

By the Committees on Criminal Justice; and Banking and Insurance; and Senators Bennett, Fasano, Lynn, and Deutch

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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 that
16 the failure to ascertain a customer's age at the time
17 of an insurance application does not constitute a
18 defense to certain violations of state law;
19 authorizing the use of video depositions in certain
20 circumstances; amending s. 626.99, F.S.; extending the
21 unconditional refund period for fixed annuity
22 contracts and variable or market value annuity
23 contracts for customers 65 years of age or older;
24 requiring that the unconditional refund amount for a
25 variable or market value annuity contract be equal to
26 the cash surrender value provided in the contract,
27 plus any fees or charges deducted from the premiums or
28 imposed under the contract; providing for
29 applicability of certain provisions; requiring that an

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30 insurer provide a prospective purchaser of an annuity
31 policy with a buyer's guide to annuities; requiring
32 that such buyer's guide contain certain information;
33 requiring that an insurer attach a cover page to an
34 annuity policy informing the purchaser of the
35 unconditional refund period; requiring that the cover
36 page provide other specified information; amending s.
37 627.4554, F.S.; defining the term "accredited
38 investor"; authorizing the Department of Financial
39 Services to order an insurance agent to pay monetary
40 restitution to a senior consumer under certain
41 circumstances; limiting the amount of such
42 restitution; prohibiting an annuity contract issued to
43 a senior consumer from containing a surrender or
44 deferred sales charge for withdrawal of funds from an
45 annuity in excess of a specified maximum amount;
46 providing for the periodic reduction of such charge;
47 creating s. 817.2351, F.S.; providing that it is
48 unlawful for a natural person to perform certain acts
49 in connection with the rendering of any advice or the
50 offer, sale, or purchase of any financial services
51 product to a person who is 65 years of age or older;
52 providing that performance of such a prohibited act
53 constitutes a felony of the third degree; providing
54 for applicability; providing that criminal prosecution
55 for certain offenses is subject to specified time
56 limitations as prescribed by state law; providing an
57 effective date.

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59 Be It Enacted by the Legislature of the State of Florida:

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61 Section 1. This act may be cited as the "Safeguard Our
62 Seniors Act."

63 Section 2. Paragraph (a) of subsection (1) of section
64 624.310, Florida Statutes, is amended to read:

65 624.310 Enforcement; cease and desist orders; removal of
66 certain persons; fines.-

67 (1) DEFINITIONS.-For the purposes of this section, the
68 term:

69 (a) "Affiliated party" means any person who directs or
70 participates in the conduct of the affairs of a licensee and who
71 is:

72 1. A director, officer, employee, trustee, committee
73 member, or controlling stockholder of a licensee or a subsidiary
74 or service corporation of the licensee, other than a controlling
75 stockholder which is a holding company, or an agent of a
76 licensee or a subsidiary or service corporation of the licensee;

77 2. A person who has filed or is required to file a
78 statement or any other information required to be filed under s.
79 628.461 or s. 628.4615;

80 3. A stockholder, other than a stockholder that is a
81 holding company of the licensee, who participates in the conduct
82 of the affairs of the licensee; ~~or~~

83 4. An independent contractor who:

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

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88 b. Affirmatively and knowingly conceals facts, through a
89 written misrepresentation to the department or office, with
90 knowledge that such misrepresentation:

91 (I) Constitutes a violation of the insurance code or a
92 lawful rule or order of the department, commission, or office;
93 and

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

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

99

100 For the purposes of this subparagraph, any representation of
101 fact made by an independent contractor on behalf of a licensee,
102 affirmatively communicated as a representation of the licensee
103 to the independent contractor, shall not be considered a
104 misrepresentation by the independent contractor.

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

107 626.025 Consumer protections.—To transact insurance, agents
108 shall comply with consumer protection laws, including the
109 following, as applicable:

110 (13) The prohibition against the designation of a life
111 insurance agent or his or her family member as the beneficiary
112 of life insurance policy sold to an individual other than a
113 family member under s. 626.798.

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

116 626.621 Grounds for discretionary refusal, suspension, or

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117 revocation of agent's, adjuster's, customer representative's,
118 service representative's, or managing general agent's license or
119 appointment.—The department may, in its discretion, deny an
120 application for, suspend, revoke, or refuse to renew or continue
121 the license or appointment of any applicant, agent, adjuster,
122 customer representative, service representative, or managing
123 general agent, and it may suspend or revoke the eligibility to
124 hold a license or appointment of any such person, if it finds
125 that as to the applicant, licensee, or appointee any one or more
126 of the following applicable grounds exist under circumstances
127 for which such denial, suspension, revocation, or refusal is not
128 mandatory under s. 626.611:

129 (13) Has been the subject of or has had a license, permit,
130 appointment, registration, or other authority to conduct
131 business subject to any decision, finding, injunction,
132 suspension, prohibition, revocation, denial, judgment, final
133 agency action, or administrative order by any court of competent
134 jurisdiction, administrative law proceeding, state agency,
135 federal agency, national securities, commodities, or option
136 exchange, or national securities, commodities, or option
137 association involving a violation of any federal or state
138 securities or commodities law or any rule or regulation adopted
139 thereunder, or a violation of any rule or regulation of any
140 national securities, commodities, or options exchange or
141 national securities, commodities, or options association.

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

144 626.641 Duration of suspension or revocation.—

145 (3) (a) If any of an individual's licenses as an agent or

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146 customer representative, or the eligibility to hold such license
147 or licenses has same, ~~as to the same individual~~ have been
148 revoked at two separate times, the department may ~~shall~~ not
149 thereafter grant or issue any license under this code ~~as~~ to such
150 individual.

151 (b) If a license as an agent or customer representative or
152 the eligibility to hold such a license has been revoked
153 resulting from the solicitation or sale of an insurance product
154 to a person 65 years of age or older, the department may not
155 thereafter grant or issue any license under this code to such
156 individual.

157 Section 6. Section 626.798, Florida Statutes, is amended to
158 read:

159 626.798 Life agent as beneficiary; prohibition.—No life
160 agent shall, with respect to the placement of life insurance
161 coverage with a life insurer covering the life of a person who
162 is not a family member of the agent, handle in his or her
163 capacity as a life agent the placement of such coverage when the
164 agent placing the coverage or a family member of such agent
165 ~~receives a commission therefor and~~ is the named beneficiary
166 under the life insurance policy, unless the life agent or family
167 member has an insurable interest in the life of such person. For
168 the purposes of this section, the phrase "not a family member,"
169 with respect to a life agent, means an individual who is not
170 related to the life agent as father, mother, son, daughter,
171 brother, sister, grandfather, grandmother, uncle, aunt, first
172 cousin, nephew, niece, husband, wife, father-in-law, mother-in-
173 law, brother-in-law, sister-in-law, stepfather, stepmother,
174 stepson, stepdaughter, stepbrother, stepsister, half brother, or

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175 half sister. For the purposes of this section, the term
176 "insurable interest" means that the life agent has an actual,
177 lawful, and substantial economic interest in the safety and
178 preservation of the life of the insured or a reasonable
179 expectation of benefit or advantage from the continued life of
180 the insured.

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

184 626.9521 Unfair methods of competition and unfair or
185 deceptive acts or practices prohibited; penalties.—

186 (3) (a) If a natural person violates s. 626.9541(1)(1), the
187 offense known as "twisting," or violates s. 626.9541(1)(aa), the
188 offense known as "churning," the person commits a misdemeanor of
189 the first degree, punishable as provided in s. 775.082, and an
190 administrative fine not greater than \$5,000 shall be imposed for
191 each nonwillful violation or an administrative fine not greater
192 than \$40,000 shall be imposed for each willful violation. To
193 impose criminal penalties under this paragraph, the practice of
194 "churning" or "twisting" must involve fraudulent conduct.

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

202 (4) The failure of a licensee to make all reasonable
203 efforts to ascertain the consumer's age at the time an insurance

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204 application is completed does not constitute a defense to a
205 violation of this section.

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

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

213 626.99 Life insurance solicitation.—

214 (4) DISCLOSURE REQUIREMENTS.—

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

224 (b) With respect to annuities, the insurer shall provide to
225 each prospective purchaser a buyer's guide to annuities
226 developed by the department and a contract summary before
227 accepting any payment for the contract. ~~as provided in the~~
228 ~~National Association of Insurance Commissioners (NAIC) Model~~
229 ~~Annuity and Deposit Fund Regulation and~~ The policy must provide
230 an unconditional refund for a period of at least 14 days. If the
231 prospective owner of an annuity contract is 65 years of age or
232 older:

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

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

244 (c) The insurer shall attach a cover page to any annuity
245 policy informing the purchaser of the unconditional refund
246 period prescribed in paragraph (b). The cover page must also
247 provide contact information for the issuing company and the
248 selling agent, the department's toll-free help line, and any
249 other information required by the department by rule. The cover
250 page is part of the contract and is subject to review by the
251 office pursuant to s. 627.410.

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

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

258 627.4554 Annuity investments by seniors.—

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

260 (a) "Annuity contract" means a fixed annuity, equity
261 indexed annuity, fixed equity indexed annuity, or variable

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262 annuity that is individually solicited, whether the product is
263 classified as an individual annuity or a group annuity.

264 (b) "Accredited investor" means any person who comes within
265 any of the following categories, or who the issuer reasonably
266 believes comes within any of the following categories, at the
267 time of the sale of an annuity to that person:

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

270 2. The person had an individual income in excess of
271 \$200,000 in each of the 2 most recent years, or joint income
272 with his or her spouse in excess of \$300,000 in each of those
273 years, and has a reasonable expectation of reaching the same
274 income level in the current year.

275 (c)~~(b)~~ "Recommendation" means advice provided by an
276 insurance agent, or an insurer if no insurance agent is
277 involved, to an individual senior consumer which results in a
278 purchase or exchange of an annuity in accordance with that
279 advice.

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

284 (5) MITIGATION OF RESPONSIBILITY.—

285 (a) The office may order an insurer to take reasonably
286 appropriate corrective action, including rescission of the
287 policy or contract and a full refund of the premiums paid or the
288 accumulation value, whichever is greater, for any senior
289 consumer harmed by a violation of this section by the insurer or
290 the insurer's insurance agent.

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291 (b) The department may order:

292 1. An insurance agent to take reasonably appropriate
293 corrective action, including monetary restitution of penalties
294 or fees incurred by the senior consumer, for any senior consumer
295 harmed by a willful violation of this section by the insurance
296 agent.

297 2. A managing general agency or insurance agency that
298 employs or contracts with an insurance agent to sell or solicit
299 the sale of annuities to senior consumers to take reasonably
300 appropriate corrective action for any senior consumer harmed by
301 a violation of this section by the insurance agent.

302 (c) The department shall, in addition to any other penalty
303 authorized under chapter 626, order an insurance agent to pay
304 restitution to any senior consumer who has been deprived of
305 money by the agent's misappropriation, conversion, or unlawful
306 withholding of moneys belonging to the senior consumer in the
307 course of a transaction involving annuities. The amount of
308 restitution required to be paid pursuant to this paragraph may
309 not exceed the amount misappropriated, converted, or unlawfully
310 withheld. This paragraph does not limit or restrict a person's
311 right to seek other remedies as provided by law.

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

318 (10) An annuity contract issued to a senior consumer may
319 not contain a surrender or deferred sales charge for a

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320 withdrawal of money from an annuity exceeding 10 percent of the
321 amount withdrawn. The charge shall be reduced annually by 1
322 percent so that no surrender or deferred sales charge exists
323 after the end of the tenth policy year or at any time
324 thereafter. This subsection does not apply to annuities
325 purchased by an accredited investor.

326 Section 10. Section 817.2351, Florida Statutes, is created
327 to read:

328 817.2351 Fraudulent financial services transactions when
329 victim is 65 years of age or older; penalty.—

330 (1) It is unlawful and a violation of the provisions of
331 this chapter for a natural person, in connection with the
332 rendering of any advice or the offer, sale, or purchase of any
333 financial services product to a person who is 65 years of age or
334 older, including, but not limited to, "twisting" as defined in
335 s. 626.9541(1) or "churning" as defined in s. 626.9541(1)(aa) of
336 insurance products, to directly or indirectly:

337 (a) Employ any device, scheme, or artifice to defraud a
338 person;

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

342 (c) Knowingly and willfully falsify, conceal, or cover up,
343 by any trick, scheme, or device, a material fact, make any
344 false, fictitious, or fraudulent statement or representation, or
345 make or use any false writing or document while knowing such
346 writing or document to contain any false, fictitious, or
347 fraudulent statement or entry.

348 (2) Any natural person who violates this section commits a

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349 felony of the third degree, punishable as provided in s. 775.082
350 or s. 775.083.

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

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

356 Section 11. This act shall take effect July 1, 2009.