

Safeguard Our Seniors Legislation Amendment Supplement

- A. §624.310(1)(a)5, F.S. – Amends the definition of an ‘affiliated party’ to bring subjected marketers under the regulatory authority of the department.

§624.310(1)(a), F.S. – “Affiliated party” means any person who directs or participates in the conduct of the affairs of a licensee and who is:

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

- B. §626.025(13) & §626.798, F.S. - Extends the prohibition on a life insurance agent being the beneficiary of a life insurance policy sold to someone other than the agent’s family member by including the agent’s family members within the prohibition and by prohibiting the agent, or the agent’s family member, from serving as a guardian, trustee, or having power of attorney over the insured.

§626.025, F.S. - To transact insurance, agents shall comply with consumer protection laws, including the following, as applicable:

(13) The prohibition against the designation of a life insurance agent or his or her family member as the beneficiary of a life insurance policy sold to an individual other than a family member under s. §626.798, F.S.

§626.798, F.S. - No agent shall, with respect to the placement of life insurance coverage with a life insurer covering the life of a person who is not a family member of the agent, handle in his or her capacity as a life agent the placement of such coverage when the agent placing the coverage or a family member of such agent is the named beneficiary under the life insurance policy, unless the life agent or family member has an insurable interest in the life of such person. However, the agent or a family member of such agent may not be designated as a trustee or guardian or be granted power of attorney unless he or she is a family member of the policy owner or insured, or is a bank or trust company duly authorized to act as a fiduciary.

- C. §626.2815(3)(k), F.S. - Exempts agents not actively soliciting or servicing insurance or annuity contracts from Senior Suitability CE requirement.

The CE requirement of life agents to complete 3 hours on the subject of Senior Suitability does not apply to an agent who does not have any active life insurance or annuity contracts. In applying this exemption, the department may require the filing of a certification attesting that the agent has not sold life insurance or annuities during the continuing education

compliance cycle in question and does not have any active life insurance or annuity contracts.

- D. §626.621(13), F.S. - Gives the department authority to take license disciplinary action against an agent who has been disciplined under his or her securities license or a related license.

§626.621, F.S. – The department may, in its discretion, deny an application for, suspend, revoke, or refuse to renew or continue the license or appointment of any applicant, agent, adjuster, customer representative, service representative, or managing general agent, and it may suspend or revoke the eligibility to hold a license or appointment of any such person, if it finds that as to the applicant, licensee, or appointee any one or more of the following applicable grounds exist under circumstances for which such denial, suspension, revocation, or refusal is not mandatory under s. 626.611, F.S.

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

- E. §626.641(3)(b), F.S. – Prohibits the department from issuing a license to a former licensee who has had his or her license revoked resulting from the solicitation or sale of an insurance product to a senior consumer.

If a licensee as an agent or customer representative or the eligibility to hold such a license has been revoked resulting from the solicitation or sale of an insurance product to a person 65 years of age or older, the department may not thereafter grant or issue any license under this code to such individual.

- F. §626.9521(3)(a)-(b), F.S. - Increases the financial penalty for the willful act of “twisting” or “churning” of an annuity, and fraudulent signatures to a maximum of \$75,000.

(3)(a) If a person violates s. 626.9541(1)(l) F.S. the offense known as “twisting,” or violates s. 626.9541(1)(aa) F.S. the offense known as “churning,” the person commits a misdemeanor of the first degree,

punishable as provided in s. 775.082, F.S. and an administrative fine not greater than \$5,000 shall be imposed for each nonwillful violation or an administrative fine not greater than \$75,000 shall be imposed for each willful violation. To impose an administrative fine for a willful violation under this paragraph, the practice of “churning” or “twisting” must involve fraudulent conduct.

(b) If a person violates s. 626.9541(1)(ee), F.S. 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, F.S. and an administrative fine not greater than \$5,000 shall be imposed for each nonwillful violation or an administrative fine not greater than \$75,000 shall be imposed for each willful violation.

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

- G. §626.9521(5), F.S. – Allows the use of video depositions in administrative hearings involving a senior consumer and require compliance with the Rules of Civil Procedures.

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

- H. §626.99(4)(b), F.S. – Life insurance solicitation; Disclosure Requirements; extends the “free look” period for the purchase of an annuity by a senior consumer from 14 to 21.

(b) With respect to fixed and variable annuities, the policy must provide an unconditional refund for a period of at least 14 days. For fixed annuities, the buyer’s guide shall be in the form as provided by the National Association of Insurance Commissioners (NAIC) Annuity Disclosure Model Regulation, until such time as a buyer’s guide is developed by the department, at which time the department guide must be used. For variable annuities, a policy summary may be used, which may be contained in a prospectus, until such time as a buyer’s guide is developed by NAIC or the department, at which time one of those guides must be used. If the prospective owner of an annuity contract is 65 years of age or older:

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

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

- I. §626.99(4)(c), F.S. – Requires an insurer to provide a cover sheet attached to the policy when an annuity is issued informing the purchaser about the free look period and about how to contact the insurer and the department if they have a question about the annuity.

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

- J. §627.4554(3)(b), F.S. – Definitions; Defines ‘Accredited investor’

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

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

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

- K. §627.4554(5)(b)(c), F.S. – Authorizes the department to require an agent to make monetary restitution to a senior consumer harmed by a violation of the insurance code under certain circumstances.

(b) The department may order:

1. An insurance agent to take reasonably appropriate corrective

action, including monetary restitution of penalties or fees incurred by the senior consumer, 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) The department shall, in addition to any other penalty authorized under chapter 626, F.S., order an insurance agent to pay restitution to any senior consumer who has been deprived of money by the agent's misappropriation, conversion, or unlawful withholding of moneys belonging to the senior consumer in the course of a transaction involving annuities. The amount of restitution required to be paid pursuant to this paragraph may not exceed the amount misappropriated, converted, or unlawfully withheld. This paragraph does not limit or restrict a person's right to seek other remedies as provided by law.

- L. §627.4554(9), F.S. – Prohibited Charges; limits the period of a surrender charge for an annuity sold to a senior consumer to 10 years and limits the surrender charge to 10 percent.

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