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

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

60

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

63 Section 2. Paragraph (a) of subsection (2) of section  
64 626.171, Florida Statutes, is amended to read:

65 626.171 Application for license as an agent, customer  
66 representative, adjuster, service representative, managing  
67 general agent, or reinsurance intermediary.--

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

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

72

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

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

81 626.2815 Continuing education required; application;  
82 exceptions; requirements; penalties.--

83 (3)

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

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88 suitability in annuity and life insurance transactions. A  
89 licensee may use the hours obtained under this paragraph to  
90 satisfy the requirement for continuing education in ethics under  
91 paragraph (a).

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

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

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

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

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

115 (2) Except as provided in subsection (3), any person who  
116 violates any provision of this part is ~~shall be~~ subject to a fine

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117 in an amount not greater than \$2,500 for each nonwillful  
118 violation and not greater than \$20,000 for each willful  
119 violation. Fines under this subsection may not exceed an  
120 aggregate amount of \$10,000 for all nonwillful violations arising  
121 out of the same action or an aggregate amount of \$100,000 for all  
122 willful violations arising out of the same action. The fines  
123 ~~authorized by this subsection~~ may be imposed in addition to any  
124 other applicable penalty.

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

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

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

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

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

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

161 626.9541 Unfair methods of competition and unfair or  
162 deceptive acts or practices defined.--

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

166 (aa) Churning.--

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

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

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

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

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

187  
188 Churning by an insurer or an agent is an unfair method of  
189 competition and an unfair or deceptive act or practice.

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

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

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

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

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

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

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

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

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

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



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

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

238 626.99 Life insurance solicitation.--

239 (4) DISCLOSURE REQUIREMENTS.--

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

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

257 627.4554 Annuity and life insurance investments by  
258 seniors.--

259 (1) PURPOSE; CONSTRUCTION.--

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

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

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

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

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

279 (b) "Life insurance contract" means a whole life, universal  
280 life, variable life, or equity indexed life insurance contract.

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

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

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

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

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

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

- 311 1. Personal information including the age and sex of the  
312 parties to the annuity or life insurance, and the ages and number  
313 of any dependents;
- 314 2. Tax status of the consumer;
- 315 3. Investment objectives of the consumer;
- 316 4. The source of the funds to be used to purchase the

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317 annuity;  
318 5. The applicant's annual income;  
319 6. Intended use of the annuity or life insurance policy;  
320 7. The applicant's existing assets, including investment  
321 and life insurance holdings;  
322 8. The applicant's liquid net worth and liquidity needs;  
323 9. The applicant's financial situation and needs;  
324 10. The applicant's risk tolerance; and  
325 11. Such other information used or considered to be  
326 relevant by the insurance agent or insurer in making  
327 recommendations to the consumer regarding the purchase or  
328 exchange of an annuity or life insurance contract.

329  
330 This information shall be collected on a form adopted by rule by  
331 the department and completed and signed by the applicant and  
332 agent. Questions requesting this information must be presented in  
333 at least 12-point type and be sufficiently clear so as to be  
334 readily understandable by both the agent and the consumer. A true  
335 and correct executed copy of the form shall be provided by the  
336 agent to the insurer within 10 days after execution of the form,  
337 and shall be provided to the consumer no later than the date of  
338 delivery of the contract or contracts.

339 (c)1. Except as provided under subparagraph 2., an  
340 insurance agent, or an insurer if no insurance agent is involved,  
341 has no shall not have any obligation to a senior consumer under  
342 paragraph (a) related to any recommendation if the senior  
343 consumer:

344 a. Refuses to provide relevant information requested by the  
345 insurer or insurance agent;

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346           b. Decides to enter into an insurance transaction that is  
347 not based on a recommendation of the insurer or insurance agent;  
348 or

349           c. Fails to provide complete or accurate information.

350           2. An insurer or insurance agent's recommendation subject  
351 to subparagraph 1. shall be objectively reasonable under all the  
352 circumstances actually known to the insurer or insurance agent at  
353 the time of the recommendation.

354           3. If the consumer refuses to provide relevant information  
355 requested by the insurance agent or insurer, before the execution  
356 of the sale the insurance agent or insurer shall obtain a signed  
357 verification from the senior consumer on a form adopted by rule  
358 by the department that he or she refuses to provide the requested  
359 information and may be limiting protections afforded by this  
360 section regarding the suitability of the sale.

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

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

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

378 3. A written basis for the recommended exchange, including  
379 the overall advantages and disadvantages to the consumer if the  
380 recommendation is followed; and

381 4. Such other information used or considered to be relevant  
382 by the insurance agent or the insurer in making recommendations  
383 to the consumer regarding the replacement or exchange of an  
384 annuity or life insurance policy.

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

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

396 a. Maintaining written procedures.

397 b. Conducting periodic reviews of its records that are  
398 reasonably designed to assist in detecting and preventing  
399 violations of this section.

400 2. A managing general agent and an insurance agency shall  
401 adopt a system established by an insurer to supervise  
402 recommendations of its insurance agents which is reasonably

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403 designed to achieve compliance with this section or shall  
404 establish and maintain such a system, including, but not limited  
405 to:

406 a. Maintaining written procedures.

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

410 3. An insurer may contract with a third party, including a  
411 managing general agent or an insurance agency, to establish and  
412 maintain a system of supervision as required by subparagraph 1.  
413 with respect to insurance agents under contract with or employed  
414 by the third party.

415 4. An insurer shall make reasonable inquiry to ensure that  
416 such third party contracting under subparagraph 3. is performing  
417 the functions required under subparagraph 1. and shall take such  
418 action as is reasonable under the circumstances to enforce the  
419 contractual obligation to perform the functions. An insurer may  
420 comply with its obligation to make reasonable inquiry by:

421 a. Annually obtaining a certification from a third party  
422 senior manager who has responsibility for the delegated functions  
423 that the manager has a reasonable basis to represent, and does  
424 represent, that the third party is performing the required  
425 functions.

426 b. Based on reasonable selection criteria, periodically  
427 selecting third parties contracting under subparagraph 3. for a  
428 review to determine whether the third parties are performing the  
429 required functions. The insurer shall perform any procedures  
430 necessary to conduct the review which are reasonable under the  
431 circumstances.

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432           5. An insurer that contracts with a third party pursuant to  
433 subparagraph 3. and complies with the requirements specified in  
434 subparagraph 4. is deemed to have fulfilled its responsibilities  
435 under subparagraph 1.

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

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

440           b. Include in its system of supervision an insurance  
441 agent's recommendations to senior consumers of products other  
442 than the annuities offered by the insurer, managing general  
443 agent, or insurance agency.

444           7. A managing general agent or insurance agency contracting  
445 with an insurer pursuant to subparagraph 3. shall promptly, when  
446 requested by the insurer pursuant to subparagraph 4., provide a  
447 certification as described in subparagraph 4. or provide a clear  
448 statement that the managing general agent or insurance agency is  
449 unable to meet the certification criteria.

450           8. A person may not provide a certification under sub-  
451 subparagraph 4.a. unless the person is a senior manager with  
452 responsibility for the delegated functions and has a reasonable  
453 basis for making the certification.

454           (5) MITIGATION OF RESPONSIBILITY.--

455           (a) The office may order an insurer to take reasonably  
456 appropriate corrective action, including rescission of the policy  
457 or contract and a full refund of the premiums paid or the  
458 accumulation value, whichever is greater, for any senior consumer  
459 harmed by a violation of this section by the insurer or the  
460 insurer's insurance agent.



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461 (b) The department may order:

462 1. An insurance agent to take reasonably appropriate  
463 corrective action for any senior consumer harmed by a violation  
464 of this section by the insurance agent.

465 2. A managing general agency or insurance agency that  
466 employs or contracts with an insurance agent to sell or solicit  
467 the sale of annuities to senior consumers to take reasonably  
468 appropriate corrective action for any senior consumer harmed by a  
469 violation of this section by the insurance agent.

470 (c) Any applicable penalty under the Florida Insurance Code  
471 for a violation of paragraph (4) (a), paragraph (4) (b), or  
472 subparagraph (4) (c) 2. may be reduced or eliminated, according to  
473 a schedule adopted by the office or the department, as  
474 appropriate, if corrective action for the senior consumer was  
475 taken promptly after a violation was discovered.

476 (6) RECORDKEEPING.--

477 (a) Insurers, managing general agents, insurance agencies,  
478 and insurance agents shall each maintain or ~~be able to~~ make  
479 available from the entity or entities responsible for maintaining  
480 the records pursuant to paragraph (4) (f), to the department or  
481 office, as appropriate, records of the information collected from  
482 the senior consumer and other information used in making the  
483 recommendations that were the basis for insurance transactions  
484 for 5 years after the insurance transaction is completed by the  
485 insurer. An insurer is permitted, but shall not be required, to  
486 maintain documentation on behalf of an insurance agent.

487 (b) Records required to be maintained by this subsection  
488 ~~regulation~~ may be maintained in paper, photographic,

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489 microprocess, magnetic, mechanical, or electronic media, or by  
490 any process that accurately reproduces the actual document.

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

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

496 (b) Contracts used to fund:

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

499 2. A plan described by s. 401(a), s. 401(k), s. 403(b), s.  
500 408(k), or s. 408(p) of the Internal Revenue Code of 1986, as  
501 amended, if established or maintained by an employer;

502 3. A government or church plan defined in s. 414 of the  
503 Internal Revenue Code of 1986, as amended, a government or church  
504 welfare benefit plan, or a deferred compensation plan of a state  
505 or local government or tax-exempt organization under s. 457 of  
506 the Internal Revenue Code of 1986, as amended;

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

509 5. Settlements of or assumptions of liabilities associated  
510 with personal injury litigation or any dispute or claim  
511 resolution process; or

512 6. Prepaid funeral contracts.

513 (8) APPLICATION TO VARIABLE ANNUITIES AND VARIABLE LIFE  
514 INSURANCE.--Compliance with the Financial Industry Regulatory  
515 Authority National Association of Securities Dealers Conduct  
516 Rules in effect on May 5, 2008 ~~January 1, 2004~~, shall satisfy the  
517 requirements under this section for the recommendation of

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518 variable annuities and variable life insurance. This section does  
519 not limit the department's ability to enforce the provisions of  
520 this section with respect to insurance agents, insurance  
521 agencies, and managing general agents, or the office's ability to  
522 enforce the provisions of this section with respect to insurers.

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

525 Section 10. Section 627.805, Florida Statutes, is amended  
526 to read:

527 627.805 Regulation of variable and indeterminate value  
528 contracts; rules.--The Department of Financial Services and the  
529 Office of Insurance Regulation ~~office, notwithstanding any other~~  
530 ~~provision of law,~~ shall ~~have the sole authority to~~ regulate the  
531 issuance and sale of variable and indeterminate value contracts  
532 pursuant to their respective authority as conferred by state law.  
533 The Office of Financial Regulation shall regulate the sale of  
534 variable and indeterminate value contracts pursuant to its  
535 authority under chapter 517. The Department of Financial Services  
536 and, when applicable, the Financial Services Commission, may, ~~and~~  
537 ~~the commission has authority to~~ adopt rules pursuant to ss.  
538 120.536(1) and 120.54 to implement ~~the provisions of~~ this part.

539 Section 11. The Department of Financial Services may adopt  
540 rules to implement this act effective upon the act becoming law.  
541 Such rules may not be effective until 60 days after the date on  
542 which the final rule is adopted or January 1, 2009, whichever is  
543 later.

544 Section 12. This act shall take effect January 1, 2009.