

By the Committees on General Government Appropriations; Banking and Insurance; and Senators Bennett and Atwater

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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
28 competition and an unfair or deceptive act or practice;
29 amending s. 626.99, F.S.; revising requirements for life

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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; requiring an agent to provide information about
48 any surrender charges and tax consequences; authorizing
49 the department and commission to adopt rules; amending s.
50 627.805, F.S.; providing for regulation of the issuance
51 and sale of variable and indeterminate value contracts by
52 the Department of Financial Services, the Office of
53 Insurance Regulation, and the Office of Financial
54 Regulation; authorizing the department and the Financial
55 Services Commission to adopt rules; providing an effective
56 date.

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

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

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

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

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

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

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

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

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

(3)

(k) Effective January 1, 2009, and until January 1, 2010, any person who holds a license to solicit or sell life insurance in this state must complete a minimum of 3 hours in continuing education, approved by the department, on the subject of suitability in annuity and life insurance transactions. A

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88 licensee may use the hours obtained under this paragraph to
89 satisfy the requirement for continuing education in ethics under
90 paragraph (a).

91 Section 4. Section 626.551, Florida Statutes, is amended to
92 read:

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

105 Section 5. Section 626.9521, Florida Statutes, is amended
106 to read:

107 626.9521 Unfair methods of competition and unfair or
108 deceptive acts or practices prohibited; penalties.--

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

114 (2) Except as provided in subsection (3), any person who
115 violates any provision of this part is ~~shall be~~ subject to a fine
116 in an amount not greater than \$2,500 for each nonwillful

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117 violation and not greater than \$20,000 for each willful
118 violation. Fines under this subsection may not exceed an
119 aggregate amount of \$10,000 for all nonwillful violations arising
120 out of the same action or an aggregate amount of \$100,000 for all
121 willful violations arising out of the same action. The fines
122 ~~authorized by this subsection~~ may be imposed in addition to any
123 other applicable penalty.

124 (3) (a) If a person violates s. 626.9541(1) (l), the offense
125 known as "twisting," or violates s. 626.9541(1) (aa), the offense
126 known as "churning," the person commits a felony of the third
127 degree, punishable as provided in s. 775.082, and a fine not
128 greater than \$5,000 shall be imposed for each nonwillful
129 violation or a fine not greater than \$30,000 shall be imposed for
130 each willful violation. However, if the victim of such offense is
131 65 years of age or older or the agent knew or should have known
132 the victim is mentally disabled, the person commits a felony of
133 the second degree, punishable as provided in s. 775.082, and a
134 fine not greater than \$5,000 shall be imposed for each nonwillful
135 violation or a fine not greater than \$30,000 shall be imposed for
136 each willful violation. To impose criminal penalties under this
137 paragraph, the agent must have exhibited a pattern or of
138 "churning" or "twisting" and the practice of "churning" must
139 involve the conduct described in both sub-subparagraphs a. and b.
140 of s. 626.9541(1) (aa)1.

141 (b) If a person violates s. 626.9541(1) (ee) by submitting
142 fraudulent signatures on an application or policy-related
143 document, the person commits a felony of the third degree,
144 punishable as provided in s. 775.082, and a fine not greater than
145 \$5,000 shall be imposed for each nonwillful violation or a fine

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146 not greater than \$30,000 shall be imposed for each willful
147 violation.

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

152 Section 6. Any increase in the fines imposed under s.
153 626.9521, Florida Statutes, which exceeds the increase provided
154 by this act shall supersede the amendments made to that section
155 by this act if such increase is enacted during the 2008
156 legislative session and becomes law, and the amendments to s.
157 626.9521, Florida Statutes, made by this act shall not take
158 effect.

159 Section 7. Paragraph (aa) of subsection (1) of section
160 626.9541, Florida Statutes, is amended, and paragraphs (ee) and
161 (ff) are added to that subsection, to read:

162 626.9541 Unfair methods of competition and unfair or
163 deceptive acts or practices defined.--

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

167 (aa) Churning.--

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

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

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

180 c. When the applicant is not informed that the policy
181 values including cash values, dividends, and other assets of the
182 existing policy or contract will be reduced, forfeited, or used
183 ~~utilized~~ in the purchase of the replacing or additional policy or
184 contract, if this is the case; or

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

188
189 Churning by an insurer or an agent is an unfair method of
190 competition and an unfair or deceptive act or practice.

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

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203 3. Each insurer shall adopt written procedures to
204 reasonably avoid churning of policies or contracts that it has
205 issued, and failure to adopt written procedures sufficient to
206 reasonably avoid churning shall be an unfair method of
207 competition and an unfair or deceptive act or practice.

208 (ee) Fraudulent signatures on an application or policy-
209 related document.--Willfully submitting to an insurer on behalf
210 of a consumer an insurance application or policy-related document
211 bearing a false or fraudulent signature.

212 (ff) Unlawful use of designations; misrepresentation of
213 agent qualifications.--

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

217 a. Possesses special financial knowledge or has obtained
218 specialized financial training; or

219 b. Is certified or qualified to provide specialized
220 financial advice to senior citizens.

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

225 3. A licensee may not, in any sales presentation or
226 solicitation for insurance, falsely imply that he or she is
227 qualified to discuss, recommend, or sell securities or other
228 investment products in addition to insurance products.

229 4. A licensee who also holds a designation as a certified
230 financial planner (CFP), chartered life underwriter (CLU),
231 chartered financial consultant (ChFC), life underwriter training

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232 council fellow (LUTC), or the appropriate license to sell
233 securities from the Financial Industry Regulatory Authority
234 (FINRA) may inform the customer of those licenses or designations
235 and make recommendations in accordance with those licenses or
236 designations, and in so doing does not violate this paragraph.

237 Section 8. Paragraph (a) of subsection (4) of section
238 626.99, Florida Statutes, is amended to read:

239 626.99 Life insurance solicitation.--

240 (4) DISCLOSURE REQUIREMENTS.--

241 (a) The insurer shall provide to each prospective purchaser
242 a buyer's guide and a policy summary prior to accepting the any
243 applicant's initial premium or premium deposit, unless the policy
244 for which application is made provides ~~contains a provision for~~
245 an unconditional refund for a period of at least 14 ~~10~~ days, or
246 unless the policy summary contains an offer of such an
247 unconditional refund, in which event the buyer's guide and policy
248 summary must be delivered with the policy or prior to delivery of
249 the policy. With respect to ~~fixed~~ annuities, the insurer shall
250 provide to each prospective purchaser a buyer's guide to
251 annuities and a contract summary as provided in the National
252 Association of Insurance Commissioners (NAIC) Model Annuity and
253 Deposit Fund Regulation and the policy must provide ~~shall contain~~
254 ~~a provision for~~ an unconditional refund for a period of at least
255 14 ~~10~~ days.

256 Section 9. Section 627.4554, Florida Statutes, is amended
257 to read:

258 627.4554 Annuity and life insurance investments by
259 seniors.--

260 (1) PURPOSE; CONSTRUCTION.--

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261 (a) The purpose of this section is to set forth standards
262 and procedures for making recommendations to senior consumers
263 which result in a transaction involving life insurance or annuity
264 products to appropriately address the insurance needs and
265 financial objectives of senior consumers at the time of the
266 transaction.

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

270 (2) APPLICATION.--This section applies to any
271 recommendation to purchase or exchange an annuity or life
272 insurance product which is made to a senior consumer by an
273 insurance agent, or an insurer where no agent is involved, and
274 which, ~~that~~ results in the purchase or exchange recommended.

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

276 (a) "Annuity contract" means a fixed annuity, fixed equity
277 indexed annuity, or variable annuity that is individually
278 solicited, whether the product is classified as an individual
279 annuity or a group annuity.

280 (b) "Life insurance contract" means life insurance of human
281 lives.

282 (c) ~~(b)~~ "Recommendation" means advice provided by an
283 insurance agent, or an insurer if no insurance agent is involved,
284 to an individual senior consumer which results in a purchase or
285 exchange of an annuity or life insurance contract in accordance
286 with that advice.

287 (d) ~~(c)~~ "Senior consumer" means a person 65 years of age or
288 older. In the event of a joint purchase by more than one party, a

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289 purchaser is considered to be a senior consumer if any of the
290 parties is age 65 or older.

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

292 (a) In recommending to a senior consumer the purchase or
293 exchange of an annuity or life insurance contract which ~~or the~~
294 ~~exchange of an annuity that~~ results in another insurance
295 transaction or series of insurance transactions, an insurance
296 agent, or an insurer if no insurance agent is involved, must
297 ~~shall~~ have an objectively reasonable basis ~~grounds~~ for believing
298 that the recommendation is suitable for the senior consumer based
299 ~~on the basis of~~ the facts disclosed by the senior consumer as to
300 his or her investments and other insurance products and as to his
301 or her financial situation and needs.

302 (b) Before executing a purchase or exchange of an annuity
303 or life insurance contract resulting from a recommendation to a
304 senior consumer, an insurance agent, or an insurer if no
305 insurance agent is involved, shall make reasonable efforts to
306 obtain information concerning the suitability of senior
307 ~~consumer's financial status, tax status, and investment~~
308 ~~objectives and such other information used or considered to be~~
309 ~~reasonable by the insurance agent, or the insurer if no agent is~~
310 ~~involved, in making~~ the recommendation. The information shall
311 include, at a minimum:

312 1. Personal information, including the age and gender of
313 the parties to the annuity or life insurance and ages and number
314 of any dependents;

315 2. Sources and amounts of income, including employment and
316 salary details or other compensation applicable to the parties to
317 the annuity or life insurance;

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318 3. Financial information applicable to the parties to the
319 annuity or life insurance, including, at a minimum, specific
320 assets and liabilities to determine net worth and long-term and
321 short-term debt;

322 4. Other in-force insurance and annuities;

323 5. Tax status of the consumer;

324 6. Current and foreseeable living and health concerns;

325 7. Investment experience of the consumer;

326 8. Savings and investment goals relative to investment and
327 income time horizons and need for liquidity;

328 9. Individual investment objectives, consumer-anticipated
329 changes in needs, and income time horizons and need for
330 liquidity;

331 10. The source of the funds that will be used to purchase
332 the annuity or life insurance; and

333 11. Such other information used or considered to be
334 relevant by the insurance agent or insurer in making
335 recommendations to the consumer regarding the purchase or
336 exchange of an annuity or life insurance contract.

337
338 This information shall be collected on a form adopted by rule by
339 the department and completed and signed by the applicant and
340 agent. Questions requesting this information must be presented in
341 at least 12-point type and be sufficiently clear so as to be
342 readily understandable by both the agent and the consumer. A true
343 and correct executed copy of the form shall be provided by the
344 agent to the insurer within 10 days after execution of the form,
345 and shall be provided to the consumer no later than the date of
346 delivery of the contract or contracts.

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347 (c)1. Except as provided under subparagraph 2., an
348 insurance agent, or an insurer if no insurance agent is involved,
349 has no ~~shall not have any~~ obligation to a senior consumer under
350 paragraph (a) related to any recommendation if the senior
351 consumer:

352 a. Refuses to provide relevant information requested by the
353 insurer or insurance agent;

354 b. Decides to enter into an insurance transaction that is
355 not based on a recommendation of the insurer or insurance agent;
356 or

357 c. Fails to provide complete or accurate information.

358 2. An insurer or insurance agent's recommendation subject
359 to subparagraph 1. shall be objectively reasonable under all the
360 circumstances actually known to the insurer or insurance agent at
361 the time of the recommendation.

362 3. If the consumer refuses to provide relevant information
363 requested by the insurance agent or insurer, before the execution
364 of the sale the insurance agent or insurer shall obtain a signed
365 verification from the senior consumer on a form adopted by rule
366 by the department that he or she refuses to provide the requested
367 information and may be limiting protections afforded by this
368 section regarding the suitability of the sale.

369 (d) In addition to the information required by paragraph
370 (b), before the execution of a replacement or exchange of an
371 annuity or life insurance policy resulting from a recommendation,
372 the insurance agent shall also provide, on a form adopted by rule
373 by the department, information concerning differences between
374 each existing annuity or life insurance policy and the annuity or
375 life insurance policy being recommended in order to determine the

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376 suitability of the recommendation and its benefit to the
377 consumer. A true and correct executed copy of this form shall be
378 provided by the agent to the insurer within 10 days after
379 execution of the form, and shall be provided to the consumer no
380 later than the date of delivery of the contract or contracts. The
381 information shall include, at a minimum:

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

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

386 3. A written basis for the recommended exchange, including
387 the overall advantages and disadvantages to the consumer if the
388 recommendation is followed; and

389 4. Such other information used or considered to be relevant
390 by the insurance agent or the insurer in making recommendations
391 to the consumer regarding the replacement or exchange of an
392 annuity or life insurance policy.

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

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

404 a. Maintaining written procedures.

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

408 2. A managing general agent and an insurance agency shall
409 adopt a system established by an insurer to supervise
410 recommendations of its insurance agents which is reasonably
411 designed to achieve compliance with this section or shall
412 establish and maintain such a system, including, but not limited
413 to:

414 a. Maintaining written procedures.

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

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

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

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

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

440 5. An insurer that contracts with a third party pursuant to
441 subparagraph 3. and complies with the requirements specified in
442 subparagraph 4. is deemed to have fulfilled its responsibilities
443 under subparagraph 1.

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

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

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

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

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

462 (5) MITIGATION OF RESPONSIBILITY.--

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

469 (b) The department may order:

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

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

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

484 (6) RECORDKEEPING.--

485 (a) Insurers, managing general agents, insurance agencies,
486 and insurance agents shall each maintain or ~~be able to~~ make
487 available to the department or office, as appropriate, records of
488 the information collected from the senior consumer and other
489 information used in making the recommendations that were the
490 basis for insurance transactions for 5 years after the insurance
491 transaction is completed by the insurer. An insurer is permitted,

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492 | but shall not be required, to maintain documentation on behalf of
493 | an insurance agent.

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

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

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

503 | (b) Contracts used to fund:

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

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

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

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

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

519 | 6. Prepaid funeral contracts.

520 | (8) APPLICATION TO VARIABLE ANNUITIES AND VARIABLE LIFE

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521 INSURANCE.--Compliance with the Financial Industry Regulatory
522 Authority National Association of Securities Dealers Conduct
523 Rules in effect on May 5, 2008 ~~January 1, 2004~~, shall satisfy the
524 requirements under this section for the recommendation of
525 variable annuities and variable life insurance. This section does
526 not limit the department's ability to enforce the provisions of
527 this section with respect to insurance agents, insurance
528 agencies, and managing general agents, or the office's ability to
529 enforce the provisions of this section with respect to insurers.

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

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 and the
536 Office of Insurance Regulation ~~office, notwithstanding any other~~
537 ~~provision of law,~~ shall have the sole authority to regulate the
538 issuance and sale of variable and indeterminate value contracts
539 pursuant to their respective authority as conferred by state law.
540 The Office of Financial Regulation shall regulate the sale of
541 variable and indeterminate value contracts pursuant to its
542 authority under chapter 517. The Department of Financial Services
543 and, when applicable, the Financial Services Commission, may, ~~and~~
544 ~~the commission has authority to~~ adopt rules pursuant to ss.
545 120.536(1) and 120.54 to implement ~~the provisions of~~ this part.

546 Section 11. This act shall take effect January 1, 2009.