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LEGISLATIVE ACTION

Senate

House

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Floor: 3/AD/2R

04/15/2010 10:49 AM

Senator Bennett moved the following:

Senate Amendment (with title amendment)

Delete lines 153 - 325

and insert:

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

626.798 Life agent as beneficiary; prohibition.—No life agent shall, with respect to the placement of life insurance coverage with a life insurer covering the life of a person who is not a family member of the agent, handle in his or her capacity as a life agent the placement of such coverage when the agent placing the coverage or a family member of such agent ~~receives a commission therefor and~~ is the named beneficiary



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14 under the life insurance policy, unless the life agent or family
15 member has an insurable interest in the life of such person.
16 However, the agent or a family member of such agent may not be
17 designated as a trustee or guardian or be granted power of
18 attorney unless he or she is a family member of the policy
19 owner. For the purposes of this section, the phrase "not a
20 family member," with respect to a life agent, means an
21 individual who is not related to the life agent as father,
22 mother, son, daughter, brother, sister, grandfather,
23 grandmother, uncle, aunt, first cousin, nephew, niece, husband,
24 wife, father-in-law, mother-in-law, brother-in-law, sister-in-
25 law, stepfather, stepmother, stepson, stepdaughter, stepbrother,
26 stepsister, half brother, or half sister. For the purposes of
27 this section, the term "insurable interest" means that the life
28 agent has an actual, lawful, and substantial economic interest
29 in the safety and preservation of the life of the insured or a
30 reasonable expectation of benefit or advantage from the
31 continued life of the insured.

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

35 626.9521 Unfair methods of competition and unfair or
36 deceptive acts or practices prohibited; penalties.—

37 (3) (a) If a person violates s. 626.9541(1) (1), the offense
38 known as "twisting," or violates s. 626.9541(1) (aa), the offense
39 known as "churning," the person commits a misdemeanor of the
40 first degree, punishable as provided in s. 775.082, and an
41 administrative fine not greater than \$5,000 shall be imposed for
42 each nonwillful violation or an administrative fine not greater



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43 than \$75,000 ~~\$40,000~~ shall be imposed for each willful
44 violation. To impose an administrative fine for a willful
45 violation ~~eriminal penalties~~ under this paragraph, the practice
46 of "churning" or "twisting" must involve fraudulent conduct.

47 (b) If a person violates s. 626.9541(1)(ee) by willfully
48 submitting fraudulent signatures on an application or policy-
49 related document, the person commits a felony of the third
50 degree, punishable as provided in s. 775.082, and an
51 administrative fine not greater than \$5,000 shall be imposed for
52 each nonwillful violation or an administrative fine not greater
53 than \$75,000 ~~\$40,000~~ shall be imposed for each willful
54 violation.

55 (4) A licensee must make all reasonable efforts to
56 ascertain the consumer's age at the time an insurance
57 application is completed.

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

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

65 626.99 Life insurance solicitation.—

66 (4) DISCLOSURE REQUIREMENTS.—

67 (a) The insurer shall provide to each prospective purchaser
68 a buyer's guide and a policy summary prior to accepting the
69 applicant's initial premium or premium deposit, unless the
70 policy for which application is made provides an unconditional
71 refund for a period of at least 14 days, or unless the policy



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72 summary contains an offer of such an unconditional refund. In
73 these instances, which event the buyer's guide and policy
74 summary must be delivered with the policy or prior to delivery
75 of the policy.

76 (b) With respect to fixed and variable annuities, the
77 ~~insurer shall provide to each prospective purchaser a buyer's~~
78 ~~guide to annuities and a contract summary as provided in the~~
79 ~~National Association of Insurance Commissioners (NAIC) Model~~
80 ~~Annuity and Deposit Fund Regulation and the policy must provide~~
81 ~~an unconditional refund for a period of at least 14 days. For~~
82 ~~fixed annuities, the buyer's guide shall be in the form as~~
83 ~~provided by the National Association of Insurance Commissioners~~
84 ~~(NAIC) Annuity Disclosure Model Regulation, until such time as a~~
85 ~~buyer's guide is developed by the department, at which time the~~
86 ~~department guide must be used. For variable annuities, a policy~~
87 ~~summary may be used, which may be contained in a prospectus,~~
88 ~~until such time as a buyer's guide is developed by NAIC or the~~
89 ~~department, at which time one of those guides must be used. If~~
90 ~~the prospective owner of an annuity contract is 65 years of age~~
91 ~~or older:~~

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

95 2. An unconditional refund for variable or market value
96 annuity contracts must be available for a period of 21 days. The
97 unconditional refund shall be equal to the cash surrender value
98 provided in the annuity contract, plus any fees or charges
99 deducted from the premiums or imposed under the contract. This
100 subparagraph does not apply if the prospective owner is an



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101 accredited investor, as defined in Regulation D as adopted by
102 the United States Securities and Exchange Commission.

103 (c) The insurer shall attach a cover page to any annuity
104 policy informing the purchaser of the unconditional refund
105 period prescribed in paragraph (b). The cover page must also
106 provide contact information for the issuing company and the
107 selling agent, the department's toll-free help line, and any
108 other information required by the department by rule. The cover
109 page is part of the policy and is subject to review by the
110 office pursuant to s. 627.410.

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

113 Section 9. Subsections (3) and (5) of section 627.4554,
114 Florida Statutes, as amended by section 9 of chapter 2008-237,
115 Laws of Florida, are amended, present subsection (9) of that
116 section is renumbered as subsection (10), and a new subsection
117 (9) is added to that section, to read:

118 627.4554 Annuity investments by seniors.—

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

120 (a) "Annuity contract" means a fixed annuity, equity
121 indexed annuity, fixed equity indexed annuity, or variable
122 annuity that is individually solicited, whether the product is
123 classified as an individual annuity or a group annuity.

124 (b) "Accredited investor" means any person who comes within
125 any of the following categories, or who the issuer reasonably
126 believes comes within any of the following categories, at the
127 time of the sale of an annuity to that person:

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



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130 2. The person had an individual income in excess of
131 \$200,000 in each of the 2 most recent years, or joint income
132 with his or her spouse in excess of \$300,000 in each of those
133 years, and has a reasonable expectation of reaching the same
134 income level in the current year.

135 ~~(c)~~ ~~(b)~~ "Recommendation" means advice provided by an
136 insurance agent, or an insurer if no insurance agent is
137 involved, to an individual senior consumer which results in a
138 purchase or exchange of an annuity in accordance with that
139 advice.

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

144 (5) MITIGATION OF RESPONSIBILITY.—

145 (a) The office may order an insurer to take reasonably
146 appropriate corrective action, including rescission of the
147 policy or contract and a full refund of the premiums paid or the
148 accumulation value, whichever is greater, for any senior
149 consumer harmed by a violation of this section by the insurer or
150 the insurer's insurance agent.

151 (b) The department may order:

152 1. An insurance agent to take reasonably appropriate
153 corrective action, including monetary restitution of penalties
154 or fees incurred by the senior consumer, for any senior consumer
155 harmed by a violation of this section by the insurance agent.

156 2. A managing general agency or insurance agency that
157 employs or contracts with an insurance agent to sell or solicit
158 the sale of annuities to senior consumers to take reasonably



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159 appropriate corrective action for any senior consumer harmed by
160 a violation of this section by the insurance agent.

161 (c) The department shall, in addition to any other penalty
162 authorized under chapter 626, order an insurance agent to pay
163 restitution to any senior consumer who has been deprived of
164 money by the agent's misappropriation, conversion, or unlawful
165 withholding of monies belonging to the senior consumer in the
166 course of a transaction involving annuities. The amount of
167 restitution required to be paid pursuant to this paragraph may
168 not exceed the amount misappropriated, converted, or unlawfully
169 withheld. This paragraph does not limit or restrict a person's
170 right to seek other remedies as provided by law.

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

177 (9) PROHIBITED CHARGES.—An annuity contract issued to a
178 senior consumer may not contain a surrender or deferred sales
179 charge for a withdrawal of money from an annuity exceeding 10
180 percent of the amount withdrawn. The charge shall be reduced so
181 that no surrender or deferred sales charge exists after the end
182 of the 10th policy year or 10 years after the premium is paid,
183 whichever is later. This subsection does not apply to annuities
184 purchased by an accredited investor or to those annuities
185 specified in paragraph (7) (b).

186 Section 10. This act shall take effect January 1, 2011.
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188 ===== T I T L E A M E N D M E N T =====

189 And the title is amended as follows:

190 Delete lines 13 - 52

191 and insert:

192 626.798, F.S.; prohibiting a family member of a life
193 insurance agent from being a beneficiary of certain
194 policies; prohibiting an agent or a family member of
195 such agent from being designated as a trustee or
196 guardian or being granted power of attorney unless he
197 or she is a family member of the policy owner;
198 amending s. 626.9521, F.S.; increasing the
199 administrative fine that may be imposed for each
200 willful violation of the offenses of twisting and
201 churning; increasing the administrative fine that may
202 be imposed for each willful violation of the offense
203 of submitting fraudulent signatures on an application
204 or policy-related document; requiring that a licensee
205 make a reasonable effort to ascertain a customer's age
206 at the time of completion of an insurance application;
207 authorizing the use of video depositions in certain
208 circumstances; amending s. 626.99, F.S.; requiring
209 that the buyer's guide for fixed annuities be in the
210 form provided by the National Association of Insurance
211 Commissioners Annuity Disclosure Model Regulation;
212 authorizing the use of a policy summary for variable
213 annuities until the NAIC or the department develops a
214 buyer's guide; extending the unconditional refund
215 period for fixed annuity contracts and variable or
216 market value annuity contracts for customers 65 years



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217 of age or older; requiring that the unconditional
218 refund amount for a variable or market value annuity
219 contract be equal to the cash surrender value provided
220 in the contract, plus any fees or charges deducted
221 from the premiums or imposed under the contract;
222 providing for applicability of certain provisions;
223 requiring that an insurer provide a prospective
224 purchaser of an annuity policy with a buyer's guide to
225 annuities; requiring that such buyer's guide contain
226 certain information; requiring that an insurer attach
227 a cover page to an annuity policy informing the
228 purchaser of the unconditional refund period;
229 requiring that the cover page provide other specified
230 information; amending s. 627.4554, F.S.; defining the
231 term "accredited investor"; authorizing the Department
232 of Financial Services to order an insurance agent to
233 pay monetary restitution to a senior consumer under
234 certain circumstances; limiting the amount of such
235 restitution; prohibiting an annuity contract issued to
236 a senior consumer from containing a surrender or
237 deferred sales charge for withdrawal of funds from an
238 annuity in excess of a specified maximum amount;
239 providing for the periodic reduction of such charge;