

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           revising the information relating to annuities that  
10          must be provided by the insurer or its agent to the  
11          consumer; revising the requirements for monitoring  
12          contractors that are providing certain functions for  
13          the insurer relating to the insurer's system for  
14          supervising recommendations; revising provisions  
15          relating to the relationship between this act and the  
16          federal Financial Industry Regulatory Authority;  
17          deleting a provision providing a cap on surrender or  
18          deferred sales charges; prohibiting specified charges  
19          for annuities issued to persons 65 years of age or  
20          older; amending s. 626.99, F.S.; increasing the period  
21          of time that an unconditional refund must remain  
22          available with respect to certain annuity contracts;  
23          making such unconditional refunds available to all  
24          prospective annuity contract buyers without regard to  
25          the buyer's age; revising requirements for cover pages  
26          of annuity contracts; providing an effective date.

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

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

32 (Substantial rewording of section. See  
33 s. 627.4554, F.S., for present text.)  
34 627.4554 Annuity investments.-

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

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

46 (3) DEFINITIONS.-As used in this section, the term:

47 (a) "Agent" has the same meaning as provided in s.  
48 626.015.

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

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

54 (d) "Insurer" has the same meaning as provided in s.  
55 624.03.

56 (e) "Recommendation" means advice provided by an insurer

57 or its agent to a consumer which results in the purchase,  
58 exchange or replacement of an annuity in accordance with that  
59 advice.

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

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

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

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

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

74 5. Used in a financed purchase.

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

79 1. Age;

80 2. Annual income;

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

83 4. Financial experience;

84 5. Financial objectives;

- 85 |       6. Intended use of the annuity;
- 86 |       7. Financial time horizon;
- 87 |       8. Existing assets, including investment and life
- 88 | insurance holdings;
- 89 |       9. Liquidity needs;
- 90 |       10. Liquid net worth;
- 91 |       11. Risk tolerance; and
- 92 |       12. Tax status.
- 93 |       (4) EXEMPTIONS.—This section does not apply to
- 94 | transactions involving:
- 95 |       (a) Direct-response solicitations where there is no
- 96 | recommendation based on information collected from the consumer
- 97 | pursuant to this section;
- 98 |       (b) Contracts used to fund:
- 99 |       1. An employee pension or welfare benefit plan that is
- 100 | covered by the federal Employee Retirement and Income Security
- 101 | Act;
- 102 |       2. A plan described by s. 401(a), s. 401(k), s. 403(b), s.
- 103 | 408(k), or s. 408(p) of the Internal Revenue Code, if
- 104 | established or maintained by an employer;
- 105 |       3. A government or church plan defined in s. 414 of the
- 106 | Internal Revenue Code, a government or church welfare benefit
- 107 | plan, or a deferred compensation plan of a state or local
- 108 | government or tax-exempt organization under s. 457 of the
- 109 | Internal Revenue Code;
- 110 |       4. A nonqualified deferred compensation arrangement
- 111 | established or maintained by an employer or plan sponsor;
- 112 |       5. Settlements or assumptions of liabilities associated

113 with personal injury litigation or any dispute or claim-  
 114 resolution process; or

115 6. Formal prepaid funeral contracts.

116 (5) DUTIES OF INSURERS AND AGENTS.-

117 (a) When recommending the purchase or exchange of an  
 118 annuity to a consumer which results in an insurance transaction  
 119 or series of insurance transactions, the agent, or the insurer  
 120 where no agent is involved, must have reasonable grounds for  
 121 believing that the recommendation is suitable for the consumer,  
 122 based on the consumer's suitability information, and that there  
 123 is a reasonable basis to believe all of the following:

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

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

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

141       4. In the case of an exchange or replacement of an  
142 annuity, the exchange or replacement is suitable after taking  
143 into consideration whether the consumer:

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

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

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

154           (b) Before executing a purchase, exchange, or replacement  
155 of an annuity resulting from a recommendation, an insurer or its  
156 agent must make reasonable efforts to obtain the consumer's  
157 suitability information. The information shall be collected on  
158 form DFS-H1-1980, which is hereby incorporated by reference, and  
159 completed and signed by the applicant and agent. Questions  
160 requesting this information must be presented in at least 12-  
161 point type and be sufficiently clear so as to be readily  
162 understandable by both the agent and the consumer. A true and  
163 correct executed copy of the form must be provided by the agent  
164 to the insurer, or to the person or entity that has contracted  
165 with the insurer to perform this function as authorized by this  
166 section, within 10 days after execution of the form, and shall  
167 be provided to the consumer no later than the date of delivery  
168 of the contract or contracts.

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

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

- 178 1. A recommendation has not been made;
- 179 2. A recommendation was made and is later found to have  
180 been based on materially inaccurate information provided by the  
181 consumer;
- 182 3. A consumer refuses to provide relevant suitability  
183 information and the annuity transaction is not recommended; or
- 184 4. A consumer decides to enter into an annuity transaction  
185 that is not based on a recommendation of an insurer or its  
186 agent.

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

- 189 1. Make a record of any recommendation made to the  
190 consumer pursuant to paragraph (a);
- 191 2. Obtain the consumer's signed statement documenting his  
192 or her refusal to provide suitability information, if  
193 applicable; and
- 194 3. Obtain the consumer's signed statement acknowledging  
195 that an annuity transaction is not recommended if he or she  
196 decides to enter into an annuity transaction that is not based

197 on the insurer's or its agent's recommendation, if applicable.

198 (f) Before executing a replacement or exchange of an  
 199 annuity contract resulting from a recommendation, the agent must  
 200 provide on form DFS-H1-1981, which is hereby incorporated by  
 201 reference, information that compares the differences between the  
 202 existing annuity contract and the annuity contract being  
 203 recommended in order to determine the suitability of the  
 204 recommendation and its benefit to the consumer. A true and  
 205 correct executed copy of this form must be provided by the agent  
 206 to the insurer, or to the person or entity that has contracted  
 207 with the insurer to perform this function as authorized by this  
 208 section, within 10 days after execution of the form, and must be  
 209 provided to the consumer no later than the date of delivery of  
 210 the contract or contracts.

211 (g) An insurer shall establish a supervision system that  
 212 is reasonably designed to achieve the insurer's and its agent's  
 213 compliance with this section.

- 214 1. Such system must include, but is not limited to:
- 215 a. Maintaining reasonable procedures to inform its agents  
 216 of the requirements of this section and incorporating those  
 217 requirements into relevant agent training manuals;
  - 218 b. Establishing standards for agent product training;
  - 219 c. Providing product-specific training and training  
 220 materials that explain all material features of its annuity  
 221 products to its agents;
  - 222 d. Maintaining procedures for the review of each  
 223 recommendation before issuance of an annuity which are designed  
 224 to ensure that there is a reasonable basis for determining that



225 a recommendation is suitable. Such review procedures may use a  
226 screening system for identifying selected transactions for  
227 additional review and may be accomplished electronically or  
228 through other means, including, but not limited to, physical  
229 review. Such electronic or other system may be designed to  
230 require additional review only of those transactions identified  
231 for additional review using established selection criteria;  
232 e. Maintaining reasonable procedures to detect  
233 recommendations that are not suitable. These may include, but  
234 are not limited to, confirmation of consumer suitability  
235 information, systematic customer surveys, consumer interviews,  
236 confirmation letters, and internal monitoring programs. This  
237 sub-subparagraph does not prevent an insurer from using sampling  
238 procedures or from confirming suitability information after the  
239 issuance or delivery of the annuity; and  
240 f. Annually providing a report to senior managers,  
241 including the senior manager who is responsible for audit  
242 functions, which details a review, along with appropriate  
243 testing, which is reasonably designed to determine the  
244 effectiveness of the supervision system, the exceptions found,  
245 and corrective action taken or recommended, if any.  
246 2. An insurer is not required to include in its  
247 supervision system agent recommendations to consumers of  
248 products other than the annuities offered by the insurer.  
249 3. An insurer may contract for performance of a function  
250 required under subparagraph 1.  
251 a. If an insurer contracts for the performance of a  
252 function, the insurer must include the supervision of

253 contractual performance as part of those procedures listed in  
 254 subparagraph 1. These include, but are not limited to:

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

257 (II) Annually obtaining a certification from a senior  
 258 manager who has responsibility for the contracted function that  
 259 the manager has a reasonable basis for representing that the  
 260 function is being properly performed.

261 b. An insurer is responsible for taking appropriate  
 262 corrective action and may be subject to sanctions and penalties  
 263 pursuant to subsection (7) regardless of whether the insurer  
 264 contracts for performance of a function and regardless of the  
 265 insurer's compliance with sub-subparagraph a.

266 (h) An agent may not dissuade, or attempt to dissuade, a  
 267 consumer from:

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

270 2. Filing a complaint; or

271 3. Cooperating with the investigation of a complaint.

272 (i) Sales made in compliance with FINRA requirements  
 273 pertaining to the suitability and supervision of annuity  
 274 transactions shall satisfy the requirements of this section.  
 275 This paragraph applies to FINRA broker-dealer sales of variable  
 276 annuities and fixed annuities if the suitability and supervision  
 277 is similar to those applied to variable annuity sales. However,  
 278 this paragraph does not limit the ability of the office or the  
 279 department to enforce, including investigate, the provisions of  
 280 this section. For this paragraph to apply, an insurer must:

281 1. Monitor the FINRA member broker-dealer using  
282 information collected in the normal course of an insurer's  
283 business; and

284 2. Provide to the FINRA member broker-dealer information  
285 and reports that are reasonably appropriate to assist the FINRA  
286 member broker-dealer in maintaining its supervision system.

287 (6) RECORDKEEPING.—

288 (a) Insurers and agents must maintain or be able to make  
289 available to the office or department records of the information  
290 collected from the consumer and other information used in making  
291 the recommendations that were the basis for insurance  
292 transactions for 5 years after the insurance transaction is  
293 completed by the insurer. An insurer may maintain the  
294 documentation on behalf of its agent.

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

299 (7) COMPLIANCE MITIGATION; PENALTIES.—

300 (a) An insurer is responsible for compliance with this  
301 section. If a violation occurs because of the action or inaction  
302 of the insurer or its agent, the office may order an insurer to  
303 take reasonably appropriate corrective action for a consumer  
304 harmed by the insurer's or by its agent's violation of this  
305 section and may impose appropriate penalties and sanctions.

306 (b) The department may order:

307 1. An insurance agent to take reasonably appropriate  
308 corrective action, including monetary restitution of penalties

309 or fees incurred by the consumer for any consumer harmed by a  
310 violation of this section by the insurance agent and impose  
311 appropriate penalties and sanctions.

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

317 (c) In addition to any other penalty authorized under  
318 chapter 626, the department shall order an insurance agent to  
319 pay restitution to a consumer who has been deprived of money by  
320 the agent's misappropriation, conversion, or unlawful  
321 withholding of moneys belonging to the senior consumer in the  
322 course of a transaction involving annuities. The amount of  
323 restitution required to be paid may not exceed the amount  
324 misappropriated, converted, or unlawfully withheld. This  
325 paragraph does not limit or restrict a person's right to seek  
326 other remedies as provided by law.

327 (d) Any applicable penalty under the Florida Insurance  
328 Code for a violation of this section shall be reduced or  
329 eliminated according to a schedule adopted by the office or the  
330 department, as appropriate, if corrective action for the  
331 consumer was taken promptly after a violation was discovered.

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

334 (8) PROHIBITED CHARGES.—An annuity contract issued to a  
335 senior consumer age 65 or older may not contain a surrender or  
336 deferred sales charge for a withdrawal of money from an annuity

337 exceeding 10 percent of the amount withdrawn. The charge shall  
 338 be reduced so that no surrender or deferred sales charge exists  
 339 after the end of the 10th policy year or 10 years after the date  
 340 of each premium payment when multiple premiums are paid,  
 341 whichever is later. This subsection does not apply to annuities  
 342 purchased by an accredited investor, as defined in Regulation D  
 343 as adopted by the United States Securities and Exchange  
 344 Commission, or to those annuities specified in paragraph (4) (b).

345 (9) RULES.—The department may adopt rules to administer  
 346 this section.

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

349 626.99 Life insurance solicitation.—

350 (4) DISCLOSURE REQUIREMENTS.—

351 (a) The insurer shall provide to each prospective  
 352 purchaser a buyer's guide and a policy summary prior to  
 353 accepting the applicant's initial premium or premium deposit,  
 354 unless the policy for which application is made provides an  
 355 unconditional refund for ~~a period of~~ at least 14 days, or unless  
 356 the policy summary contains an offer of such an unconditional  
 357 refund. In these instances, the buyer's guide and policy summary  
 358 must be delivered with the policy or before ~~prior to~~ delivery of  
 359 the policy.

360 (b) With respect to fixed and variable annuities, the  
 361 policy must provide an unconditional refund for ~~a period of~~ at  
 362 least 21 ~~14~~ days. For fixed annuities, the buyer's guide must  
 363 ~~shall~~ be in the form ~~as~~ provided by the National Association of  
 364 Insurance Commissioners (NAIC) Annuity Disclosure Model

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365 Regulation, until ~~such time as~~ a buyer's guide is developed by  
366 the department, at which time the department guide must be used.  
367 For variable annuities, a policy summary may be used, which may  
368 be contained in a prospectus, until such time as a buyer's guide  
369 is developed by NAIC or the department, at which time one of  
370 those guides must be used. Unconditional refund means ~~If the~~  
371 ~~prospective owner of an annuity contract is 65 years of age or~~  
372 ~~older:~~

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

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

385 (c) The insurer shall attach a cover page to any annuity  
386 contract ~~policy~~ informing the purchaser of the unconditional  
387 refund period prescribed in paragraph (b). The cover page must  
388 also provide contact information for the issuing company and the  
389 selling agent, and the department's toll-free help line, ~~and any~~  
390 ~~other information required by the department by rule.~~ The cover  
391 page must also contain the following disclosures in bold print  
392 and at least 12-point type, if applicable:

393           1. "PLEASE BE AWARE THAT THE PURCHASE OF AN ANNUITY  
 394 CONTRACT IS A LONG-TERM COMMITMENT AND MAY RESTRICT ACCESS TO  
 395 YOUR FUNDS."

396           2. "IT IS IMPORTANT THAT YOU UNDERSTAND HOW THE BONUS  
 397 FEATURE OF YOUR CONTRACT WORKS. PLEASE REFER TO YOUR POLICY FOR  
 398 FURTHER DETAILS."

399           3. "INTEREST RATES MAY HAVE CERTAIN LIMITATIONS. PLEASE  
 400 REFER TO YOUR POLICY FOR FURTHER DETAILS."

401           4. "A [PROSPECTUS AND POLICY SUMMARY] [BUYERS GUIDE] IS  
 402 REQUIRED TO BE GIVEN TO YOU."

403

404 The cover page is part of the policy and is subject to review by  
 405 the office pursuant to s. 627.410.

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

408           Section 3. This act shall take effect October 1, 2012.