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LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
02/07/2012	.	
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The Committee on Banking and Insurance (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause and insert:

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

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

(1) PURPOSE.—The purpose of this section is to require insurers to set forth standards and procedures for making recommendations to consumers which result in transactions



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13 involving annuity products, and to establish a system for
14 supervising such recommendations in order to ensure that the
15 insurance needs and financial objectives of consumers are
16 appropriately addressed at the time of the transaction.

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

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

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

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

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

28 (d) "Insurer" has the same meaning as provided in s.
29 624.03.

30 (e) "Recommendation" means advice provided by an insurer or
31 its agent to a consumer which results in the purchase, exchange
32 or replacement of an annuity in accordance with that advice.

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

37 1. Lapsed, forfeited, surrendered or partially surrendered,
38 assigned to the replacing insurer, or otherwise terminated;

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



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

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

46 5. Used in a financed purchase.

47 (g) "Suitability information" means information related to
48 the consumer that is reasonably appropriate to determine the
49 suitability of a recommendation made to the consumer, including
50 the following:

51 1. Age;

52 2. Annual income;

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

55 4. Financial experience;

56 5. Financial objectives;

57 6. Intended use of the annuity;

58 7. Financial time horizon;

59 8. Existing assets, including investment and life insurance
60 holdings;

61 9. Liquidity needs;

62 10. Liquid net worth;

63 11. Risk tolerance; and

64 12. Tax status.

65 (4) EXEMPTIONS.—This section does not apply to transactions
66 involving:

67 (a) Direct-response solicitations where there is no
68 recommendation based on information collected from the consumer
69 pursuant to this section;

70 (b) Contracts used to fund:



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

74 2. A plan described by s. 401(a), s. 401(k), s. 403(b), s.
75 408(k), or s. 408(p) of the Internal Revenue Code, if
76 established or maintained by an employer;

77 3. A government or church plan defined in s. 414 of the
78 Internal Revenue Code, a government or church welfare benefit
79 plan, or a deferred compensation plan of a state or local
80 government or tax-exempt organization under s. 457 of the
81 Internal Revenue Code;

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

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

87 6. Formal prepaid funeral contracts.

88 (5) DUTIES OF INSURERS AND AGENTS.—

89 (a) When recommending the purchase or exchange of an
90 annuity to a consumer which results in an insurance transaction
91 or series of insurance transactions, the agent, or the insurer
92 where no agent is involved, must have reasonable grounds for
93 believing that the recommendation is suitable for the consumer,
94 based on the consumer's suitability information, and that there
95 is a reasonable basis to believe all of the following:

96 1. The consumer has been reasonably informed of various
97 features of the annuity, such as the potential surrender period
98 and surrender charge; potential tax penalty if the consumer
99 sells, exchanges, surrenders, or annuitizes the annuity;



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100 mortality and expense fees; investment advisory fees; potential
101 charges for and features of riders; limitations on interest
102 returns; insurance and investment components; and market risk.

103 2. The consumer would benefit from certain features of the
104 annuity, such as tax-deferred growth, annuitization, or the
105 death or living benefit.

106 3. The particular annuity as a whole, the underlying
107 subaccounts to which funds are allocated at the time of purchase
108 or exchange of the annuity, and riders and similar product
109 enhancements, if any, are suitable; and, in the case of an
110 exchange or replacement, the transaction as a whole is suitable
111 for the particular consumer based on his or her suitability
112 information.

113 4. In the case of an exchange or replacement of an annuity,
114 the exchange or replacement is suitable after considering
115 whether the consumer:

116 a. Will incur a surrender charge; be subject to the
117 commencement of a new surrender period; lose existing benefits,
118 such as death, living, or other contractual benefits; or be
119 subject to increased fees, investment advisory fees, or charges
120 for riders and similar product enhancements;

121 b. Would benefit from product enhancements and
122 improvements; and

123 c. Has had another annuity exchange or replacement, in
124 particular, an exchange or replacement within the preceding 36
125 months.

126 (b) Before executing a purchase, exchange, or replacement
127 of an annuity resulting from a recommendation, an insurer or its
128 agent must make reasonable efforts to obtain the consumer's



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129 suitability information. The information shall be collected on
130 form DFS-H1-1980, which is hereby incorporated by reference, and
131 completed and signed by the applicant and agent. Questions
132 requesting this information must be presented in at least 12-
133 point type and be sufficiently clear so as to be readily
134 understandable by both the agent and the consumer. A true and
135 correct executed copy of the form must be provided by the agent
136 to the insurer, or to the person or entity that has contracted
137 with the insurer to perform this function as authorized by this
138 section, within 10 days after execution of the form, and must be
139 provided to the consumer by the date of delivery of the contract
140 or contracts.

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

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

- 150 1. A recommendation has not been made;
- 151 2. A recommendation was made and is later found to have
152 been based on materially inaccurate information provided by the
153 consumer;
- 154 3. A consumer refuses to provide relevant suitability
155 information and the annuity transaction is not recommended; or
- 156 4. A consumer decides to enter into an annuity transaction
157 that is not based on a recommendation of an insurer or its



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158 agent.

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

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

163 2. Obtain the consumer's signed statement documenting his
164 or her refusal to provide suitability information, if
165 applicable; and

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

170 (f) Before executing a replacement or exchange of an
171 annuity contract resulting from a recommendation, the agent must
172 provide on form DFS-H1-1981, which is incorporated by reference,
173 information that compares the differences between the existing
174 annuity contract and the annuity contract being recommended in
175 order to determine the suitability of the recommendation and its
176 benefit to the consumer. A true and correct executed copy of
177 this form must be provided by the agent to the insurer, or to
178 the person or entity that has contracted with the insurer to
179 perform this function as authorized by this section, within 10
180 days after execution of the form, and must be provided to the
181 consumer by the date of delivery of the contract or contracts.

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

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

186 a. Maintaining reasonable procedures to inform its agents



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187 of the requirements of this section and incorporating those
188 requirements into relevant agent training manuals;
189 b. Establishing standards for agent product training;
190 c. Providing product-specific training and training
191 materials that explain all material features of its annuity
192 products to its agents;
193 d. Maintaining procedures for the review of each
194 recommendation before issuance of an annuity which are designed
195 to ensure that there is a reasonable basis for determining that
196 a recommendation is suitable. Such review procedures may use a
197 screening system for identifying selected transactions for
198 additional review and may be accomplished electronically or
199 through other means, including, but not limited to, physical
200 review. Such electronic or other system may be designed to
201 require additional review only of those transactions identified
202 for additional review using established selection criteria;
203 e. Maintaining reasonable procedures to detect
204 recommendations that are not suitable. These may include, but
205 are not limited to, confirmation of consumer suitability
206 information, systematic customer surveys, consumer interviews,
207 confirmation letters, and internal monitoring programs. This
208 sub-subparagraph does not prevent an insurer from using sampling
209 procedures or from confirming suitability information after the
210 issuance or delivery of the annuity; and
211 f. Annually providing a report to senior managers,
212 including the senior manager who is responsible for audit
213 functions, which details a review, along with appropriate
214 testing, which is reasonably designed to determine the
215 effectiveness of the supervision system, the exceptions found,



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216 and corrective action taken or recommended, if any.

217 2. An insurer is not required to include in its supervision
218 system agent recommendations to consumers of products other than
219 the annuities offered by the insurer.

220 3. An insurer may contract for performance of a function
221 required under subparagraph 1.

222 a. If an insurer contracts for the performance of a
223 function, the insurer must include the supervision of
224 contractual performance as part of those procedures listed in
225 subparagraph 1. These include, but are not limited to:

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

228 (II) Annually obtaining a certification from a senior
229 manager who has responsibility for the contracted function that
230 the manager has a reasonable basis for representing that the
231 function is being properly performed.

232 b. An insurer is responsible for taking appropriate
233 corrective action and may be subject to sanctions and penalties
234 pursuant to subsection (8) regardless of whether the insurer
235 contracts for performance of a function and regardless of the
236 insurer's compliance with sub-subparagraph a.

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

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

241 2. Filing a complaint; or

242 3. Cooperating with the investigation of a complaint.

243 (i) Sales made in compliance with FINRA requirements
244 pertaining to the suitability and supervision of annuity



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245 transactions must satisfy the requirements of this section. This
246 paragraph applies to FINRA broker-dealer sales of variable
247 annuities and fixed annuities if the suitability and supervision
248 is similar to those applied to variable annuity sales. However,
249 this paragraph does not limit the ability of the office or the
250 department to enforce, including investigate, the provisions of
251 this section. For this paragraph to apply, an insurer must:

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

254 2. Provide to the FINRA member broker-dealer information
255 and reports that are reasonably appropriate to assist the FINRA
256 member broker-dealer in maintaining its supervision system.

257 (6) RECORDKEEPING.—

258 (a) Insurers and agents must maintain or be able to make
259 available to the office or department records of the information
260 collected from the consumer and other information used in making
261 the recommendations that were the basis for insurance
262 transactions for 5 years after the insurance transaction is
263 completed by the insurer. An insurer may maintain the
264 documentation on behalf of its agent.

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

269 (7) COMPLIANCE MITIGATION; PENALTIES.—

270 (a) An insurer is responsible for compliance with this
271 section. If a violation occurs because of the action or inaction
272 of the insurer or its agent, the office may order an insurer to
273 take reasonably appropriate corrective action for a consumer



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274 harmed by the insurer's or by its agent's violation of this
275 section and may impose appropriate penalties and sanctions.

276 (b) The department may order:

277 1. An insurance agent to take reasonably appropriate
278 corrective action, including monetary restitution of penalties
279 or fees incurred by the consumer for any consumer harmed by a
280 violation of this section by the insurance agent and impose
281 appropriate penalties and sanctions.

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

287 (c) In addition to any other penalty authorized under
288 chapter 626, the department shall order an insurance agent to
289 pay restitution to a consumer who has been deprived of money by
290 the agent's misappropriation, conversion, or unlawful
291 withholding of moneys belonging to the senior consumer in the
292 course of a transaction involving annuities. The amount of
293 restitution may not exceed the amount misappropriated,
294 converted, or unlawfully withheld. This paragraph does not limit
295 or restrict a person's right to seek other remedies as provided
296 by law.

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

302 (e) A violation of this section does not create or imply a



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303 private cause of action.

304 (8) PROHIBITED CHARGES.—An annuity contract issued to a
305 senior consumer age 65 or older may not contain a surrender or
306 deferred sales charge for a withdrawal of money from an annuity
307 exceeding 10 percent of the amount withdrawn. The charge shall
308 be reduced so that no surrender or deferred sales charge exists
309 after the end of the 10th policy year or 10 years after the date
310 of each premium payment if multiple premiums are paid, whichever
311 is later. This subsection does not apply to annuities purchased
312 by an accredited investor, as defined in Regulation D as adopted
313 by the United States Securities and Exchange Commission, or to
314 those annuities specified in paragraph (4) (b).

315 (9) RULES.—The department may adopt rules to administer
316 this section.

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

319 626.99 Life insurance solicitation.—

320 (4) DISCLOSURE REQUIREMENTS.—

321 (a) The insurer shall provide to each prospective purchaser
322 a buyer's guide and a policy summary prior to accepting the
323 applicant's initial premium or premium deposit, unless the
324 policy for which application is made provides an unconditional
325 refund for ~~a period of~~ at least 14 days, or unless the policy
326 summary contains an offer of such an unconditional refund. In
327 these instances, the buyer's guide and policy summary must be
328 delivered with the policy or before ~~prior to~~ delivery of the
329 policy.

330 (b) With respect to fixed and variable annuities, the
331 policy must provide an unconditional refund for ~~a period of~~ at



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332 least 21 ~~14~~ days. For fixed annuities, the buyer's guide must
333 ~~shall~~ be in the form ~~as~~ provided by the National Association of
334 Insurance Commissioners (NAIC) Annuity Disclosure Model
335 Regulation, until ~~such time as~~ a buyer's guide is developed by
336 the department, at which time the department guide must be used.
337 For variable annuities, a policy summary may be used, which may
338 be contained in a prospectus, until such time as a buyer's guide
339 is developed by NAIC or the department, at which time one of
340 those guides must be used. Unconditional refund means ~~if the~~
341 ~~prospective owner of an annuity contract is 65 years of age or~~
342 ~~elder:~~

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

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

355 (c) The insurer shall attach a cover page to any annuity
356 contract ~~policy~~ informing the purchaser of the unconditional
357 refund period prescribed in paragraph (b). The cover page must
358 also provide contact information for the issuing company and the
359 selling agent, and the department's toll-free help line, ~~and any~~
360 ~~other information required by the department by rule.~~ The cover



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361 page must also contain the following disclosures in bold print
362 and at least 12-point type, if applicable:

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

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

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

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

373
374 The cover page is part of the policy and is subject to
375 review by the office pursuant to s. 627.410.

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

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

379
380 ===== T I T L E A M E N D M E N T =====

381 And the title is amended as follows:

382 Delete everything before the enacting clause
383 and insert:

384 A bill to be entitled
385 An act relating to annuities; amending s. 627.4554,
386 F.S.; providing that recommendations relating to
387 annuities made by an insurer or its agents apply to
388 all consumers not just to senior consumers; revising
389 and providing definitions; revising the duties of



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390 insurers and agents; providing that recommendations
391 must be based on consumer suitability information;
392 revising the information relating to annuities that
393 must be provided by the insurer or its agent to the
394 consumer; revising the requirements for monitoring
395 contractors that are providing certain functions for
396 the insurer relating to the insurer's system for
397 supervising recommendations; revising provisions
398 relating to the relationship between this act and the
399 federal Financial Industry Regulatory Authority;
400 deleting a provision providing a cap on surrender or
401 deferred sales charges; prohibiting specified charges
402 for annuities issued to persons 65 years of age or
403 older; amending s. 626.99, F.S.; increasing the period
404 of time that an unconditional refund must remain
405 available with respect to certain annuity contracts;
406 making such unconditional refunds available to all
407 prospective annuity contract buyers without regard to
408 the buyer's age; revising requirements for cover pages
409 of annuity contracts; providing an effective date.