



454688

LEGISLATIVE ACTION

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| Senate     | . | House |
| Comm: WD   | . |       |
| 03/25/2009 | . |       |
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The Committee on Criminal Justice (Dean) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 236 - 257

and insert:

Section 9. Subsections (3) and (5) of section 627.4554, Florida Statutes, as amended by section 9 of chapter 2008-237, Laws of Florida, are amended, and subsection (10) is added to that section, to read:

627.4554 Annuity investments by seniors.—

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

(a) "Annuity contract" means a fixed annuity, equity



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12 indexed annuity, fixed equity indexed annuity, or variable  
13 annuity that is individually solicited, whether the product is  
14 classified as an individual annuity or a group annuity.

15 (b) "Accredited investor" means any person who comes within  
16 any of the following categories, or who the issuer reasonably  
17 believes comes within any of the following categories, at the  
18 time of the sale of an annuity to that person:

19 1. The person's net worth or joint net worth with his or  
20 her spouse, at the time of the purchase, exceeds \$1 million; or

21 2. The person had an individual income in excess of  
22 \$200,000 in each of the 2 most recent years, or joint income  
23 with his or her spouse in excess of \$300,000 in each of those  
24 years, and has a reasonable expectation of reaching the same  
25 income level in the current year.

26 (c) ~~(b)~~ "Recommendation" means advice provided by an  
27 insurance agent, or an insurer if no insurance agent is  
28 involved, to an individual senior consumer which results in a  
29 purchase or exchange of an annuity in accordance with that  
30 advice.

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

35 (5) MITIGATION OF RESPONSIBILITY.—

36 (a) The office may order an insurer to take reasonably  
37 appropriate corrective action, including rescission of the  
38 policy or contract and a full refund of the premiums paid or the  
39 accumulation value, whichever is greater, for any senior  
40 consumer harmed by a violation of this section by the insurer or



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41 the insurer's insurance agent.

42 (b) The department may order:

43 1. An insurance agent to take reasonably appropriate  
44 corrective action, including monetary restitution of penalties  
45 or fees incurred by the senior consumer, for any senior consumer  
46 harmed by a willful violation of this section by the insurance  
47 agent.

48 2. A managing general agency or insurance agency that  
49 employs or contracts with an insurance agent to sell or solicit  
50 the sale of annuities to senior consumers to take reasonably  
51 appropriate corrective action for any senior consumer harmed by  
52 a violation of this section by the insurance agent.

53 (c) The department shall, in addition to any other penalty  
54 authorized under chapter 626, order an insurance agent to pay  
55 restitution to any senior consumer who has been deprived of  
56 money by the agent's misappropriation, conversion, or unlawful  
57 withholding of moneys belonging to the senior consumer in the  
58 course of a transaction involving annuities. The amount of  
59 restitution required to be paid pursuant to this paragraph may  
60 not exceed the amount misappropriated, converted, or unlawfully  
61 withheld. This paragraph does not limit or restrict a person's  
62 right to seek other remedies as provided by law.

63 (d)~~(e)~~ Any applicable penalty under the Florida Insurance  
64 Code for a violation of paragraph (4) (a), paragraph (4) (b), or  
65 subparagraph (4) (c)2. may be reduced or eliminated, according to  
66 a schedule adopted by the office or the department, as  
67 appropriate, if corrective action for the senior consumer was  
68 taken promptly after a violation was discovered.

69 (10) An annuity contract issued to a senior consumer may



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70 not contain a surrender or deferred sales charge for a  
71 withdrawal of money from an annuity exceeding 10 percent of the  
72 amount withdrawn. The charge shall be reduced annually by 1  
73 percent so that no surrender or deferred sales charge exists  
74 after the end of the tenth policy year or at any time  
75 thereafter. This subsection does not apply to annuities  
76 purchased by an accredited investor.  
77

78 ===== T I T L E A M E N D M E N T =====

79 And the title is amended as follows:

80 Delete lines 34 - 40

81 and insert:

82 627.4554, F.S.; defining the term "accredited investor";  
83 authorizing the Department of Financial Services to order an  
84 insurance agent to pay monetary restitution to a senior consumer  
85 under certain circumstances; limiting the amount of such  
86 restitution; prohibiting an annuity contract issued to a senior  
87 consumer from containing a surrender or deferred sales charge  
88 for withdrawal of funds from an annuity in excess of a specified  
89 maximum amount; providing for the periodic reduction of such  
90 charge; providing for applicability; providing an effective  
91 date.