



790564

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
03/04/2010	.	
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The Committee on Criminal Justice (Dean) recommended the following:

**Senate Amendment (with title amendment)**

Delete lines 186 - 356  
and insert:

(3) (a) If a person violates s. 626.9541(1)(1), the offense known as "twisting," or violates s. 626.9541(1)(aa), the offense known as "churning," the person commits a misdemeanor of the first degree, punishable as provided in s. 775.082, and an administrative fine not greater than \$5,000 shall be imposed for each nonwillful violation or an administrative fine not greater than \$75,000 ~~\$40,000~~ shall be imposed for each willful violation. To impose criminal penalties under this paragraph,



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13 the practice of "churning" or "twisting" must involve fraudulent  
14 conduct.

15 (b) If a person violates s. 626.9541(1)(ee) by willfully  
16 submitting fraudulent signatures on an application or policy-  
17 related document, the person commits a felony of the third  
18 degree, punishable as provided in s. 775.082, and an  
19 administrative fine not greater than \$5,000 shall be imposed for  
20 each nonwillful violation or an administrative fine not greater  
21 than \$75,000 ~~\$40,000~~ shall be imposed for each willful  
22 violation.

23 (4) The failure of a licensee to make all reasonable  
24 efforts to ascertain the consumer's age at the time an insurance  
25 application is completed does not constitute a defense to a  
26 violation of this section.

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

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

34 626.99 Life insurance solicitation.—

35 (4) DISCLOSURE REQUIREMENTS.—

36 (a) The insurer shall provide to each prospective purchaser  
37 a buyer's guide and a policy summary prior to accepting the  
38 applicant's initial premium or premium deposit, unless the  
39 policy for which application is made provides an unconditional  
40 refund for a period of at least 14 days, or unless the policy  
41 summary contains an offer of such an unconditional refund. In



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42 these instances, which event the buyer's guide and policy  
43 summary must be delivered with the policy or prior to delivery  
44 of the policy.

45 (b) With respect to annuities, the insurer shall provide to  
46 each prospective purchaser a buyer's guide to annuities  
47 developed by the department and a contract summary before  
48 accepting any payment for the contract. as provided in the  
49 National Association of Insurance Commissioners (NAIC) Model  
50 Annuity and Deposit Fund Regulation and The policy must provide  
51 an unconditional refund for a period of at least 14 days. If the  
52 prospective owner of an annuity contract is 65 years of age or  
53 older:

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

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

65 (c) The insurer shall attach a cover page to any annuity  
66 policy informing the purchaser of the unconditional refund  
67 period prescribed in paragraph (b). The cover page must also  
68 provide contact information for the issuing company and the  
69 selling agent, the department's toll-free help line, and any  
70 other information required by the department by rule. The cover



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71 page is part of the contract and is subject to review by the  
72 office pursuant to s. 627.410.

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

75 Section 9. Subsections (3) and (5) of section 627.4554,  
76 Florida Statutes, as amended by section 9 of chapter 2008-237,  
77 Laws of Florida, are amended, present subsection (9) of that  
78 section is renumbered as subsection (10), and a new subsection  
79 (9) is added to that section, to read:

80 627.4554 Annuity investments by seniors.—

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

82 (a) "Annuity contract" means a fixed annuity, equity  
83 indexed annuity, fixed equity indexed annuity, or variable  
84 annuity that is individually solicited, whether the product is  
85 classified as an individual annuity or a group annuity.

86 (b) "Accredited investor" means any person who comes within  
87 any of the following categories, or who the issuer reasonably  
88 believes comes within any of the following categories, at the  
89 time of the sale of an annuity to that person:

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

92 2. The person had an individual income in excess of  
93 \$200,000 in each of the 2 most recent years, or joint income  
94 with his or her spouse in excess of \$300,000 in each of those  
95 years, and has a reasonable expectation of reaching the same  
96 income level in the current year.

97 (c) ~~(b)~~ "Recommendation" means advice provided by an  
98 insurance agent, or an insurer if no insurance agent is  
99 involved, to an individual senior consumer which results in a



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100 purchase or exchange of an annuity in accordance with that  
101 advice.

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

106 (5) MITIGATION OF RESPONSIBILITY.—

107 (a) The office may order an insurer to take reasonably  
108 appropriate corrective action, including rescission of the  
109 policy or contract and a full refund of the premiums paid or the  
110 accumulation value, whichever is greater, for any senior  
111 consumer harmed by a violation of this section by the insurer or  
112 the insurer's insurance agent.

113 (b) The department may order:

114 1. An insurance agent to take reasonably appropriate  
115 corrective action, including monetary restitution of penalties  
116 or fees incurred by the senior consumer, for any senior consumer  
117 harmed by a violation of this section by the insurance agent.

118 2. A managing general agency or insurance agency that  
119 employs or contracts with an insurance agent to sell or solicit  
120 the sale of annuities to senior consumers to take reasonably  
121 appropriate corrective action for any senior consumer harmed by  
122 a violation of this section by the insurance agent.

123 (c) The department shall, in addition to any other penalty  
124 authorized under chapter 626, order an insurance agent to pay  
125 restitution to any senior consumer who has been deprived of  
126 money by the agent's misappropriation, conversion, or unlawful  
127 withholding of moneys belonging to the senior consumer in the  
128 course of a transaction involving annuities. The amount of



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129 restitution required to be paid pursuant to this paragraph may  
130 not exceed the amount misappropriated, converted, or unlawfully  
131 withheld. This paragraph does not limit or restrict a person's  
132 right to seek other remedies as provided by law.

133 (d)(e) Any applicable penalty under the Florida Insurance  
134 Code for a violation of paragraph (4) (a), paragraph (4) (b), or  
135 subparagraph (4) (c)2. may be reduced or eliminated, according to  
136 a schedule adopted by the office or the department, as  
137 appropriate, if corrective action for the senior consumer was  
138 taken promptly after a violation was discovered.

139 (9) PROHIBITED CHARGES.—An annuity contract issued to a  
140 senior consumer may not contain a surrender or deferred sales  
141 charge for a withdrawal of money from an annuity exceeding 10  
142 percent of the amount withdrawn. The charge shall be reduced  
143 annually by 1 percent so that no surrender or deferred sales  
144 charge exists after the end of the tenth policy year or at any  
145 time thereafter. This subsection does not apply to annuities  
146 purchased by an accredited investor or to those annuities  
147 specified in paragraph (7) (b).

148  
149 ===== T I T L E A M E N D M E N T =====

150 And the title is amended as follows:

151 Delete lines 15 - 56

152 and insert:

153 policies; amending s. 626.9521, F.S.; increasing the  
154 administrative fine that may be imposed for each  
155 willful violation of the offenses of twisting and  
156 churning; increasing the administrative fine that may  
157 be imposed for each willful violation of the offense



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158 of submitting fraudulent signatures on an application  
159 or policy-related document; providing that the failure  
160 to ascertain a customer's age at the time of an  
161 insurance application does not constitute a defense to  
162 certain violations of state law; authorizing the use  
163 of video depositions in certain circumstances;  
164 amending s. 626.99, F.S.; extending the unconditional  
165 refund period for fixed annuity contracts and variable  
166 or market value annuity contracts for customers 65  
167 years of age or older; requiring that the  
168 unconditional refund amount for a variable or market  
169 value annuity contract be equal to the cash surrender  
170 value provided in the contract, plus any fees or  
171 charges deducted from the premiums or imposed under  
172 the contract; providing for applicability of certain  
173 provisions; requiring that an insurer provide a  
174 prospective purchaser of an annuity policy with a  
175 buyer's guide to annuities; requiring that such  
176 buyer's guide contain certain information; requiring  
177 that an insurer attach a cover page to an annuity  
178 policy informing the purchaser of the unconditional  
179 refund period; requiring that the cover page provide  
180 other specified information; amending s. 627.4554,  
181 F.S.; defining the term "accredited investor";  
182 authorizing the Department of Financial Services to  
183 order an insurance agent to pay monetary restitution  
184 to a senior consumer under certain circumstances;  
185 limiting the amount of such restitution; prohibiting  
186 an annuity contract issued to a senior consumer from



187 containing a surrender or deferred sales charge for  
188 withdrawal of funds from an annuity in excess of a  
189 specified maximum amount; providing for the periodic  
190 reduction of such charge; providing an