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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 only 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 this 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          that an unconditional refund must remain available  
22          with respect to certain annuity contracts; making such  
23          unconditional refunds available to all prospective  
24          annuity contract buyers without regard to the buyer's  
25          age; revising requirements for cover pages of annuity  
26          contracts; providing an effective date.

27  
28   Be It Enacted by the Legislature of the State of Florida:

29  
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.  
48 626.015.

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

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

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

56 (e) "Recommendation" means advice provided by an insurer

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

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

65 | 1. Lapsed, forfeited, surrendered or partially  
66 | surrendered, assigned to the replacing insurer, or otherwise  
67 | terminated;

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

71 | 3. Amended so as to effect a reduction in benefits or the  
72 | term for which coverage would otherwise remain in force or for  
73 | which benefits would be paid;

74 | 4. Reissued with a reduction in cash value; or

75 | 5. Used in a financed purchase.

76 | (g) "Suitability information" means information related to  
77 | the consumer that is reasonably appropriate to determine the  
78 | suitability of a recommendation made to the consumer, including:

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
- 88 | insurance 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
- 94 | transactions 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 any dispute or claim-  
114 resolution process; or

115 6. Formal prepaid funeral contracts.

116 (5) DUTIES OF INSURERS AND AGENTS.-

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  
142 annuity, the exchange or replacement is suitable after taking  
143 into consideration whether the consumer:

144 a. Will incur a surrender charge; be subject to the  
145 commencement of a new surrender period; lose existing benefits,  
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, in  
152 particular 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 a  
158 form adopted by the department and completed and signed by the  
159 applicant and agent. Questions requesting this information must  
160 be presented in at least 12-point type and be sufficiently clear  
161 so as to be readily understandable by both the agent and the  
162 consumer. A true and correct executed copy of the form must be  
163 provided by the agent to the insurer, or to the person or entity  
164 that has contracted with the insurer to perform this function as  
165 authorized by this section, within 10 days after execution of  
166 the form and shall be provided to the consumer no later than the  
167 date of delivery of the contract or contracts.

168 (c) Except as provided under paragraph (d), an insurer may

169 not issue an annuity recommended to a consumer unless there is a  
170 reasonable basis to believe the annuity is suitable based on the  
171 consumer's suitability information.

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

177 1. A recommendation has not been made;

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

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

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

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

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

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

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

197        (f) Before executing a replacement or exchange of an  
198 annuity contract resulting from a recommendation, the agent must  
199 provide on a form adopted by the department information that  
200 compares the differences between the existing annuity contract  
201 and the annuity contract being recommended in order to determine  
202 the suitability of the recommendation and its benefit to the  
203 consumer. A true and correct executed copy of this form must be  
204 provided by the agent to the insurer, or to the person or entity  
205 that has contracted with the insurer to perform this function as  
206 authorized by this section, within 10 days after execution of  
207 the form and must be provided to the consumer no later than the  
208 date of delivery of the contract or contracts.

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

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

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

216            b. Establishing standards for agent product training;

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

220            d. Maintaining procedures for the review of each  
221 recommendation before issuance of an annuity which are designed  
222 to ensure that there is a reasonable basis for determining that  
223 a recommendation is suitable. Such review procedures may use a  
224 screening system for identifying selected transactions for



225 additional review and may be accomplished electronically or  
226 through other means, including, but not limited to, physical  
227 review. Such electronic or other system may be designed to  
228 require additional review only of those transactions identified  
229 for additional review using established selection criteria;

230 e. Maintaining reasonable procedures to detect  
231 recommendations that are not suitable. These may include, but  
232 are not limited to, confirmation of consumer suitability  
233 information, systematic customer surveys, consumer interviews,  
234 confirmation letters, and internal monitoring programs. This  
235 sub-subparagraph does not prevent an insurer from using sampling  
236 procedures or from confirming suitability information after the  
237 issuance or delivery of the annuity; and

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

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

247 3. An insurer may contract for performance of a function  
248 required under subparagraph 1.

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

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

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

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

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

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

268 2. Filing a complaint; or

269 3. Cooperating with the investigation of a complaint.

270 (i) Sales made in compliance with FINRA requirements  
271 pertaining to the suitability and supervision of annuity  
272 transactions shall satisfy the requirements of this section.

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

279 1. Monitor the FINRA member broker-dealer using  
280 information collected in the normal course of an insurer's

281 business; and

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

285 (6) RECORDKEEPING.—

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

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

297 (7) COMPLIANCE MITIGATION; PENALTIES.—

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

304 (b) The department may order:

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

309 appropriate penalties and sanctions.

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

315 (c) In addition to any other penalty authorized under  
316 chapter 626, the department shall order an insurance agent to  
317 pay restitution to a consumer who has been deprived of money by  
318 the agent's misappropriation, conversion, or unlawful  
319 withholding of moneys belonging to the senior consumer in the  
320 course of a transaction involving annuities. The amount of  
321 restitution required to be paid may not exceed the amount  
322 misappropriated, converted, or unlawfully withheld. This  
323 paragraph does not limit or restrict a person's right to seek  
324 other remedies as provided by law.

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

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

332 (8) PROHIBITED CHARGES.—An annuity contract issued to a  
333 senior consumer 65 years of age or older may not contain a  
334 surrender or deferred sales charge for a withdrawal of money  
335 from an annuity exceeding 10 percent of the amount withdrawn.  
336 The charge shall be reduced so that no surrender or deferred

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337 sales charge exists after the end of the 10th policy year or 10  
338 years after the date of each premium payment when multiple  
339 premiums are paid, whichever is later. This subsection does not  
340 apply to annuities purchased by an accredited investor, as  
341 defined in Regulation D as adopted by the United States  
342 Securities and Exchange Commission, or to those annuities  
343 specified in paragraph (4) (b).

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

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

348 626.99 Life insurance solicitation.—

349 (4) DISCLOSURE REQUIREMENTS.—

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

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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. ~~If the prospective owner of an~~  
370 ~~annuity contract is 65 years of age or older:~~

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

374 2. An unconditional refund for variable or market value  
375 annuity contracts must be available for a period of 21 days. The  
376 unconditional refund shall be equal to the cash surrender value  
377 provided in the annuity contract, plus any fees or charges  
378 deducted from the premiums or imposed under the contract, or a  
379 refund of all premiums paid. This subparagraph does not apply if  
380 the prospective owner is an accredited investor, as defined in  
381 Regulation D as adopted by the United States Securities and  
382 Exchange Commission.

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

391  
392 1. "PLEASE BE AWARE THAT THE PURCHASE OF AN

393 ANNUITY CONTRACT IS A LONG-TERM COMMITMENT AND MAY  
 394 RESTRICT ACCESS TO YOUR FUNDS."

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

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

400 4. "A [PROSPECTUS AND POLICY SUMMARY] [BUYER'S  
 401 GUIDE] IS 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.

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