

By Senator Richter

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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

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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 purposes of this section are 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. 626.015.

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

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

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

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

57 (f) "Replacement" means a transaction in which a new policy
58 or contract is to be purchased and it is known or should be

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59 known to the proposing insurer or its agent that by reason of
60 such transaction an existing policy or contract will be:

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

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

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

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

70 5. Used in a financed purchase.

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

75 1. Age;

76 2. Annual income;

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

79 4. Financial experience;

80 5. Financial objectives;

81 6. Intended use of the annuity;

82 7. Financial time horizon;

83 8. Existing assets, including investment and life insurance
84 holdings;

85 9. Liquidity needs;

86 10. Liquid net worth;

87 11. Risk tolerance; and

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88 12. Tax status.

89 (4) EXEMPTIONS.—This section does not apply to transactions
90 involving:

91 (a) Direct-response solicitations if the recommendation is
92 not based on suitability information collected from the consumer
93 pursuant to this section;

94 (b) Contracts used to fund:

95 1. An employee pension or welfare benefit plan that is
96 covered by the federal Employee Retirement and Income Security
97 Act;

98 2. A plan described by s. 401(a), s. 401(k), s. 403(b), s.
99 408(k), or s. 408(p) of the Internal Revenue Code, if
100 established or maintained by an employer;

101 3. A government or church plan defined in s. 414 of the
102 Internal Revenue Code, a government or church welfare benefit
103 plan, or a deferred compensation plan of a state or local
104 government or tax-exempt organization under s. 457 of the
105 Internal Revenue Code;

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

108 5. Settlements or assumptions of liabilities associated
109 with personal injury litigation or any dispute or claim-
110 resolution process; or

111 6. Formal prepaid funeral contracts.

112 (5) DUTIES OF INSURERS AND AGENTS.—

113 (a) When recommending the purchase or exchange of an
114 annuity to a consumer which results in an insurance transaction
115 or series of insurance transactions, the insurer or its agent
116 must have reasonable grounds for believing that the

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117 recommendation is suitable for the consumer, based on the
118 consumer's suitability information, and that there is a
119 reasonable basis to believe all of the following:

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

127 2. The consumer would benefit from certain features of the
128 annuity, such as tax-deferred growth, annuitization, or the
129 death or living benefit.

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

137 4. In the case of an exchange or replacement of an annuity,
138 the exchange or replacement is suitable after taking into
139 consideration whether the consumer:

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

145 b. Would benefit from product enhancements and

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146 improvements; and

147 c. Has had another annuity exchange or replacement, in
148 particular, an exchange or replacement within the preceding 36
149 months.

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

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

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

163 1. A recommendation has not been made;

164 2. A recommendation was made and is later found to have
165 been based on materially inaccurate information provided by the
166 consumer;

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

169 4. A consumer decides to enter into an annuity transaction
170 that is not based on a recommendation of an insurer or its
171 agent.

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

174 1. Make a record of any recommendation made to the consumer

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175 pursuant to paragraph (a);

176 2. Obtain the consumer's signed statement documenting his
177 or her refusal to provide suitability information, if
178 applicable; and

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

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

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

187 a. Maintaining reasonable procedures to inform its agents
188 of the requirements of this section and incorporating those
189 requirements into relevant agent training manuals;

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

193 c. Providing product-specific training and training
194 materials that explain all material features of its annuity
195 products to its agents;

196 d. Maintaining procedures for the review of each
197 recommendation before issuance of an annuity which are designed
198 to ensure that there is a reasonable basis for determining that
199 a recommendation is suitable. Such review procedures may use a
200 screening system for identifying selected transactions for
201 additional review and may be accomplished electronically or
202 through other means, including, but not limited to, physical
203 review. Such electronic or other system may be designed to

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204 require additional review only of those transactions identified
205 for additional review using established selection criteria;

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

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

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

223 3. An insurer may contract for performance of a function
224 required under subparagraph 1.

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

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

231 (II) Annually obtaining a certification from a senior
232 manager who has responsibility for the contracted function that

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233 the manager has a reasonable basis for representing that the
234 function is being properly performed.

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

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

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

244 2. Filing a complaint; or

245 3. Cooperating with the investigation of a complaint.

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

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

257 2. Provide to the FINRA member broker-dealer information
258 and reports that are reasonably appropriate to assist the FINRA
259 member broker-dealer in maintaining its supervision system.

260 (6) RECORDKEEPING.—

261 (a) Insurers and agents must maintain or be able to make

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262 available to the office or department records of the information
263 collected from the consumer and other information used in making
264 the recommendations that were the basis for insurance
265 transactions for 5 years after the insurance transaction is
266 completed by the insurer. An insurer may maintain the
267 documentation on behalf of its agent.

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

272 (7) AGENT TRAINING.—

273 (a) An agent may not solicit the sale of an annuity product
274 unless the agent has sufficient knowledge of the product to
275 recommend the annuity and the agent is in compliance with the
276 insurer's standards for product training. An agent may rely on
277 insurer-provided, product-specific training standards and
278 materials in order to comply with this paragraph.

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

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

285 2. The training must include information on the following
286 topics:

287 a. The types of annuities and various classifications of
288 annuities.

289 b. Identification of the parties to an annuity.

290 c. How fixed, variable, and indexed annuity contract

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291 provisions affect consumers.

292 d. Income taxation of qualified and nonqualified annuities.

293 e. The primary uses of annuities.

294 f. Appropriate sales practices, replacement, and disclosure
295 requirements.

296 3. The training course may be conducted and completed by
297 classroom or a self-study program in accordance with s.
298 626.2815.

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

302 1. Providers must cover all topics listed in subparagraph
303 (b)2. and may not present any marketing information or provide
304 training on sales techniques or provide specific information
305 about a particular insurer's products. Additional topics may be
306 offered in conjunction with the required topics.

307 2. Providers must comply with the reporting requirements
308 and issue certificates of completion in accordance with s.
309 626.2815.

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

319 (e) Agents that hold a life insurance line of authority on

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320 July 1, 2012, and that desire to sell annuities must complete
321 the annuity training course within 6 months after that date.
322 Individuals who obtain a life insurance line of authority on or
323 after July 1, 2012, may not engage in the sale of annuities
324 until the annuity training course has been completed.

325 (f) Satisfaction of the training requirements of another
326 state which are substantially similar to this subsection satisfy
327 the training requirements of this subsection.

328 (8) COMPLIANCE MITIGATION; PENALTIES.-

329 (a) An insurer is responsible for compliance with this
330 section. If a violation occurs because of the action or inaction
331 of the insurer or its agent, the office may order an insurer to
332 take reasonably appropriate corrective action for a consumer
333 harmed by the insurer's or by its agent's violation of this
334 section and may impose appropriate penalties and sanctions.

335 (b) The department may order:

336 1. An insurance agent to take reasonably appropriate
337 corrective action, including monetary restitution of penalties
338 or fees incurred by the consumer for any consumer harmed by a
339 violation of this section by the insurance agent and impose
340 appropriate penalties and sanctions.

341 2. A managing general agency or insurance agency that
342 employs or contracts with an insurance agent to sell or solicit
343 the sale of annuities to consumers must take reasonably
344 appropriate corrective action for a consumer harmed by a
345 violation of this section by the insurance agent.

346 (c) In addition to any other penalty authorized under
347 chapter 626, the department shall order an insurance agent to
348 pay restitution to a consumer who has been deprived of money by

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349 the agent's misappropriation, conversion, or unlawful
350 withholding of moneys belonging to the senior consumer in the
351 course of a transaction involving annuities. The amount of
352 restitution required to be paid may not exceed the amount
353 misappropriated, converted, or unlawfully withheld. This
354 paragraph does not limit or restrict a person's right to seek
355 other remedies as provided by law.

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

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

363 (9) RULES.—The department may adopt rules to administer
364 this section.

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

367 626.99 Life insurance solicitation.—

368 (4) DISCLOSURE REQUIREMENTS.—

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

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

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

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

401 (c) ~~The insurer shall attach a cover page to any annuity~~
402 ~~policy informing the purchaser of the unconditional refund~~
403 ~~period prescribed in paragraph (b). The cover page must also~~
404 ~~provide contact information for the issuing company and the~~
405 ~~selling agent, the department's toll-free help line, and any~~
406 ~~other information required by the department by rule. The cover~~

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407 ~~page is part of the policy and is subject to review by the~~
408 ~~office pursuant to s. 627.410.~~

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

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