

HB 1065

2012

1                   A bill to be entitled  
2           An act relating to annuities; amending s. 627.4554,  
3           F.S.; providing that recommendations relating to  
4           annuities made by an insurer or its agents apply to  
5           all consumers not just to senior consumers; revising  
6           and providing definitions; revising the duties of  
7           insurers and agents; providing that recommendations  
8           must be based on consumer suitability information;  
9           deleting requirements relating to information that  
10          must be collected on certain forms adopted by rule of  
11          the Department of Financial Services; revising the  
12          information relating to annuities that must be  
13          provided by the insurer or its agent to the consumer;  
14          revising the requirements for monitoring contractors  
15          that are providing certain functions for the insurer  
16          relating to the insurer's system for supervising  
17          recommendations; revising provisions relating to the  
18          relationship between this act and the federal  
19          Financial Industry Regulatory Authority; providing  
20          training requirements for agents selling annuities;  
21          deleting a provision providing a cap on surrender or  
22          deferred sales charges; amending s. 626.99, F.S.;  
23          deleting certain annuity policy requirements  
24          applicable to persons 65 years of age or older;  
25          providing an effective date.

26  
27   Be It Enacted by the Legislature of the State of Florida:  
28

29 Section 1. Section 627.4554, Florida Statutes, is amended  
 30 to read:

31 (Substantial rewording of section. See  
 32 s. 627.4554, F.S., for present text.)  
 33 627.4554 Annuity investments.—

34 (1) PURPOSE.—The purpose of this section is to require  
 35 insurers to set forth standards and procedures for making  
 36 recommendations to consumers which result in transactions  
 37 involving annuity products, and to establish a system for  
 38 supervising such recommendations in order to ensure that the  
 39 insurance needs and financial objectives of consumers are  
 40 appropriately addressed at the time of the transaction.

41 (2) SCOPE.—This section applies to any recommendation made  
 42 to a consumer to purchase, exchange, or replace an annuity by an  
 43 insurer or its agent, and which results in the purchase,  
 44 exchange, or replacement recommended.

45 (3) DEFINITIONS.—As used in this section, the term:

46 (a) "Agent" has the same meaning as provided in s.  
 47 626.015.

48 (b) "Annuity" means an insurance product under state law  
 49 which is individually solicited, whether classified as an  
 50 individual or group annuity.

51 (c) "FINRA" means the Financial Industry Regulatory  
 52 Authority or a succeeding agency.

53 (d) "Insurer" has the same meaning as provided in s.  
 54 624.03.

55 (e) "Recommendation" means advice provided by an insurer  
 56 or its agent to a consumer which results in the purchase,

57 exchange or replacement of an annuity in accordance with that  
58 advice.

59 (f) "Replacement" means a transaction in which a new  
60 policy or contract is to be purchased and it is known or should  
61 be known to the proposing insurer or its agent that by reason of  
62 such transaction an existing policy or contract will be:

63 1. Lapsed, forfeited, surrendered or partially  
64 surrendered, assigned to the replacing insurer, or otherwise  
65 terminated;

66 2. Converted to reduced paid-up insurance, continued as  
67 extended term insurance, or otherwise reduced in value due to  
68 the use of nonforfeiture benefits or other policy values;

69 3. Amended so as to effect a reduction in benefits or the  
70 term for which coverage would otherwise remain in force or for  
71 which benefits would be paid;

72 4. Reissued with a reduction in cash value; or

73 5. Used in a financed purchase.

74 (g) "Suitability information" means information related to  
75 the consumer that is reasonably appropriate to determine the  
76 suitability of a recommendation made to the consumer, including  
77 the following:

78 1. Age;

79 2. Annual income;

80 3. Financial situation and needs, including the financial  
81 resources used for funding the annuity;

82 4. Financial experience;

83 5. Financial objectives;

84 6. Intended use of the annuity;

- 85           7. Financial time horizon;  
 86           8. Existing assets, including investment and life  
 87 insurance holdings;  
 88           9. Liquidity needs;  
 89           10. Liquid net worth;  
 90           11. Risk tolerance; and  
 91           12. Tax status.
- 92           (4) EXEMPTIONS.—This section does not apply to  
 93 transactions involving:
- 94           (a) Direct-response solicitations if the recommendation is  
 95 not based on suitability information collected from the consumer  
 96 pursuant to this section;
- 97           (b) Contracts used to fund:
- 98           1. An employee pension or welfare benefit plan that is  
 99 covered by the federal Employee Retirement and Income Security  
 100 Act;
- 101           2. A plan described by s. 401(a), s. 401(k), s. 403(b), s.  
 102 408(k), or s. 408(p) of the Internal Revenue Code, if  
 103 established or maintained by an employer;
- 104           3. A government or church plan defined in s. 414 of the  
 105 Internal Revenue Code, a government or church welfare benefit  
 106 plan, or a deferred compensation plan of a state or local  
 107 government or tax-exempt organization under s. 457 of the  
 108 Internal Revenue Code;
- 109           4. A nonqualified deferred compensation arrangement  
 110 established or maintained by an employer or plan sponsor;
- 111           5. Settlements or assumptions of liabilities associated  
 112 with personal injury litigation or any dispute or claim-

HB 1065

2012

113 resolution process; or

114 6. Formal prepaid funeral contracts.

115 (5) DUTIES OF INSURERS AND AGENTS.—

116 (a) When recommending the purchase or exchange of an  
117 annuity to a consumer which results in an insurance transaction  
118 or series of insurance transactions, the insurer or its agent  
119 must have reasonable grounds for believing that the  
120 recommendation is suitable for the consumer, based on the  
121 consumer's suitability information, and that there is a  
122 reasonable basis to believe all of the following:

123 1. The consumer has been reasonably informed of various  
124 features of the annuity, such as the potential surrender period  
125 and surrender charge; potential tax penalty if the consumer  
126 sells, exchanges, surrenders, or annuitizes the annuity;  
127 mortality and expense fees; investment advisory fees; potential  
128 charges for and features of riders; limitations on interest  
129 returns; insurance and investment components; and market risk.

130 2. The consumer would benefit from certain features of the  
131 annuity, such as tax-deferred growth, annuitization, or the  
132 death or living benefit.

133 3. The particular annuity as a whole, the underlying  
134 subaccounts to which funds are allocated at the time of purchase  
135 or exchange of the annuity, and riders and similar product  
136 enhancements, if any, are suitable; and, in the case of an  
137 exchange or replacement, the transaction as a whole is suitable  
138 for the particular consumer based on his or her suitability  
139 information.

140 4. In the case of an exchange or replacement of an

141 annuity, the exchange or replacement is suitable after taking  
142 into consideration whether the consumer:

143 a. Will incur a surrender charge; be subject to the  
144 commencement of a new surrender period; lose existing benefits,  
145 such as death, living, or other contractual benefits; or be  
146 subject to increased fees, investment advisory fees, or charges  
147 for riders and similar product enhancements;

148 b. Would benefit from product enhancements and  
149 improvements; and

150 c. Has had another annuity exchange or replacement, in  
151 particular, an exchange or replacement within the preceding 36  
152 months.

153 (b) Before executing a purchase, exchange, or replacement  
154 of an annuity resulting from a recommendation, an insurer or its  
155 agent must make reasonable efforts to obtain the consumer's  
156 suitability information.

157 (c) Except as provided under paragraph (d), an insurer may  
158 not issue an annuity recommended to a consumer unless there is a  
159 reasonable basis to believe the annuity is suitable based on the  
160 consumer's suitability information.

161 (d) An insurer's issuance of an annuity must be reasonable  
162 based on all the circumstances actually known to the insurer at  
163 the time the annuity is issued. However, an insurer or its agent  
164 does not have an obligation to a consumer related to an annuity  
165 transaction under paragraph (a) or paragraph (c) if:

166 1. A recommendation has not been made;

167 2. A recommendation was made and is later found to have  
168 been based on materially inaccurate information provided by the

169 consumer;

170 3. A consumer refuses to provide relevant suitability  
 171 information and the annuity transaction is not recommended; or

172 4. A consumer decides to enter into an annuity transaction  
 173 that is not based on a recommendation of an insurer or its  
 174 agent.

175 (e) At the time of sale, the agent or the agent's  
 176 representative must:

177 1. Make a record of any recommendation made to the  
 178 consumer pursuant to paragraph (a);

179 2. Obtain the consumer's signed statement documenting his  
 180 or her refusal to provide suitability information, if  
 181 applicable; and

182 3. Obtain the consumer's signed statement acknowledging  
 183 that an annuity transaction is not recommended if he or she  
 184 decides to enter into an annuity transaction that is not based  
 185 on the insurer's or its agent's recommendation, if applicable.

186 (f) An insurer shall establish a supervision system that  
 187 is reasonably designed to achieve the insurer's and its agent's  
 188 compliance with this section.

189 1. Such system must include, but is not limited to:

190 a. Maintaining reasonable procedures to inform its agents  
 191 of the requirements of this section and incorporating those  
 192 requirements into relevant agent training manuals;

193 b. Establishing standards for agent product training and  
 194 maintaining reasonable procedures that require its agents to  
 195 comply with subsection (7);

196 c. Providing product-specific training and training

197 materials that explain all material features of its annuity  
198 products to its agents;

199 d. Maintaining procedures for the review of each  
200 recommendation before issuance of an annuity which are designed  
201 to ensure that there is a reasonable basis for determining that  
202 a recommendation is suitable. Such review procedures may use a  
203 screening system for identifying selected transactions for  
204 additional review and may be accomplished electronically or  
205 through other means, including, but not limited to, physical  
206 review. Such electronic or other system may be designed to  
207 require additional review only of those transactions identified  
208 for additional review using established selection criteria;

209 e. Maintaining reasonable procedures to detect  
210 recommendations that are not suitable. These may include, but  
211 are not limited to, confirmation of consumer suitability  
212 information, systematic customer surveys, consumer interviews,  
213 confirmation letters, and internal monitoring programs. This  
214 sub-subparagraph does not prevent an insurer from using sampling  
215 procedures or from confirming suitability information after the  
216 issuance or delivery of the annuity; and

217 f. Annually providing a report to senior managers,  
218 including the senior manager who is responsible for audit  
219 functions, which details a review, along with appropriate  
220 testing, which is reasonably designed to determine the  
221 effectiveness of the supervision system, the exceptions found,  
222 and corrective action taken or recommended, if any.

223 2. An insurer is not required to include in its  
224 supervision system agent recommendations to consumers of



HB 1065

2012

225 products other than the annuities offered by the insurer.

226 3. An insurer may contract for performance of a function  
227 required under subparagraph 1.

228 a. If an insurer contracts for the performance of a  
229 function, the insurer must include the supervision of  
230 contractual performance as part of those procedures listed in  
231 subparagraph 1. These include, but are not limited to:

232 (I) Monitoring and, as appropriate, conducting audits to  
233 ensure that the contracted function is properly performed; and

234 (II) Annually obtaining a certification from a senior  
235 manager who has responsibility for the contracted function that  
236 the manager has a reasonable basis for representing that the  
237 function is being properly performed.

238 b. An insurer is responsible for taking appropriate  
239 corrective action and may be subject to sanctions and penalties  
240 pursuant to subsection (8) regardless of whether the insurer  
241 contracts for performance of a function and regardless of the  
242 insurer's compliance with sub-subparagraph a.

243 (g) An agent may not dissuade, or attempt to dissuade, a  
244 consumer from:

245 1. Truthfully responding to an insurer's request for  
246 confirmation of suitability information;

247 2. Filing a complaint; or

248 3. Cooperating with the investigation of a complaint.

249 (h) Sales made in compliance with FINRA requirements  
250 pertaining to the suitability and supervision of annuity  
251 transactions must satisfy the requirements of this section. This  
252 paragraph applies to FINRA broker-dealer sales of variable

253 annuities and fixed annuities if the suitability and supervision  
 254 is similar to those applied to variable annuity sales. However,  
 255 this paragraph does not limit the ability of the office or the  
 256 department to enforce, including investigate, the provisions of  
 257 this section. For this paragraph to apply, an insurer must:

258 1. Monitor the FINRA member broker-dealer using  
 259 information collected in the normal course of an insurer's  
 260 business; and

261 2. Provide to the FINRA member broker-dealer information  
 262 and reports that are reasonably appropriate to assist the FINRA  
 263 member broker-dealer in maintaining its supervision system.

264 (6) RECORDKEEPING.—

265 (a) Insurers and agents must maintain or be able to make  
 266 available to the office or department records of the information  
 267 collected from the consumer and other information used in making  
 268 the recommendations that were the basis for insurance  
 269 transactions for 5 years after the insurance transaction is  
 270 completed by the insurer. An insurer may maintain the  
 271 documentation on behalf of its agent.

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

276 (7) AGENT TRAINING.—

277 (a) An agent may not solicit the sale of an annuity  
 278 product unless the agent has sufficient knowledge of the product  
 279 to recommend the annuity and the agent is in compliance with the  
 280 insurer's standards for product training. An agent may rely on

281 insurer-provided, product-specific training standards and  
282 materials in order to comply with this paragraph.

283 (b) An agent who engages in the sale of annuity products  
284 must complete a one-time annuity training course approved by the  
285 department.

286 1. The minimum length of the training course must be  
287 sufficient to qualify for at least 4 hours of continuing  
288 education under s. 626.2815, but may be longer.

289 2. The training must include information on the following  
290 topics:

291 a. The types of annuities and various classifications of  
292 annuities.

293 b. Identification of the parties to an annuity.

294 c. How fixed, variable, and indexed annuity contract  
295 provisions affect consumers.

296 d. Income taxation of qualified and nonqualified  
297 annuities.

298 e. The primary uses of annuities.

299 f. Appropriate sales practices, replacement, and  
300 disclosure requirements.

301 3. The training course may be conducted and completed by  
302 classroom or a self-study program in accordance with s.  
303 626.2815.

304 (c) A provider of an annuity training course must comply  
305 with s. 626.2816 and the rules applicable to continuing  
306 education courses adopted under that section.

307 1. Providers must cover all topics listed in subparagraph  
308 (b)2. and may not present any marketing information or provide

HB 1065

2012

309 training on sales techniques or provide specific information  
310 about a particular insurer's products. Additional topics may be  
311 offered in conjunction with the required topics.

312 2. Providers must comply with the reporting requirements  
313 and issue certificates of completion in accordance with s.  
314 626.2815.

315 (d) An insurer shall verify that its agent has completed  
316 the annuity training course required under this subsection  
317 before allowing the agent to sell an annuity product for that  
318 insurer. An insurer may satisfy this requirement by obtaining  
319 certificates of completion of the training course or obtaining  
320 reports provided by office-sponsored database systems or vendors  
321 or from a reasonably reliable commercial database vendor that  
322 has a reporting arrangement with approved insurance education  
323 providers.

324 (e) Agents that hold a life insurance line of authority on  
325 July 1, 2012, and that desire to sell annuities must complete  
326 the annuity training course within 6 months after that date.  
327 Individuals who obtain a life insurance line of authority on or  
328 after July 1, 2012, may not engage in the sale of annuities  
329 until the annuity training course has been completed.

330 (f) Satisfaction of the training requirements of another  
331 state which are substantially similar to this subsection satisfy  
332 the training requirements of this subsection.

333 (8) COMPLIANCE MITIGATION; PENALTIES.—

334 (a) An insurer is responsible for compliance with this  
335 section. If a violation occurs because of the action or inaction  
336 of the insurer or its agent, the office may order an insurer to

337 take reasonably appropriate corrective action for a consumer  
338 harmed by the insurer's or by its agent's violation of this  
339 section and may impose appropriate penalties and sanctions.

340 (b) The department may order:

341 1. An insurance agent to take reasonably appropriate  
342 corrective action, including monetary restitution of penalties  
343 or fees incurred by the consumer for any consumer harmed by a  
344 violation of this section by the insurance agent and impose  
345 appropriate penalties and sanctions.

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

351 (c) In addition to any other penalty authorized under  
352 chapter 626, the department shall order an insurance agent to  
353 pay restitution to a consumer who has been deprived of money by  
354 the agent's misappropriation, conversion, or unlawful  
355 withholding of moneys belonging to the senior consumer in the  
356 course of a transaction involving annuities. The amount of  
357 restitution required to be paid may not exceed the amount  
358 misappropriated, converted, or unlawfully withheld. This  
359 paragraph does not limit or restrict a person's right to seek  
360 other remedies as provided by law.

361 (d) Any applicable penalty under the Florida Insurance  
362 Code for a violation of this section shall be reduced or  
363 eliminated according to a schedule adopted by the office or the  
364 department, as appropriate, if corrective action for the

365 consumer was taken promptly after a violation was discovered.

366 (e) A violation of this section does not create or imply a  
 367 private cause of action.

368 (9) RULES.—The department may adopt rules to administer  
 369 this section.

370 Section 2. Subsection (4) of section 626.99, Florida  
 371 Statutes, is amended to read:

372 626.99 Life insurance solicitation.—

373 (4) DISCLOSURE REQUIREMENTS.—

374 (a) The insurer shall provide to each prospective  
 375 purchaser a buyer's guide and a policy summary prior to  
 376 accepting the applicant's initial premium or premium deposit,  
 377 unless the policy for which application is made provides an  
 378 unconditional refund for ~~a period of~~ at least 14 days, or unless  
 379 the policy summary contains an offer of such an unconditional  
 380 refund. In these instances, the buyer's guide and policy summary  
 381 must be delivered with the policy or before ~~prior to~~ delivery of  
 382 the policy.

383 (b) With respect to fixed and variable annuities, the  
 384 policy must provide an unconditional refund for ~~a period of~~ at  
 385 least 14 days. For fixed annuities, the buyer's guide must ~~shall~~  
 386 be in the form ~~as~~ provided by the National Association of  
 387 Insurance Commissioners (NAIC) Annuity Disclosure Model  
 388 Regulation, until ~~such time as~~ a buyer's guide is developed by  
 389 the department, at which time the department guide must be used.  
 390 For variable annuities, a policy summary may be used, which may  
 391 be contained in a prospectus, until such time as a buyer's guide  
 392 is developed by NAIC or the department, at which time one of

393 those guides must be used. ~~If the prospective owner of an~~  
394 ~~annuity contract is 65 years of age or older:~~

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

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

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

414 ~~(c)(d)~~ (c) The insurer shall provide a buyer's guide and a  
415 policy summary to a ~~any~~ prospective purchaser upon request.

416 Section 3. This act shall take effect July 1, 2012.