



590498

LEGISLATIVE ACTION

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 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



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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, attended by the parties, may be
27 used for any purpose in any administrative proceeding conducted
28 pursuant to chapter 120.

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

31 626.99 Life insurance solicitation.—

32 (4) DISCLOSURE REQUIREMENTS.—

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



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41 of the policy.

42 (b) With respect to annuities, the insurer shall provide to
43 each prospective purchaser a buyer's guide to annuities
44 developed by the department and a contract summary before
45 accepting any payment for the contract. ~~as provided in the~~
46 National Association of Insurance Commissioners (NAIC) Model
47 Annuity and Deposit Fund Regulation and The policy must provide
48 an unconditional refund for a period of at least 14 days. If the
49 prospective purchaser of an annuity is 65 years of age or older,
50 the unconditional refund period must be at least 60 days.

51 (c) The insurer shall attach a cover page to any annuity
52 policy informing the purchaser of the unconditional refund
53 period prescribed in paragraph (b). The cover page must also
54 provide contact information for the issuing company, the
55 department's toll-free help line, and any other information
56 required by the department by rule. The cover page is part of
57 the contract and is subject to review by the office pursuant to
58 s. 627.410.

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

61 Section 9. Paragraph (b) of subsection (5) of section
62 627.4554, Florida Statutes, as amended by section 9 of chapter
63 2008-237, Laws of Florida, is amended, and subsection (10) is
64 added to that section, to read:

65 627.4554 Annuity investments by seniors.—

66 (5) MITIGATION OF RESPONSIBILITY.—

67 (b) The department may order:

68 1. An insurance agent to take reasonably appropriate
69 corrective action for any senior consumer harmed by a violation



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70 of this section by the insurance agent, including, but not
71 limited to, monetary restitution for penalties or fees incurred
72 by the senior consumer for misappropriation of funds by the
73 agent.

74 2. A managing general agency or insurance agency that
75 employs or contracts with an insurance agent to sell or solicit
76 the sale of annuities to senior consumers to take reasonably
77 appropriate corrective action for any senior consumer harmed by
78 a violation of this section by the insurance agent.

79 (10) An annuity contract issued to a purchaser who is 65
80 years of age or older may not contain a deferred sales charge
81 exceeding 5 percent, and such charge shall be reduced to zero
82 percent by the end of the fifth policy year.

83 Section 10. Section 817.2351, Florida Statutes, is created
84 to read:

85 817.2351 Fraudulent financial services transactions;
86 penalty.-

87 (1) It is unlawful and a violation of the provisions of
88 this chapter for a natural person, in connection with the
89 rendering of any advice or in connection with the offer, sale,
90 or purchase of any financial services product, including, but
91 not limited to, "twisting" as defined in s. 626.9541(1) or
92 "churning" as defined s. 626.9541(1)(aa) of insurance products,
93 to directly or indirectly:

94 (a) Employ any device, scheme, or artifice to defraud a
95 person;

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



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99 (c) Knowingly and willfully falsify, conceal, or cover up,
100 by any trick, scheme, or device, a material fact, make any
101 false, fictitious, or fraudulent statement or representation, or
102 make or use any false writing or document while knowing such
103 writing or document to contain any false, fictitious, or
104 fraudulent statement or entry.

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

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

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

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

115 And the title is amended as follows:

116 Delete lines 15 - 40

117 and insert:

118 policies; amending s. 626.9521, F.S.; providing that the failure
119 to ascertain a customer's age at the time of an insurance
120 application does not constitute a defense to certain violations
121 of state law; authorizing the use of video depositions in
122 certain circumstances; amending s. 626.99, F.S.; extending the
123 unconditional refund period for customers 65 years of age or
124 older; requiring that an insurer provide a prospective purchaser
125 of an annuity policy with a buyer's guide to annuities;
126 requiring that such buyer's guide contain certain information;
127 requiring that an insurer attach a cover page to an annuity



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128 policy informing the purchaser of the unconditional refund
129 period; requiring that the cover page provide other specified
130 information; amending s. 627.4554, F.S.; authorizing the
131 department to order monetary restitution in certain
132 circumstances; prohibiting an annuity contract issued to a
133 person 65 years of age or older from containing a deferred sales
134 charge in excess of a specified percentage; requiring that such
135 charge be reduced to zero within a specified period; creating s.
136 817.2351, F.S.; providing that it is unlawful for a natural
137 person to perform certain acts in connection with the rendering
138 of any advice or in connection with the offer, sale, or purchase
139 of any financial services product; providing that performance of
140 such a prohibited act constitutes a felony of the third degree;
141 providing for applicability; providing that criminal prosecution
142 for certain offenses is subject to specified time limitations as
143 prescribed by state law; providing an effective date.