

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 to
7 the transaction of life insurance; amending s. 626.621,
8 F.S.; expanding grounds for discretionary refusal,
9 suspension, or revocation of certain licenses; amending s.
10 626.641, F.S.; prohibiting the Department of Financial
11 Services from issuing certain licenses in certain
12 circumstances; amending s. 626.798, F.S.; prohibiting a
13 family member of a life insurance agent from being a
14 beneficiary of certain policies; amending s. 626.9521,
15 F.S.; providing that the failure to ascertain a customer's
16 age at the time of an insurance application does not
17 constitute a defense to certain violations of state law;
18 authorizing the use of video depositions in certain
19 circumstances; amending s. 626.99, F.S.; extending the
20 unconditional refund period for fixed annuity contracts
21 and variable or market value annuity contracts for
22 customers 65 years of age or older; requiring that the
23 unconditional refund amount for a variable or market value
24 annuity contract be equal to the cash surrender value
25 provided in the contract, plus any fees or charges
26 deducted from the premiums or imposed under the contract;
27 providing for applicability of certain provisions;
28 requiring that an insurer provide a prospective purchaser

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

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55 Be It Enacted by the Legislature of the State of Florida:
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57 Section 1. This act may be cited as the "Safeguard Our
 58 Seniors Act."

59 Section 2. Paragraph (a) of subsection (1) of section
 60 624.310, Florida Statutes, is amended to read:

61 624.310 Enforcement; cease and desist orders; removal of
 62 certain persons; fines.—

63 (1) DEFINITIONS.—For the purposes of this section, the
 64 term:

65 (a) "Affiliated party" means any person who directs or
 66 participates in the conduct of the affairs of a licensee and who
 67 is:

68 1. A director, officer, employee, trustee, committee
 69 member, or controlling stockholder of a licensee or a subsidiary
 70 or service corporation of the licensee, other than a controlling
 71 stockholder which is a holding company, or an agent of a
 72 licensee or a subsidiary or service corporation of the licensee;

73 2. A person who has filed or is required to file a
 74 statement or any other information required to be filed under s.
 75 628.461 or s. 628.4615;

76 3. A stockholder, other than a stockholder that is a
 77 holding company of the licensee, who participates in the conduct
 78 of the affairs of the licensee; ~~or~~

79 4. An independent contractor who:

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

84 b. Affirmatively and knowingly conceals facts, through a

85 written misrepresentation to the department or office, with
 86 knowledge that such misrepresentation:

87 (I) Constitutes a violation of the insurance code or a
 88 lawful rule or order of the department, commission, or office;
 89 and

90 (II) Directly and materially endangers the ability of the
 91 licensee to meet its obligations to policyholders; ~~or~~

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

95
 96 For the purposes of this subparagraph, any representation of
 97 fact made by an independent contractor on behalf of a licensee,
 98 affirmatively communicated as a representation of the licensee
 99 to the independent contractor, shall not be considered a
 100 misrepresentation by the independent contractor.

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

103 626.025 Consumer protections.—To transact insurance,
 104 agents shall comply with consumer protection laws, including the
 105 following, as applicable:

106 (13) The prohibition against the designation of a life
 107 insurance agent or his or her family member as the beneficiary
 108 of life insurance policy sold to an individual other than a
 109 family member under s. 626.798.

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

112 626.621 Grounds for discretionary refusal, suspension, or

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

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

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

140 626.641 Duration of suspension or revocation.—

141 (3) (a) If any of an individual's licenses as an agent or
 142 customer representative, or the eligibility to hold such license
 143 or licenses has same, ~~as to the same individual have~~ been
 144 revoked at two separate times, the department may ~~shall~~ not
 145 thereafter grant or issue any license under this code ~~as~~ to such
 146 individual.

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

153 Section 6. Section 626.798, Florida Statutes, is amended
 154 to read:

155 626.798 Life agent as beneficiary; prohibition.—No life
 156 agent shall, with respect to the placement of life insurance
 157 coverage with a life insurer covering the life of a person who
 158 is not a family member of the agent, handle in his or her
 159 capacity as a life agent the placement of such coverage when the
 160 agent placing the coverage or a family member of such agent
 161 ~~receives a commission therefor and~~ is the named beneficiary
 162 under the life insurance policy, unless the life agent or family
 163 member has an insurable interest in the life of such person. For
 164 the purposes of this section, the phrase "not a family member,"
 165 with respect to a life agent, means an individual who is not
 166 related to the life agent as father, mother, son, daughter,
 167 brother, sister, grandfather, grandmother, uncle, aunt, first
 168 cousin, nephew, niece, husband, wife, father-in-law, mother-in-

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169 law, brother-in-law, sister-in-law, stepfather, stepmother,
 170 stepson, stepdaughter, stepbrother, stepsister, half brother, or
 171 half sister. For the purposes of this section, the term
 172 "insurable interest" means that the life agent has an actual,
 173 lawful, and substantial economic interest in the safety and
 174 preservation of the life of the insured or a reasonable
 175 expectation of benefit or advantage from the continued life of
 176 the insured.

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

180 626.9521 Unfair methods of competition and unfair or
 181 deceptive acts or practices prohibited; penalties.—

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

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

197 | than \$40,000 shall be imposed for each willful violation.

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

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

207 | Section 8. Subsection (4) of section 626.99, Florida
 208 | Statutes, is amended to read:

209 | 626.99 Life insurance solicitation.—

210 | (4) DISCLOSURE REQUIREMENTS.—

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

220 | (b) With respect to annuities, the insurer shall provide
 221 | to each prospective purchaser a buyer's guide to annuities
 222 | developed by the department and a contract summary before
 223 | accepting any payment for the contract. ~~as provided in the~~
 224 | ~~National Association of Insurance Commissioners (NAIC) Model~~

225 ~~Annuity and Deposit Fund Regulation~~ and The policy must provide
 226 an unconditional refund for a period of at least 14 days. If the
 227 prospective owner of an annuity contract is 65 years of age or
 228 older:

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

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

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

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

250 Section 9. Subsections (3) and (5) of section 627.4554,
 251 Florida Statutes, as amended by section 9 of chapter 2008-237,
 252 Laws of Florida, are amended, present subsection (9) of that

253 section is renumbered as subsection (10), and a new subsection
 254 (9) is added to that section, to read:

255 627.4554 Annuity investments by seniors.—

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

257 (a) "Annuity contract" means a fixed annuity, equity
 258 indexed annuity, fixed equity indexed annuity, or variable
 259 annuity that is individually solicited, whether the product is
 260 classified as an individual annuity or a group annuity.

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

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

268 2. The person had an individual income in excess of
 269 \$200,000 in each of the 2 most recent years, or joint income
 270 with his or her spouse in excess of \$300,000 in each of those
 271 years, and has a reasonable expectation of reaching the same
 272 income level in the current year.

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

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

281 parties is age 65 or older.

282 (5) MITIGATION OF RESPONSIBILITY.—

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

289 (b) The department may order:

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

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

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

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

315 (9) PROHIBITED CHARGES.—An annuity contract issued to a
316 senior consumer may not contain a surrender or deferred sales
317 charge for a withdrawal of money from an annuity exceeding 10
318 percent of the amount withdrawn. The charge shall be reduced
319 annually by 1 percent so that no surrender or deferred sales
320 charge exists after the end of the tenth policy year or at any
321 time thereafter. This subsection does not apply to annuities
322 purchased by an accredited investor or to those annuities
323 specified in paragraph (7) (b).

324 Section 10. Section 817.2351, Florida Statutes, is created
325 to read:

326 817.2351 Fraudulent financial services transactions when
327 victim is 65 years of age or older; penalty.—

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

335 (a) Employ any device, scheme, or artifice to defraud a
336 person;

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

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

346 (2) Any natural person who violates this section commits a
347 felony of the third degree, punishable as provided in s. 775.082
348 or s. 775.083.

349 (3) This section does not apply to transactions governed
350 by chapter 494, chapter 496, chapter 501, chapter 516, chapter
351 517, chapter 560, or chapters 655-667.

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

354 Section 11. This act shall take effect July 1, 2010.