

By the Committee on Banking and Insurance; and 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; providing exemptions;  
7           revising the duties of insurers and agents; providing  
8           that recommendations must be based on consumer  
9           suitability information; revising the information  
10          relating to annuities that must be provided by the  
11          insurer or its agent to the consumer; revising the  
12          requirements for monitoring contractors that are  
13          providing certain functions for the insurer relating  
14          to the insurer's system for supervising  
15          recommendations; revising provisions relating to the  
16          relationship between this act and the federal  
17          Financial Industry Regulatory Authority; prohibiting  
18          specified charges for annuities issued to persons 65  
19          years of age or older; authorizing the Department of  
20          Financial Services and the Financial Services  
21          Commission to adopt rules; amending s. 626.99, F.S.;  
22          increasing the period of time that an unconditional  
23          refund must remain available with respect to certain  
24          annuity contracts; making such unconditional refunds  
25          available to all prospective annuity contract buyers  
26          without regard to the buyer's age; revising  
27          requirements for cover pages of annuity contracts;  
28          providing an effective date.

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30 Be It Enacted by the Legislature of the State of Florida:

31  
32 Section 1. Section 627.4554, Florida Statutes, is amended  
33 to read:

34 (Substantial rewording of section. See  
35 s. 627.4554, F.S., for present text.)

36 627.4554 Annuity investments.—

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

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

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

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

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

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

55 (d) "Insurer" has the same meaning as provided in s.  
56 624.03.

57 (e) "Recommendation" means advice provided by an insurer or  
58 its agent to a consumer which would result in the purchase,

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59 exchange, or replacement of an annuity in accordance with that  
60 advice.

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

65 1. Lapsed, forfeited, surrendered or partially surrendered,  
66 assigned to the replacing insurer, or otherwise 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 which 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 insurance

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88 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 transactions  
 94 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 a dispute or claim-resolution  
 114 process; or

115 6. Formal prepaid funeral contracts.

116 (5) DUTIES OF INSURERS AND AGENTS.—

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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 annuity,  
142 the exchange or replacement is suitable after considering  
143 whether the consumer:

144       a. Will incur a surrender charge; be subject to the  
145 commencement of a new surrender period; lose existing benefits,

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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,  
152 including 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.

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

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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 consumer  
190 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

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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 is  
212 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 physical review. Such electronic  
229 or other system may be designed to require additional review  
230 only of those transactions identified for additional review  
231 using established selection criteria;

232 e. Maintaining reasonable procedures to detect

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233 recommendations that are not suitable, such as confirmation of  
234 consumer suitability information, systematic customer surveys,  
235 consumer interviews, confirmation letters, and internal  
236 monitoring programs. This sub-subparagraph does not prevent an  
237 insurer from using sampling procedures or from confirming  
238 suitability information after the issuance or delivery of the  
239 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 supervision  
247 system agent recommendations to consumers of products other than  
248 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

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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 satisfy the requirements of this section. This  
275 applies to FINRA broker-dealer sales of variable annuities and  
276 fixed annuities if the suitability and supervision is similar to  
277 those applied to variable annuity sales. However, this paragraph  
278 does not limit the ability of the office or the department to  
279 enforce, including investigate, the provisions of this section.  
280 For this paragraph to apply, an insurer must:

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

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

286 (6) RECORDKEEPING.—

287 (a) Insurers and agents must maintain or be able to make  
288 available to the office or department records of the information  
289 collected from the consumer and other information used in making  
290 the recommendations that were the basis for insurance

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291 transactions for 5 years after the insurance transaction is  
292 completed by the insurer. An insurer may maintain the  
293 documentation on behalf of its agent.

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

298 (7) COMPLIANCE MITIGATION; PENALTIES.-

299 (a) An insurer is responsible for compliance with this  
300 section. If a violation occurs because of the action or inaction  
301 of the insurer or its agent which results in harm to a consumer,  
302 the office may order the insurer to take reasonably appropriate  
303 corrective action for the consumer and may impose appropriate  
304 penalties and sanctions.

305 (b) The department may order:

306 1. An insurance agent to take reasonably appropriate  
307 corrective action for a consumer harmed by a violation of this  
308 section by the insurance agent, including monetary restitution  
309 of penalties or fees incurred by the consumer, and impose  
310 appropriate penalties and sanctions.

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

316 (c) In addition to any other penalty authorized under  
317 chapter 626, the department shall order an insurance agent to  
318 pay restitution to a consumer who has been deprived of money by  
319 the agent's misappropriation, conversion, or unlawful

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320 withholding of moneys belonging to the consumer in the course of  
321 a transaction involving annuities. The amount of restitution  
322 required to be paid may not exceed the amount misappropriated,  
323 converted, or unlawfully withheld. This paragraph does not limit  
324 or restrict a person's right to seek other remedies as provided  
325 by law.

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

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

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

344 (9) RULES.—The department and the commission may adopt  
345 rules to administer this section.

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

348 626.99 Life insurance solicitation.—

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349 (4) DISCLOSURE REQUIREMENTS.—

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

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

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

375 2. An unconditional refund for variable or market value  
376 annuity contracts must be available for a period of 21 days. The  
377 unconditional refund shall be equal to the cash surrender value

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378 provided in the annuity contract, plus any fees or charges  
 379 deducted from the premiums or imposed under the contract, or a  
 380 refund of all premiums paid. This subparagraph does not apply if  
 381 the prospective owner is an accredited investor, as defined in  
 382 Regulation D as adopted by the United States Securities and  
 383 Exchange Commission.

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

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

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

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

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

402

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

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

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Section 3. This act shall take effect October 1, 2013.