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LEGISLATIVE ACTION

Senate	.	House
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Floor: 1/AD/RM	.	Floor: C
04/30/2010 03:07 PM	.	04/30/2010 06:54 PM
	.	

Senator Bennett moved the following:

1 **Senate Amendment to House Amendment (842183) (with title**
2 **amendment)**

3
4 Between lines 1016 and 1017
5 insert:

6 Section 35. This act may be cited as the "Safeguard Our
7 Seniors Act."

8 Section 36. Paragraph (a) of subsection (1) of section
9 624.310, Florida Statutes, is amended to read:

10 624.310 Enforcement; cease and desist orders; removal of
11 certain persons; fines.—

12 (1) DEFINITIONS.—For the purposes of this section, the
13 term:



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14 (a) "Affiliated party" means any person who directs or
15 participates in the conduct of the affairs of a licensee and who
16 is:

17 1. A director, officer, employee, trustee, committee
18 member, or controlling stockholder of a licensee or a subsidiary
19 or service corporation of the licensee, other than a controlling
20 stockholder which is a holding company, or an agent of a
21 licensee or a subsidiary or service corporation of the licensee;

22 2. A person who has filed or is required to file a
23 statement or any other information required to be filed under s.
24 628.461 or s. 628.4615;

25 3. A stockholder, other than a stockholder that is a
26 holding company of the licensee, who participates in the conduct
27 of the affairs of the licensee; ~~or~~

28 4. An independent contractor who:

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

33 b. Affirmatively and knowingly conceals facts, through a
34 written misrepresentation to the department or office, with
35 knowledge that such misrepresentation:

36 (I) Constitutes a violation of the insurance code or a
37 lawful rule or order of the department, commission, or office;
38 and

39 (II) Directly and materially endangers the ability of the
40 licensee to meet its obligations to policyholders; ~~or-~~

41 5. A third-party marketer who aids or abets a licensee in a
42 violation of the insurance code relating to the sale of an



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43 annuity to a person 65 years of age or older.

44

45 For the purposes of this subparagraph, any representation of
46 fact made by an independent contractor on behalf of a licensee,
47 affirmatively communicated as a representation of the licensee
48 to the independent contractor, shall not be considered a
49 misrepresentation by the independent contractor.

50 Section 37. Section 624.46223, Florida Statutes, is created
51 to read:

52 624.46223 Notice of intent to withdraw.—Any association,
53 fund, or pool authorized by state law and created for the
54 purpose of forming a risk-management mechanism or providing self
55 insurance for public entities in this state may not require its
56 members to provide more than 45 days' notice of the member's
57 intention to withdraw as a prerequisite for withdrawing from the
58 association, fund, or pool.

59 Section 38. Paragraph (j) of subsection (2) of section
60 626.221, Florida Statutes, is amended to read:

61 626.221 Examination requirement; exemptions.—

62 (2) However, no such examination shall be necessary in any
63 of the following cases:

64 (j) An applicant for license as a customer representative
65 who has earned the designation of Accredited Advisor in
66 Insurance (AAI) from the Insurance Institute of America, the
67 designation of Certified Insurance Counselor (CIC) from the
68 Society of Certified Insurance Service Counselors, the
69 designation of Accredited Customer Service Representative (ACSR)
70 from the Independent Insurance Agents of America, the
71 designation of Certified Professional Service Representative



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72 (CPSR) from the National Foundation for Certified Professional
73 Service Representatives, the designation of Certified Insurance
74 Service Representative (CISR) from the Society of Certified
75 Insurance Service Representatives, or the designation of
76 Certified Insurance Representative (CIR) from the National
77 Association of Christian Catastrophe Insurance Adjusters. Also,
78 an applicant for license as a customer representative who has
79 earned an associate degree or bachelor's degree from an
80 accredited college or university with at least 9 academic hours
81 of property and casualty insurance curriculum, or the
82 equivalent, or has earned the designation of Certified Customer
83 Service Representative (CCSR) from the Florida Association of
84 Insurance Agents, or the designation of Registered Customer
85 Service Representative (RCSR) from a regionally accredited
86 postsecondary institution in this state, or the designation of
87 Professional Customer Service Representative (PCSR) from the
88 Professional Career Institute, whose curriculum has been
89 approved by the department and whose curriculum includes
90 comprehensive analysis of basic property and casualty lines of
91 insurance and testing at least equal to that of standard
92 department testing for the customer representative license. The
93 department shall adopt rules establishing standards for the
94 approval of curriculum.

95 Section 39. Subsection (13) of section 626.025, Florida
96 Statutes, is amended to read:

97 626.025 Consumer protections.—To transact insurance, agents
98 shall comply with consumer protection laws, including the
99 following, as applicable:

100 (13) The prohibition against the designation of a life



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101 insurance agent or his or her family member as the beneficiary
102 of life insurance policy sold to an individual other than a
103 family member under s. 626.798.

104 Section 40. Paragraph (k) of subsection (3) of section
105 626.2815, Florida Statutes, is amended to read:

106 626.2815 Continuing education required; application;
107 exceptions; requirements; penalties.-

108 (3)

109 (k) Any person who holds a license to solicit or sell life
110 insurance in this state must complete a minimum of 3 hours in
111 continuing education, approved by the department, on the subject
112 of suitability in annuity and life insurance transactions. This
113 requirement does not apply to an agent who does not have any
114 active life insurance or annuity contracts. In applying this
115 exemption, the department may require the filing of a
116 certification attesting that the agent has not sold life
117 insurance or annuities during the continuing education
118 compliance cycle in question and does not have any active life
119 insurance or annuity contracts. A licensee may use the hours
120 obtained under this paragraph to satisfy the requirement for
121 continuing education in ethics under paragraph (a).

122 Section 41. Subsection (13) is added to section 626.621,
123 Florida Statutes, to read:

124 626.621 Grounds for discretionary refusal, suspension, or
125 revocation of agent's, adjuster's, customer representative's,
126 service representative's, or managing general agent's license or
127 appointment.-The department may, in its discretion, deny an
128 application for, suspend, revoke, or refuse to renew or continue
129 the license or appointment of any applicant, agent, adjuster,



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130 customer representative, service representative, or managing
131 general agent, and it may suspend or revoke the eligibility to
132 hold a license or appointment of any such person, if it finds
133 that as to the applicant, licensee, or appointee any one or more
134 of the following applicable grounds exist under circumstances
135 for which such denial, suspension, revocation, or refusal is not
136 mandatory under s. 626.611:

137 (13) Has been the subject of or has had a license, permit,
138 appointment, registration, or other authority to conduct
139 business subject to any decision, finding, injunction,
140 suspension, prohibition, revocation, denial, judgment, final
141 agency action, or administrative order by any court of competent
142 jurisdiction, administrative law proceeding, state agency,
143 federal agency, national securities, commodities, or option
144 exchange, or national securities, commodities, or option
145 association involving a violation of any federal or state
146 securities or commodities law or any rule or regulation adopted
147 thereunder, or a violation of any rule or regulation of any
148 national securities, commodities, or options exchange or
149 national securities, commodities, or options association.

150 Section 42. Subsection (3) of section 626.641, Florida
151 Statutes, is amended to read:

152 626.641 Duration of suspension or revocation.—

153 (3) (a) If any of an individual's licenses as an agent or
154 customer representative, or the eligibility to hold such license
155 or licenses has ~~same, as to the same individual have~~ been
156 revoked at two separate times, the department ~~may~~ shall not
157 thereafter grant or issue any license under this code ~~as~~ to such
158 individual.



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159 (b) If a license as an agent or customer representative or
160 the eligibility to hold such a license has been revoked
161 resulting from the solicitation or sale of an insurance product
162 to a person 65 years of age or older, the department may not
163 thereafter grant or issue any license under this code to such
164 individual.

165 Section 43. Section 626.798, Florida Statutes, is amended
166 to read:

167 626.798 Life agent as beneficiary; prohibition.—No life
168 agent shall, with respect to the placement of life insurance
169 coverage with a life insurer covering the life of a person who
170 is not a family member of the agent, handle in his or her
171 capacity as a life agent the placement of such coverage when the
172 agent placing the coverage or a family member of such agent
173 ~~receives a commission therefor and~~ is the named beneficiary
174 under the life insurance policy, unless the life agent or family
175 member has an insurable interest in the life of such person.
176 However, the agent or a family member of such agent may not be
177 designated as a trustee or guardian or be granted power of
178 attorney unless he or she is a family member of the policy owner
179 or insured, or is a bank or trust company duly authorized to act
180 as a fiduciary. For the purposes of this section, the phrase
181 "not a family member," with respect to a life agent, means an
182 individual who is not related to the life agent as father,
183 mother, son, daughter, brother, sister, grandfather,
184 grandmother, uncle, aunt, first cousin, nephew, niece, husband,
185 wife, father-in-law, mother-in-law, brother-in-law, sister-in-
186 law, stepfather, stepmother, stepson, stepdaughter, stepbrother,
187 stepsister, half brother, or half sister. For the purposes of



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188 this section, the term "insurable interest" means that the life
189 agent has an actual, lawful, and substantial economic interest
190 in the safety and preservation of the life of the insured or a
191 reasonable expectation of benefit or advantage from the
192 continued life of the insured.

193 Section 44. Paragraphs (a) and (b) of subsection (3) of
194 section 626.9521, Florida Statutes, are amended, and subsections
195 (4) and (5) are added to that section, to read:

196 626.9521 Unfair methods of competition and unfair or
197 deceptive acts or practices prohibited; penalties.—

198 (3) (a) If a person violates s. 626.9541(1)(1), the offense
199 known as "twisting," or violates s. 626.9541(1)(aa), the offense
200 known as "churning," the person commits a misdemeanor of the
201 first degree, punishable as provided in s. 775.082, and an
202 administrative fine not greater than \$5,000 shall be imposed for
203 each nonwillful violation or an administrative fine not greater
204 than \$75,000 ~~\$40,000~~ shall be imposed for each willful
205 violation. To impose an administrative fine for a willful
206 violation ~~criminal penalties~~ under this paragraph, the practice
207 of "churning" or "twisting" must involve fraudulent conduct.

208 (b) If a person violates s. 626.9541(1)(ee) by willfully
209 submitting fraudulent signatures on an application or policy-
210 related document, the person commits a felony of the third
211 degree, punishable as provided in s. 775.082, and an
212 administrative fine not greater than \$5,000 shall be imposed for
213 each nonwillful violation or an administrative fine not greater
214 than \$75,000 ~~\$40,000~~ shall be imposed for each willful
215 violation.

216 (4) A licensee must make all reasonable efforts to



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217 ascertain the consumer's age at the time an insurance
218 application is completed.

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

224 Section 45. Subsection (4) of section 626.99, Florida
225 Statutes, is amended to read:

226 626.99 Life insurance solicitation.—

227 (4) DISCLOSURE REQUIREMENTS.—

228 (a) The insurer shall provide to each prospective purchaser
229 a buyer's guide and a policy summary prior to accepting the
230 applicant's initial premium or premium deposit, unless the
231 policy for which application is made provides an unconditional
232 refund for a period of at least 14 days, or unless the policy
233 summary contains an offer of such an unconditional refund. In
234 these instances, which event the buyer's guide and policy
235 summary must be delivered with the policy or prior to delivery
236 of the policy.

237 (b) With respect to fixed and variable annuities, the
238 insurer shall provide to each prospective purchaser a buyer's
239 guide to annuities and a contract summary as provided in the
240 National Association of Insurance Commissioners (NAIC) Model
241 Annuity and Deposit Fund Regulation and the policy must provide
242 an unconditional refund for a period of at least 14 days. For
243 fixed annuities, the buyer's guide shall be in the form as
244 provided by the National Association of Insurance Commissioners
245 (NAIC) Annuity Disclosure Model Regulation, until such time as a



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246 buyer's guide is developed by the department, at which time the
247 department guide must be used. For variable annuities, a policy
248 summary may be used, which may be contained in a prospectus,
249 until such time as a buyer's guide is developed by NAIC or the
250 department, at which time one of those guides must be used. If
251 the prospective owner of an annuity contract is 65 years of age
252 or older:

253 1. An unconditional refund of premiums paid for a fixed
254 annuity contract, including any contract fees or charges, must
255 be available for a period of 21 days; and

256 2. An unconditional refund for variable or market value
257 annuity contracts must be available for a period of 21 days. The
258 unconditional refund shall be equal to the cash surrender value
259 provided in the annuity contract, plus any fees or charges
260 deducted from the premiums or imposed under the contract. This
261 subparagraph does not apply if the prospective owner is an
262 accredited investor, as defined in Regulation D as adopted by
263 the United States Securities and Exchange Commission.

264 (c) The insurer shall attach a cover page to any annuity
265 policy informing the purchaser of the unconditional refund
266 period prescribed in paragraph (b). The cover page must also
267 provide contact information for the issuing company and the
268 selling agent, the department's toll-free help line, and any
269 other information required by the department by rule. The cover
270 page is part of the policy and is subject to review by the
271 office pursuant to s. 627.410.

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

274 Section 46. Subsections (3) and (5) of section 627.4554,



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275 Florida Statutes, as amended by section 9 of chapter 2008-237,
276 Laws of Florida, are amended, present subsection (9) of that
277 section is renumbered as subsection (10), and a new subsection
278 (9) is added to that section, to read:

279 627.4554 Annuity investments by seniors.—

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

281 (a) "Annuity contract" means a fixed annuity, equity
282 indexed annuity, fixed equity indexed annuity, or variable
283 annuity that is individually solicited, whether the product is
284 classified as an individual annuity or a group annuity.

285 (b) "Accredited investor" means any person who comes within
286 any of the following categories, or who the issuer reasonably
287 believes comes within any of the following categories, at the
288 time of the sale of an annuity to that person:

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

291 2. The person had an individual income in excess of
292 \$200,000 in each of the 2 most recent years, or joint income
293 with his or her spouse in excess of \$300,000 in each of those
294 years, and has a reasonable expectation of reaching the same
295 income level in the current year.

296 (c) ~~(b)~~ "Recommendation" means advice provided by an
297 insurance agent, or an insurer if no insurance agent is
298 involved, to an individual senior consumer which results in a
299 purchase or exchange of an annuity in accordance with that
300 advice.

301 (d) ~~(c)~~ "Senior consumer" means a person 65 years of age or
302 older. In the event of a joint purchase by more than one party,
303 a purchaser is considered to be a senior consumer if any of the



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304 parties is age 65 or older.

305 (5) MITIGATION OF RESPONSIBILITY.—

306 (a) The office may order an insurer to take reasonably
307 appropriate corrective action, including rescission of the
308 policy or contract and a full refund of the premiums paid or the
309 accumulation value, whichever is greater, for any senior
310 consumer harmed by a violation of this section by the insurer or
311 the insurer's insurance agent.

312 (b) The department may order:

313 1. An insurance agent to take reasonably appropriate
314 corrective action, including monetary restitution of penalties
315 or fees incurred by the senior consumer, for any senior consumer
316 harmed by a violation of this section by the insurance agent.

317 2. A managing general agency or insurance agency that
318 employs or contracts with an insurance agent to sell or solicit
319 the sale of annuities to senior consumers to take reasonably
320 appropriate corrective action for any senior consumer harmed by
321 a violation of this section by the insurance agent.

322 (c) The department shall, in addition to any other penalty
323 authorized under chapter 626, order an insurance agent to pay
324 restitution to any senior consumer who has been deprived of
325 money by the agent's misappropriation, conversion, or unlawful
326 withholding of monies belonging to the senior consumer in the
327 course of a transaction involving annuities. The amount of
328 restitution required to be paid pursuant to this paragraph may
329 not exceed the amount misappropriated, converted, or unlawfully
330 withheld. This paragraph does not limit or restrict a person's
331 right to seek other remedies as provided by law.

332 (d) ~~(e)~~ Any applicable penalty under the Florida Insurance



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333 Code for a violation of paragraph (4) (a), paragraph (4) (b), or
334 subparagraph (4) (c)2. may be reduced or eliminated, according to
335 a schedule adopted by the office or the department, as
336 appropriate, if corrective action for the senior consumer was
337 taken promptly after a violation was discovered.

338 (9) PROHIBITED CHARGES.—An annuity contract issued to a
339 senior consumer may not contain a surrender or deferred sales
340 charge for a withdrawal of money from an annuity exceeding 10
341 percent of the amount withdrawn. The charge shall be reduced so
342 that no surrender or deferred sales charge exists after the end
343 of the 10th policy year or 10 years after the premium is paid,
344 whichever is later. This subsection does not apply to annuities
345 purchased by an accredited investor or to those annuities
346 specified in paragraph (7) (b).

347
348 ===== T I T L E A M E N D M E N T =====

349 And the title is amended as follows:

350 Delete line 1103

351 and insert:

352 F.S., relating to required rate filings; providing a
353 short title; amending s. 624.310, F.S.; expanding the
354 definition of "affiliated party" to include certain
355 third-party marketers; creating s. 624.46223, F.S.;
356 prohibiting a self-insurance association, fund, or
357 pool from requiring its members to provide more than a
358 specified maximum period of notice of any member's
359 intent to withdraw; amending s. 626.221, F.S.;
360 expanding the list of individuals who are exempt from
361 the requirement to pass an examination before being



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362 issued a license as an agent, customer representative,
363 or adjuster; amending s. 626.025, F.S.; including
364 family members of insurance agents in a prohibition
365 related to the transaction of life insurance; amending
366 s. 626.2815, F.S.; providing an exemption from certain
367 continuing education requirements to certain agents;
368 authorizing the department to take certain action in
369 applying such exemption; amending s. 626.621, F.S.;
370 expanding grounds for discretionary refusal,
371 suspension, or revocation of certain licenses;
372 amending s. 626.641, F.S.; prohibiting the Department
373 of Financial Services from issuing certain licenses in
374 certain circumstances; amending s. 626.798, F.S.;
375 prohibiting a family member of a life insurance agent
376 from being a beneficiary of certain policies;
377 prohibiting an agent or a family member of such agent
378 from being designated as a trustee or guardian or
379 being granted power of attorney unless he or she is a
380 family member of the policy owner or insured, or is a
381 bank or trust company duly authorized to act as a
382 fiduciary; amending s. 626.9521, F.S.; increasing the
383 administrative fine that may be imposed for each
384 willful violation of the offenses of twisting and
385 churning; increasing the administrative fine that may
386 be imposed for each willful violation of the offense
387 of submitting fraudulent signatures on an application
388 or policy-related document; requiring that a licensee
389 make a reasonable effort to ascertain a customer's age
390 at the time of completion of an insurance application;



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391 authorizing the use of video depositions in certain
392 circumstances; amending s. 626.99, F.S.; requiring
393 that the buyer's guide for fixed annuities be in the
394 form provided by the National Association of Insurance
395 Commissioners Annuity Disclosure Model Regulation;
396 authorizing the use of a policy summary for variable
397 annuities until the NAIC or the department develops a
398 buyer's guide; extending the unconditional refund
399 period for fixed annuity contracts and variable or
400 market value annuity contracts for customers 65 years
401 of age or older; requiring that the unconditional
402 refund amount for a variable or market value annuity
403 contract be equal to the cash surrender value provided
404 in the contract, plus any fees or charges deducted
405 from the premiums or imposed under the contract;
406 providing for applicability of certain provisions;
407 requiring that an insurer provide a prospective
408 purchaser of an annuity policy with a buyer's guide to
409 annuities; requiring that such buyer's guide contain
410 certain information; requiring that an insurer attach
411 a cover page to an annuity policy informing the
412 purchaser of the unconditional refund period;
413 requiring that the cover page provide other specified
414 information; amending s. 627.4554, F.S.; defining the
415 term "accredited investor"; authorizing the Department
416 of Financial Services to order an insurance agent to
417 pay monetary restitution to a senior consumer under
418 certain circumstances; limiting the amount of such
419 restitution; prohibiting an annuity contract issued to



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420 a senior consumer from containing a surrender or
421 deferred sales charge for withdrawal of funds from an
422 annuity in excess of a specified maximum amount;
423 providing for the periodic reduction of such charge;
424 providing