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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; creating s. 624.46223, F.S.; prohibiting a  
6           self-insurance association, fund, or pool from  
7           requiring its members to provide more than a specified  
8           maximum period of notice of any member's intent to  
9           withdraw; amending s. 626.221, F.S.; expanding the  
10          list of individuals who are exempt from the  
11          requirement to pass an examination before being issued  
12          a license as an agent, customer representative, or  
13          adjuster; amending s. 626.025, F.S.; including family  
14          members of insurance agents in a prohibition related  
15          to the transaction of life insurance; amending s.  
16          626.2815, F.S.; providing an exemption from certain  
17          continuing education requirements to certain agents;  
18          authorizing the department to take certain action in  
19          applying such exemption; amending s. 626.621, F.S.;  
20          expanding grounds for discretionary refusal,  
21          suspension, or revocation of certain licenses;  
22          amending s. 626.641, F.S.; prohibiting the Department  
23          of Financial Services from issuing certain licenses in  
24          certain circumstances; amending s. 626.798, F.S.;  
25          prohibiting a family member of a life insurance agent  
26          from being a beneficiary of certain policies;  
27          prohibiting an agent or a family member of such agent  
28          from being designated as a trustee or guardian or  
29          being granted power of attorney unless he or she is a

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30 family member of the policy owner; amending s.  
31 626.9521, F.S.; increasing the administrative fine  
32 that may be imposed for each willful violation of the  
33 offenses of twisting and churning; increasing the  
34 administrative fine that may be imposed for each  
35 willful violation of the offense of submitting  
36 fraudulent signatures on an application or policy-  
37 related document; requiring that a licensee make a  
38 reasonable effort to ascertain a customer's age at the  
39 time of completion of an insurance application;  
40 authorizing the use of video depositions in certain  
41 circumstances; amending s. 626.99, F.S.; requiring  
42 that the buyer's guide for fixed annuities be in the  
43 form provided by the National Association of Insurance  
44 Commissioners Annuity Disclosure Model Regulation;  
45 authorizing the use of a policy summary for variable  
46 annuities until the NAIC or the department develops a  
47 buyer's guide; extending the unconditional refund  
48 period for fixed annuity contracts and variable or  
49 market value annuity contracts for customers 65 years  
50 of age or older; requiring that the unconditional  
51 refund amount for a variable or market value annuity  
52 contract be equal to the cash surrender value provided  
53 in the contract, plus any fees or charges deducted  
54 from the premiums or imposed under the contract;  
55 providing for applicability of certain provisions;  
56 requiring that an insurer provide a prospective  
57 purchaser of an annuity policy with a buyer's guide to  
58 annuities; requiring that such buyer's guide contain

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59 certain information; requiring that an insurer attach  
60 a cover page to an annuity policy informing the  
61 purchaser of the unconditional refund period;  
62 requiring that the cover page provide other specified  
63 information; amending s. 627.4554, F.S.; defining the  
64 term "accredited investor"; authorizing the Department  
65 of Financial Services to order an insurance agent to  
66 pay monetary restitution to a senior consumer under  
67 certain circumstances; limiting the amount of such  
68 restitution; prohibiting an annuity contract issued to  
69 a senior consumer from containing a surrender or  
70 deferred sales charge for withdrawal of funds from an  
71 annuity in excess of a specified maximum amount;  
72 providing for the periodic reduction of such charge;  
73 providing an effective date.

74  
75 Be It Enacted by the Legislature of the State of Florida:

76  
77 Section 1. This act may be cited as the "Safeguard Our  
78 Seniors Act."

79 Section 2. Paragraph (a) of subsection (1) of section  
80 624.310, Florida Statutes, is amended to read:

81 624.310 Enforcement; cease and desist orders; removal of  
82 certain persons; fines.—

83 (1) DEFINITIONS.—For the purposes of this section, the  
84 term:

85 (a) "Affiliated party" means any person who directs or  
86 participates in the conduct of the affairs of a licensee and who  
87 is:

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88 1. A director, officer, employee, trustee, committee  
89 member, or controlling stockholder of a licensee or a subsidiary  
90 or service corporation of the licensee, other than a controlling  
91 stockholder which is a holding company, or an agent of a  
92 licensee or a subsidiary or service corporation of the licensee;

93 2. A person who has filed or is required to file a  
94 statement or any other information required to be filed under s.  
95 628.461 or s. 628.4615;

96 3. A stockholder, other than a stockholder that is a  
97 holding company of the licensee, who participates in the conduct  
98 of the affairs of the licensee; ~~or~~

99 4. An independent contractor who:

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

104 b. Affirmatively and knowingly conceals facts, through a  
105 written misrepresentation to the department or office, with  
106 knowledge that such misrepresentation:

107 (I) Constitutes a violation of the insurance code or a  
108 lawful rule or order of the department, commission, or office;  
109 and

110 (II) Directly and materially endangers the ability of the  
111 licensee to meet its obligations to policyholders; or-

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

115  
116 For the purposes of this subparagraph, any representation of

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117 fact made by an independent contractor on behalf of a licensee,  
118 affirmatively communicated as a representation of the licensee  
119 to the independent contractor, shall not be considered a  
120 misrepresentation by the independent contractor.

121 Section 3. Section 624.46223, Florida Statutes, is created  
122 to read:

123 624.46223 Notice of intent to withdraw.—Any association,  
124 fund, or pool authorized by state law and created for the  
125 purpose of forming a risk-management mechanism or providing self  
126 insurance for public entities in this state may not require its  
127 members to provide more than 45 days' notice of the member's  
128 intention to withdraw as a prerequisite for withdrawing from the  
129 association, fund, or pool.

130 Section 4. Paragraph (j) of subsection (2) of section  
131 626.221, Florida Statutes, is amended to read:

132 626.221 Examination requirement; exemptions.—

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

135 (j) An applicant for license as a customer representative  
136 who has earned the designation of Accredited Advisor in  
137 Insurance (AAI) from the Insurance Institute of America, the  
138 designation of Certified Insurance Counselor (CIC) from the  
139 Society of Certified Insurance Service Counselors, the  
140 designation of Accredited Customer Service Representative (ACSR)  
141 from the Independent Insurance Agents of America, the  
142 designation of Certified Professional Service Representative  
143 (CPSR) from the National Foundation for Certified Professional  
144 Service Representatives, the designation of Certified Insurance  
145 Service Representative (CISR) from the Society of Certified

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146 Insurance Service Representatives, or the designation of  
147 Certified Insurance Representative (CIR) from the National  
148 Association of Christian Catastrophe Insurance Adjusters. Also,  
149 an applicant for license as a customer representative who has  
150 earned an associate degree or bachelor's degree from an  
151 accredited college or university with at least 9 academic hours  
152 of property and casualty insurance curriculum, or the  
153 equivalent, or has earned the designation of Certified Customer  
154 Service Representative (CCSR) from the Florida Association of  
155 Insurance Agents, or the designation of Registered Customer  
156 Service Representative (RCSR) from a regionally accredited  
157 postsecondary institution in this state, or the designation of  
158 Professional Customer Service Representative (PCSR) from the  
159 Professional Career Institute, whose curriculum has been  
160 approved by the department and whose curriculum includes  
161 comprehensive analysis of basic property and casualty lines of  
162 insurance and testing at least equal to that of standard  
163 department testing for the customer representative license. The  
164 department shall adopt rules establishing standards for the  
165 approval of curriculum.

166 Section 5. Subsection (13) of section 626.025, Florida  
167 Statutes, is amended to read:

168 626.025 Consumer protections.—To transact insurance, agents  
169 shall comply with consumer protection laws, including the  
170 following, as applicable:

171 (13) The prohibition against the designation of a life  
172 insurance agent or his or her family member as the beneficiary  
173 of life insurance policy sold to an individual other than a  
174 family member under s. 626.798.

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175 Section 6. Paragraph (k) of subsection (3) of section  
176 626.2815, Florida Statutes, is amended to read:

177 626.2815 Continuing education required; application;  
178 exceptions; requirements; penalties.—

179 (3)

180 (k) Any person who holds a license to solicit or sell life  
181 insurance in this state must complete a minimum of 3 hours in  
182 continuing education, approved by the department, on the subject  
183 of suitability in annuity and life insurance transactions. This  
184 requirement does not apply to an agent who does not have any  
185 active life insurance or annuity contracts. In applying this  
186 exemption, the department may require the filing of a  
187 certification attesting that the agent has not sold life  
188 insurance or annuities during the continuing education  
189 compliance cycle in question and does not have any active life  
190 insurance or annuity contracts. A licensee may use the hours  
191 obtained under this paragraph to satisfy the requirement for  
192 continuing education in ethics under paragraph (a).

193 Section 7. Subsection (13) is added to section 626.621,  
194 Florida Statutes, to read:

195 626.621 Grounds for discretionary refusal, suspension, or  
196 revocation of agent's, adjuster's, customer representative's,  
197 service representative's, or managing general agent's license or  
198 appointment.—The department may, in its discretion, deny an  
199 application for, suspend, revoke, or refuse to renew or continue  
200 the license or appointment of any applicant, agent, adjuster,  
201 customer representative, service representative, or managing  
202 general agent, and it may suspend or revoke the eligibility to  
203 hold a license or appointment of any such person, if it finds

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204 that as to the applicant, licensee, or appointee any one or more  
205 of the following applicable grounds exist under circumstances  
206 for which such denial, suspension, revocation, or refusal is not  
207 mandatory under s. 626.611:

208 (13) Has been the subject of or has had a license, permit,  
209 appointment, registration, or other authority to conduct  
210 business subject to any decision, finding, injunction,  
211 suspension, prohibition, revocation, denial, judgment, final  
212 agency action, or administrative order by any court of competent  
213 jurisdiction, administrative law proceeding, state agency,  
214 federal agency, national securities, commodities, or option  
215 exchange, or national securities, commodities, or option  
216 association involving a violation of any federal or state  
217 securities or commodities law or any rule or regulation adopted  
218 thereunder, or a violation of any rule or regulation of any  
219 national securities, commodities, or options exchange or  
220 national securities, commodities, or options association.

221 Section 8. Subsection (3) of section 626.641, Florida  
222 Statutes, is amended to read:

223 626.641 Duration of suspension or revocation.—

224 (3)(a) If any of an individual's licenses as an agent or  
225 customer representative, or the eligibility to hold such license  
226 or licenses has ~~same, as to the same individual~~ have been  
227 revoked at two separate times, the department ~~may~~ shall not  
228 thereafter grant or issue any license under this code as to such  
229 individual.

230 (b) If a license as an agent or customer representative or  
231 the eligibility to hold such a license has been revoked  
232 resulting from the solicitation or sale of an insurance product



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233 to a person 65 years of age or older, the department may not  
234 thereafter grant or issue any license under this code to such  
235 individual.

236 Section 9. Section 626.798, Florida Statutes, is amended to  
237 read:

238 626.798 Life agent as beneficiary; prohibition.—No life  
239 agent shall, with respect to the placement of life insurance  
240 coverage with a life insurer covering the life of a person who  
241 is not a family member of the agent, handle in his or her  
242 capacity as a life agent the placement of such coverage when the  
243 agent placing the coverage or a family member of such agent  
244 ~~receives a commission therefor and~~ is the named beneficiary  
245 under the life insurance policy, unless the life agent or family  
246 member has an insurable interest in the life of such person.  
247 However, the agent or a family member of such agent may not be  
248 designated as a trustee or guardian or be granted power of  
249 attorney unless he or she is a family member of the policy  
250 owner. For the purposes of this section, the phrase "not a  
251 family member," with respect to a life agent, means an  
252 individual who is not related to the life agent as father,  
253 mother, son, daughter, brother, sister, grandfather,  
254 grandmother, uncle, aunt, first cousin, nephew, niece, husband,  
255 wife, father-in-law, mother-in-law, brother-in-law, sister-in-  
256 law, stepfather, stepmother, stepson, stepdaughter, stepbrother,  
257 stepsister, half brother, or half sister. For the purposes of  
258 this section, the term "insurable interest" means that the life  
259 agent has an actual, lawful, and substantial economic interest  
260 in the safety and preservation of the life of the insured or a  
261 reasonable expectation of benefit or advantage from the

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262 continued life of the insured.

263 Section 10. Paragraphs (a) and (b) of subsection (3) of  
264 section 626.9521, Florida Statutes, are amended, and subsections  
265 (4) and (5) are added to that section, to read:

266 626.9521 Unfair methods of competition and unfair or  
267 deceptive acts or practices prohibited; penalties.—

268 (3) (a) If a person violates s. 626.9541(1) (1), the offense  
269 known as "twisting," or violates s. 626.9541(1) (aa), the offense  
270 known as "churning," the person commits a misdemeanor of the  
271 first degree, punishable as provided in s. 775.082, and an  
272 administrative fine not greater than \$5,000 shall be imposed for  
273 each nonwillful violation or an administrative fine not greater  
274 than \$75,000 ~~\$40,000~~ shall be imposed for each willful  
275 violation. To impose an administrative fine for a willful  
276 violation ~~criminal penalties~~ under this paragraph, the practice  
277 of "churning" or "twisting" must involve fraudulent conduct.

278 (b) If a person violates s. 626.9541(1) (ee) by willfully  
279 submitting fraudulent signatures on an application or policy-  
280 related document, the person commits a felony of the third  
281 degree, punishable as provided in s. 775.082, and an  
282 administrative fine not greater than \$5,000 shall be imposed for  
283 each nonwillful violation or an administrative fine not greater  
284 than \$75,000 ~~\$40,000~~ shall be imposed for each willful  
285 violation.

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

289 (5) If a consumer who is a senior citizen is a victim, a  
290 video deposition of the victim may be used for any purpose in

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291 any administrative proceeding conducted pursuant to chapter 120  
292 if all parties are given proper notice of the deposition in  
293 accordance with the Florida Rules of Civil Procedure.

294 Section 11. Subsection (4) of section 626.99, Florida  
295 Statutes, is amended to read:

296 626.99 Life insurance solicitation.—

297 (4) DISCLOSURE REQUIREMENTS.—

298 (a) The insurer shall provide to each prospective purchaser  
299 a buyer's guide and a policy summary prior to accepting the  
300 applicant's initial premium or premium deposit, unless the  
301 policy for which application is made provides an unconditional  
302 refund for a period of at least 14 days, or unless the policy  
303 summary contains an offer of such an unconditional refund. In  
304 these instances, ~~which event~~ the buyer's guide and policy  
305 summary must be delivered with the policy or prior to delivery  
306 of the policy.

307 (b) With respect to fixed and variable annuities, ~~the~~  
308 ~~insurer shall provide to each prospective purchaser a buyer's~~  
309 ~~guide to annuities and a contract summary as provided in the~~  
310 ~~National Association of Insurance Commissioners (NAIC) Model~~  
311 ~~Annuity and Deposit Fund Regulation and the policy must provide~~  
312 ~~an unconditional refund for a period of at least 14 days. For~~  
313 fixed annuities, the buyer's guide shall be in the form as  
314 provided by the National Association of Insurance Commissioners  
315 (NAIC) Annuity Disclosure Model Regulation, until such time as a  
316 buyer's guide is developed by the department, at which time the  
317 department guide must be used. For variable annuities, a policy  
318 summary may be used, which may be contained in a prospectus,  
319 until such time as a buyer's guide is developed by NAIC or the

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320 department, at which time one of those guides must be used. If  
321 the prospective owner of an annuity contract is 65 years of age  
322 or older:

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

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

334 (c) The insurer shall attach a cover page to any annuity  
335 policy informing the purchaser of the unconditional refund  
336 period prescribed in paragraph (b). The cover page must also  
337 provide contact information for the issuing company and the  
338 selling agent, the department's toll-free help line, and any  
339 other information required by the department by rule. The cover  
340 page is part of the policy and is subject to review by the  
341 office pursuant to s. 627.410.

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

344 Section 12. Subsections (3) and (5) of section 627.4554,  
345 Florida Statutes, as amended by section 9 of chapter 2008-237,  
346 Laws of Florida, are amended, present subsection (9) of that  
347 section is renumbered as subsection (10), and a new subsection  
348 (9) is added to that section, to read:

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349 627.4554 Annuity investments by seniors.—

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

351 (a) "Annuity contract" means a fixed annuity, equity  
352 indexed annuity, fixed equity indexed annuity, or variable  
353 annuity that is individually solicited, whether the product is  
354 classified as an individual annuity or a group annuity.

355 (b) "Accredited investor" means any person who comes within  
356 any of the following categories, or who the issuer reasonably  
357 believes comes within any of the following categories, at the  
358 time of the sale of an annuity to that person:

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

361 2. The person had an individual income in excess of  
362 \$200,000 in each of the 2 most recent years, or joint income  
363 with his or her spouse in excess of \$300,000 in each of those  
364 years, and has a reasonable expectation of reaching the same  
365 income level in the current year.

366 (c) ~~(b)~~ "Recommendation" means advice provided by an  
367 insurance agent, or an insurer if no insurance agent is  
368 involved, to an individual senior consumer which results in a  
369 purchase or exchange of an annuity in accordance with that  
370 advice.

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

375 (5) MITIGATION OF RESPONSIBILITY.—

376 (a) The office may order an insurer to take reasonably  
377 appropriate corrective action, including rescission of the

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378 policy or contract and a full refund of the premiums paid or the  
379 accumulation value, whichever is greater, for any senior  
380 consumer harmed by a violation of this section by the insurer or  
381 the insurer's insurance agent.

382 (b) The department may order:

383 1. An insurance agent to take reasonably appropriate  
384 corrective action, including monetary restitution of penalties  
385 or fees incurred by the senior consumer, for any senior consumer  
386 harmed by a violation of this section by the insurance agent.

387 2. A managing general agency or insurance agency that  
388 employs or contracts with an insurance agent to sell or solicit  
389 the sale of annuities to senior consumers to take reasonably  
390 appropriate corrective action for any senior consumer harmed by  
391 a violation of this section by the insurance agent.

392 (c) The department shall, in addition to any other penalty  
393 authorized under chapter 626, order an insurance agent to pay  
394 restitution to any senior consumer who has been deprived of  
395 money by the agent's misappropriation, conversion, or unlawful  
396 withholding of monies belonging to the senior consumer in the  
397 course of a transaction involving annuities. The amount of  
398 restitution required to be paid pursuant to this paragraph may  
399 not exceed the amount misappropriated, converted, or unlawfully  
400 withheld. This paragraph does not limit or restrict a person's  
401 right to seek other remedies as provided by law.

402 (d)~~(e)~~ Any applicable penalty under the Florida Insurance  
403 Code for a violation of paragraph (4) (a), paragraph (4) (b), or  
404 subparagraph (4) (c)2. may be reduced or eliminated, according to  
405 a schedule adopted by the office or the department, as  
406 appropriate, if corrective action for the senior consumer was

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407 taken promptly after a violation was discovered.

408 (9) PROHIBITED CHARGES.—An annuity contract issued to a  
409 senior consumer may not contain a surrender or deferred sales  
410 charge for a withdrawal of money from an annuity exceeding 10  
411 percent of the amount withdrawn. The charge shall be reduced so  
412 that no surrender or deferred sales charge exists after the end  
413 of the 10th policy year or 10 years after the premium is paid,  
414 whichever is later. This subsection does not apply to annuities  
415 purchased by an accredited investor or to those annuities  
416 specified in paragraph (7) (b) .

417 Section 13. This act shall take effect January 1, 2011.