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

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

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

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

80 Section 2. Paragraph (a) of subsection (1) of section  
81 624.310, Florida Statutes, is amended to read:

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

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

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

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88 is:

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

94 2. A person who has filed or is required to file a  
95 statement or any other information required to be filed under s.  
96 628.461 or s. 628.4615;

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

100 4. An independent contractor who:

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

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

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

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

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

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

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

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

131 Section 4. Paragraph (j) of subsection (2) of section  
132 626.221, Florida Statutes, is amended to read:

133 626.221 Examination requirement; exemptions.—

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

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

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

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

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

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

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175 family member under s. 626.798.

176 Section 6. Paragraph (k) of subsection (3) of section  
177 626.2815, Florida Statutes, is amended to read:

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

180 (3)

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

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

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

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

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

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

224 626.641 Duration of suspension or revocation.—

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

231 (b) If a license as an agent or customer representative or  
232 the eligibility to hold such a license has been revoked



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233 resulting from the solicitation or sale of an insurance product  
234 to a person 65 years of age or older, the department may not  
235 thereafter grant or issue any license under this code to such  
236 individual.

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

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

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262 in the safety and preservation of the life of the insured or a  
263 reasonable expectation of benefit or advantage from the  
264 continued life of the insured.

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

268 626.9521 Unfair methods of competition and unfair or  
269 deceptive acts or practices prohibited; penalties.—

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

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

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

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

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

298 626.99 Life insurance solicitation.—

299 (4) DISCLOSURE REQUIREMENTS.—

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

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

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320 summary may be used, which may be contained in a prospectus,  
321 until such time as a buyer's guide is developed by NAIC or the  
322 department, at which time one of those guides must be used. If  
323 the prospective owner of an annuity contract is 65 years of age  
324 or older:

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

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

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

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

346 Section 12. Subsections (3) and (5) of section 627.4554,  
347 Florida Statutes, as amended by section 9 of chapter 2008-237,  
348 Laws of Florida, are amended, present subsection (9) of that

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

351 627.4554 Annuity investments by seniors.—

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

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

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

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

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

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

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

377 (5) MITIGATION OF RESPONSIBILITY.—

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378 (a) The office may order an insurer to take reasonably  
379 appropriate corrective action, including rescission of the  
380 policy or contract and a full refund of the premiums paid or the  
381 accumulation value, whichever is greater, for any senior  
382 consumer harmed by a violation of this section by the insurer or  
383 the insurer's insurance agent.

384 (b) The department may order:

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

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

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

404 (d)~~(e)~~ Any applicable penalty under the Florida Insurance  
405 Code for a violation of paragraph (4) (a), paragraph (4) (b), or  
406 subparagraph (4) (c)2. may be reduced or eliminated, according to

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407 a schedule adopted by the office or the department, as  
408 appropriate, if corrective action for the senior consumer was  
409 taken promptly after a violation was discovered.

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

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