

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.