

20091372e2

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

20091372e2

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.  
58

20091372e2

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

60

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

20091372e2

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

20091372e2

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

20091372e2

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

20091372e2

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

20091372e2

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. 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:



20091372e2

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

20091372e2

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.

20091372e2

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 violation of this section by the insurance agent.

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

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

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

317 (10) An annuity contract issued to a senior consumer may  
318 not contain a surrender or deferred sales charge for a  
319 withdrawal of money from an annuity exceeding 10 percent of the

20091372e2

320 amount withdrawn. The charge shall be reduced annually by 1  
321 percent so that no surrender or deferred sales charge exists  
322 after the end of the tenth policy year or at any time  
323 thereafter. This subsection does not apply to annuities  
324 purchased by an accredited investor or to those annuities  
325 specified in paragraph (7) (b) .

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 annuity product to a person who is 65 years of age or older,  
334 including, but not limited to, "twisting" as defined in s.  
335 626.9541(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

20091372e2

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 chapters 655-667.

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.