

1 the Office of Insurance Regulation and the
2 Department of Financial Services; authorizing
3 the office and the department to issue orders
4 to mitigate certain responsibilities of
5 insurers or insurance agents; providing for
6 reduction or elimination of certain penalties
7 under certain circumstances; providing
8 recordkeeping requirements; providing an
9 exemption from application for variable
10 annuities; providing effective dates.

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12 Be It Enacted by the Legislature of the State of Florida:

13
14 Section 1. Subsection (8) is added to section 624.402,
15 Florida Statutes, to read:

16 624.402 Exceptions, certificate of authority
17 required.--A certificate of authority shall not be required of
18 an insurer with respect to:

19 (8)(a) Life insurance policies or annuity contracts
20 issued by an insurer domiciled outside the United States
21 covering only persons who are not residents of the United
22 States at the time of issuance, if the insurer meets the
23 following requirements:

24 1. The insurer must be currently an authorized insurer
25 in its country of domicile as to the kind or kinds of
26 insurance proposed to be offered and must have been such an
27 insurer for not less than the 3 years next preceding, must be
28 the wholly owned subsidiary of such authorized insurer, or
29 must be the wholly owned subsidiary of an already eligible
30 authorized insurer as to the kind or kinds of insurance
31 proposed for a period of not less than the 3 years next

1 preceding. However, the office may waive the 3-year
2 requirement if the insurer has operated successfully for a
3 period of at least 1 year next preceding and has capital and
4 surplus of not less than \$25 million;

5 2. The requesting insurer must furnish the office a
6 duly authenticated copy of its current annual financial
7 statement in the English language, with all monetary values
8 therein expressed in United States dollars, at an exchange
9 rate, in the case of statements originally made in the
10 currencies of other countries, then-current and shown in the
11 statement, and with such additional information relative to
12 the insurer as the office requests;

13 3. The insurer must have and maintain surplus as to
14 policyholders of not less than \$15 million. Any such surplus
15 as to policyholders shall be represented by investments
16 consisting of eligible investments for like funds of like
17 domestic insurers under part II of chapter 625; however, any
18 such surplus as to policyholders may be represented by
19 investments permitted by the domestic regulator of such alien
20 insurance company if such investments are substantially
21 similar in terms of quality, liquidity, and security to
22 eligible investments for like funds of like domestic insurers
23 under part II of chapter 625;

24 4. The insurer must be of good reputation as to the
25 providing of service to its policyholders and the payment of
26 losses and claims;

27 5. To maintain eligibility, the insurer must furnish
28 the office within the time period specified in s.
29 624.424(1)(a) a duly authenticated copy of its current annual
30 and quarterly financial statements in the English language,
31 with all monetary values therein expressed in United States

1 dollars, at an exchange rate, in the case of statements
2 originally made in the currencies of other countries,
3 then-current and shown in the statement, and with such
4 additional information relative to the insurer as the office
5 requests;

6 6. The insurer must agree to make its books and
7 records pertaining to its operations from Florida available
8 for inspection during normal business hours upon request of
9 the office; and

10 7. The insurer must provide to the applicant for the
11 policy or contract a copy of the most recent quarterly
12 financial statements of the insurer, in clear and conspicuous
13 language:

14 a. The date of organization of the insurer;

15 b. The identity of and rating assigned by each
16 recognized insurance company rating organization that has
17 rated the insurer or, if applicable, that the insurer is
18 unrated;

19 c. That the insurer does not hold a certificate of
20 authority issued in Florida and that the Office of Insurance
21 Regulation does not exercise regulatory oversight over the
22 insurer; and

23 d. The identity and address of the regulatory
24 authority exercising oversight of the insurer.

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26 This paragraph shall not be deemed to cast upon the office any
27 duty or responsibility to determine the actual financial
28 condition or claims practices of any unauthorized insurer and
29 the status of eligibility, if granted by the office, shall
30 indicate only that the insurer appears to be sound financially
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1 and to have satisfactory claims practices and that the office
2 has no credible evidence to the contrary.

3 (b) If at any time the office has reason to believe
4 that an insurer issuing policies or contracts pursuant to this
5 subsection is insolvent or in unsound financial condition,
6 does not make reasonable prompt payment of benefits, or is no
7 longer eligible under the conditions specified in this
8 subsection, it shall withdraw the eligibility of the insurer
9 to issue policies or contracts pursuant to this subsection
10 without having a certificate of authority issued by the
11 office.

12 (c) This subsection does not provide an exception to
13 the agent licensure requirements of chapter 626. Any insurer
14 issuing policies or contracts pursuant to this subsection
15 shall appoint the agents that it uses to sell such policies or
16 contracts, as provided in chapter 626.

17 (d) An insurer issuing policies or contracts pursuant
18 to this subsection is subject to part IX of chapter 626,
19 Unfair Insurance Trade Practices, and the office may take such
20 actions against the insurer for a violation as are provided in
21 that part.

22 (e) Policies and contracts issued pursuant to this
23 subsection are not subject to the premium tax specified in s.
24 624.509.

25 (f) Applications for life insurance coverage offered
26 under this subsection must contain, in contrasting color and
27 not less than 12-point type, the following statement on the
28 same page as the applicant's signature:

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30 "This policy is primarily governed by the laws
31 of a foreign country. As a result, all of the

1 rating and underwriting laws applicable to
2 policies filed in this state do not apply to
3 this coverage, which may result in your
4 premiums being higher than would be permissible
5 under a Florida-approved policy. Any purchase
6 of individual life insurance should be
7 considered carefully, as future medical
8 conditions may make it impossible to qualify
9 for another individual life policy. If the
10 insurer issuing your policy becomes insolvent,
11 this policy is not covered by the Florida Life
12 and Health Insurance Guaranty Association. For
13 information concerning individual life coverage
14 under a Florida-approved policy, consult your
15 agent or the Florida Department of Financial
16 Services."

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18 (g) All life insurance policies and annuity contracts
19 issued pursuant to this subsection must contain on the first
20 page of the policy or contract, in contrasting color and not
21 less than 10-point type, the following statement:

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23 "The benefits of the policy providing your
24 coverage are governed primarily by the law of a
25 country other than the United States."

26
27 (h) All single premium life insurance policies and
28 single premium annuity contracts issued to persons who are not
29 residents of the United States pursuant to this subsection are
30 subject to the provisions of chapter 896.

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1 Section 2. Subsection (2) of section 627.404, Florida
2 Statutes, is amended to read:

3 627.404 Insurable interest; personal insurance.--

4 (2) A charitable organization ~~that meets the~~
5 ~~requirements of s. 501(c)(3) of the Internal Revenue Code of~~
6 ~~1986, as amended,~~ may own or purchase life insurance on an
7 insured who consents to the ownership or purchase of that
8 insurance. For purposes of this subsection, the term
9 "charitable organization" means:

10 (a) Any organization that meets the requirements of s.
11 501(c)(3) of the Internal Revenue Code of 1986, as amended;

12 (b) Any organization to which a charitable
13 contribution could be made under s. 170(c)(1), s. 170(c)(2),
14 or s. 170(c)(3) of the Internal Revenue Code of 1986, as
15 amended; or

16 (c) Any trust, partnership, limited liability company,
17 or similar entity that is approved in writing by an
18 organization described in paragraph (a) or paragraph (b) to
19 procure or cause to be procured the combination of a life
20 insurance policy and annuity contract on the life of an
21 individual insured. Before an entity described in this
22 paragraph can qualify as a "charitable organization" for
23 purposes of this subsection, either:

24 1. The individual insured must be an "accredited
25 investor" as defined in s. 230.501(a) in Rule 501 Reg D of the
26 Securities Act Rules; or

27 2. The approving organization described in paragraph
28 (a) or paragraph (b) must have total assets in excess of \$5
29 million at the time the application for the life insurance
30 policy and annuity contract is made.

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1 Except in the case of a material default or insolvency of
2 either the life insurer or annuity company or a
3 misrepresentation of the individual insured on the application
4 for either the life insurance policy or annuity contract
5 providing grounds for a contest by the life insurer or annuity
6 company, the life insurance policy procured or caused to be
7 procured by an entity described in paragraph (c) may not be
8 assigned or transferred by such entity. Such charitable
9 organization has an insurable interest in the life of the
10 insured whether the charitable organization originally
11 purchased the insurance or the insurance is later transferred
12 to the charitable organization by the insured.

13 Section 3. Section 627.4554, Florida Statutes, is
14 created to read:

15 627.4554 Annuity investments by seniors.--

16 (1) PURPOSE; CONSTRUCTION.--

17 (a) The purpose of this section is to set forth
18 standards and procedures for recommendations to senior
19 consumers which result in a transaction involving annuity
20 products to appropriately address the insurance needs and
21 financial objectives of senior consumers at the time of the
22 transaction.

23 (b) Nothing in this section shall be construed to
24 create or imply a private cause of action for a violation of
25 this section.

26 (2) APPLICATION.--This section applies to any
27 recommendation to purchase or exchange an annuity made to a
28 senior consumer by an insurance agent, or an insurer where no
29 agent is involved, that results in the purchase or exchange
30 recommended.

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

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

4 (b) "Recommendation" means advice provided by an
5 insurance agent, or an insurer if no insurance agent is
6 involved, to an individual senior consumer which results in a
7 purchase or exchange of an annuity in accordance with that
8 advice.

9 (c) "Senior consumer" means a person 65 years of age
10 or older. In the event of a joint purchase by more than one
11 party, a purchaser is considered to be a senior consumer if
12 any of the parties is age 65 or older.

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

14 (a) In recommending to a senior consumer the purchase
15 of an annuity or the exchange of an annuity that results in
16 another insurance transaction or series of insurance
17 transactions, an insurance agent, or an insurer if no
18 insurance agent is involved, shall have reasonable grounds for
19 believing that the recommendation is suitable for the senior
20 consumer on the basis of the facts disclosed by the senior
21 consumer as to his or her investments and other insurance
22 products and as to his or her financial situation and needs.

23 (b) Before executing a purchase or exchange of an
24 annuity resulting from a recommendation to a senior consumer,
25 an insurance agent, or an insurer if no insurance agent is
26 involved, shall make reasonable efforts to obtain information
27 concerning the senior consumer's financial status, tax status,
28 and investment objectives and such other information used or
29 considered to be reasonable by the insurance agent, or the
30 insurer if no agent is involved, in making the recommendation.

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

6 a. Refuses to provide relevant information requested
7 by the insurer or insurance agent;

8 b. Decides to enter into an insurance transaction that
9 is not based on a recommendation of the insurer or insurance
10 agent; or

11 c. Fails to provide complete or accurate information.

12 2. An insurer or insurance agent's recommendation
13 subject to subparagraph 1. shall be reasonable under all the
14 circumstances actually known to the insurer or insurance agent
15 at the time of the recommendation.

16 (d)1. An insurer or insurance agent shall ensure that
17 a system to supervise recommendations which is reasonably
18 designed to achieve compliance with this section is
19 established and maintained by complying with subparagraphs 3.,
20 4., and 5., or shall establish and maintain such a system,
21 including, but not limited to:

22 a. Maintaining written procedures.

23 b. Conducting periodic reviews of its records that are
24 reasonably designed to assist in detecting and preventing
25 violations of this section.

26 2. A managing general agent and an insurance agency
27 shall adopt a system established by an insurer to supervise
28 recommendations of its insurance agents which is reasonably
29 designed to achieve compliance with this section or shall
30 establish and maintain such a system, including, but not
31 limited to:

- 1 a. Maintaining written procedures.
- 2 b. Conducting periodic reviews of records that are
3 reasonably designed to assist in detecting and preventing
4 violations of this section.
- 5 3. An insurer may contract with a third party,
6 including a managing general agent or an insurance agency, to
7 establish and maintain a system of supervision as required by
8 subparagraph 1. with respect to insurance agents under
9 contract with or employed by the third party.
- 10 4. An insurer shall make reasonable inquiry to ensure
11 that such third party contracting under subparagraph 3. is
12 performing the functions required under subparagraph 1. and
13 shall take such action as is reasonable under the
14 circumstances to enforce the contractual obligation to perform
15 the functions. An insurer may comply with its obligation to
16 make reasonable inquiry by:
- 17 a. Annually obtaining a certification from a third
18 party senior manager who has responsibility for the delegated
19 functions that the manager has a reasonable basis to
20 represent, and does represent, that the third party is
21 performing the required functions.
- 22 b. Based on reasonable selection criteria,
23 periodically selecting third parties contracting under
24 subparagraph 3. for a review to determine whether the third
25 parties are performing the required functions. The insurer
26 shall perform any procedures necessary to conduct the review
27 which are reasonable under the circumstances.
- 28 5. An insurer that contracts with a third party
29 pursuant to subparagraph 3. and complies with the requirements
30 specified in subparagraph 4. is deemed to have fulfilled its
31 responsibilities under subparagraph 1.

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

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

6 b. Include in its system of supervision an insurance
7 agent's recommendations to senior consumers of products other
8 than the annuities offered by the insurer, managing general
9 agent, or insurance agency.

10 7. A managing general agent or insurance agency
11 contracting with an insurer pursuant to subparagraph 3. shall
12 promptly, when requested by the insurer pursuant to
13 subparagraph 4., provide a certification as described in
14 subparagraph 4. or provide a clear statement that the managing
15 general agent or insurance agency is unable to meet the
16 certification criteria.

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

21 (5) MITIGATION OF RESPONSIBILITY.--

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

26 (b) The department may order:

27 1. An insurance agent to take reasonably appropriate
28 corrective action for any senior consumer harmed by a
29 violation of this section by the insurance agent.

30 2. A managing general agency or insurance agency that
31 employs or contracts with an insurance agent to sell or

1 solicit the sale of annuities to senior consumers to take
2 reasonably appropriate corrective action for any senior
3 consumer harmed by a violation of this section by the
4 insurance agent.

5 (c) Any applicable penalty under the Florida Insurance
6 Code for a violation of paragraph (4)(a), paragraph (4)(b), or
7 subparagraph (4)(c)2. may be reduced or eliminated, according
8 to a schedule adopted by the office or the department, as
9 appropriate, if corrective action for the senior consumer was
10 taken promptly after a violation was discovered.

11 (6) RECORDKEEPING.--

12 (a) Insurers, managing general agents, insurance
13 agencies, and insurance agents shall maintain or be able to
14 make available to the department or office, as appropriate,
15 records of the information collected from the senior consumer
16 and other information used in making the recommendations that
17 were the basis for insurance transactions for 5 years after
18 the insurance transaction is completed by the insurer. An
19 insurer is permitted, but shall not be required, to maintain
20 documentation on behalf of an insurance agent.

21 (b) Records required to be maintained by this
22 regulation may be maintained in paper, photographic,
23 microprocess, magnetic, mechanical, or electronic media, or by
24 any process that accurately reproduces the actual document.

25 (7) EXEMPTIONS.--Unless otherwise specifically
26 included, this section does not apply to recommendations
27 involving:

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

31 (b) Contracts used to fund:

- 1 1. An employee pension or welfare benefit plan that is
2 covered by the Employee Retirement and Income Security Act;
3 2. A plan described by Sections 401(a), 401(k),
4 403(b), 408(k), or 408(p) of the Internal Revenue Code of
5 1986, as amended, if established or maintained by an employer;
6 3. A government or church plan defined in Section 414
7 of the Internal Revenue Code of 1986, as amended, a government
8 or church welfare benefit plan, or a deferred compensation
9 plan of a state or local government or tax-exempt organization
10 under Section 457 of the Internal Revenue Code of 1986, as
11 amended;
12 4. A nonqualified deferred compensation arrangement
13 established or maintained by an employer or plan sponsor;
14 5. Settlements of or assumptions of liabilities
15 associated with personal injury litigation or any dispute or
16 claim resolution process; or
17 6. Prepaid funeral contracts.
18 (8) APPLICATION TO VARIABLE ANNUITIES.--Compliance
19 with the National Association of Securities Dealers Conduct
20 Rules in effect on January 1, 2004, shall satisfy the
21 requirements under this section for the recommendation of
22 variable annuities. This section does not limit the
23 department's ability to enforce the provisions of this section
24 with respect to insurance agents, insurance agencies, and
25 managing general agents, or the office's ability to enforce
26 the provisions of this section with respect to insurers.
27 Section 4. Except for this section and section 2 of
28 this act, which shall take effect upon becoming a law, this
29 act shall take effect July 1, 2004.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
CS/SB 2442

The committee substitute also enacts legislation, based on model regulations adopted by the National Association of Insurance Commissioners (NAIC), which is intended to help protect senior consumers (age 65 or older) when they purchase or exchange annuity products. The measure is designed to ensure that the insurance needs and financial objectives of senior consumers are appropriately addressed by establishing standards and procedures for insurance agents, or insurance companies if no agent is involved, in the sale of these products to senior consumers.