



539310

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/25/2009	.	
	.	
	.	
	.	

The Committee on Criminal Justice (Dean) recommended the following:

Senate Amendment (with title amendment)

Delete lines 169 - 257
and insert:

(3) (a) If a natural person violates s. 626.9541(1)(1), the offense known as "twisting," or violates s. 626.9541(1)(aa), the offense known as "churning," the person commits a misdemeanor of the first degree, punishable as provided in s. 775.082, and an administrative fine not greater than \$5,000 shall be imposed for each nonwillful violation or an administrative fine not greater than \$40,000 shall be imposed for each willful violation. To



539310

12 impose criminal penalties under this paragraph, the practice of
13 "churning" or "twisting" must involve fraudulent conduct.

14 (b) If a natural person violates s. 626.9541(1)(ee) by
15 willfully submitting fraudulent signatures on an application or
16 policy-related document, the person commits a felony of the
17 third degree, punishable as provided in s. 775.082, and an
18 administrative fine not greater than \$5,000 shall be imposed for
19 each nonwillful violation or an administrative fine not greater
20 than \$40,000 shall be imposed for each willful violation.

21 (4) The failure of a licensee to make all reasonable
22 efforts to ascertain the consumer's age at the time an insurance
23 application is completed does not constitute a defense to a
24 violation of this section.

25 (5) If a consumer who is a senior citizen is a victim, a
26 video deposition of the victim may be used for any purpose in
27 any administrative proceeding conducted pursuant to chapter 120
28 if all parties are given proper notice of the deposition in
29 accordance with the Florida Rules of Civil Procedure.

30 Section 8. Subsection (4) of section 626.99, Florida
31 Statutes, is amended to read:

32 626.99 Life insurance solicitation.—

33 (4) DISCLOSURE REQUIREMENTS.—

34 (a) The insurer shall provide to each prospective purchaser
35 a buyer's guide and a policy summary prior to accepting the
36 applicant's initial premium or premium deposit, unless the
37 policy for which application is made provides an unconditional
38 refund for a period of at least 14 days, or unless the policy
39 summary contains an offer of such an unconditional refund. In
40 these instances, ~~which event~~ the buyer's guide and policy



539310

41 summary must be delivered with the policy or prior to delivery
42 of the policy.

43 (b) With respect to annuities, the insurer shall provide to
44 each prospective purchaser a buyer's guide to annuities
45 developed by the department and a contract summary before
46 accepting any payment for the contract. ~~as provided in the~~
47 ~~National Association of Insurance Commissioners (NAIC) Model~~
48 ~~Annuity and Deposit Fund Regulation and~~ The policy must provide
49 an unconditional refund for a period of at least 14 days. If the
50 prospective owner of an annuity contract is 65 years of age or
51 older:

52 1. An unconditional refund of premiums paid for a fixed
53 annuity contract, including any contract fees or charges, must
54 be available for period of 30 days; and

55 2. An unconditional refund for variable or market value
56 annuity contracts must be available for a period of 30 days. The
57 unconditional refund shall be equal to the cash surrender value
58 provided in the annuity contract, plus any fees or charges
59 deducted from the premiums or imposed under the contract. This
60 subparagraph does not apply if the prospective owner is an
61 accredited investor, as defined in Regulation D as adopted by
62 the United States Securities and Exchange Commission.

63 (c) The insurer shall attach a cover page to any annuity
64 policy informing the purchaser of the unconditional refund
65 period prescribed in paragraph (b). The cover page must also
66 provide contact information for the issuing company and the
67 selling agent, the department's toll-free help line, and any
68 other information required by the department by rule. The cover
69 page is part of the contract and is subject to review by the



539310

70 office pursuant to s. 627.410.

71 (d) ~~(b)~~ The insurer shall provide a buyer's guide and a
72 policy summary to any prospective purchaser upon request.

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

77 627.4554 Annuity investments by seniors.—

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

79 (a) "Annuity contract" means a fixed annuity, equity
80 indexed annuity, fixed equity indexed annuity, or variable
81 annuity that is individually solicited, whether the product is
82 classified as an individual annuity or a group annuity.

83 (b) "Accredited investor" means any person who comes within
84 any of the following categories, or who the issuer reasonably
85 believes comes within any of the following categories, at the
86 time of the sale of an annuity to that person:

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

89 2. The person had an individual income in excess of
90 \$200,000 in each of the 2 most recent years, or joint income
91 with his or her spouse in excess of \$300,000 in each of those
92 years, and has a reasonable expectation of reaching the same
93 income level in the current year.

94 (c) ~~(b)~~ "Recommendation" means advice provided by an
95 insurance agent, or an insurer if no insurance agent is
96 involved, to an individual senior consumer which results in a
97 purchase or exchange of an annuity in accordance with that
98 advice.



539310

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

103 (5) MITIGATION OF RESPONSIBILITY.—

104 (a) The office may order an insurer to take reasonably
105 appropriate corrective action, including rescission of the
106 policy or contract and a full refund of the premiums paid or the
107 accumulation value, whichever is greater, for any senior
108 consumer harmed by a violation of this section by the insurer or
109 the insurer's insurance agent.

110 (b) The department may order:

111 1. An insurance agent to take reasonably appropriate
112 corrective action, including monetary restitution of penalties
113 or fees incurred by the senior consumer, for any senior consumer
114 harmed by a willful violation of this section by the insurance
115 agent.

116 2. A managing general agency or insurance agency that
117 employs or contracts with an insurance agent to sell or solicit
118 the sale of annuities to senior consumers to take reasonably
119 appropriate corrective action for any senior consumer harmed by
120 a violation of this section by the insurance agent.

121 (c) The department shall, in addition to any other penalty
122 authorized under chapter 626, order an insurance agent to pay
123 restitution to any senior consumer who has been deprived of
124 money by the agent's misappropriation, conversion, or unlawful
125 withholding of moneys belonging to the senior consumer in the
126 course of a transaction involving annuities. The amount of
127 restitution required to be paid pursuant to this paragraph may



539310

128 not exceed the amount misappropriated, converted, or unlawfully
129 withheld. This paragraph does not limit or restrict a person's
130 right to seek other remedies as provided by law.

131 (d)(e) Any applicable penalty under the Florida Insurance
132 Code for a violation of paragraph (4) (a), paragraph (4) (b), or
133 subparagraph (4) (c)2. may be reduced or eliminated, according to
134 a schedule adopted by the office or the department, as
135 appropriate, if corrective action for the senior consumer was
136 taken promptly after a violation was discovered.

137 (10) An annuity contract issued to a senior consumer may
138 not contain a surrender or deferred sales charge for a
139 withdrawal of money from an annuity exceeding 10 percent of the
140 amount withdrawn. The charge shall be reduced annually by 1
141 percent so that no surrender or deferred sales charge exists
142 after the end of the tenth policy year or at any time
143 thereafter. This subsection does not apply to annuities
144 purchased by an accredited investor.

145 Section 10. Section 817.2351, Florida Statutes, is created
146 to read:

147 817.2351 Fraudulent financial services transactions when
148 victim is 65 years of age or older; penalty.—

149 (1) It is unlawful and a violation of the provisions of
150 this chapter for a natural person, in connection with the
151 rendering of any advice or the offer, sale, or purchase of any
152 financial services product to a person who is 65 years of age or
153 older, including, but not limited to, "twisting" as defined in
154 s. 626.9541(1) or "churning" as defined in s. 626.9541(1) (aa) of
155 insurance products, to directly or indirectly:

156 (a) Employ any device, scheme, or artifice to defraud a



539310

157 person;

158 (b) Engage in any transaction, practice, or course of
159 business that operates or would operate as a fraud or deceit
160 upon a person; or

161 (c) Knowingly and willfully falsify, conceal, or cover up,
162 by any trick, scheme, or device, a material fact, make any
163 false, fictitious, or fraudulent statement or representation, or
164 make or use any false writing or document while knowing such
165 writing or document to contain any false, fictitious, or
166 fraudulent statement or entry.

167 (2) Any natural person who violates this section commits a
168 felony of the third degree, punishable as provided in s. 775.082
169 or s. 775.083.

170 (3) This section does not apply to transactions governed by
171 chapter 494, chapter 496, chapter 501, chapter 516, chapter 517,
172 chapter 560, or s. 655.50.

173 (4) Criminal prosecution for offenses under this section is
174 subject to the time limitations set forth in s. 775.15(8).

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

177 And the title is amended as follows:

178 Delete lines 15 - 40

179 and insert:

180 policies; amending s. 626.9521, F.S.; providing that the failure
181 to ascertain a customer's age at the time of an insurance
182 application does not constitute a defense to certain violations
183 of state law; authorizing the use of video depositions in
184 certain circumstances; amending s. 626.99, F.S.; extending the
185 unconditional refund period for fixed annuity contracts and



539310

186 variable or market value annuity contracts for customers 65
187 years of age or older; requiring that the unconditional refund
188 amount for a variable or market value annuity contract be equal
189 to the cash surrender value provided in the contract, plus any
190 fees or charges deducted from the premiums or imposed under the
191 contract; providing for applicability of certain provisions;
192 requiring that an insurer provide a prospective purchaser of an
193 annuity policy with a buyer's guide to annuities; requiring that
194 such buyer's guide contain certain information; requiring that
195 an insurer attach a cover page to an annuity policy informing
196 the purchaser of the unconditional refund period; requiring that
197 the cover page provide other specified information; amending s.
198 627.4554, F.S.; defining the term "accredited investor";
199 authorizing the Department of Financial Services to order an
200 insurance agent to pay monetary restitution to a senior consumer
201 under certain circumstances; limiting the amount of such
202 restitution; prohibiting an annuity contract issued to a senior
203 consumer from containing a surrender or deferred sales charge
204 for withdrawal of funds from an annuity in excess of a specified
205 maximum amount; providing for the periodic reduction of such
206 charge; creating s. 817.2351, F.S.; providing that it is
207 unlawful for a natural person to perform certain acts in
208 connection with the rendering of any advice or the offer, sale,
209 or purchase of any financial services product to a person who is
210 65 years of age or older; providing that performance of such a
211 prohibited act constitutes a felony of the third degree;
212 providing for applicability; providing that criminal prosecution
213 for certain offenses is subject to specified time limitations as
214 prescribed by state law; providing an effective date.