

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 1003 Insurance

SPONSOR(S): Jobs & Entrepreneurship Council, Ford and others

TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Financial Institutions</u>	<u>6 Y, 0 N</u>	<u>Holt/Bradford</u>	<u>Haug</u>
2) <u>Jobs & Entrepreneurship Council</u>	<u>14 Y, 0 N, As CS</u>	<u>Holt/Topp</u>	<u>Thorn</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

CS/HB1003 may be cited as the John and Patricia Seibel Act. In general, the bill enhances protection for senior citizens regarding the sale of annuities, and it establishes multi-line discounts for homeowner and auto policyholders. More specifically, the bill:

- Requires an applicant for certain licensure to provide the Department of Financial Services (DFS) specified contact information. Requires a written 60-day notification to be submitted to DFS after any changes occur in any of the specified information.
- Requires persons licensed to solicit or sell life insurance to complete 3 hours of continuing education on suitability in annuity transactions.
- Provides enhanced penalties for offenses involving "twisting"¹ and "churning," misleading representations or omissions, and fraudulent signatures on certain applications or other policy-related documents.
- Revises the elements of the offense known as "churning" to include direct or indirect purchases made for the purpose of earning additional fees or commissions.
- Provides that the 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.
- Provides for other enhanced penalties to supersede the penalties provided by the act under certain conditions.
- Increases from 10 days to 14 days the period of time allowed for obtaining an unconditional refund.

¹ Twisting- Knowingly making any misleading representations with respect to any insurance policies or insurers for the purpose of inducing any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance with another insurer. Churning— Churning is the practice whereby policy values in an existing life insurance policy or annuity contract are utilized to purchase another insurance policy or annuity with that same insurer for the purpose of earning additional compensation.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

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- Establishes multi-lines insurance discounts.
- Provides for the regulation of recommendations relating to the sale of annuities to senior consumers.
- Redefines the term "annuity" and includes in the definition fixed equity indexed annuity.
- Requires an agent to obtain objective financial and other information concerning a senior consumer before executing a purchase or exchange of an annuity.
- Requires an agent to use a DFS approved form in performing a suitability analysis relative to recommended investment(s).
- Requires an agent to provide a comparison of current and recommended products if the transaction involves the replacement or exchange of an existing annuity.
- Requires an agent to recommend a consumer seek additional financial advisement to avoid any surrender charges and tax consequences.
- Authorizes the Financial Services Commission, the Department of Financial Regulation, and the Office of Financial Regulation to adopt rules; provides an effective date for rulemaking, and provides for applicability of such rules.
- Provides for regulation of the issuance and sale of variable and indeterminate value contracts by the Department of Financial Services, the Office of Insurance Regulation, and the Office of Financial Regulation.

The Department of Financial Services (DFS) indicates a fiscal impact to the state in the amount of \$130,000 to update computer applications to allow for the one time education requirement in this bill. This bill also insures the Office of Financial Regulation will be able to prosecute its securities licensees for abusive sales practices of what is essentially a securities related product. At this point in time the Office of Insurance Regulation has jurisdiction over these licensees. There is also a small cost for rule making authority to the Office of Financial Regulation. The Department of Financial Services, Office of Insurance Regulation and Office of Financial Regulation will manage these costs within existing resources. Potential revenues from imposes fines and enhanced penalties is indeterminate. There is no fiscal impact to local governments or the private sector.

On March 31, 2008, the Criminal Justice Impact Conference (CJIC) met and determined this bill would have an insignificant impact on prison beds in the Department of Corrections. Changes to the bill by way of amendments have lessened some of the felonies to misdemeanors since the March 31st meeting.

This act shall take effect January 1, 2009.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Empower families: Creates objective requirements for an agent to pursue prior to completing annuity transactions involving senior citizens. Creates multi-line insurance discounts.

B. EFFECT OF PROPOSED CHANGES:

PRESENT SITUATION

Sales of annuities to seniors have risen dramatically over the past several years, and in turn, so have instances of deceptive sales practices. Seniors comprise a vital component of Florida's economy, and are frequently a prime target for fraud because of the lifetime of savings they have amassed.²

ANNUITY PRODUCTS IN GENERAL

As life expectancies continue to increase, and as the percentage of the population age 65 and older continues to grow, a new word is emerging as a keystone in retirement planning: longevity. The need for a lifetime source of income will continue to be at the forefront of many retirees' concerns. Annuities remain, and will likely continue to remain, the only investment product that can provide a guaranteed source of income that cannot be outlived.³

There are two basic types of annuities: fixed and variable, and they both are commercially available as either immediate or deferred annuities. Immediate annuities are useful vehicles for seniors seeking to supplement their retirement income. They are usually irrevocable contracts, and should not be considered if a need for liquidity may potentially arise.⁴

A main advantage of deferred annuities is tax-deferred growth of principal. However, they often carry associated fees and charges that restrict an investor's access to funds, and may serve to penalize those investors who do access the funds during the contract term. Whether deferred or immediate, annuities are long-term contracts that typically restrict an investor's ability to access his or her money. The terms and conditions of annuity products are constantly evolving and becoming more complex. Herein lays the potential suitability problems for many senior citizens.

For example, equity indexed annuities are relatively new products and represent one of the fastest growing segments in the insurance industry. These products are considered a hybrid of both fixed and variable annuities. Despite their classification, definition, and regulation as fixed annuities, equity indexed annuities may be much more complex. In contrast to a traditional fixed annuity which provides a stated "guaranteed rate" of interest, equity indexed annuities provide a "minimum guaranteed" interest rate in combination with an index-linked component.

One reason for the widespread interest in equity indexed annuities is that these products are perceived as an investment that realizes stock-market-like gains without the risk, a "best of both worlds." However, "a "guaranteed minimum" interest rate may still create a loss of principal if the guarantee is based on an amount less than the amount of premium or initial payment. Investors who find it necessary to cancel an annuity to access funds prior to maturity of the contract may also lose principal through detrimental features such as surrender charges, hidden penalties, costs, fees, and massive multi-year surrender charges."⁵

² Florida Department of Financial Services : 2008 White Paper on Annuities: by Roxanne Rehm, Assistant General Counsel

³ Id.

⁴ Id.

⁵ Id.

Further, “despite their complex nature, equity indexed annuities are typically not considered securities and are not required to be registered with the SEC, as is the case with variable annuity products. This means that most equity indexed annuities are not required by law to have an accompanying prospectus with disclosures regarding risk. And, unlike the sale of variable annuity products, which require an agent to possess both an insurance license and a securities license to be able to sell such products, equity indexed annuities may be sold by life insurance agents who have taken and passed a 40-hour licensing course and state life insurance exam.”

ANNUITY AND LIFE INSURANCE SUITABILITY ISSUES AND CONCERNS

The issue of suitability and its correlation with senior citizens’ transactions is a national concern. The term suitability refers to not only the appropriateness of a particular product relative to a consumer’s age, but also with regard to a customer’s investment objectives and current and future financial needs.

In Florida, suitability concerns dominate life insurance and annuity transactions where senior consumers are involved. The majority of these unsuitable transactions commonly “involve instances of inappropriate conduct on the part of the agent, typically through misrepresentation and material omission designed to camouflage the unsuitable nature of the sale.”⁶

In 2003, the National Association of Insurance Commissioners (NAIC) created an Annuity Transactions Model Regulation (the “Suitability Model”). The Suitability Model was adopted by Florida in 2004 as s. 627.4554, F.S., (Florida’s Suitability Statute). Florida’s Suitability Statute applies to all annuity transactions involving persons age 65 or older after July 1, 2004. Currently, the Suitability Statute merely requires that an agent make inquiry into a senior’s financial condition, and that information is used by the agent to determine the reasonableness of a product’s suitability to the client. However, for unscrupulous individuals, the lucrative outcome of selling unsuitable annuities or life insurance products to unknowing senior citizens creates a detrimental incentive to deceive Florida’s elderly population. The majority of such unsuitable transactions commonly “involve instances of inappropriate conduct on the part of the agent, typically through misrepresentation and material omission designed to camouflage the unsuitable nature of the sale.”⁷

Staff resources indicate that the “reasonable grounds” standard under the NAIC Suitability Model and Florida’s Suitability Statute have the effect of placing the burden on the Department of Financial Service (DFS) to prove, by clear and convincing evidence, that an agent did not believe a particular transaction was suitable. “This burden is largely unachievable, given that the suitability determination is solely within the discretion of the agent.”⁸

FLORIDA STATUTES

Chapter 626, Part IX, F.S., Unfair Insurance Trade Practices, reads:

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) Any person who violates any provision of this part 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

⁶ Florida Department of Financial Services : 2008 White Paper on Annuities: by Roxanne Rehm, Assistant General Counsel

⁷ Id.

⁸ Id.

arising out of the same action. The fines authorized by this subsection may be imposed in addition to any other applicable penalty.

Section 626.9541, F.S., specifies practices that create unfair methods of competition and unfair or deceptive acts or practices. This section reads in part:

(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:

(l) Twisting.—Knowingly making any misleading representations or incomplete or fraudulent comparisons or fraudulent material omissions of or with respect to any insurance policies or insurers for the purpose of inducing, or tending to induce, any person to lapse, forfeit, surrender, terminate, retain, pledge, assign, borrow on, or convert any insurance policy or to take out a policy of insurance in another insurer.

(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 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 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.

Currently, the offenses of “twisting” and “churning” of annuities and life insurance products are classified as second degree misdemeanors.⁹ Violations of Florida’s Suitability Statute, s. 627.4554, F.S., are also second degree misdemeanors.¹⁰

Section 626.9581, F.S., Cease and desist and penalty orders.— The DFS or the Office of Insurance Regulation (OIR) are both currently authorized to issues cease and desist orders against licensees charged with engaging in an unfair or deceptive act or practice or the unlawful transaction of insurance. Further, if the act or practice is a violation of s. 626.9541 or s. 626.9551, the department or office may, at its discretion, order any one or more of the following:

⁹ S. 624.15(1), F.S.

¹⁰ Florida Department of Financial Services : 2008 White Paper on Annuities: by Roxanne Rehm, Assistant General Counsel

(1) Suspension or revocation of the person's certificate of authority, license, or eligibility for any certificate of authority or license, if he or she knew, or reasonably should have known, he or she was in violation of this act.

(2) Such other relief as may be provided in the insurance code.

Section 626.9601, F.S., Penalty for violation of cease and desist orders, provides that any person who violates a cease and desist order is subject to: 1) A monetary penalty of not more than \$50,000, 2) Suspension or revocation of such person's certificate of authority, license, or eligibility to hold such certificate of authority or license, 3) Such other relief as may be provided in the insurance code.

Section 626.681, F.S., Administrative fine in lieu of or in addition to suspension, revocation, or refusal of license, appointment, or disapproval, reads in part:

(1) Except as to insurance agencies, if the department finds that one or more grounds exist for the suspension, revocation, or refusal to issue, renew, or continue any license or appointment issued under this chapter. . . an administrative penalty in an amount up to \$500 or, if the department has found willful misconduct or willful violation. . . up to \$3,500.

EFFECT OF PROPOSED CHANGES

Section 1: Cites the act as the John and Patricia Seibel Act.

Section 2: Paragraph (a) of subsection (2) of s. 626.171, F.S., Application for license as an agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary.

The section is amended to require an application for agent licensure include contact telephone numbers, including business telephone number, and email address.

Section 3: Paragraph (k) is added to subsection (3) of s. 626.2815, F.S., Continuing education required; application; exceptions; requirements; penalties.

The section requires any person who holds a license to solicit or sell life insurance in Florida to complete 3 hours of DFS approved continuing education on suitability in annuity and life insurance transactions. These hours may also be used to satisfy the ethics requirements of s. 626.2815(3)(a), F.S. (Effective 1/1/09-1/1/10)

Section 4: Section 626.551, F.S., Notice of change of address, name: This section is amended to require licensees notify the department in writing within 60 days of changes to home and business telephone numbers, or email address.

Section 5: Section 626.9521, F.S., Unfair methods of competition and unfair or deceptive acts or practices prohibited; penalties

The bill imposes increased fines and penalties for "twisting" and "churning" as follows:

- \$5,000 for each non-willful violation (currently \$2,500) or \$30,000 (currently \$20,000) for each willful violation.
- \$5,000 for each non-willful violation (currently \$2,500) or \$30,000 for each willful violation. A person commits a first degree misdemeanor, if the victim is 65 years or older or the agent knew or should have known the victim suffered from a mental incapacity.

To impose criminal penalties under this section, the practice of "churning" or "twisting" must involve fraudulent conduct. Additionally, the bill makes it a prohibited act and a third degree felony to willfully

submit a fraudulent signature on an application or policy-related documents and, it imposes an administrative fine. This fine is \$5,000 for each nonwillful violation or \$30,000 for each willful violation.

This section is further amended to provide that any fines imposed under this subsection may not exceed an aggregate amount of \$50,000 (currently \$10,000) for all nonwillful violations arising out of the same action or an aggregate amount of \$250,000 (currently \$100,000) for all willful violations arising out of the same action.

Section 6: This section provides that any increase in the fines imposed under s. 626.9521, F.S., 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, F.S., made by this act shall not take effect.

Section 7: Paragraph (aa) of subsection (1) of s. 626.9541, F.S., is amended to modify the definition of "churning" to include direct and indirect churning. Indirect churning occurs when a policy is surrendered and the resulting funds are used to purchase an immediate annuity (specifying payments to begin at once) which is then used to fund a deferred annuity or a life insurance policy. It is often done because the agent can receive a double commission for the immediate annuity and the deferred annuity or life insurance policy that it funds.¹¹

The bill adds paragraphs (ee) and (ff) to this subsection to create two new unfair methods of competition and unfair /deceptive acts. Paragraph (ee) speaks to the willful submission to an insurer on behalf of a consumer an application or policy-related documents bearing false or fraudulent signature. Paragraph (ff) reads:

(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, F.S., relates to disclosure requirements regarding the sale of life insurance and annuities. The bill provides that an insurer

¹¹ CS/SB 2082

provide a prospective life insurance applicant with a buyer's guide and policy summary prior to accepting the applicant's initial premium or premium deposit, unless the policy provides an unconditional refund period of 14 days. Current law provides for 10 days.

Additionally, the current disclosure requirements of this subsection apply to fixed annuities. The bill makes the requirements applicable to all annuities. An insurer shall provide a prospective purchaser with a buyer's guide to annuities and a contract summary, the bill provides that the policy must contain an unconditional refund period of 14 days. The bill changes the current 10-day requirement.

Section 9: Section 627.0655, F.S., Policyholder loss or expense-related premium discounts.
Current law¹² provides:

An insurer or person authorized to engage in the business of insurance in this state may include, in the premium charged an insured for any policy, contract, or certificate of insurance, a discount based on the fact that another policy, contract, or certificate of any type has been purchased by the insured from the same insurer or insurer group.

The bill amends this section to read:

. . .group, the Citizens Property Insurance Corporation created under s. 627.351(6) if the same insurance agent is servicing both policies, or an insurer that has removed the policy from the Citizens Property Insurance Corporation if the same insurance agent is servicing both policies.

As a result, this section amendment allows insurers to discount policies if the policyholder purchases a policy from Citizens Property Insurance Corporation or from an insurer taking policies out of Citizens, provided the same agent services the policies.

Section 627.351(6) reads in part:

The Legislature intends by this subsection that affordable property insurance be provided and that it continue to be provided, as long as necessary, through Citizens Property Insurance Corporation, a government entity that is an integral part of the state, and that is not a private insurance company.

According to OIR, the purpose of putting the requirement of "the same insurer or insurer "group" in the 2007 law was to prevent companies from transferring their wind risks into Citizens and keeping their auto premiums high by offering multi-line discounts in situations where the insurer or insurer group no longer has multiple policies for an insured. As a result, the ability to provide a multi-line discount was removed in SB 2498 (glitch bill1A). Further, OIR has articulated that this amendment would further segregate the homeowner insurance market by allowing insurance companies to write auto policies without taking any homeowners insurance risks in Florida. Essentially, this leaves Citizens with all of the homeowners' risk and allows the private insurance companies to profit from the auto lines.

In contrast, proponents for this change indicate that policyholders who choose to purchase Citizens or are forced to obtain this coverage will have the same access to discounts as consumers who purchase private market coverage. Customers should have this discount as an option when they utilize one insurance agent for both homeowner and auto or other policies. There is no reason to punish customers for shopping with the same agent for all their insurance needs, or for purchasing coverage from Citizens.

¹² s. 20, ch. 2007-1; s. 10, ch. 2007-90.

Section 10: Section 627.4554, F.S., Annuity investments by seniors is amended to enhance its requirements. This section, Florida's Suitability Statute, comprises the standards and procedures for annuity sales to seniors. The bill amends the definitions of "annuity" to read "annuity contract. The new definition includes "fixed equity indexed annuity" which is a new product line.

Subsection (1) of s. 627.4554, F.S., is amended to make clarifying and conforming changes. The bill also creates a paragraph (c) that reads:

(c) Nothing in this Act 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.

Subsection (2) of s. 627.4554, F.S., Application, is amended to make clarifying and conforming changes.

Subsection (4) of s. 627.4554, F.S., Duties of Insurers and Insurance Agents, is amended to require insurers and insurance agents have an objectively reasonable basis for making suitable recommendations to senior consumers to purchase or exchange an annuity based on specific disclosures. The bill specifies the minimum information to be obtained concerning the suitability of a recommendation.

New provisions provide that consumer information is to be collected on a departmentally approved form signed by the applicant and agent. A true and correct executed copy of the form shall be provided by the agent to either the insurer or a third party that has contracted with such insurer pursuant to subparagraph (f)¹³ within 10 days after from execution. This language clarifies that when the insurer has delegated to a third party the insurer's responsibility to supervise its agents' compliance with the annuity suitability requirements, the agent may be required to send the executed forms to the third party, instead of the insurer. Current law permits an insurer to delegate this supervisory responsibility to a third party. Moreover, this section requires that the form shall also be provided to the consumer no later than the date of delivery of the contract(s).

Additionally, if a consumer refuses to provide the relevant information requested by the agent or insurer before the execution of the sale, the bill provides that the insurance agent or insurer shall obtain a signed verification for the consumer on a form adopted by the department disclosing the refusal and the possibility of limitations on the suitability protection afforded by this section.

In addition to the suitability information, prior to execution of a replacement or exchange of an annuity, the bill requires an insurance agent is to provide on a DFS approved form a comparison of differences between each existing annuity and annuity contract to determine suitability and benefit to the consumer. A true and correct executed copy of the form is to be provided by the agent to either the insurer or insurer contracted third party within 10 days after execution. A form copy shall be provided to the consumer no later than the date of delivery of the contract(s). The bill specifies the minimum information that is to be contained in a comparison. It is further required by the bill that an agent discloses to the consumer any tax consequences and that the applicant seek his or her tax advisor to obtain more information.

Subsection (5) of s. 627.4554, F.S, Mitigation of Responsibility: The bill expands the options used by the OIR in ordering an insurer to take reasonable corrective action to include rescission of the policy or contract and a full refund of the premiums paid or the accumulation value, whichever is greater.

¹³ 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.

Subsection (6) of s. 627.4554, F.S, Recordkeeping: The bill clarifies that insurers, managing general agents, insurance agencies, and insurance agents are each to maintain or make available from a contracted entity to the DFS and OIR appropriate documentation used for recommendations made to senior consumers.

Subsection (8) of s. 627.4554, F.S, Application to Variable Annuities: The bill replaces a reference to the National Association of Securities Dealers with the Financial Industry Regulatory Authority, and it deletes an obsolete date reference.

Subsection (9) of s. 627.4554, F.S., this subsection is created to provide DFS and the Financial Services Commission to adopt rules to administer this section.

Section 11: Section 627.805, F.S., Regulation of variable and indeterminate value contracts; rules- This section is amended to correct a 2003 glitch.

According to OFR, the 2003 legislation reassigned duties of two abolished agencies, the Department of Insurance and the Department of Banking and Finance, among three newly created entities, the Department of Financial Services (DFS), the Office of Insurance Regulation (OIR), and the Office of Financial Regulation (OFR). Both OIR and OFR are housed within the DFS.

In 2003, the DFS assumed authority over the conduct of insurance agents, and the OIR assumed authority over the conduct of insurance companies. Because of this particular glitch, OIR was provided sole jurisdiction over the sale of variable annuities. However, most abuses in the annuity area are committed by insurance agents who are under DFS regulatory authority.

This section is amended to correct the glitch by requiring DFS and OIR to regulate the issuance and sale of variable and indeterminate value contracts pursuant their respective authority. OFR shall regulate the sale of variable and indeterminate value contracts pursuant its authority under chapter 517, Securities Transactions. Further, this amended language helps insure that DFS and OIR would be able to prosecute its securities licensees for abusive sales practices involving securities related products. Moreover, DFS, when applicable, is granted rulemaking authority.

Section 12: The section is created to provide that DFS may adopt rules to implement this act effective upon the act becoming law. Also, section 10 of the bill and the implementing rules shall take effect 60 days after the date on which the final rule is adopted or January 1, 2009, whichever is later.

Section13: This act shall take effect January 1, 2009.

C. SECTION DIRECTORY:

Section 1: Cites the act as the John and Patricia Seibel Act.

Section 2: Application for license as an agent, customer representative, adjuster, service representative, managing general agent, or reinsurance intermediary.

Section 3: Continuing education required; application; exceptions; requirements; penalties.

Section 4: Notice of change of address, name

Section 5: Unfair methods of competition and unfair or deceptive acts or practices prohibited; penalties

Section 6: Fines

Section 7: Unfair methods of competition and unfair or deceptive acts (twisting and churning)

Section 8: Disclosure requirement

Section 9: Policyholder loss or expense-related premium discounts.

Section 10: Annuity investments by seniors

Section 11: Regulation of variable and indeterminate value contracts; rules

Section 12: Creates rulemaking authority for DFS

Section13: This act shall take effect January 1, 2009.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

Potential revenues from imposed fines and enhanced penalties are indeterminate.

2. Expenditures:

This bill requires that life insurance agents complete a one-time course on suitability in annuity and life insurance transactions between January 1, 2009 and January 1, 2010. This course will count towards the agent's ethics continuing education requirement. The division's computer systems are currently programmed to require and enforce licensee's continuing education requirements on a biennial basis. The bill's education requirement sets a one-time continuing education requirement within a one-year period. In order to implement the bill as written, the division will be required to make significant changes to the department's computer systems in order to enforce the one-time education requirement. The estimated cost for these changes is \$130,000.

This bill also insures the Office of Financial Regulation will be able to prosecute its securities licensees for abusive sales practices of what is essentially a securities related product. At this point in time the Office of Insurance Regulation has jurisdiction over these licensees. There is also a small cost for rule making authority to the Office of Financial Regulation. The Department of Financial Services, Office of Insurance Regulation and Office of Financial Regulation will manage these costs within existing resources.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None

2. Expenditures:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None

D. FISCAL COMMENTS:

None

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

D. STATEMENT OF THE SPONSOR

None.

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES

On March 20, 2008, the Committee on Financial Institutions voted to recommend a strike-all amendment to the Jobs & Entrepreneurship Council. The amendment changed the bill as follows:

- Cites the act as “John and Patricia Seibel Act.”
- Requires an agent to provide the department with his/her home and business telephone numbers, and email address, and to notify the department 60 days of changes.
- Requires any person who holds a license to solicit or sell life insurance to complete 3 hours of department approved continuing education on suitability in annuity and life insurance transactions. (Effective 1/1/09-1/1/10)
- Increases fines for “twisting,” and “churning” and adds a prohibited practice of willfully submitting to an insurer on behalf of a consumer a document bearing a false signature. The fines for these practices are increased to:
 - ✓ \$5,000 for each non-willful violation (currently \$2,500), up to a maximum aggregate amount of \$20,000 (currently \$10,000).
 - ✓ \$30,000 for each willful violation (currently \$20,000), up to a maximum aggregate amount of \$150,000 (currently \$100,000).
- Provides that twisting or churning is a second degree felony if the agent shows a pattern or a practice and the victim is 65 years or older or is mentally disabled. A third degree felony is imposed if the acts are done to other victims. Willfully submitting a false signature of a consumer is also made a third degree felony.
- Applies the current annuity suitability requirements to life insurance.
- Requires an agent to have an objectively reasonable basis for believing that an annuity or a life insurance recommendation to a senior consumer is suitable.
- Requires an agent to obtain specified personal and financial information from the consumer relevant to the suitability of the recommendation, on a form adopted by the Department of Financial Services.
- Increases the free review period from 10 days to 14 days after purchase of a life insurance or annuity for the consumer to obtain a refund. This requirement applies to all annuities.
- Authorizes the Office of Insurance Regulation to order an insurer to rescind a life insurance policy or annuity and provide a full refund of the premiums paid or the accumulation value, whichever is greater, when a senior consumer is harmed by a violation of the suitability statute.
- Changes effective date to January 1, 2009.

On April 15, 2008, the Jobs & Entrepreneurship Council adopted a substitute strike-all amendment and two amendments to the substitute amendment. These amendments changed the bill as follows:

- Cites the act as “John and Patricia Seibel Act.”
- Requires applicants for certain agent licensure to provide specific contact information. Any changes to this information are to be provided to the DFS in writing within 60 days of the change.

- Deletes definition of “life insurance contract” and makes conforming changes to delete references to life insurance throughout the bill.
- Requires licensees who solicit or sell life insurance to complete 3 hours of approved continuing education on suitability in annuity and life insurance transactions. These hours may also be used to satisfy the requirement for continuing education in ethics. (Effective 1/1/09-1/1/10).
- Imposes increased fines and penalties for “twisting” and “churning” as follows:
 - ✓ \$5,000 for each non-willful violation (currently \$2,500) or \$30,000 (currently \$20,000) for each willful violation.
 - ✓ \$5,000 for each non-willful violation (currently \$2,500) or \$30,000 for each willful violation. A person commits a first degree misdemeanor, if the victim is 65 years or older or the agent knew or should have known the victim suffered from a mental incapacity.
- Imposes criminal penalties for the practice of “churning” or “twisting” they involve fraudulent conduct.
- Creates as a prohibited act willful submission of fraudulent signature on certain documents punishable as a third degree felony. Imposes fines of \$5,000 for each nonwillful violation or \$30,000 for each willful violation.
- Establishes an aggregate amount of \$50,000 (currently \$10,000) for all nonwillful violations arising out of the same action or an aggregate amount of \$250,000 (currently \$100,000) for all willful violations arising out of the same action.
- Rescinds fines established by the bill, if enhanced penalties are enacted during the 2008 legislative session.
- Modifies the definition of “churning” to include direct and indirect churning.
- Creates two new unfair methods of competition and unfair /deceptive acts: willful submission of documents bearing false or fraudulent signature and the unlawful misrepresentation of agent qualifications.
- Changes an unconditional refund period from 10 days to 14 days.
- Expands disclosure requirements apply to all annuities.
- Allows insurers to discount policies if the policyholder purchases a policy from Citizens Property Insurance Corporation or from an insurer taking policies out of Citizens, provided the same agent services the policies.
- Removes criminal or civil liability from an insurer for acts of nonaffiliated independent individuals whose sales are unauthorized by the insurer.
- Clarifies that when the insurer has delegated to a third party its supervision authority over its agents' compliance with the annuity suitability requirements, the agent may send any executed forms to the third party.
- Corrects reference to National Association of Securities Dealers to the Financial Industry Regulatory Authority, and deletes obsolete date reference.
- Grant rulemaking authority to the Financial Services Commission and the DFS.
- Provides for regulation of the issuance and sale of variable and indeterminate value contracts by the DFS, OFR, and OIR.
- Provides January 1, 2009, except where expressly indicated otherwise.