199 reasonably avoid churning shall be an unfair method of  
200 competition and an unfair or deceptive act or practice.

201 (ee) Fraudulent signatures on an application or policy-  
202 related document.--Willfully submitting to an insurer on behalf  
203 of a consumer an insurance application or policy-related document  
204 bearing a false or fraudulent signature.



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205       (ff) Unlawful use of designations; misrepresentation of  
206 agent qualifications.--

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

210           a. Possesses special financial knowledge or has obtained  
211 specialized financial training; or

212           b. Is certified or qualified to provide specialized  
213 financial advice to senior citizens.

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

218       3. A licensee may not, in any sales presentation or  
219 solicitation for insurance, falsely imply that he or she is  
220 qualified to discuss, recommend, or sell securities or other  
221 investment products in addition to insurance products.

222       Section 8. Paragraph (a) of subsection (4) of section  
223 626.99, Florida Statutes, is amended to read:

224       626.99 Life insurance solicitation.--

225       (4) DISCLOSURE REQUIREMENTS.--

226       (a) The insurer shall provide to each prospective purchaser  
227 a buyer's guide and a policy summary prior to accepting the any  
228 applicant's initial premium or premium deposit, unless the policy  
229 for which application is made provides ~~contains a provision for~~  
230 an unconditional refund for a period of at least 14 ~~10~~ days, or  
231 unless the policy summary contains an offer of such an  
232 unconditional refund, in which event the buyer's guide and policy  
233 summary must be delivered with the policy or prior to delivery of  
234 the policy. With respect to ~~fixed~~ annuities, the insurer shall





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235 provide to each prospective purchaser a buyer's guide to  
236 annuities and a contract summary as provided in the National  
237 Association of Insurance Commissioners (NAIC) Model Annuity and  
238 Deposit Fund Regulation and the policy must provide ~~shall contain~~  
239 ~~a provision for~~ an unconditional refund for a period of at least  
240 14 ~~10~~ days.

241 Section 9. Section 627.4554, Florida Statutes, is amended  
242 to read:

243 627.4554 Annuity and life insurance investments by  
244 seniors.--

245 (1) PURPOSE; CONSTRUCTION.--

246 (a) The purpose of this section is to set forth standards  
247 and procedures for making recommendations to senior consumers  
248 which result in a transaction involving life insurance or annuity  
249 products to appropriately address the insurance needs and  
250 financial objectives of senior consumers at the time of the  
251 transaction.

252 (b) A violation of ~~Nothing in~~ this section does not shall  
253 ~~be construed to~~ create or imply a private cause of action ~~for a~~  
254 ~~violation of this section.~~

255 (2) APPLICATION.--This section applies to any  
256 recommendation to purchase or exchange an annuity or life  
257 insurance product which is made to a senior consumer by an  
258 insurance agent, or an insurer where no agent is involved, and  
259 which, that results in the purchase or exchange recommended.

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

261 (a) "Annuity contract" means a fixed annuity, fixed equity  
262 indexed annuity, or variable annuity that is individually  
263 solicited, whether the product is classified as an individual  
264 annuity or a group annuity.



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265        (b) "Life insurance contract" means life insurance of human  
266 lives.

267        (c) ~~(b)~~ "Recommendation" means advice provided by an  
268 insurance agent, or an insurer if no insurance agent is involved,  
269 to an individual senior consumer which results in a purchase or  
270 exchange of an annuity or life insurance contract in accordance  
271 with that advice.

272        (d) ~~(e)~~ "Senior consumer" means a person 65 years of age or  
273 older. In the event of a joint purchase by more than one party, a  
274 purchaser is considered to be a senior consumer if any of the  
275 parties is age 65 or older.

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

277        (a) In recommending to a senior consumer the purchase or  
278 exchange of an annuity or life insurance contract which ~~or the~~  
279 ~~exchange of an annuity that~~ results in another insurance  
280 transaction or series of insurance transactions, an insurance  
281 agent, or an insurer if no insurance agent is involved, must  
282 ~~shall~~ have an objectively reasonable basis ~~grounds~~ for believing  
283 that the recommendation is suitable for the senior consumer based  
284 ~~on the basis of~~ the facts disclosed by the senior consumer as to  
285 his or her investments and other insurance products and as to his  
286 or her financial situation and needs.

287        (b) Before executing a purchase or exchange of an annuity  
288 or life insurance contract resulting from a recommendation to a  
289 senior consumer, an insurance agent, or an insurer if no  
290 insurance agent is involved, shall make reasonable efforts to  
291 obtain information concerning the suitability of senior  
292 ~~consumer's financial status, tax status, and investment~~  
293 ~~objectives and such other information used or considered to be~~  
294 ~~reasonable by the insurance agent, or the insurer if no agent is~~



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295 ~~involved, in making~~ the recommendation. The information shall  
296 include, at a minimum:

- 297 1. Personal information, including the age and gender of  
298 the parties to the annuity or life insurance and ages and number  
299 of any dependents;
- 300 2. Sources and amounts of income, including employment and  
301 salary details or other compensation applicable to the parties to  
302 the annuity or life insurance;
- 303 3. Financial information applicable to the parties to the  
304 annuity or life insurance, including, at a minimum, specific  
305 assets and liabilities to determine net worth and long-term and  
306 short-term debt;
- 307 4. Other in-force insurance and annuities and retirement or  
308 savings plans;
- 309 5. Tax status of the consumer;
- 310 6. Current and foreseeable living and health-related  
311 expenses;
- 312 7. Investment experience of the consumer;
- 313 8. Savings and investment goals relative to investment and  
314 income time horizons and need for liquidity;
- 315 9. Individual objectives, anticipated changes in needs, and  
316 investment preferences, including risk tolerance;
- 317 10. The source of the funds that will be used to purchase  
318 the annuity; and
- 319 11. Such other information used or considered to be  
320 relevant by the insurance agent or insurer in making  
321 recommendations to the consumer regarding the purchase or  
322 exchange of an annuity or life insurance contract.  
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324 This information shall be collected on a form adopted by rule by  
325 the department and completed and signed by the applicant and  
326 agent. Questions requesting this information must be presented in  
327 at least 12-point type and be sufficiently clear so as to be  
328 readily understandable by both the agent and the consumer. A true  
329 and correct executed copy of the form shall be provided by the  
330 agent to the insurer within 10 days after execution of the form,  
331 and shall be provided to the consumer no later than the date of  
332 delivery of the contract or contracts.

333 (c)1. Except as provided under subparagraph 2., an  
334 insurance agent, or an insurer if no insurance agent is involved,  
335 has no shall not have any obligation to a senior consumer under  
336 paragraph (a) related to any recommendation if the senior  
337 consumer:

338 a. Refuses to provide relevant information requested by the  
339 insurer or insurance agent;

340 b. Decides to enter into an insurance transaction that is  
341 not based on a recommendation of the insurer or insurance agent;  
342 or

343 c. Fails to provide complete or accurate information.

344 2. An insurer or insurance agent's recommendation subject  
345 to subparagraph 1. shall be objectively reasonable under all the  
346 circumstances actually known to the insurer or insurance agent at  
347 the time of the recommendation.

348 3. If the consumer refuses to provide relevant information  
349 requested by the insurance agent or insurer, before the execution  
350 of the sale the insurance agent or insurer shall obtain a signed  
351 verification from the senior consumer on a form adopted by rule  
352 by the department that he or she refuses to provide the requested



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353 information and may be limiting protections afforded by this  
354 section regarding the suitability of the sale.

355 (d) In addition to the information required by paragraph  
356 (b), before the execution of a replacement or exchange of an  
357 annuity or life insurance policy resulting from a recommendation,  
358 the insurance agent shall also provide, on a form adopted by rule  
359 by the department, information concerning differences between  
360 each existing annuity or life insurance policy and the annuity or  
361 life insurance policy being recommended in order to determine the  
362 suitability of the recommendation and its benefit to the  
363 consumer. A true and correct executed copy of this form shall be  
364 provided by the agent to the insurer within 10 days after  
365 execution of the form, and shall be provided to the consumer no  
366 later than the date of delivery of the contract or contracts. The  
367 information shall include, at a minimum:

368 1. A comparison of the benefits, terms, and limitations  
369 between the annuities and life insurance policies;

370 2. A comparison of any fees and charges between the  
371 annuities and life insurance policies;

372 3. A written basis for the recommended exchange, including  
373 the overall advantages and disadvantages to the consumer if the  
374 recommendation is followed; and

375 4. Such other information used or considered to be relevant  
376 by the insurance agent or the insurer in making recommendations  
377 to the consumer regarding the replacement or exchange of an  
378 annuity or life insurance policy.

379 (e) If the surrender or replacement of an in-force  
380 insurance or investment product is involved, before effectuating  
381 the purchase or exchange, the insurance agent shall:



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382       1. In the presence of the consumer, place a telephone call  
383 to the company of record of the in-force insurance or investment  
384 to inquire as to the existence and amount of surrender charges or  
385 other penalties the consumer may incur upon surrender or  
386 liquidation;

387       2. Document in writing, on a form adopted by rule by the  
388 department, the existence and amount of surrender charges or  
389 other penalties, if any; and

390       3. Have the consumer sign an acknowledgement of the  
391 existence and amount of such charges, if any.

392       (f) Prior to the execution of a purchase or exchange of an  
393 annuity or life insurance policy resulting from a recommendation,  
394 an agent shall also disclose to the consumer that such a purchase  
395 or exchange may have tax consequences and that the applicant  
396 should contact his or her tax advisor for more information.

397       (g) ~~(d)~~1. An insurer or insurance agent must ~~shall~~ ensure  
398 that a system to supervise recommendations, which is reasonably  
399 designed to achieve compliance with this section, is established  
400 and maintained by complying with subparagraphs 3., 4., and 5., or  
401 shall establish and maintain such a system, including, but not  
402 limited to:

403           a. Maintaining written procedures.

404           b. Conducting periodic reviews of its records that are  
405 reasonably designed to assist in detecting and preventing  
406 violations of this section.

407       2. A managing general agent and an insurance agency shall  
408 adopt a system established by an insurer to supervise  
409 recommendations of its insurance agents which is reasonably  
410 designed to achieve compliance with this section or shall



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411 | establish and maintain such a system, including, but not limited  
412 | to:

413 |       a. Maintaining written procedures.

414 |       b. Conducting periodic reviews of records that are  
415 | reasonably designed to assist in detecting and preventing  
416 | violations of this section.

417 |       3. An insurer may contract with a third party, including a  
418 | managing general agent or an insurance agency, to establish and  
419 | maintain a system of supervision as required by subparagraph 1.  
420 | with respect to insurance agents under contract with or employed  
421 | by the third party.

422 |       4. An insurer shall make reasonable inquiry to ensure that  
423 | such third party contracting under subparagraph 3. is performing  
424 | the functions required under subparagraph 1. and shall take such  
425 | action as is reasonable under the circumstances to enforce the  
426 | contractual obligation to perform the functions. An insurer may  
427 | comply with its obligation to make reasonable inquiry by:

428 |       a. Annually obtaining a certification from a third party  
429 | senior manager who has responsibility for the delegated functions  
430 | that the manager has a reasonable basis to represent, and does  
431 | represent, that the third party is performing the required  
432 | functions.

433 |       b. Based on reasonable selection criteria, periodically  
434 | selecting third parties contracting under subparagraph 3. for a  
435 | review to determine whether the third parties are performing the  
436 | required functions. The insurer shall perform any procedures  
437 | necessary to conduct the review which are reasonable under the  
438 | circumstances.

439 |       5. An insurer that contracts with a third party pursuant to  
440 | subparagraph 3. and complies with the requirements specified in



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441 | subparagraph 4. is deemed to have fulfilled its responsibilities  
442 | under subparagraph 1.

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

445 |             a. Review or provide for review of all transactions  
446 | solicited by an insurance agent; or

447 |             b. Include in its system of supervision an insurance  
448 | agent's recommendations to senior consumers of products other  
449 | than the annuities offered by the insurer, managing general  
450 | agent, or insurance agency.

451 |         7. A managing general agent or insurance agency contracting  
452 | with an insurer pursuant to subparagraph 3. shall promptly, when  
453 | requested by the insurer pursuant to subparagraph 4., provide a  
454 | certification as described in subparagraph 4. or provide a clear  
455 | statement that the managing general agent or insurance agency is  
456 | unable to meet the certification criteria.

457 |         8. A person may not provide a certification under sub-  
458 | subparagraph 4.a. unless the person is a senior manager with  
459 | responsibility for the delegated functions and has a reasonable  
460 | basis for making the certification.

461 |             (5) MITIGATION OF RESPONSIBILITY.--

462 |             (a) The office may order an insurer to take reasonably  
463 | appropriate corrective action, including rescission of the policy  
464 | or contract and a full refund of the premiums paid or the  
465 | accumulation value, whichever is greater, for any senior consumer  
466 | harmed by a violation of this section by the insurer or the  
467 | insurer's insurance agent.

468 |             (b) The department may order:





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469 | 1. An insurance agent to take reasonably appropriate  
470 | corrective action for any senior consumer harmed by a violation  
471 | of this section by the insurance agent.

472 | 2. A managing general agency or insurance agency that  
473 | employs or contracts with an insurance agent to sell or solicit  
474 | the sale of annuities to senior consumers to take reasonably  
475 | appropriate corrective action for any senior consumer harmed by a  
476 | violation of this section by the insurance agent.

477 | (c) Any applicable penalty under the Florida Insurance Code  
478 | for a violation of paragraph (4) (a), paragraph (4) (b), or  
479 | subparagraph (4) (c)2. may be reduced or eliminated, according to  
480 | a schedule adopted by the office or the department, as  
481 | appropriate, if corrective action for the senior consumer was  
482 | taken promptly after a violation was discovered.

483 | (6) RECORDKEEPING.--

484 | (a) Insurers, managing general agents, insurance agencies,  
485 | and insurance agents shall each maintain or ~~be able to~~ make  
486 | available to the department or office, as appropriate, records of  
487 | the information collected from the senior consumer and other  
488 | information used in making the recommendations that were the  
489 | basis for insurance transactions for 5 years after the insurance  
490 | transaction is completed by the insurer. An insurer is permitted,  
491 | but shall not be required, to maintain documentation on behalf of  
492 | an insurance agent.

493 | (b) Records required to be maintained by this subsection  
494 | ~~regulation~~ may be maintained in paper, photographic,  
495 | microprocess, magnetic, mechanical, or electronic media, or by  
496 | any process that accurately reproduces the actual document.

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



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

502 (b) Contracts used to fund:

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

505 2. A plan described by s. 401(a), s. 401(k), s. 403(b), s.  
506 408(k), or s. 408(p) of the Internal Revenue Code of 1986, as  
507 amended, if established or maintained by an employer;

508 3. A government or church plan defined in s. 414 of the  
509 Internal Revenue Code of 1986, as amended, a government or church  
510 welfare benefit plan, or a deferred compensation plan of a state  
511 or local government or tax-exempt organization under s. 457 of  
512 the Internal Revenue Code of 1986, as amended;

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

515 5. Settlements of or assumptions of liabilities associated  
516 with personal injury litigation or any dispute or claim  
517 resolution process; or

518 6. Prepaid funeral contracts.

519 (8) APPLICATION TO VARIABLE ANNUITIES.--Compliance with the  
520 Financial Industry Regulatory Authority National Association of  
521 Securities Dealers Conduct Rules in effect on January 1, 2004,  
522 shall satisfy the requirements under this section for the  
523 recommendation of variable annuities. This section does not limit  
524 the department's ability to enforce the provisions of this  
525 section with respect to insurance agents, insurance agencies, and  
526 managing general agents, or the office's ability to enforce the  
527 provisions of this section with respect to insurers.



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528        (9) RULES.--The department and commission may adopt rules  
529 to administer this section, including, but not limited to, rules  
530 identifying suitability considerations and setting standards of  
531 disclosure.

532        Section 10. Section 627.805, Florida Statutes, is amended  
533 to read:

534        627.805 Regulation of variable and indeterminate value  
535 contracts; rules.--The Department of Financial Services, the  
536 Office of Financial Regulation, and the Office of Insurance  
537 Regulation office, notwithstanding any other provision of law,  
538 shall have the sole authority to regulate the issuance and sale  
539 of variable and indeterminate value contracts, pursuant to their  
540 respective authority as set out in law. The Department of  
541 Financial Services and, where applicable, the Financial Services  
542 Commission, may and the commission has authority to adopt rules  
543 pursuant to ss. 120.536(1) and 120.54 to implement the provisions  
544 of this part.

545        Section 11. This act shall take effect October 1, 2008.