

By the Committee on Banking and Insurance; and Senator Bennett

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1 A bill to be entitled
2 An act relating to insurance; providing a short title;
3 amending s. 624.310, F.S.; expanding the definition of
4 "affiliated party" to include certain third-party
5 marketers; amending s. 626.025, F.S.; including family
6 members of insurance agents in a prohibition related
7 to the transaction of life insurance; amending s.
8 626.621, F.S.; expanding grounds for discretionary
9 refusal, suspension, or revocation of certain
10 licenses; amending s. 626.641, F.S.; prohibiting the
11 Department of Financial Services from issuing certain
12 licenses in certain circumstances; amending s.
13 626.798, F.S.; prohibiting a family member of a life
14 insurance agent from being a beneficiary of certain
15 policies; amending s. 626.9521, F.S.; providing
16 criminal and administrative penalties for the offenses
17 of "twisting" and "churning" when a victim is 65 years
18 of age or older, if such offense involves fraudulent
19 conduct; limiting the amount of such administrative
20 penalties; providing that the failure to ascertain a
21 customer's age at the time of an insurance application
22 does not constitute a defense to certain violations of
23 state law; authorizing the use of video depositions in
24 certain circumstances; amending s. 626.99, F.S.;
25 extending the unconditional refund period for
26 customers 65 years of age or older; requiring that an
27 insurer provide a prospective purchaser of an annuity
28 policy with a buyer's guide to annuities; requiring
29 that such buyer's guide contain certain information;

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30 requiring that an insurer attach a cover page to an
31 annuity policy informing the purchaser of the
32 unconditional refund period; requiring that the cover
33 page provide other specified information; amending s.
34 627.4554, F.S.; authorizing the department to order
35 monetary restitution in certain circumstances;
36 prohibiting an annuity contract issued to a person 65
37 years of age or older from containing a deferred sales
38 charge in excess of a specified percentage; requiring
39 that such charge be reduced to zero within a specified
40 period; providing an effective date.

41
42 Be It Enacted by the Legislature of the State of Florida:

43
44 Section 1. This act may be cited as the "Safeguard Our
45 Seniors Act."

46 Section 2. Paragraph (a) of subsection (1) of section
47 624.310, Florida Statutes, is amended to read:

48 624.310 Enforcement; cease and desist orders; removal of
49 certain persons; fines.—

50 (1) DEFINITIONS.—For the purposes of this section, the
51 term:

52 (a) "Affiliated party" means any person who directs or
53 participates in the conduct of the affairs of a licensee and who
54 is:

55 1. A director, officer, employee, trustee, committee
56 member, or controlling stockholder of a licensee or a subsidiary
57 or service corporation of the licensee, other than a controlling
58 stockholder which is a holding company, or an agent of a

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59 licensee or a subsidiary or service corporation of the licensee;

60 2. A person who has filed or is required to file a
61 statement or any other information required to be filed under s.
62 628.461 or s. 628.4615;

63 3. A stockholder, other than a stockholder that is a
64 holding company of the licensee, who participates in the conduct
65 of the affairs of the licensee; ~~or~~

66 4. An independent contractor who:

67 a. Renders a written opinion required by the laws of this
68 state under her or his professional credentials on behalf of the
69 licensee, which opinion is reasonably relied on by the
70 department or office in the performance of its duties; or

71 b. Affirmatively and knowingly conceals facts, through a
72 written misrepresentation to the department or office, with
73 knowledge that such misrepresentation:

74 (I) Constitutes a violation of the insurance code or a
75 lawful rule or order of the department, commission, or office;
76 and

77 (II) Directly and materially endangers the ability of the
78 licensee to meet its obligations to policyholders; or-

79 5. A third-party marketer who aids or abets a licensee in a
80 violation of the insurance code relating to the sale of an
81 annuity to a person 65 years of age or older.

82
83 For the purposes of this subparagraph, any representation of
84 fact made by an independent contractor on behalf of a licensee,
85 affirmatively communicated as a representation of the licensee
86 to the independent contractor, shall not be considered a
87 misrepresentation by the independent contractor.

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88 Section 3. Subsection (13) of section 626.025, Florida
89 Statutes, is amended to read:

90 626.025 Consumer protections.—To transact insurance, agents
91 shall comply with consumer protection laws, including the
92 following, as applicable:

93 (13) The prohibition against the designation of a life
94 insurance agent or his or her family member as the beneficiary
95 of life insurance policy sold to an individual other than a
96 family member under s. 626.798.

97 Section 4. Subsection (13) is added to section 626.621,
98 Florida Statutes, to read:

99 626.621 Grounds for discretionary refusal, suspension, or
100 revocation of agent's, adjuster's, customer representative's,
101 service representative's, or managing general agent's license or
102 appointment.—The department may, in its discretion, deny an
103 application for, suspend, revoke, or refuse to renew or continue
104 the license or appointment of any applicant, agent, adjuster,
105 customer representative, service representative, or managing
106 general agent, and it may suspend or revoke the eligibility to
107 hold a license or appointment of any such person, if it finds
108 that as to the applicant, licensee, or appointee any one or more
109 of the following applicable grounds exist under circumstances
110 for which such denial, suspension, revocation, or refusal is not
111 mandatory under s. 626.611:

112 (13) Has been the subject of or has had a license, permit,
113 appointment, registration, or other authority to conduct
114 business subject to any decision, finding, injunction,
115 suspension, prohibition, revocation, denial, judgment, final
116 agency action, or administrative order by any court of competent

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117 jurisdiction, administrative law proceeding, state agency,
118 federal agency, national securities, commodities, or option
119 exchange, or national securities, commodities, or option
120 association involving a violation of any federal or state
121 securities or commodities law or any rule or regulation adopted
122 thereunder, or a violation of any rule or regulation of any
123 national securities, commodities, or options exchange or
124 national securities, commodities, or options association.

125 Section 5. Subsection (3) of section 626.641, Florida
126 Statutes, is amended to read:

127 626.641 Duration of suspension or revocation.—

128 (3) (a) If any of an individual's licenses as an agent or
129 customer representative, or the eligibility to hold such license
130 or licenses has same, as to the same individual have been
131 revoked at two separate times, the department may shall not
132 thereafter grant or issue any license under this code as to such
133 individual.

134 (b) If a license as an agent or customer representative or
135 the eligibility to hold such a license has been revoked
136 resulting from the solicitation or sale of an insurance product
137 to a person 65 years of age or older, the department may not
138 thereafter grant or issue any license under this code to such
139 individual.

140 Section 6. Section 626.798, Florida Statutes, is amended to
141 read:

142 626.798 Life agent as beneficiary; prohibition.—No life
143 agent shall, with respect to the placement of life insurance
144 coverage with a life insurer covering the life of a person who
145 is not a family member of the agent, handle in his or her

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146 capacity as a life agent the placement of such coverage when the
147 agent placing the coverage or a family member of such agent
148 ~~receives a commission therefor and~~ is the named beneficiary
149 under the life insurance policy, unless the life agent or family
150 member has an insurable interest in the life of such person. For
151 the purposes of this section, the phrase "not a family member,"
152 with respect to a life agent, means an individual who is not
153 related to the life agent as father, mother, son, daughter,
154 brother, sister, grandfather, grandmother, uncle, aunt, first
155 cousin, nephew, niece, husband, wife, father-in-law, mother-in-
156 law, brother-in-law, sister-in-law, stepfather, stepmother,
157 stepson, stepdaughter, stepbrother, stepsister, half brother, or
158 half sister. For the purposes of this section, the term
159 "insurable interest" means that the life agent has an actual,
160 lawful, and substantial economic interest in the safety and
161 preservation of the life of the insured or a reasonable
162 expectation of benefit or advantage from the continued life of
163 the insured.

164 Section 7. Paragraphs (a) and (b) of subsection (3) of
165 section 626.9521, Florida Statutes, are amended, and subsections
166 (4) and (5) are added to that section, to read:

167 626.9521 Unfair methods of competition and unfair or
168 deceptive acts or practices prohibited; penalties.—

169 (3) (a) 1. If a natural person violates s. 626.9541(1)(1),
170 the offense known as "twisting," or violates s. 626.9541(1)(aa),
171 the offense known as "churning," the person commits a
172 misdemeanor of the first degree, punishable as provided in s.
173 775.082, and an administrative fine not greater than \$5,000
174 shall be imposed for each nonwillful violation or an

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175 administrative fine not greater than \$40,000 shall be imposed
176 for each willful violation. To impose criminal penalties under
177 this ~~subparagraph~~ ~~paragraph~~, the practice of "churning" or
178 "twisting" must involve fraudulent conduct.

179 2. If a natural person violates s. 626.9541(1)(l), the
180 offense known as "twisting," or violates s. 626.9541(1)(aa), the
181 offense known as "churning," and the victim is 65 years of age
182 or older, such person commits a felony of the third degree,
183 punishable as provided in s. 775.082, and an administrative fine
184 not greater than \$5,000 shall be imposed for each nonwillful
185 violation or an administrative fine not greater than \$40,000
186 shall be imposed for each willful violation. To impose criminal
187 penalties under this sub-paragraph, the practice of "churning"
188 or "twisting" must involve fraudulent conduct.

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

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

200 (5) If a consumer who is a senior citizen is a victim, a
201 video deposition of the victim, attended by the parties, may be
202 used for any purpose in any administrative proceeding conducted
203 pursuant to chapter 120.

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

206 626.99 Life insurance solicitation.—

207 (4) DISCLOSURE REQUIREMENTS.—

208 (a) The insurer shall provide to each prospective purchaser
209 a buyer's guide and a policy summary prior to accepting the
210 applicant's initial premium or premium deposit, unless the
211 policy for which application is made provides an unconditional
212 refund for a period of at least 14 days, or unless the policy
213 summary contains an offer of such an unconditional refund. 7 In
214 these instances, ~~which event~~ the buyer's guide and policy
215 summary must be delivered with the policy or prior to delivery
216 of the policy.

217 (b) With respect to annuities, the insurer shall provide to
218 each prospective purchaser a buyer's guide to annuities
219 developed by the department and a contract summary before
220 accepting any payment for the contract. ~~as provided in the~~
221 ~~National Association of Insurance Commissioners (NAIC) Model~~
222 ~~Annuity and Deposit Fund Regulation and~~ The policy must provide
223 an unconditional refund for a period of at least 14 days. If the
224 prospective purchaser of an annuity is 65 years of age or older,
225 the unconditional refund period must be at least 60 days.

226 (c) The insurer shall attach a cover page to any annuity
227 policy informing the purchaser of the unconditional refund
228 period prescribed in paragraph (b). The cover page must also
229 provide contact information for the issuing company, the
230 department's toll-free help line, and any other information
231 required by the department by rule. The cover page is part of
232 the contract and is subject to review by the office pursuant to

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233 s. 627.410.

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

236 Section 9. Paragraph (b) of subsection (5) of section
237 627.4554, Florida Statutes, as amended by section 9 of chapter
238 2008-237, Laws of Florida, is amended, and subsection (10) is
239 added to that section, to read:

240 627.4554 Annuity investments by seniors.-

241 (5) MITIGATION OF RESPONSIBILITY.-

242 (b) The department may order:

243 1. An insurance agent to take reasonably appropriate
244 corrective action for any senior consumer harmed by a violation
245 of this section by the insurance agent, including, but not
246 limited to, monetary restitution for penalties or fees incurred
247 by the senior consumer for misappropriation of funds by the
248 agent.

249 2. A managing general agency or insurance agency that
250 employs or contracts with an insurance agent to sell or solicit
251 the sale of annuities to senior consumers to take reasonably
252 appropriate corrective action for any senior consumer harmed by
253 a violation of this section by the insurance agent.

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

258 Section 10. This act shall take effect July 1, 2009.