

By the Committee on Criminal Justice; and Senators Bennett and Fasano

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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  
7           to the transaction of life insurance; amending s.  
8           626.621, F.S.; expanding grounds for discretionary  
9           refusal, suspension, or revocation of certain  
10          licenses; amending s. 626.641, F.S.; prohibiting the  
11          Department of Financial Services from issuing certain  
12          licenses in certain circumstances; amending s.  
13          626.798, F.S.; prohibiting a family member of a life  
14          insurance agent from being a beneficiary of certain  
15          policies; amending s. 626.9521, F.S.; increasing the  
16          administrative fine that may be imposed for each  
17          willful violation of the offenses of twisting and  
18          churning; increasing the administrative fine that may  
19          be imposed for each willful violation of the offense  
20          of submitting fraudulent signatures on an application  
21          or policy-related document; providing that the fact  
22          that a licensee made a reasonable effort to ascertain  
23          a customer's age at the time of an insurance  
24          application does not constitute a defense to certain  
25          violations of state law; authorizing the use of video  
26          depositions in certain circumstances; amending s.  
27          626.99, F.S.; extending the unconditional refund  
28          period for fixed annuity contracts and variable or  
29          market value annuity contracts for customers 65 years

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30 of age or older; requiring that the unconditional  
31 refund amount for a variable or market value annuity  
32 contract be equal to the cash surrender value provided  
33 in the contract, plus any fees or charges deducted  
34 from the premiums or imposed under the contract;  
35 providing for applicability of certain provisions;  
36 requiring that an insurer provide a prospective  
37 purchaser of an annuity policy with a buyer's guide to  
38 annuities; requiring that such buyer's guide contain  
39 certain information; requiring that an insurer attach  
40 a cover page to an annuity policy informing the  
41 purchaser of the unconditional refund period;  
42 requiring that the cover page provide other specified  
43 information; amending s. 627.4554, F.S.; defining the  
44 term "accredited investor"; authorizing the Department  
45 of Financial Services to order an insurance agent to  
46 pay monetary restitution to a senior consumer under  
47 certain circumstances; limiting the amount of such  
48 restitution; prohibiting an annuity contract issued to  
49 a senior consumer from containing a surrender or  
50 deferred sales charge for withdrawal of funds from an  
51 annuity in excess of a specified maximum amount;  
52 providing for the periodic reduction of such charge;  
53 providing an effective date.

54  
55 Be It Enacted by the Legislature of the State of Florida:

56  
57 Section 1. This act may be cited as the "Safeguard Our  
58 Seniors Act."

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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

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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 a  
93 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, agents  
104 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  
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

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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

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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 to  
154 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-  
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

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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 person violates s. 626.9541(1)(1), the offense  
183 known as "twisting," or violates s. 626.9541(1)(aa), the offense  
184 known as "churning," the person commits a misdemeanor of the  
185 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 \$75,000 ~~\$40,000~~ shall be imposed for each willful  
189 violation. To impose criminal penalties under this paragraph,  
190 the practice of "churning" or "twisting" must involve fraudulent  
191 conduct.

192 (b) If a person violates s. 626.9541(1)(ee) by willfully  
193 submitting fraudulent signatures on an application or policy-  
194 related document, the person commits a felony of the third  
195 degree, punishable as provided in s. 775.082, and an  
196 administrative fine not greater than \$5,000 shall be imposed for  
197 each nonwillful violation or an administrative fine not greater  
198 than \$75,000 ~~\$40,000~~ shall be imposed for each willful  
199 violation.

200 (4) The fact that the licensee made a reasonable effort to  
201 ascertain the consumer's age at the time an insurance  
202 application is completed does not constitute a defense to a  
203 violation of this section.

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

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

211       626.99 Life insurance solicitation.—

212       (4) DISCLOSURE REQUIREMENTS.—

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

222       (b) With respect to annuities, the insurer shall provide to  
223 each prospective purchaser a buyer's guide to annuities  
224 developed by the department and a contract summary before  
225 accepting any payment for the contract. ~~as provided in the~~  
226 ~~National Association of Insurance Commissioners (NAIC) Model~~  
227 ~~Annuity and Deposit Fund Regulation and~~ The policy must provide  
228 an unconditional refund for a period of at least 14 days. If the  
229 prospective owner of an annuity contract is 65 years of age or  
230 older:

231       1. An unconditional refund of premiums paid for a fixed  
232 annuity contract, including any contract fees or charges, must



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233 be available for a period of 30 days; and

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

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

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

252 Section 9. Subsections (3) and (5) of section 627.4554,  
253 Florida Statutes, as amended by section 9 of chapter 2008-237,  
254 Laws of Florida, are amended, present subsection (9) of that  
255 section is renumbered as subsection (10), and a new subsection  
256 (9) is added to that section, to read:

257 627.4554 Annuity investments by seniors.—

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

259 (a) "Annuity contract" means a fixed annuity, equity  
260 indexed annuity, fixed equity indexed annuity, or variable  
261 annuity that is individually solicited, whether the product is

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262 classified as an individual annuity or a group annuity.

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

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

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

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

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

283 (5) MITIGATION OF RESPONSIBILITY.—

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

290 (b) The department may order:

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

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

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

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

316 (9) PROHIBITED CHARGES.-An annuity contract issued to a  
317 senior consumer may not contain a surrender or deferred sales  
318 charge for a withdrawal of money from an annuity exceeding 10  
319 percent of the amount withdrawn. The charge shall be reduced

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320 annually by 1 percent so that no surrender or deferred sales  
321 charge exists after the end of the 10th policy year or at any  
322 time thereafter. This subsection does not apply to annuities  
323 purchased by an accredited investor or to those annuities  
324 specified in paragraph (7) (b).

325 Section 10. This act shall take effect July 1, 2010.