The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Banking and Insurance Committee

BILL: PCS/SB 2082 (437508)

INTRODUCER: Banking and Insurance Committee and Senator Bennett

SUBJECT: Insurance

DATE: March 16, 2008 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Knudson	Deffenbaugh	BI	**Fav/CS**
2.			GA	
3.				
4.				
5.				
6.				

I. Summary:

The Proposed Committee Substitute for Senate Bill 2082 increases penalties for specified unfair or deceptive insurance practices and strengthens the standards for making recommendations to senior consumers involving annuities while expanding them to apply to life insurance contracts. The act is named the “John and Patricia Seibel Act.”

The bill imposes increased fines and penalties for the unfair and deceptive insurance practices known as “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. Twisting and churning involve misleading representations in an attempt to induce a consumer to cash-in funds from a current investment or insurance product in order to purchase another product, which the bill classifies as second degree felonies if the victim is at least 65 years old or mentally disabled and third degree felonies if done to other victims. Willfully submitting a false signature is also made a third degree felony. 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).

The bill also prohibits an agent from utilizing designations or titles that falsely imply that he or she has special financial knowledge or training.

The duties placed on insurers and insurance agents regarding recommendations to a senior consumer to purchase an annuity are also applied to life insurance. The bill requires that the

insurer or insurance agent have an *objectively* reasonable basis for believing that a recommendation to a senior consumer is suitable given the senior's investments, other insurance products, and financial situation and needs.

The bill requires insurance agents, prior to recommending a product to a senior consumer, 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 (department or DFS), signed by the applicant and agent, and requires that a copy be provided to the insurer and the consumer.

In a transaction involving the surrender or replacement of an in-force insurance or investment product, the bill requires an insurance agent to call the company of the in-force investment, in the presence of the consumer, to inquire and document whether there are any surrender charges or penalties.

The insurer or agent must provide the consumer with specified information concerning differences between the annuity or life insurance policy being recommended for purchase and an existing annuity or life insurance policy that would be surrendered or replaced. The information must be provided on a form the DFS adopts by rule and a copy must be provided to the insurer and the consumer.

The bill increases the "free look" period (which is one of the alternative requirements an insurer must meet) from 10 days to 14 days after purchase of a life insurance or fixed annuity for the consumer to obtain a refund, and applies this requirement to all annuities. Current law is limited to "fixed" annuities.

The bill 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 by either the insurer or insurer's insurance agent.

The bill requires insurers, managing general agents, and insurance agencies to *each* maintain or make available to the DFS or OIR records of information collected from senior consumers and other information used in making recommendations that resulted in insurance transactions for 5 years after the insurance transaction is completed. Insurers may maintain documentation on behalf of an agent, but the agent must be able to make available such documentation.

The bill requires applicants for agent licensure to set forth their home and business telephone numbers and email address in the application and to notify the department 60 days of changes.

The bill requires all licensees to complete 3 hours of department approved continuing education on the subject of suitability in annuity and life insurance transactions. The hours may be used to satisfy the current ethics continuing education requirement.

This bill substantially amends the following sections of the Florida Statutes: 626.171, 626.2815, 626.551, 626.9521, 626.9541, and 627.4554

II. Present Situation:

Unfair Insurance Trade Practices Act

The "Unfair Insurance Trade Practices Act" under s. 626.9541, F.S., specifies and prohibits practices which constitute unfair methods of competition or unfair or deceptive acts. Insurers, insurance agents, and any other person involved in the business of insurance can be fined for violating the Act, up to $2,500 for each non-willful violation up to an aggregate $10,000 fine, and up to $20,000 for each willful violation up to an aggregate $100,000 fine. Willful violations of these provisions are also subject to criminal prosecution as a second degree misdemeanor (s. 624.15, F.S.).

Further, the unfair trade practice laws authorize the OIR or the department to issue cease and desist orders against insurers and agents that violate those provisions (s. 626.9581, F.S.). Violation of a cease and desist order is subject to a penalty not to exceed $50,000 (s. 626.9601, F.S.). An insurance agent that violates this section is also subject to suspension or revocation of his or her license and an administrative penalty of up to $500 or, for willful violations, up to $3,500, under the authority of the Department of Financial Services (s. 626.681, F.S.).

Annuities: Fixed vs. Variable[1]

An annuity is a contract between a customer and an insurer for which the customer makes a lump sum payment or series of payments to an insurer that in return agrees to make periodic payments back to the annuitant at a future date, either for the annuitant's life or a specified period. There are two basic annuity types. A fixed annuity guarantees fixed payments at a fixed interest rate to the annuitant, while a variable annuity provides a rate of return that is not guaranteed and is based on the success of the investment option that underlies the annuity. In a variable annuity, the premium dollars are placed into a variety of investments called subaccounts. The performance of the investments in the subaccounts determines the performance of the annuity. Variable annuities will often offer a wide range of subaccount investment options with varying degrees of risk. Fixed annuities are considered insurance products that may be sold by a licensed life insurance and annuity agent. Variable annuities are considered investment products and under the jurisdiction of both securities regulators and state insurance departments. Agents selling this type of annuity must hold a variable annuity license from the state insurance regulator, a securities license and an active securities registration with a broker/dealer. As of May 5, 2008, all variable annuities sold will be subject to the suitability standards contained in the Financial Industry Regulatory Authority (FINRA) under FINRA Rule 2821.

Both fixed and variable annuities can be obtained in either immediate or deferred form. In an immediate annuity the annuity company is typically given a lump sum payment in exchange for immediate and regular periodic payments, which may be for as long as the contract owner lives. For a deferred annuity, premiums are usually either paid in a lump sum or by a series of payments, and is subject to an *accumulation phase*, when those payments experience tax-deferred growth, followed by the *anunitization* or *payout phase*, when the annuity provides a regular stream of periodic payments to the consumer.

[1] The Present Situation is based in part on *Florida Department of Financial Services 2008 White Paper on Annuities*, Roxanne Rehm (March 5, 2008).

Annuities are often used for retirement planning because they provide a guaranteed source of income for future years. Immediate annuities are often used by senior citizens as a means to supplement their retirement income, or as a method of planning for Medicaid nursing care. The main advantage of deferred annuities is that the principal invested grows on a tax-deferred basis. However, unlike some other investments that are subject to the capital gains tax (maximum 15 percent), a deferred annuity is subject to the ordinary income tax rates of up to 35 percent. Both deferred and immediate annuities are long-term contracts that typically restrict investor's ability to access money placed in the annuity. Deferred annuities may be unsuitable investments for many senior citizens because of this fact.

Equity Indexed Annuities

Equity indexed annuities are defined and regulated as fixed annuity products, but act more as a hybrid of a fixed and variable annuity. Equity indexed annuities provide a "minimum guaranteed" interest rate in combination with an index-linked component. This is different than a traditional fixed annuity which provides a specific guaranteed rate of interest.

Equity indexed annuities are one of the fastest growing segments of the insurance industry today and many insurance agents are aggressively marketing them to seniors in Florida. The products are touted as a vehicle for investors to realize gains similar to those in the stock market without the corresponding risk. However, such annuities rarely provide returns that are the equivalent of a stock market index. Additionally, even with a guaranteed minimum interest rate, investors may still lose money purchasing an equity indexed annuity if the rate is less than the premium or initial payment. Investors who need to cancel an annuity to access funds prior to the maturity of the contract may lose principal through surrender charges.

Equity indexed annuities are complex and can contain many detrimental features such as hidden penalties, fees, and large multi-year surrender charges. These annuities are not considered securities and not required to register with the federal Securities and Exchange Commission, as is the case with variable annuities. As a result, the law does not require equity indexed annuities to be accompanied with a prospectus that discloses possible investment risks. Additionally, unlike variable annuity products that may only be sold by agents with securities and insurance licenses, agents that have only an insurance license may sell equity indexed annuities.

Equity based annuities have several unique factors that may affect potential return. The unique factors used to calculate the interest an investor may receive often include:

- Interest Rate Caps – A maximum rate of interest that an investor will receive, even if the underlying stock market index performs well. For example, if an equity indexed annuity has a cap of 6 percent the investor is limited to a 6 percent return even if the underlying investment index earns a much higher percentage.
- Participation Rates – Determines how much of the increase or return of the underlying stock market index will be used to calculate the annuity's return on investment. For example, if the participation rate is 70 percent, and the index increases 20 percent, the return credited to the equity indexed annuity would be only 14 percent.
- Index Crediting Methods – Permit investors to choose the method by which interest will be credited to equity indexed annuities. For instance, the annual ratchet method usually credits an amount of interest based on the increase (if any) in value of the underlying

index from the beginning to the end of the year. The point-to-point method credits an amount of interest based on any increase in the value of the underlying index from the beginning to the end of a specific period of time, sometimes based on the contract date.

Equity indexed annuities often have various fees and charges. These include:

- Surrender Charges – These vary dramatically among annuities and can be as high as 25 percent and be valid for up to 20 years.
- Administrative Fees or Margins – The fees in some equity indexed annuities amount to the difference between the percentage gain in the index and the actual amount credited to the investor. These fees or "margins" are not always disclosed clearly in marketing materials or contracts.
- Market Value Adjustments – Typically function to alter or reduce the cash value of an annuity dependent on changes in the interest rate since the contract's issue. Such adjustments may result in a loss of previously credited bonuses or interest credits.
- Asset Fees – Charged by the company, based upon a percentage of the value of the annuity, sometimes subject to change annually.

It is important to note that whether an annuity is fixed, variable or equity indexed, the industry does not require that the annuity contract be provided to the consumer prior to or at the time of purchase. Thus, the consumer must relay on the representations of the agent. Florida requires that contracts contain a free look provision that allows consumers to read and review their contracts and request cancellation within 10 days after receiving the contract.

Suitability of Annuity and Life Insurance Products

In Florida, the suitability—the appropriateness of a particular product relative to the consumer's age, investment objectives, and current and future financial needs—is a primary concern with regard to transactions involving senior consumers. The Department of Financial Services indicates that consumer complaints involve the suitability of the product itself, deceptive sales practices by agents, or both. Florida has enacted the Annuity Transactions Model Regulation of the National Association of Insurance Commissioners in s. 627.4554, F.S.

Section 627.4554, F.S., provides standards and procedures that must be followed when recommending the purchase of an annuity product to seniors. The section sets forth duties on insurers and insurance agents when recommending the purchase of an annuity by a senior. The agent or insurer must make reasonable efforts to obtain information about the senior's financial status, tax status, and investment objectives prior to completing the sale of an annuity. Additionally, the agent or insurer must have reasonable grounds for recommending the annuity on the basis of the facts disclosed by the senior consumer as to his or her investments, other insurance products, financial situation, and needs. The Department of Financial Services indicates that the "reasonable grounds" standard in Florida law is a subjective standard. It requires the Department to prove, by clear and convincing evidence, that an agent did not believe a particular transaction was suitable. Thus, the issue is not whether the investment advice was actually suitable on an objective basis, but whether the agent believed it was. The DFS provides an example where an elderly couple living in Titusville, FL, was induced to invest their entire liquid net worth of $40,000 into a deterred annuity investment. The agent did not disclose the features of the investment, including the many years of surrender charges that would prevent the couple from having full access to their funds for the rest of their natural lives. The agent was asked what his reasonable grounds were for believing the investment was suitable. The agent replied that he had made inquiry of the consumers at the time of the transaction and determined that their health and finances were stable, and therefore had reasonably concluded the investment was suitable. The DFS believes that creating an objective standard for suitability would allow transactions to be evaluated in line with securities industry suitability norms.

Persons recommending variable annuities must comply with s. 627.4554, F.S., and the National Association of Securities Dealers Conduct Rules in effect on January 1, 2004. The Office of Insurance Regulation is authorized to order an insurer to take corrective action on behalf of a senior consumer harmed by a violation of the section, while the Department of Financial Services has such authority with regard to insurance agents, insurance agencies, and managing general agencies. During the 2006-2007 fiscal years the DFS opened a total of 351 investigations related to annuity transactions, a 41 percent increase compared to the 2005-2006 fiscal year. In the first eight months of fiscal year 2007-2008, the DFS has opened 260 annuity-related investigations, which trends to be a 12.5 percent increase over the prior fiscal year and a 58 percent cumulative increase since fiscal year 2005-2006.

Common Types of Annuity and Life Insurance Fraud
When unsuitable annuities are sold to consumers, the transaction commonly involves inappropriate conduct by the agent such as misrepresentations and material omissions designed to hide the fact that the product is not suitable to meet the consumer's needs. Forgeries are also commonplace. Annuity or life insurance transactions involving misrepresentations or material omissions are administratively prosecutable under the Unfair Insurance Trade Practices Act in Chapter 626, F.S.

Two common unfair insurance trade practices are "twisting" and "churning." Twisting involves knowingly making misleading representations, or incomplete or fraudulent comparisons, or fraudulent material omissions regarding insurance policies or insurers in an attempt to induce a customer take an action regarding their current insurance policy or take out an insurance policy with another insurer.[2] Churning is similar to twisting, but instead involves the surrender or withdrawal from a product to fund another product issued by the same company.[3] Agents that engage in these practices do so to obtain additional agent commissions that range between 9 and 12 percent for most annuity sales (a $100,000 annuity would yield a commission between $9,000 and $12,000). The DFS indicates that because such practices are considered misdemeanors by statute, state's attorneys are reluctant to initiate criminal prosecutions of suspected violators who engage in twisting or churning.

III. Effect of Proposed Changes:

Section 1. Names the act the "John and Patricia Seibel Act."

Section 2. Amends s. 626.171, F.S., to require that applicants for licensure as an insurance agent, customer representative, adjuster, and other specified parties include their home and business telephone numbers and email address in the application.

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[2] Section 626.9541(1)(l), F.S.
[3] Section 626.9541(1)(aa), F.S.

Section 3. Amends s. 626.2815, F.S., to amend the continuing education requirements for persons that solicit or sell insurance in Florida. Effective January 1, 2009, until January 1, 2010, all licensees must complete at least 3 hours of department approved continuing education on the subject of suitability in annuity and life insurance transactions. The hours may be used to satisfy the current ethics continuing education requirement.

Section 4. Amends s. 626.551, F.S., to require that insurance agents and other specified licensees notify the Department of Financial Services in writing within 60 days after a change of home telephone number, business telephone number, or e-mail address.

Sections 5-7. Amends ss 626.9521 and 626.9541, F.S.; Florida's unfair and deceptive trade practices act for insurance. The bill creates new prohibited practices and imposes increased fines for specified violations.

The bill makes it a second degree felony to engage in "twisting" if the victim is over 65 years old or possesses a mental disability. Otherwise, the crime is a third degree felony. Twisting is prohibited in paragraph (l) of s. 626.9541, F.S., and defined as knowingly making misleading representations, or incomplete or fraudulent comparisons, or fraudulent material omissions regarding insurance policies or insurers in an attempt to induce a customer take an action regarding their current insurance policy or take out an insurance policy with another insurer.

The bill makes it a second degree felony to engage in "churning" if the victim is over 65 years old or possesses a mental disability. Otherwise, the crime is a third degree felony. Churning is prohibited in paragraph (aa) of s. 626.9541, F.S., and occurs when a policyholder will not benefit from or is fraudulently induced into using the value in an existing life insurance contract or annuity to purchase another insurance policy or annuity with the same insurer for the purpose of earning additional premiums, fees, commissions, or other compensation. The definition of "churning" is modified to include direct or indirect churning. Indirect churning occurs when a policy is surrendered and the resulting funds are used to purchase an immediate annuity (specifying payments to begin at once) which is then used to fund a deferred annuity or a life insurance policy. It is often done because the agent can receive a double commission for the immediate annuity and the deferred annuity or life insurance policy that it funds.

The bill creates a new prohibited act and makes it a third degree felony to willfully submit to an insurer an insurance application or policy-related document on behalf of a consumer that contains a false or fraudulent signature as prohibited in s. 6262.9541(1)(ee), F.S.

A second degree felony is punishable by up to 15 year's imprisonment, while a third degree felony is punishable by up to 5 years imprisonment, pursuant to s. 775.082, F.S.

The fines and penalties for violations in s. 626.9521, F.S., for twisting, churning, or false signatures are increased as follows:

- $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).

Unlawfully using designations or misrepresenting the agent qualifications is made an unfair or deceptive act or method of competition, as prohibited by the bill in s. 626.9541(1)(ff), F.S., as follows:

- When making a sales presentation or solicitation for insurance, a licensee is prohibited from utilizing designations or titles that falsely imply that the licensee has special financial knowledge or has obtained specialized financial training or is certified or qualified to provide specialized financial advice to senior citizens.
- Terms such as “financial advisor” may not be used to falsely imply the licensee is licensed or qualified to discuss, sell, or recommend financial products other than insurance products.
- When making a sales presentation or solicitation for insurance, a licensee is prohibited from falsely implying he or she is qualified to discuss, recommend, or sell securities or other investment products in addition to insurance products.

Section 6 of the bill states that if another act is enacted during the 2008 legislative session that creates greater fines in s. 626.9521, F.S., than those created by this bill, then those greater fines shall supersede the increases made to that statutory section by this bill.

Section 8. Amends s. 626.99, F.S., regarding disclosure requirements pursuant to the sale of a life insurance or annuity contract. For life insurance, an insurer must provide one of the following:

- A buyer’s guide and policy summary prior to accepting an applicant’s initial premium or premium deposit;
- A policy that provides an unconditional refund for at least 14 days (current law is 10 days); or
- A policy summary that contains an offer of such an unconditional refund (14 days) that is delivered with the policy or prior to the delivery of the policy.

The bill requires that for annuities, rather than only fixed annuities, an insurer must provide each prospective purchaser a buyer’s guide to annuities and a contract summary as provided in the National Association of Insurance Commissioners Model Annuity and Deposit Fund Regulation. Additionally, the policy must provide an unconditional refund for at least 14 days (current law is 10 days).

Section 9. Amends s. 627.4554, F.S., the “suitability” statute that provides standards and procedures that must be followed when recommending the purchase of an annuity product to seniors. The bill applies the section to sales to seniors of life insurance, as well as annuities, and strengthens the section’s requirements.

Definitions – Subsection (3) is amended to define the terms “annuity contract” and “life insurance contract.” The definition of “annuity” is deleted. The definition for annuity contract is similar to the current definition of annuity, except that the term is expanded to specifically include a fixed equity indexed annuity. “Life insurance contract” is defined as life insurance of human lives.

Subsection (4), which contains the duties placed on insurers and insurance agents, is amended to include recommendations to a senior consumer to exchange or purchase a life insurance product, or an annuity. Currently, it only applies to annuity recommendations. Additionally, the subsection is amended to include a list of information that must be gathered by the agent or insurer for purposes of making a recommendation to a senior consumer for the purchase or exchange of an annuity or life insurance, and also require certain disclosures be made to the consumer.

Objective Standard of Suitability – The bill requires that the insurer or insurance agent have an *objectively* reasonable basis for believing that a recommendation to a senior consumer is suitable given the senior's investments, other insurance products, and financial situation and needs. The bill indicates an objective standard of judgment should be used when determining if a recommendation is reasonable.

Information Gathered to Determine Suitability – Paragraph (4)(b) details the minimum information that the insurance agent or insurer is to obtain before executing a purchase or exchange of an annuity or life insurance contract. The information must be collected on a form adopted by rule by the DFS, which must be completed and signed by the applicant and the agent. The form will include at a minimum:

- Personal information of the parties including the age and gender of the applicant and any dependents;
- Income sources and amounts and other compensation of the parties;
- Financial information of the parties, including specific assets and liabilities to determine net worth and long term and short term debt;
- Other in-force insurance, annuities, and retirement or savings plans;
- Tax status of the consumer;
- Current and foreseeable living and health-related expenses;
- Investment experience of the consumer;
- Savings and investment goals relative to investment and income time horizons and the need for liquidity of assets;
- Individual objectives, anticipated changes in needs, and investment preferences (including risk tolerance);
- The funding source to be used to purchase the annuity (Note: does not say life insurance); and
- Other information used or considered relevant by the insurance agent or insurer in making recommendations to the consumer regarding the purchase of an annuity or life insurance contract.

If a consumer refuses to provide relevant information requested by the insurance agent or insurer, the agent or insurer must obtain a signed verification from the senior consumer that the consumer refuses to provide the information and may be limiting protections under the section regarding the suitability of the sale. The signed verification must be obtained before the execution of the sale on a form adopted by the DFS by rule.

Information Provided to the Consumer when Replacing or Exchanging an Annuity or Life Insurance Policy – Paragraph (4)(d) applies when a new annuity or life insurance policy is going to replace or exchange one that is currently in force. The insurer or agent must provide information concerning differences between an existing annuity or life insurance policy and the annuity or life insurance policy being recommended for purchase. The purpose is to determine the suitability of the recommendation and why it benefits the consumer. The information must be provided on a form the DFS adopts by rule. A copy must be provided by the agent to the insurer within 10 days after the form is executed and to the consumer no later than the date of delivery of the contract(s). The information at a minimum must include a:

- Comparison of the benefits, terms, and limitations between the annuities and life insurance policies;
- Comparison of any fees and charges between the annuities and life insurance products;
- Written basis for the recommended exchange, including the overall advantages and disadvantages to the consumer if the recommendation is followed; and
- Other information used or considered to be relevant by the insurance agent or the insurer in making recommendations to the consumer to exchange or replace an annuity or life insurance policy.

Inquiry on Charges or Penalties for Surrendering/Replacing an Insurance or Investment Product – Paragraph (4)(e) requires, in a transaction involving the surrender or replacement of an in-force insurance or investment product, the insurance agent must do three things before effectuating the purchase or exchange:

- First, the insurance agent must call the company of record of the in-force investment to inquire whether there are any surrender charges or penalties the consumer may incur upon surrender or liquidation. The phone call must me made in the presence of the consumer.
- Next, the agent must write down the existence and amount of any surrender charges or penalties on a form adopted by the department.
- Finally, the agent must have the consumer sign an acknowledgment of the existence and amount of any charges.

Notification on Possibility of Tax Consequences - Paragraph (4)(f) requires the agent to disclose that a purchase or exchange of an annuity or life insurance policy may have tax consequences and that the applicant should contact his or her tax advisor for more information.

OIR Authority to Order Refund – Subsection (5) authorizes the OIR 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 by either the insurer or insurer’s insurance agent.

Recordkeeping Requirements for Agents and Insurers – Subsection (6) is amended to require insurers, managing general agents, and insurance agencies to *each* maintain or make available to the DFS or OIR records of information collected from senior consumers and other information used in making recommendations that resulted in insurance transactions. Currently, the statute is considered by some to be ambiguous as to whether all three entities need maintain records. The information must be kept for 5 years after the insurance transaction is completed. The bill permits insurers to maintain documentation on behalf of an agent, but the agent must be able to make available such documentation.

Rulemaking - The bill creates a new subsection (9) authorizing the Department of Financial Services and the Financial Services Commission (agency head for rulemaking for OIR) to adopt rules to administer this section, including rules identifying suitability considerations (objective criteria regarding whether an investment recommendation is suitable for the particular senior consumer), and setting standards of disclosure.

Section 10. Amends s. 627.805, F.S., to clarify that the Department of Financial Services, the Office of Financial Regulation, and the Office of Insurance Regulation have the authority to regulate the issuance and sale of variable and indeterminate value contracts. The section also clarifies that the Department of Financial Services and the Financial Services Commission have rulemaking authority as appropriate to implement the requirements placed on variable and intermediate value contracts in ss. 627.801-627.807, F.S. An “indeterminate value contract” is defined as an annuity, life insurance contract, or contract upon the lives of the beneficiaries under life insurance contracts when such annuity or contract provides variable or indeterminate benefits, values, or premiums. An indeterminate value contract that holds assets in a separate account is defined as a “variable contract.”

Section 11. The act is effective July 1, 2008.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Insurance consumers, particularly senior consumers, should benefit by being afforded greater protection from specified unfair insurance trade practices, due to bill’s new prohibited acts and increased penalties for current prohibited acts, notably practices such as “churning” and “twisting” that often financially harm consumers.

The bill will provide additional consumer protections to senior consumers age 65 or older that purchase an annuity or life insurance policy. The protections are designed to prevent seniors from being induced to purchase annuities or life insurance that will harm them financially. The OIR may 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 by either the insurer or insurer's insurance agent.

Insurance agents and insurers are subject to increased penalties and potential felony convictions for certain acts. The increased requirements for documenting suitability considerations and disclosing specific costs and benefits when a current policy is being replaced may act to discourage or reduce sales of life insurance and annuity contracts.

C. Government Sector Impact:

The Financial Services Commission and the Department of Financial Services are required to engage in rulemaking proceedings to administer the requirements related to life insurance and annuity sales to seniors.

The bill requires the imposition of increased fines for "twisting," "churning," and submitting fraudulent signatures on an insurance application, which may result in increased funds to the OIR or DFS.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.