A bill to be entitled

An act relating to annuities; amending s. 627.4554, F.S.; providing that recommendations relating to annuities made by an insurer or its agents apply to all consumers, not only to senior consumers; revising and providing definitions; revising the duties of insurers and agents; providing that recommendations must be based on consumer suitability information; revising the information relating to annuities that must be provided by the insurer or its agent to the consumer; revising the requirements for monitoring contractors that are providing certain functions for the insurer relating to the insurer's system for supervising recommendations; revising provisions relating to the relationship between this act and the federal Financial Industry Regulatory Authority; prohibiting specified charges for annuities issued to persons 65 years of age or older; amending s. 626.99, F.S.; increasing the period that an unconditional refund must remain available with respect to certain annuity contracts; making such unconditional refunds available to all prospective annuity contract buyers without regard to the buyer's age; revising requirements for cover pages of annuity contracts; providing an effective date.

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

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

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

627.4554 Annuity investments.—

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

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

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

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

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

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

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

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

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

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

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

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

4. Reissued with a reduction in cash value; or

5. Used in a financed purchase.

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

1. Age;

2. Annual income;

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

4. Financial experience;

5. Financial objectives;

6. Intended use of the annuity;

7. Financial time horizon;

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

9. Liquidity needs;

10. Liquid net worth;

11. Risk tolerance; and

12. Tax status.

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

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

(b) Contracts used to fund:

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

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

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

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

5. Settlements or assumptions of liabilities associated with personal injury litigation or any dispute or claim-

resolution process; or

6. Formal prepaid funeral contracts.

(5) DUTIES OF INSURERS AND AGENTS.—

(a) When recommending the purchase or exchange of an annuity to a consumer which results in an insurance transaction or series of insurance transactions, the agent, or the insurer where no agent is involved, must have reasonable grounds for believing that the recommendation is suitable for the consumer, based on the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

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

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

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

4. In the case of an exchange or replacement of an

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

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

b. Would benefit from product enhancements and improvements; and

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

(b) Before executing a purchase, exchange, or replacement of an annuity resulting from a recommendation, an insurer or its agent must make reasonable efforts to obtain the consumer's suitability information. The information shall be collected on form DFS-H1-1980, which is hereby incorporated by reference, and completed and signed by the applicant and agent. Questions requesting this information must be presented in at least 12-point type and be sufficiently clear so as to be readily understandable by both the agent and the consumer. A true and correct executed copy of the form must be provided by the agent to the insurer, or to the person or entity that has contracted with the insurer to perform this function as authorized by this section, within 10 days after execution of the form and shall be provided to the consumer no later than the date of delivery of the contract or contracts.

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

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

1. A recommendation has not been made;

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

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

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

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

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

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

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

(f) Before executing a replacement or exchange of an annuity contract resulting from a recommendation, the agent must provide on form DFS-H1-1981, which is hereby incorporated by reference, information that compares the differences between the existing annuity contract and the annuity contract being recommended in order to determine the suitability of the recommendation and its benefit to the consumer. A true and correct executed copy of this form must be provided by the agent to the insurer, or to the person or entity that has contracted with the insurer to perform this function as authorized by this section, within 10 days after execution of the form and must be provided to the consumer no later than the date of delivery of the contract or contracts.

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

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

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

b. Establishing standards for agent product training;

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

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

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

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

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

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

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

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

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

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

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

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

2. Filing a complaint; or

3. Cooperating with the investigation of a complaint.

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

1. Monitor the FINRA member broker-dealer using



CODING: Words ~~stricken~~ are deletions; words underlined are additions.

information collected in the normal course of an insurer's business; and

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

(6) RECORDKEEPING.—

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

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

(7) COMPLIANCE MITIGATION; PENALTIES.—

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

(b) The department may order:

1. An insurance agent to take reasonably appropriate corrective action, including monetary restitution of penalties or fees incurred by the consumer for any consumer harmed by a

violation of this section by the insurance agent and impose appropriate penalties and sanctions.

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

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

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

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

(8) PROHIBITED CHARGES.—An annuity contract issued to a senior consumer 65 years of age or older may not contain a surrender or deferred sales charge for a withdrawal of money from an annuity exceeding 10 percent of the amount withdrawn.

The charge shall be reduced so that no surrender or deferred sales charge exists after the end of the 10th policy year or 10 years after the date of each premium payment when multiple premiums are paid, whichever is later. This subsection does not apply to annuities purchased by an accredited investor, as defined in Regulation D as adopted by the United States Securities and Exchange Commission, or to those annuities specified in paragraph (4)(b).

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

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

626.99 Life insurance solicitation.—

(4) DISCLOSURE REQUIREMENTS.—

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

(b) With respect to fixed and variable annuities, the policy must provide an unconditional refund for ~~a period of~~ at least 21 ~~14~~ days. For fixed annuities, the buyer's guide must ~~shall~~ be in the form ~~as~~ provided by the National Association of Insurance Commissioners (NAIC) Annuity Disclosure Model

Regulation, until ~~such time as~~ a buyer's guide is developed by the department, at which time the department guide must be used. For variable annuities, a policy summary may be used, which may be contained in a prospectus, until such time as a buyer's guide is developed by NAIC or the department, at which time one of those guides must be used. ~~If the prospective owner of an annuity contract is 65 years of age or older:~~

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

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

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

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

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

3. "THE INTEREST RATE APPLIED TO YOUR CONTRACT MAY BE SUBJECT TO CHANGE PERIODICALLY AND MAY INCREASE OR DECREASE, SUBJECT TO CERTAIN INTEREST RATE GUARANTEES DESCRIBED IN YOUR CONTRACT."

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

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

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

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