

Committee Substitute for
Committee Substitute for Senate Bill No. 2082

An act relating to insurance; providing a short title; amending s. 626.171, F.S.; requiring that an applicant for licensure as an insurance agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary provide to the Department of Financial Services his or her contact and business telephone numbers and e-mail address; amending s. 626.2815, F.S.; requiring persons licensed to solicit or sell life insurance to complete a specified number of hours in continuing education on the subject of suitability in annuity and life insurance transactions; amending s. 626.551, F.S.; requiring that a licensee notify the department within 60 days after a change in contact or business telephone numbers or e-mail address; amending s. 626.9521, F.S.; providing for administrative fines and criminal penalties for offenses involving misleading representations or fraudulent comparisons or omissions, the generation of unlawful fees and commissions, or the use of fraudulent signatures; limiting the aggregate amounts of fines; providing for other administrative fines to supersede the administrative fines and penalties provided by the act under certain conditions; amending s. 626.9541, F.S.; revising the elements of the offense known as “churning” to include direct or indirect purchases made for the purpose of earning fees or commissions; providing that the willful submission of certain fraudulent signatures or the misrepresentation of a licensee’s qualifications constitute an unfair method of competition and an unfair or deceptive act or practice; amending s. 626.99, F.S.; revising requirements for life insurance or annuity policies to increase the period of time allowed for obtaining an unconditional refund; requiring insurers for all types of annuities to provide a buyer’s guide and a policy summary to the buyer; amending s. 627.4554, F.S.; revising the regulation of recommendations relating to the sale of annuities to senior consumers; redefining the term “annuity”; requiring that an agent obtain financial and other information concerning the senior consumer before executing a purchase or exchange of an annuity; requiring that the agent perform a suitability analysis relative to the investment he or she recommends and document the analysis in writing; requiring an agent to provide a comparison of current and recommended products if the transaction involves the replacement or exchange of an annuity; requiring an agent to provide information about any surrender charges and tax consequences; exempting certain persons from compliance with certain separate suitability determinations under certain circumstances; authorizing the department and Financial Services Commission to adopt rules; amending s. 627.551, F.S.; expanding the list of life insurance policies and plans of self-insurance that are exempt from certain provisions of state law; providing for contingent effect; amending s. 627.805, F.S.; providing for regulation of the issuance and sale of variable and indeterminate value contracts by

the department, the Office of Insurance Regulation, and the Office of Financial Regulation; authorizing the department and the commission to adopt rules; providing an effective date for such rulemaking authority; providing for applicability of such rules; providing effective dates.

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

Section 1. This act may be cited as the “John and Patricia Seibel Act.”

Section 2. Paragraph (a) of subsection (2) of section 626.171, Florida Statutes, is amended to read:

626.171 Application for license as an agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary.—

(2) In the application, the applicant shall set forth:

(a) His or her full name, age, social security number, residence address, business address, ~~and mailing address, contact telephone numbers, including~~ a business telephone number, and e-mail address.

However, the application must contain a statement that an applicant is not required to disclose his or her race or ethnicity, gender, or native language, that he or she will not be penalized for not doing so, and that the department will use this information exclusively for research and statistical purposes and to improve the quality and fairness of the examinations.

Section 3. Paragraph (k) is added to subsection (3) of section 626.2815, Florida Statutes, to read:

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

(3)

(k) Any person who holds a license to solicit or sell life insurance in this state must complete a minimum of 3 hours in continuing education, approved by the department, on the subject of suitability in annuity and life insurance transactions. A licensee may use the hours obtained under this paragraph to satisfy the requirement for continuing education in ethics under paragraph (a).

Section 4. Section 626.551, Florida Statutes, is amended to read:

626.551 Notice of change of address, name.—Every licensee shall notify the department in writing within 60 days after a change of name, residence address, principal business street address, ~~or mailing address, contact telephone numbers, including a business telephone number, or e-mail address.~~

A ~~Any~~ licensed agent who has moved his or her residence from this state shall have his or her license and all appointments immediately terminated by the department. Failure to notify the department within the required

time period shall result in a fine not to exceed \$250 for the first offense and, for subsequent offenses, a fine of at least ~~not less than~~ \$500 or suspension or revocation of the license pursuant to s. 626.611 or s. 626.621.

Section 5. Section 626.9521, Florida Statutes, is amended to read:

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

(1) No person shall engage in this state in any trade practice which is defined in this part as, or determined pursuant to s. 626.951 or s. 626.9561 to be, an unfair method of competition or an unfair or deceptive act or practice involving the business of insurance.

(2) Except as provided in subsection (3), any person who violates any provision of this part is shall be subject to a fine in an amount not greater than \$2,500 for each nonwillful violation and not greater than \$20,000 for each willful violation. Fines under this subsection may not exceed an aggregate amount of \$10,000 for all nonwillful violations arising out of the same action or an aggregate amount of \$100,000 for all willful violations arising out of the same action. The fines ~~authorized by this subsection~~ may be imposed in addition to any other applicable penalty.

(3)(a) If a person violates s. 626.9541(1)(l), the offense known as “twisting,” or violates s. 626.9541(1)(aa), the offense known as “churning,” the person commits a misdemeanor of the first degree, punishable as provided in s. 775.082, and an administrative fine not greater than \$5,000 shall be imposed for each nonwillful violation or an administrative fine not greater than \$30,000 shall be imposed for each willful violation. To impose criminal penalties under this paragraph, the practice of “churning” or “twisting” must involve fraudulent conduct.

(b) If a person violates s. 626.9541(1)(ee) by willfully submitting fraudulent signatures on an application or policy-related document, the person commits a felony of the third degree, punishable as provided in s. 775.082, and an administrative fine not greater than \$5,000 shall be imposed for each nonwillful violation or an administrative fine not greater than \$30,000 shall be imposed for each willful violation.

(c) Administrative fines under this subsection may not exceed an aggregate amount of \$50,000 for all nonwillful violations arising out of the same action or an aggregate amount of \$250,000 for all willful violations arising out of the same action.

Section 6. Any increase in the fines imposed under s. 626.9521, Florida Statutes, which exceeds the increase provided by this act shall supersede the amendments made to that section by this act if such increase is enacted during the 2008 legislative session and becomes law, and the amendments to s. 626.9521, Florida Statutes, made by this act shall not take effect.

Section 7. Paragraph (aa) of subsection (1) of section 626.9541, Florida Statutes, is amended, and paragraphs (ee) and (ff) are added to that subsection, to read:

626.9541 Unfair methods of competition and unfair or deceptive acts or practices defined.—

(1) UNFAIR METHODS OF COMPETITION AND UNFAIR OR DECEPTIVE ACTS.—The following are defined as unfair methods of competition and unfair or deceptive acts or practices:

(aa) Churning.—

1. Churning is the practice whereby policy values in an existing life insurance policy or annuity contract, including, but not limited to, cash, loan values, or dividend values, and in any riders to that policy or contract, are directly or indirectly used ~~utilized~~ to purchase another insurance policy or annuity contract with that same insurer for the purpose of earning additional premiums, fees, commissions, or other compensation:

a. Without an objectively reasonable basis for believing that the replacement or extraction will result in an actual and demonstrable benefit to the policyholder;

b. In a fashion that is fraudulent, deceptive, or otherwise misleading or that involves a deceptive omission;

c. When the applicant is not informed that the policy values including cash values, dividends, and other assets of the existing policy or contract will be reduced, forfeited, or used ~~utilized~~ in the purchase of the replacing or additional policy or contract, if this is the case; or

d. Without informing the applicant that the replacing or additional policy or contract will not be a paid-up policy or that additional premiums will be due, if this is the case.

Churning by an insurer or an agent is an unfair method of competition and an unfair or deceptive act or practice.

2. Each insurer shall comply with sub-subparagraphs 1.c. and 1.d. by disclosing to the applicant at the time of the offer on a form designed and adopted by rule by the commission if, how, and the extent to which the policy or contract values (including cash value, dividends, and other assets) of a previously issued policy or contract will be used to purchase a replacing or additional policy or contract with the same insurer. The form must ~~shall~~ include disclosure of the premium, the death benefit of the proposed replacing or additional policy, and the date when the policy values of the existing policy or contract will be insufficient to pay the premiums of the replacing or additional policy or contract.

3. Each insurer shall adopt written procedures to reasonably avoid churning of policies or contracts that it has issued, and failure to adopt written procedures sufficient to reasonably avoid churning shall be an unfair method of competition and an unfair or deceptive act or practice.

(ee) Fraudulent signatures on an application or policy-related document.—Willfully submitting to an insurer on behalf of a consumer an insur-

ance application or policy-related document bearing a false or fraudulent signature.

(ff) Unlawful use of designations; misrepresentation of agent qualifications.—

1. A licensee may not, in any sales presentation or solicitation for insurance, use a designation or title in such a way as to falsely imply that the licensee:

a. Possesses special financial knowledge or has obtained specialized financial training; or

b. Is certified or qualified to provide specialized financial advice to senior citizens.

2. A licensee may not use terms such as “financial advisor” in such a way as to falsely imply that the licensee is licensed or qualified to discuss, sell, or recommend financial products other than insurance products.

3. A licensee may not, in any sales presentation or solicitation for insurance, falsely imply that he or she is qualified to discuss, recommend, or sell securities or other investment products in addition to insurance products.

4. A licensee who also holds a designation as a certified financial planner (CFP), chartered life underwriter (CLU), chartered financial consultant (ChFC), life underwriter training council fellow (LUTC), or the appropriate license to sell securities from the Financial Industry Regulatory Authority (FINRA) may inform the customer of those licenses or designations and make recommendations in accordance with those licenses or designations, and in so doing does not violate this paragraph.

Section 8. Paragraph (a) of subsection (4) of section 626.99, Florida Statutes, is amended to read:

626.99 Life insurance solicitation.—

(4) DISCLOSURE REQUIREMENTS.—

(a) The insurer shall provide to each prospective purchaser a buyer’s guide and a policy summary prior to accepting the ~~any~~ applicant’s initial premium or premium deposit, unless the policy for which application is made provides ~~contains a provision for~~ an unconditional refund for a period of at least 14 ~~10~~ days, or unless the policy summary contains an offer of such an unconditional refund, in which event the buyer’s guide and policy summary must be delivered with the policy or prior to delivery of the policy. With respect to ~~fixed~~ annuities, the insurer shall provide to each prospective purchaser a buyer’s guide to annuities and a contract summary as provided in the National Association of Insurance Commissioners (NAIC) Model Annuity and Deposit Fund Regulation and the policy must provide ~~shall contain a provision for~~ an unconditional refund for a period of at least 14 ~~10~~ days.

Section 9. Section 627.4554, Florida Statutes, is amended to read:

627.4554 Annuity investments by seniors.—

(1) PURPOSE; CONSTRUCTION.—

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

(b) A violation of ~~Nothing in~~ this section does not ~~shall be construed to~~ create or imply a private cause of action ~~for a violation of this section.~~

(c) Nothing in this section shall subject an insurer to criminal or civil liability for the acts of independent individuals not affiliated with that insurer for selling its products, when such sales are made in a way not authorized by the insurer.

(2) APPLICATION.—This section applies to any recommendation to purchase or exchange an annuity made to a senior consumer by an insurance agent, or an insurer where no agent is involved, and which, ~~that~~ results in the purchase or exchange recommended.

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

(a) “Annuity contract” means a fixed annuity, equity indexed annuity, ~~fixed equity indexed annuity,~~ or variable annuity that is individually solicited, whether the product is classified as an individual annuity or a group annuity.

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

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

(4) DUTIES OF INSURERS AND INSURANCE AGENTS.—

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

(b) Before executing a purchase or exchange of an annuity resulting from a recommendation to a senior consumer, an insurance agent, or an insurer

if no insurance agent is involved, shall make reasonable efforts to obtain information concerning the ~~suitability of senior consumer's financial status, tax status, and investment objectives and such other information used or considered to be reasonable by the insurance agent, or the insurer if no agent is involved,~~ in making the recommendation. The information shall include, at a minimum:

1. Personal information, including the age and sex of the parties to the annuity and the ages and number of any dependents;
2. Tax status of the consumer;
3. Investment objectives of the consumer;
4. The source of the funds to be used to purchase the annuity;
5. The applicant's annual income;
6. Intended use of the annuity;
7. The applicant's existing assets, including investment holdings;
8. The applicant's liquid net worth and liquidity needs;
9. The applicant's financial situation and needs;
10. The applicant's risk tolerance; and
11. Such other information used or considered to be relevant by the insurance agent or insurer in making recommendations to the consumer regarding the purchase or exchange of an annuity contract.

This information shall be collected on a form adopted by rule by the department and completed and signed by the applicant and agent. Questions requesting this information must be presented in at least 12-point type and be sufficiently clear so as to be readily understandable by both the agent and the consumer. A true and correct executed copy of the form shall be provided by the agent to the insurer, or the third party that has contracted with such insurer pursuant to subparagraph (f)3., within 10 days after execution of the form, and shall be provided to the consumer no later than the date of delivery of the contract or contracts.

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

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

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

c. Fails to provide complete or accurate information.

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

3. If the consumer refuses to provide relevant information requested by the insurance agent or insurer, before the execution of the sale the insurance agent or insurer shall obtain a signed verification from the senior consumer on a form adopted by rule by the department that he or she refuses to provide the requested information and may be limiting protections afforded by this section regarding the suitability of the sale.

(d) In addition to the information required by paragraph (b), before the execution of a replacement or exchange of an annuity contract resulting from a recommendation, the insurance agent shall also provide, on a form adopted by rule by the department, information concerning differences between each existing annuity contract and the annuity contract being recommended in order to determine the suitability of the recommendation and its benefit to the consumer. A true and correct executed copy of this form shall be provided by the agent to the insurer, or the third party that has contracted with such insurer pursuant to subparagraph (f)3., within 10 days after execution of the form, and shall be provided to the consumer no later than the date of delivery of the contract or contracts. The information shall include, at a minimum:

1. A comparison of the benefits, terms, and limitations between the annuity contracts.

2. A comparison of any fees and charges between the annuity contracts.

3. A written basis for the recommended exchange, including the overall advantages and disadvantages to the consumer if the recommendation is followed.

4. Such other information used or considered to be relevant by the insurance agent or the insurer in making recommendations to the consumer regarding the replacement or exchange of an annuity contract.

(e) Prior to the execution of a purchase or exchange of an annuity contract resulting from a recommendation, an agent shall also disclose to the consumer that such purchase or exchange may have tax consequences and that the applicant should contact his or her tax advisor for more information.

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

a. Maintaining written procedures.

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

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

a. Maintaining written procedures.

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

3. An insurer may contract with a third party, including a managing general agent or an insurance agency, to establish and maintain a system of supervision as required by subparagraph 1. with respect to insurance agents under contract with or employed by the third party.

4. An insurer shall make reasonable inquiry to ensure that such third party contracting under subparagraph 3. is performing the functions required under subparagraph 1. and shall take such action as is reasonable under the circumstances to enforce the contractual obligation to perform the functions. An insurer may comply with its obligation to make reasonable inquiry by:

a. Annually obtaining a certification from a third party senior manager who has responsibility for the delegated functions that the manager has a reasonable basis to represent, and does represent, that the third party is performing the required functions.

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

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

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

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

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

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

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

(5) MITIGATION OF RESPONSIBILITY.—

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

(b) The department may order:

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

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

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

(6) RECORDKEEPING.—

(a) Insurers, managing general agents, insurance agencies, and insurance agents shall maintain or ~~be able to~~ make available from the entity or entities responsible for maintaining the records pursuant to paragraph (4)(f), to the department or office, as appropriate, records of the information collected from the senior consumer and other information used in making the recommendations that were the basis for insurance transactions for 5 years after the insurance transaction is completed by the insurer. An insurer is permitted, but shall not be required, to maintain documentation on behalf of an insurance agent.

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

(7) EXEMPTIONS.—Unless otherwise specifically included, this section does not apply to recommendations involving:

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

(b) Contracts used to fund:

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

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

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

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

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

6. Prepaid funeral contracts.

(8) APPLICATION TO VARIABLE ANNUITIES.—Any person who is registered with a member of the Financial Industry Regulatory Authority, who is required to make a suitability determination, and who makes and documents such determination is deemed to Compliance with the National Association of Securities Dealers Conduct Rules in effect on January 1, 2004, shall satisfy the requirements under this section for the recommendation of variable annuities. This section does not limit the department's ability to enforce the provisions of this section with respect to insurance agents, insurance agencies, and managing general agents, or the office's ability to enforce the provisions of this section with respect to insurers.

(9) RULES.—The department and commission may adopt rules to administer this section.

Section 10. Effective only if Senate Bill 648, adopted during the 2008 Regular Session of the Legislature, becomes a law, paragraph (d) is added to subsection (2) of section 627.551, Florida Statutes, to read:

627.551 Group contracts and plans of self-insurance must meet group requirements.—

(2) Subsection (1) does not apply to life insurance policies or plans of self-insurance:

(a) Insuring or providing benefits only to individuals related by blood, marriage, or legal adoption.

(b) Insuring or providing benefits only to individuals who have a common interest through ownership of a business enterprise, or a substantial legal interest or equity therein, and who are actively engaged in the management of the business enterprise.

(c) Insuring or providing benefits only to individuals otherwise having an insurable interest in each other's lives.

(d) Insuring or providing benefits pursuant to s. 627.404(2)(b)8. or 9.

Section 11. Section 627.805, Florida Statutes, is amended to read:

627.805 Regulation of variable and indeterminate value contracts; rules.—~~The Department of Financial Services and the Office of Insurance Regulation office, notwithstanding any other provision of law, shall have the sole authority to regulate the issuance and sale of variable and indeterminate value contracts pursuant to their respective authority as conferred by state law. The Office of Financial Regulation shall regulate the sale of variable and indeterminate value contracts pursuant to its authority under chapter 517. The Department of Financial Services and, when applicable, the Financial Services Commission, may, and the commission has authority to adopt rules pursuant to ss. 120.536(1) and 120.54 to implement the provisions of this part.~~

Section 12. Effective upon this act becoming a law, the Department of Financial Services may adopt rules to implement this act. Section 9 of this act and such implementing rules shall take effect 60 days after the date on which the final rule is adopted or January 1, 2009, whichever is later.

Section 13. Except as otherwise expressly provided in this act and except for this section, which shall take effect upon becoming a law, this act shall take effect January 1, 2009.

Approved by the Governor June 30, 2008.

Filed in Office Secretary of State June 30, 2008.