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

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30 constitute an unfair method of competition and an unfair
31 or deceptive act or practice; amending s. 626.99, F.S.;
32 revising requirements for life insurance or annuity
33 policies to increase the period of time allowed for
34 obtaining an unconditional refund; requiring insurers for
35 all types of annuities to provide a buyer's guide and a
36 policy summary to the buyer; amending s. 627.4554, F.S.;
37 revising the regulation of recommendations relating to the
38 sale of annuities to senior consumers; redefining the term
39 "annuity"; requiring that an agent obtain financial and
40 other information concerning the senior consumer before
41 executing a purchase or exchange of an annuity; requiring
42 that the agent perform a suitability analysis relative to
43 the investment he or she recommends and document the
44 analysis in writing; requiring an agent to provide a
45 comparison of current and recommended products if the
46 transaction involves the replacement or exchange of an
47 annuity; requiring an agent to provide information about
48 any surrender charges and tax consequences; exempting
49 certain persons from compliance with certain separate
50 suitability determinations under certain circumstances;
51 authorizing the department and Financial Services
52 Commission to adopt rules; amending s. 627.551, F.S.;
53 expanding the list of life insurance policies and plans of
54 self-insurance that are exempt from certain provisions of
55 state law; providing for contingent effect; amending s.
56 627.805, F.S.; providing for regulation of the issuance
57 and sale of variable and indeterminate value contracts by
58 the department, the Office of Insurance Regulation, and

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59 | the Office of Financial Regulation; authorizing the
60 | department and the commission to adopt rules; providing an
61 | effective date for such rulemaking authority; providing
62 | for applicability of such rules; providing effective
63 | dates.
64 |

65 | Be It Enacted by the Legislature of the State of Florida:
66 |

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

69 | Section 2. Paragraph (a) of subsection (2) of section
70 | 626.171, Florida Statutes, is amended to read:

71 | 626.171 Application for license as an agent, customer
72 | representative, adjuster, service representative, managing
73 | general agent, or reinsurance intermediary.--

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

75 | (a) His or her full name, age, social security number,
76 | residence address, business address, ~~and~~ mailing address, contact
77 | telephone numbers, including a business telephone number, and e-
78 | mail address.
79 |

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

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

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88 626.2815 Continuing education required; application;
89 exceptions; requirements; penalties.--

90 (3)

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

98 Section 4. Section 626.551, Florida Statutes, is amended to
99 read:

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

112 Section 5. Section 626.9521, Florida Statutes, is amended
113 to read:

114 626.9521 Unfair methods of competition and unfair or
115 deceptive acts or practices prohibited; penalties.--

116 (1) No person shall engage in this state in any trade

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117 | practice which is defined in this part as, or determined pursuant
118 | to s. 626.951 or s. 626.9561 to be, an unfair method of
119 | competition or an unfair or deceptive act or practice involving
120 | the business of insurance.

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

131 | (3) (a) If a person violates s. 626.9541(1) (l), the offense
132 | known as "twisting," or violates s. 626.9541(1) (aa), the offense
133 | known as "churning," the person commits a misdemeanor of the
134 | first degree, punishable as provided in s. 775.082, and an
135 | administrative fine not greater than \$5,000 shall be imposed for
136 | each nonwillful violation or an administrative fine not greater
137 | than \$30,000 shall be imposed for each willful violation. To
138 | impose criminal penalties under this paragraph, the practice of
139 | "churning" or "twisting" must involve fraudulent conduct.

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

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146 than \$30,000 shall be imposed for each willful violation.

147 (c) Administrative fines under this subsection may not
148 exceed an aggregate amount of \$50,000 for all nonwillful
149 violations arising out of the same action or an aggregate amount
150 of \$250,000 for all willful violations arising out of the same
151 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.

203 3. Each insurer shall adopt written procedures to

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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
232 council fellow (LUTC), or the appropriate license to sell

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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 investments by seniors.--

259 | (1) PURPOSE; CONSTRUCTION.--

260 | (a) The purpose of this section is to set forth standards
261 | and procedures for making recommendations to senior consumers

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262 | which result in a transaction involving annuity products to
263 | appropriately address the insurance needs and financial
264 | objectives of senior consumers at the time of the transaction.

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

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

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

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

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

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

287 | (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
289 | purchaser is considered to be a senior consumer if any of the
290 | parties is age 65 or older.

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

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

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

- 311 1. Personal information, including the age and sex of the
312 parties to the annuity and the ages and number of any dependents;
313 2. Tax status of the consumer;
314 3. Investment objectives of the consumer;
315 4. The source of the funds to be used to purchase the
316 annuity;
317 5. The applicant's annual income;
318 6. Intended use of the annuity;
319 7. The applicant's existing assets, including investment

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320 holdings;
321 8. The applicant's liquid net worth and liquidity needs;
322 9. The applicant's financial situation and needs;
323 10. The applicant's risk tolerance; and
324 11. Such other information used or considered to be
325 relevant by the insurance agent or insurer in making
326 recommendations to the consumer regarding the purchase or
327 exchange of an annuity contract.

328
329 This information shall be collected on a form adopted by rule by
330 the department and completed and signed by the applicant and
331 agent. Questions requesting this information must be presented in
332 at least 12-point type and be sufficiently clear so as to be
333 readily understandable by both the agent and the consumer. A true
334 and correct executed copy of the form shall be provided by the
335 agent to the insurer, or the third party that has contracted with
336 such insurer pursuant to subparagraph (f)3., within 10 days after
337 execution of the form, and shall be provided to the consumer no
338 later than the date of 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;

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

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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 contract resulting from a recommendation, the insurance
364 agent shall also provide, on a form adopted by rule by the
365 department, information concerning differences between each
366 existing annuity contract and the annuity contract being
367 recommended in order to determine the suitability of the
368 recommendation and its benefit to the consumer. A true and
369 correct executed copy of this form shall be provided by the agent
370 to the insurer, or the third party that has contracted with such
371 insurer pursuant to subparagraph (f)3., within 10 days after
372 execution of the form, and shall be provided to the consumer no
373 later than the date of delivery of the contract or contracts. The
374 information shall include, at a minimum:

375 1. A comparison of the benefits, terms, and limitations
376 between the annuity contracts.

377 2. A comparison of any fees and charges between the annuity

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378 | contracts.

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

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

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

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

397 | a. Maintaining written procedures.

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

401 | 2. A managing general agent and an insurance agency shall
402 | adopt a system established by an insurer to supervise
403 | recommendations of its insurance agents which is reasonably
404 | designed to achieve compliance with this section or shall
405 | establish and maintain such a system, including, but not limited
406 | to:

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407 a. Maintaining written procedures.

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

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

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

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

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

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

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436 | under subparagraph 1.

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

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

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

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

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

455 | (5) MITIGATION OF RESPONSIBILITY.--

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

462 | (b) The department may order:

463 | 1. An insurance agent to take reasonably appropriate
464 | corrective action for any senior consumer harmed by a violation

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465 of this section by the insurance agent.

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

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

477 (6) RECORDKEEPING.--

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

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

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

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

497 (b) Contracts used to fund:

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

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

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

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

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

513 6. Prepaid funeral contracts.

514 (8) APPLICATION TO ~~VARIABLE~~ ANNUITIES.--Any person who is
515 registered with a member of the Financial Industry Regulatory
516 Authority, who is required to make a suitability determination,
517 and who makes and documents such determination is deemed to
518 ~~Compliance with the National Association of Securities Dealers~~
519 ~~Conduct Rules in effect on January 1, 2004, shall~~ satisfy the
520 requirements under this section for the recommendation of
521 ~~variable~~ annuities. This section does not limit the department's
522 ability to enforce the provisions of this section with respect to

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523 insurance agents, insurance agencies, and managing general
524 agents, or the office's ability to enforce the provisions of this
525 section with respect to insurers.

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

528 Section 10. Effective only if Senate Bill 648, adopted
529 during the 2008 Regular Session of the Legislature, becomes a
530 law, paragraph (d) is added to subsection (2) of section 627.551,
531 Florida Statutes, to read:

532 627.551 Group contracts and plans of self-insurance must
533 meet group requirements.--

534 (2) Subsection (1) does not apply to life insurance
535 policies or plans of self-insurance:

536 (a) Insuring or providing benefits only to individuals
537 related by blood, marriage, or legal adoption.

538 (b) Insuring or providing benefits only to individuals who
539 have a common interest through ownership of a business
540 enterprise, or a substantial legal interest or equity therein,
541 and who are actively engaged in the management of the business
542 enterprise.

543 (c) Insuring or providing benefits only to individuals
544 otherwise having an insurable interest in each other's lives.

545 (d) Insuring or providing benefits pursuant to s.
546 627.404(2)(b)8. or 9.

547 Section 11. Section 627.805, Florida Statutes, is amended
548 to read:

549 627.805 Regulation of variable and indeterminate value
550 contracts; rules.--The Department of Financial Services and the
551 Office of Insurance Regulation ~~office, notwithstanding any other~~

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

561 Section 12. Effective upon this act becoming a law, the
562 Department of Financial Services may adopt rules to implement
563 this act. Section 9 of this act and such implementing rules shall
564 take effect 60 days after the date on which the final rule is
565 adopted or January 1, 2009, whichever is later.

566 Section 13. Except as otherwise expressly provided in this
567 act and except for this section, which shall take effect upon
568 becoming a law, this act shall take effect January 1, 2009.