

By Senator Atwater

25-1095-04

See HB 965

1 A bill to be entitled
 2 An act relating to annuity investments by
 3 seniors; creating s. 627.4554, F.S.; providing
 4 a purpose; providing application; providing
 5 definitions; specifying duties of insurers and
 6 insurance agents relating to making annuity
 7 investment recommendations to senior consumers;
 8 providing requirements; limiting responsibility
 9 of insurers or insurance agents under certain
 10 circumstances; requiring a system of compliance
 11 and supervision; providing for enforcement by
 12 the Office of Financial Regulation of the
 13 Financial Services Commission; authorizing the
 14 office to issue certain orders to mitigate
 15 certain responsibilities of insurers or
 16 insurance agents; providing for reduction or
 17 elimination of certain penalties under certain
 18 circumstances; providing recordkeeping
 19 requirements; providing exemptions from
 20 application; requiring the Department of
 21 Financial Services and the office to enforce
 22 compliance; authorizing the department and
 23 commission to adopt rules; providing an
 24 effective date.

25
 26 Be It Enacted by the Legislature of the State of Florida:

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 28 Section 1. Section 627.4554, Florida Statutes, is
 29 created to read:

30 627.4554 Annuity investments by seniors.--

31 (1) PURPOSE; CONSTRUCTION.--

1 (a) The purpose of this section is to set forth
2 standards and procedures for recommendations to senior
3 consumers which result in a transaction involving annuity
4 products to appropriately address the insurance needs and
5 financial objectives of senior consumers at the time of the
6 transaction.

7 (b) Nothing in this section shall be construed to
8 create or imply a private cause of action for a violation of
9 this section.

10 (2) APPLICATION.--This section applies to any
11 recommendation to purchase or exchange an annuity made to a
12 senior consumer by an insurance agent, or an insurer where no
13 agent is involved, that results in the purchase or exchange
14 recommended.

15 (3) DEFINITIONS.--For purposes of this section:

16 (a) "Annuity" means a fixed annuity or variable
17 annuity that is individually solicited, whether the product is
18 classified as an individual annuity or a group annuity.

19 (b) "Recommendation" means advice provided by an
20 insurance agent, or an insurer if no insurance agent is
21 involved, to an individual senior consumer which results in a
22 purchase or exchange of an annuity in accordance with that
23 advice.

24 (c) "Senior consumer" means a person 64 years of age
25 or older. In the event of a joint purchase by more than one
26 party, a purchaser is considered to be a senior consumer if
27 any of the parties is age 64 or older.

28 (4) DUTIES OF INSURERS AND INSURANCE AGENTS.--

29 (a) In recommending to a senior consumer the purchase
30 of an annuity or the exchange of an annuity that results in
31 another insurance transaction or series of insurance

1 transactions, an insurance agent, or an insurer if no
2 insurance agent is involved, shall have reasonable grounds for
3 believing that the recommendation is suitable for the senior
4 consumer on the basis of the facts disclosed by the senior
5 consumer as to his or her investments and other insurance
6 products and as to his or her financial situation and needs.

7 (b) Before executing a purchase or exchange of an
8 annuity resulting from a recommendation to a senior consumer,
9 an insurance agent, or an insurer if no insurance agent is
10 involved, shall make reasonable efforts to obtain information
11 concerning the senior consumer's financial status, tax status,
12 and investment objectives and such other information used or
13 considered to be reasonable by the insurance agent, or the
14 insurer if no agent is involved, in making the recommendation.

15 (c)1. Except as provided under subparagraph 2., an
16 insurance agent, or an insurer if no insurance agent is
17 involved, shall not have any obligation to a senior consumer
18 under paragraph (a) related to any recommendation if the
19 senior consumer:

20 a. Refuses to provide relevant information requested
21 by the insurer or insurance agent;

22 b. Decides to enter into an insurance transaction that
23 is not based on a recommendation of the insurer or insurance
24 agent; or

25 c. Fails to provide complete or accurate information.

26 2. An insurer or insurance agent's recommendation
27 subject to subparagraph 1. shall be reasonable under all the
28 circumstances actually known to the insurer or insurance agent
29 at the time of the recommendation.

30 (d)1. An insurer or insurance agent shall ensure that
31 a system to supervise recommendations which is reasonably

1 designed to achieve compliance with this section is
2 established and maintained by complying with subparagraphs 3.,
3 4., and 5., or shall establish and maintain such a system,
4 including, but not limited to:
5 a. Maintaining written procedures.
6 b. Conducting periodic reviews of its records that are
7 reasonably designed to assist in detecting and preventing
8 violations of this section.
9 2. A managing general agent and an insurance agency
10 shall adopt a system established by an insurer to supervise
11 recommendations of its insurance agents which is reasonably
12 designed to achieve compliance with this section or shall
13 establish and maintain such a system, including, but not
14 limited to:
15 a. Maintaining written procedures.
16 b. Conducting periodic reviews of records that are
17 reasonably designed to assist in detecting and preventing
18 violations of this section.
19 3. An insurer may contract with a third party,
20 including a managing general agent or an insurance agency, to
21 establish and maintain a system of supervision as required by
22 subparagraph 1. with respect to insurance agents under
23 contract with or employed by the third party.
24 4. An insurer shall make reasonable inquiry to ensure
25 that such third party contracting under subparagraph 3. is
26 performing the functions required under subparagraph 1. and
27 shall take such action as is reasonable under the
28 circumstances to enforce the contractual obligation to perform
29 the functions. An insurer may comply with its obligation to
30 make reasonable inquiry by:
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1 a. Annually obtaining a certification from a third
2 party senior manager who has responsibility for the delegated
3 functions that the manager has a reasonable basis to
4 represent, and does represent, that the third party is
5 performing the required functions.

6 b. Based on reasonable selection criteria,
7 periodically selecting third parties contracting under
8 subparagraph 3. for a review to determine whether the third
9 parties are performing the required functions. The insurer
10 shall perform any procedures necessary to conduct the review
11 which are reasonable under the circumstances.

12 5. An insurer that contracts with a third party
13 pursuant to subparagraph 3. and complies with the requirements
14 specified in subparagraph 4. is deemed to have fulfilled its
15 responsibilities under subparagraph 1.

16 6. An insurer, managing general agent, or insurance
17 agency is not required by subparagraph 1. or subparagraph 2.
18 to:

19 a. Review or provide for review of all transactions
20 solicited by an insurance agent; or

21 b. Include in its system of supervision an insurance
22 agent's recommendations to senior consumers of products other
23 than the annuities offered by the insurer, managing general
24 agent, or insurance agency.

25 7. A managing general agent or insurance agency
26 contracting with an insurer pursuant to subparagraph 3. shall
27 promptly, when requested by the insurer pursuant to
28 subparagraph 4., provide a certification as described in
29 subparagraph 4. or provide a clear statement that the managing
30 general agent or insurance agency is unable to meet the
31 certification criteria.

1 8. A person may not provide a certification under
2 sub-subparagraph 4.a. unless the person is a senior manager
3 with responsibility for the delegated functions and has a
4 reasonable basis for making the certification.

5 (5) MITIGATION OF RESPONSIBILITY.--

6 (a) The office may order an insurer to take reasonably
7 appropriate corrective action for any senior consumer harmed
8 by a violation of this section by the insurer or the insurer's
9 insurance agent.

10 (b) The department may order:

11 1. An insurance agent to take reasonably appropriate
12 corrective action for any senior consumer harmed by a
13 violation of this section by the insurance agent.

14 2. A managing general agency or insurance agency that
15 employs or contracts with an insurance agent to sell or
16 solicit the sale of annuities to senior consumers to take
17 reasonably appropriate corrective action for any senior
18 consumer harmed by a violation of this section by the
19 insurance agent.

20 (c) Any applicable penalty under this chapter for a
21 violation of paragraph (4)(a), paragraph (4)(b), or
22 subparagraph (4)(c)2. may be reduced or eliminated, according
23 to a schedule adopted by the office, if corrective action for
24 the senior consumer was taken promptly after a violation was
25 discovered.

26 (6) RECORDKEEPING.--

27 (a) Insurers, managing general agents, insurance
28 agencies, and insurance agents shall maintain or be able to
29 make available to the department or office, as appropriate,
30 records of the information collected from the senior consumer
31 and other information used in making the recommendations that

1 were the basis for insurance transactions for 5 years after
2 the insurance transaction is completed by the insurer. An
3 insurer is permitted, but shall not be required, to maintain
4 documentation on behalf of an insurance agent.

5 (b) Records required to be maintained by this
6 regulation may be maintained in paper, photographic,
7 microprocess, magnetic, mechanical, or electronic media, or by
8 any process that accurately reproduces the actual document.

9 (7) EXEMPTIONS.--Unless otherwise specifically
10 included, this section does not apply to recommendations
11 involving:

12 (a) Direct-response solicitations where there is no
13 recommendation based on information collected from the senior
14 consumer pursuant to this section.

15 (b) Contracts used to fund:

16 1. An employee pension or welfare benefit plan that is
17 covered by the Employee Retirement and Income Security Act;

18 2. A plan described by Sections 401(a), 401(k),
19 403(b), 408(k), or 408(p) of the Internal Revenue Code of
20 1986, as amended, if established or maintained by an employer;

21 3. A government or church plan defined in Section 414
22 of the Internal Revenue Code of 1986, as amended, a government
23 or church welfare benefit plan, or a deferred compensation
24 plan of a state or local government or tax-exempt organization
25 under Section 457 of the Internal Revenue Code of 1986, as
26 amended;

27 4. A nonqualified deferred compensation arrangement
28 established or maintained by an employer or plan sponsor;

29 5. Settlements of or assumptions of liabilities
30 associated with personal injury litigation or any dispute or
31 claim resolution process; or

1 6. Prepaid funeral contracts.
2 (8)(a) The department shall enforce compliance with
3 this section by insurance agents, insurance agencies, and
4 managing general agents and may adopt rules to implement this
5 section and apply this section to insurance agents and
6 managing general agents.
7 (b) The office shall enforce compliance with this
8 section by insurers. The commission may adopt rules to
9 implement this section and apply this section to insurers.
10 Section 2. This act shall take effect October 1, 2004.
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