

By the Committee on Banking and Insurance; and Senator Richter

597-03048A-12

20121476c1

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 the 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:  
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597-03048A-12

20121476c1

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

58 (f) "Replacement" means a transaction in which a new policy

597-03048A-12

20121476c1

59 or contract is to be purchased and it is known or should be  
60 known to the proposing insurer or its agent that by reason of  
61 such transaction an existing policy or contract will be:

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

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

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

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

71 5. Used in a financed purchase.

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

76 1. Age;

77 2. Annual income;

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

80 4. Financial experience;

81 5. Financial objectives;

82 6. Intended use of the annuity;

83 7. Financial time horizon;

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

86 9. Liquidity needs;

87 10. Liquid net worth;

597-03048A-12

20121476c1

88       11. Risk tolerance; and

89       12. Tax status.

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

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

95       (b) Contracts used to fund:

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

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

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

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

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

112       6. Formal prepaid funeral contracts.

113       (5) DUTIES OF INSURERS AND AGENTS.—

114       (a) When recommending the purchase or exchange of an  
115 annuity to a consumer which results in an insurance transaction  
116 or series of insurance transactions, the agent, or the insurer

597-03048A-12

20121476c1

117 where no agent is involved, must have reasonable grounds for  
118 believing that the recommendation is suitable for the consumer,  
119 based on the consumer's suitability information, and that there  
120 is a reasonable basis to believe all of the following:

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

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

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

138 4. In the case of an exchange or replacement of an annuity,  
139 the exchange or replacement is suitable after considering  
140 whether the consumer:

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

597-03048A-12

20121476c1

146 b. Would benefit from product enhancements and  
147 improvements; and

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

151 (b) Before executing a purchase, exchange, or replacement  
152 of an annuity resulting from a recommendation, an insurer or its  
153 agent must make reasonable efforts to obtain the consumer's  
154 suitability information. The information shall be collected on  
155 form DFS-H1-1980, which is hereby incorporated by reference, and  
156 completed and signed by the applicant and agent. Questions  
157 requesting this information must be presented in at least 12-  
158 point type and be sufficiently clear so as to be readily  
159 understandable by both the agent and the consumer. A true and  
160 correct executed copy of the form must be provided by the agent  
161 to the insurer, or to the person or entity that has contracted  
162 with the insurer to perform this function as authorized by this  
163 section, within 10 days after execution of the form, and must be  
164 provided to the consumer by the date of delivery of the contract  
165 or contracts.

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

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

597-03048A-12

20121476c1

175 1. A recommendation has not been made;

176 2. A recommendation was made and is later found to have  
177 been based on materially inaccurate information provided by the  
178 consumer;

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

181 4. A consumer decides to enter into an annuity transaction  
182 that is not based on a recommendation of an insurer or its  
183 agent.

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

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

188 2. Obtain the consumer's signed statement documenting his  
189 or her refusal to provide suitability information, if  
190 applicable; and

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

195 (f) Before executing a replacement or exchange of an  
196 annuity contract resulting from a recommendation, the agent must  
197 provide on form DFS-H1-1981, which is incorporated by reference,  
198 information that compares the differences between the existing  
199 annuity contract and the annuity contract being recommended in  
200 order to determine the suitability of the recommendation and its  
201 benefit to the consumer. A true and correct executed copy of  
202 this form must be provided by the agent to the insurer, or to  
203 the person or entity that has contracted with the insurer to

597-03048A-12

20121476c1

204 perform this function as authorized by this section, within 10  
205 days after execution of the form, and must be provided to the  
206 consumer by the date of delivery of the contract or contracts.

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

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

211 a. Maintaining reasonable procedures to inform its agents  
212 of the requirements of this section and incorporating those  
213 requirements into relevant agent training manuals;

214 b. Establishing standards for agent product training;

215 c. Providing product-specific training and training  
216 materials that explain all material features of its annuity  
217 products to its agents;

218 d. Maintaining procedures for the review of each  
219 recommendation before issuance of an annuity which are designed  
220 to ensure that there is a reasonable basis for determining that  
221 a recommendation is suitable. Such review procedures may use a  
222 screening system for identifying selected transactions for  
223 additional review and may be accomplished electronically or  
224 through other means, including, but not limited to, physical  
225 review. Such electronic or other system may be designed to  
226 require additional review only of those transactions identified  
227 for additional review using established selection criteria;

228 e. Maintaining reasonable procedures to detect  
229 recommendations that are not suitable. These may include, but  
230 are not limited to, confirmation of consumer suitability  
231 information, systematic customer surveys, consumer interviews,  
232 confirmation letters, and internal monitoring programs. This



597-03048A-12

20121476c1

233 sub-subparagraph does not prevent an insurer from using sampling  
234 procedures or from confirming suitability information after the  
235 issuance or delivery of the annuity; and

236 f. Annually providing a report to senior managers,  
237 including the senior manager who is responsible for audit  
238 functions, which details a review, along with appropriate  
239 testing, which is reasonably designed to determine the  
240 effectiveness of the supervision system, the exceptions found,  
241 and corrective action taken or recommended, if any.

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

245 3. An insurer may contract for performance of a function  
246 required under subparagraph 1.

247 a. If an insurer contracts for the performance of a  
248 function, the insurer must include the supervision of  
249 contractual performance as part of those procedures listed in  
250 subparagraph 1. These include, but are not limited to:

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

253 (II) Annually obtaining a certification from a senior  
254 manager who has responsibility for the contracted function that  
255 the manager has a reasonable basis for representing that the  
256 function is being properly performed.

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

597-03048A-12

20121476c1

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

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

266 2. Filing a complaint; or

267 3. Cooperating with the investigation of a complaint.

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

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

279 2. Provide to the FINRA member broker-dealer information  
280 and reports that are reasonably appropriate to assist the FINRA  
281 member broker-dealer in maintaining its supervision system.

282 (6) RECORDKEEPING.—

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

290 (b) Records required to be maintained under this subsection

597-03048A-12

20121476c1

291 may be maintained in paper, photographic, microprocess,  
292 magnetic, mechanical, or electronic media, or by any process  
293 that accurately reproduces the actual document.

294 (7) COMPLIANCE MITIGATION; PENALTIES.-

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

301 (b) The department may order:

302 1. An insurance agent to take reasonably appropriate  
303 corrective action, including monetary restitution of penalties  
304 or fees incurred by the consumer for any consumer harmed by a  
305 violation of this section by the insurance agent and impose  
306 appropriate penalties and sanctions.

307 2. A managing general agency or insurance agency that  
308 employs or contracts with an insurance agent to sell or solicit  
309 the sale of annuities to consumers must take reasonably  
310 appropriate corrective action for a consumer harmed by a  
311 violation of this section by the insurance agent.

312 (c) In addition to any other penalty authorized under  
313 chapter 626, the department shall order an insurance agent to  
314 pay restitution to a consumer who has been deprived of money by  
315 the agent's misappropriation, conversion, or unlawful  
316 withholding of moneys belonging to the senior consumer in the  
317 course of a transaction involving annuities. The amount of  
318 restitution may not exceed the amount misappropriated,  
319 converted, or unlawfully withheld. This paragraph does not limit

597-03048A-12

20121476c1

320 or restrict a person's right to seek other remedies as provided  
321 by law.

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

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

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

340 (9) RULES.—The department may adopt rules to administer  
341 this section.

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

344 626.99 Life insurance solicitation.—

345 (4) DISCLOSURE REQUIREMENTS.—

346 (a) The insurer shall provide to each prospective purchaser  
347 a buyer's guide and a policy summary prior to accepting the  
348 applicant's initial premium or premium deposit, unless the

597-03048A-12

20121476c1

349 policy for which application is made provides an unconditional  
350 refund for ~~a period of~~ at least 14 days, or unless the policy  
351 summary contains an offer of such an unconditional refund. In  
352 these instances, the buyer's guide and policy summary must be  
353 delivered with the policy or before ~~prior to~~ delivery of the  
354 policy.

355 (b) With respect to fixed and variable annuities, the  
356 policy must provide an unconditional refund for ~~a period of~~ at  
357 least 21 ~~14~~ days. For fixed annuities, the buyer's guide must  
358 ~~shall~~ be in the form ~~as~~ provided by the National Association of  
359 Insurance Commissioners (NAIC) Annuity Disclosure Model  
360 Regulation, until ~~such time as~~ a buyer's guide is developed by  
361 the department, at which time the department guide must be used.  
362 For variable annuities, a policy summary may be used, which may  
363 be contained in a prospectus, until such time as a buyer's guide  
364 is developed by NAIC or the department, at which time one of  
365 those guides must be used. Unconditional refund means ~~If the~~  
366 ~~prospective owner of an annuity contract is 65 years of age or~~  
367 ~~elder:~~

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

371 2. An unconditional refund for variable or market value  
372 annuity contracts must be available for a period of 21 days. The  
373 unconditional refund shall be equal to the cash surrender value  
374 provided in the annuity contract, plus any fees or charges  
375 deducted from the premiums or imposed under the contract, or a  
376 refund of all premiums paid. This subparagraph does not apply if  
377 the prospective owner is an accredited investor, as defined in

597-03048A-12

20121476c1

378 Regulation D as adopted by the United States Securities and  
379 Exchange Commission.

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

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

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

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

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

398  
399 The cover page is part of the policy and is subject to review by  
400 the office pursuant to s. 627.410.

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

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