

HB 981

2009

1 A bill to be entitled
2 An act relating to annuity contracts for seniors; amending
3 s. 624.310, F.S.; revising the definition of the term
4 "affiliated party"; amending s. 626.025, F.S.; revising a
5 consumer protection requirement relating to designation of
6 beneficiaries of a life insurance policy; amending s.
7 626.621, F.S.; providing an additional ground for taking
8 adverse action against the license or appointment of
9 certain persons; amending s. 626.641, F.S.; expanding a
10 prohibition against the Department of Financial Services
11 issuing a license to certain persons for certain
12 activities; amending s. 626.798, F.S.; revising a
13 prohibition against life agents handling the placement of
14 coverage under life insurance policies under certain
15 circumstances; amending s. 626.9521, F.S.; providing for
16 limitation to natural persons of certain criminal
17 penalties relating to the offenses of twisting or
18 churning; providing an increased criminal penalty for
19 natural persons committing the offenses of twisting or
20 churning with respect to seniors; providing for limitation
21 to natural persons of certain criminal penalties relating
22 to willfully submitting fraudulent signatures on an
23 application or policy-related document; specifying that
24 failure to ascertain a consumer's age is not a defense to
25 certain violations; authorizing use of video depositions
26 in administrative proceedings involving seniors as
27 victims; amending s. 626.99, F.S.; extending an
28 unconditional refund period for annuities purchased by

HB 981

2009

29 seniors; providing additional life insurance solicitation
 30 disclosure requirements; amending s. 627.4554, F.S.;
 31 revising requirements for annuity investments by seniors;
 32 authorizing the department to order monetary restitution
 33 as a corrective action; prohibiting annuity contracts
 34 issued to a senior from containing a deferred sales charge
 35 in excess of a certain percentage and requires a reduction
 36 in the percentage to zero by a certain time; providing an
 37 effective date.

38

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

40

41 Section 1. Subsection (1) of section 624.310, Florida
 42 Statutes, is amended to read:

43 624.310 Enforcement; cease and desist orders; removal of
 44 certain persons; fines.--

45 (1) DEFINITIONS.--For the purposes of this section, the
 46 term:

47 (a) "Affiliated party" means any person who directs or
 48 participates in the conduct of the affairs of a licensee and who
 49 is:

50 1. A director, officer, employee, trustee, committee
 51 member, or controlling stockholder of a licensee or a subsidiary
 52 or service corporation of the licensee, other than a controlling
 53 stockholder which is a holding company, or an agent of a
 54 licensee or a subsidiary or service corporation of the licensee;

55 2. A person who has filed or is required to file a
 56 statement or any other information required to be filed under s.
 57 628.461 or s. 628.4615;

58 3. A stockholder, other than a stockholder that is a
 59 holding company of the licensee, who participates in the conduct
 60 of the affairs of the licensee; ~~or~~

61 4. An independent contractor who:

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

66 b. Affirmatively and knowingly conceals facts, through a
 67 written misrepresentation to the department or office, with
 68 knowledge that such misrepresentation:

69 (I) Constitutes a violation of the insurance code or a
 70 lawful rule or order of the department, commission, or office;
 71 and

72 (II) Directly and materially endangers the ability of the
 73 licensee to meet its obligations to policyholders.

74

75 For the purposes of this subparagraph, any representation of
 76 fact made by an independent contractor on behalf of a licensee,
 77 affirmatively communicated as a representation of the licensee
 78 to the independent contractor, shall not be considered a
 79 misrepresentation by the independent contractor; or

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

HB 981

2009

83 (b) "Licensee" means a person issued a license or
84 certificate of authority or approval under this code or a person
85 registered under a provision of this code.

86 Section 2. Subsection (13) of section 626.025, Florida
87 Statutes, is amended to read:

88 626.025 Consumer protections.--To transact insurance,
89 agents shall comply with consumer protection laws, including the
90 following, as applicable:

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

95 Section 3. Subsection (13) is added to section 626.621,
96 Florida Statutes, to read:

97 626.621 Grounds for discretionary refusal, suspension, or
98 revocation of agent's, adjuster's, customer representative's,
99 service representative's, or managing general agent's license or
100 appointment.--The department may, in its discretion, deny an
101 application for, suspend, revoke, or refuse to renew or continue
102 the license or appointment of any applicant, agent, adjuster,
103 customer representative, service representative, or managing
104 general agent, and it may suspend or revoke the eligibility to
105 hold a license or appointment of any such person, if it finds
106 that as to the applicant, licensee, or appointee any one or more
107 of the following applicable grounds exist under circumstances
108 for which such denial, suspension, revocation, or refusal is not
109 mandatory under s. 626.611:

110 (13) Has been the subject of or has had a license, permit,
 111 appointment, registration, or other authority to conduct
 112 business subject to any decision, finding, injunction,
 113 suspension, prohibition, revocation, denial, judgment, final
 114 agency action, or administrative order by any court of competent
 115 jurisdiction, administrative law proceeding, state agency,
 116 federal agency, national securities, commodities, or option
 117 exchange, or national securities, commodities, or option
 118 association, involving fraud, breach of trust, dishonest
 119 dealing, fiduciary misconduct, a violation of any federal or
 120 state securities or commodities law or any rule or regulation
 121 adopted under such law, rule, or regulation, a violation of any
 122 rule or regulation of any national securities, commodities, or
 123 options exchange or national securities, commodities, or options
 124 association, or any other act of moral turpitude.

125 Section 4. 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 licenses as agent or customer representative, or
 129 the eligibility to hold same, as to the same individual have
 130 been revoked at two separate times, the department may ~~shall~~ not
 131 thereafter grant or issue any license under this code as to such
 132 individual.

133 (b) If licenses as agent or customer representative, or
 134 the eligibility to hold such licenses, as to the same individual
 135 have been revoked resulting from the solicitation or sale of an
 136 insurance product to a person 65 years of age or older, the

HB 981

2009

137 department may not thereafter grant or issue any license under
138 this code as to such individual.

139 Section 5. Section 626.798, Florida Statutes, is amended
140 to read:

141 626.798 Life agent as beneficiary; prohibition.--A ~~No~~ life
142 agent may not shall, with respect to the placement of life
143 insurance coverage with a life insurer covering the life of a
144 person who is not a family member of the agent, handle in his or
145 her capacity as a life agent the placement of such coverage when
146 the agent placing the coverage or a family member of the agent
147 ~~receives a commission therefor and~~ is the named beneficiary
148 under the life insurance policy, unless the life agent or family
149 member has an insurable interest in the life of such person. For
150 the purposes of this section, the phrase "not a family member,"
151 with respect to a life agent, means an individual who is not
152 related to the life agent as father, mother, son, daughter,
153 brother, sister, grandfather, grandmother, uncle, aunt, first
154 cousin, nephew, niece, husband, wife, father-in-law, mother-in-
155 law, brother-in-law, sister-in-law, stepfather, stepmother,
156 stepson, stepdaughter, stepbrother, stepsister, half brother, or
157 half sister. For the purposes of this section, the term
158 "insurable interest" means that the life agent has an actual,
159 lawful, and substantial economic interest in the safety and
160 preservation of the life of the insured or a reasonable
161 expectation of benefit or advantage from the continued life of
162 the insured.

HB 981

2009

163 Section 6. Subsection (3) of section 626.9521, Florida
164 Statutes, is amended, and subsections (4) and (5) are added to
165 that section, to read:

166 626.9521 Unfair methods of competition and unfair or
167 deceptive acts or practices prohibited; penalties.--

168 (3) (a) 1. If a natural person violates s. 626.9541(1) (l),
169 the offense known as "twisting," or violates s. 626.9541(1) (aa),
170 the offense known as "churning," the person commits a
171 misdemeanor of the first degree, punishable as provided in s.
172 775.082, and an administrative fine not greater than \$5,000
173 shall be imposed for each nonwillful violation or an
174 administrative fine not greater than \$40,000 shall be imposed
175 for each willful violation. To impose criminal penalties under
176 this subparagraph ~~paragraph~~, the practice of "churning" or
177 "twisting" must involve fraudulent conduct.

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

189 (b) If a natural person violates s. 626.9541(1) (ee) by
190 willfully submitting fraudulent signatures on an application or

HB 981

2009

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 (c) Administrative fines under this subsection may not
197 exceed an aggregate amount of \$50,000 for all nonwillful
198 violations arising out of the same action or an aggregate amount
199 of \$250,000 for all willful violations arising out of the same
200 action.

201 (4) The failure of a licensee to make all reasonable
202 efforts to ascertain the consumer's age at the time an insurance
203 application is completed shall not constitute a defense to a
204 violation of this chapter.

205 (5) When a senior consumer is a victim, a video deposition
206 of the victim may be used for any purpose in any administrative
207 proceeding conducted under chapter 120.

208 Section 7. Subsection (4) of section 626.99, Florida
209 Statutes, is amended to read:

210 626.99 Life insurance solicitation.--

211 (4) DISCLOSURE REQUIREMENTS.--

212 (a) The insurer shall provide to each prospective
213 purchaser a buyer's guide and a policy summary prior to
214 accepting the applicant's initial premium or premium deposit,
215 unless the policy for which application is made provides an
216 unconditional refund for a period of at least 14 days, or unless
217 the policy summary contains an offer of such an unconditional
218 refund, in which event the buyer's guide and policy summary must

HB 981

2009

219 | be delivered with the policy or prior to delivery of the policy.
220 | With respect to annuities, the insurer shall provide to each
221 | prospective purchaser a buyer's guide to annuities and a
222 | contract summary as provided in the National Association of
223 | Insurance Commissioners (NAIC) Model Annuity and Deposit Fund
224 | Regulation and the policy must provide an unconditional refund
225 | for a period of at least 14 days. If the prospective purchaser
226 | of an annuity is 65 years of age or older, the unconditional
227 | refund period must be at least 60 days.

228 | (b) The insurer shall provide a buyer's guide and a policy
229 | summary to any prospective purchaser upon request.

230 | (c) The insurer shall provide a buyer's guide to
231 | annuities, which shall be developed by the department, that
232 | informs the prospective purchaser of an annuity how to contact
233 | the department or office if he or she has questions regarding
234 | the annuity offered for sale.

235 | (d) The insurer shall attach a cover page to an annuity
236 | policy informing the purchaser of the unconditional refund
237 | period in paragraph (a). The cover page shall also provide
238 | contact information for the issuing company, the department's
239 | toll-free help line number, and other information that may be
240 | required by the department by rule.

241 | Section 8. Subsection (5) of section 627.4554, Florida
242 | Statutes, as amended by chapter 2008-237, Laws of Florida, is
243 | amended, subsection (9) of that section is renumbered as
244 | subsection (10), and a new subsection (9) is added to that
245 | section, to read:

246 | 627.4554 Annuity investments by seniors.--

247 (5) MITIGATION OF RESPONSIBILITY.--

248 (a) The office may order an insurer to take reasonably
 249 appropriate corrective action, including rescission of the
 250 policy or contract and a full refund of the premiums paid or the
 251 accumulation value, whichever is greater, for any senior
 252 consumer harmed by a violation of this section by the insurer or
 253 the insurer's insurance agent.

254 (b) The department may order:

255 1. An insurance agent to take reasonably appropriate
 256 corrective action for any senior consumer harmed by a violation
 257 of this section by the insurance agent, including, but not
 258 limited to, monetary restitution.

259 2. A managing general agency or insurance agency that
 260 employs or contracts with an insurance agent to sell or solicit
 261 the sale of annuities to senior consumers to take reasonably
 262 appropriate corrective action for any senior consumer harmed by
 263 a violation of this section by the insurance agent.

264 (c) Any applicable penalty under the Florida Insurance
 265 Code for a violation of paragraph (4) (a), paragraph (4) (b), or
 266 subparagraph (4) (c) 2. may be reduced or eliminated, according to
 267 a schedule adopted by the office or the department, as
 268 appropriate, if corrective action for the senior consumer was
 269 taken promptly after a violation was discovered.

270 (9) DEFERRED SALES CHARGES.--An annuity contract issued in
 271 the name of an annuitant 65 years of age and older may not
 272 contain a deferred sales charge exceeding 5 percent, and such
 273 charge shall be reduced to zero percent by the end of the fifth
 274 policy year.

HB 981

2009

275

Section 9. This act shall take effect July 1, 2009.