

1 A bill to be entitled

2 An act relating to annuities; amending s. 627.4554,
3 F.S.; providing that recommendations relating to
4 annuities made by an insurer or its agents apply to
5 all consumers not just to senior consumers; revising
6 and providing definitions; revising the duties of
7 insurers and agents; providing that recommendations
8 must be based on consumer suitability information;
9 revising the information relating to annuities that
10 must be provided by the insurer or its agent to the
11 consumer; revising the requirements for monitoring
12 contractors that are providing certain functions for
13 the insurer relating to the insurer's system for
14 supervising recommendations; revising provisions
15 relating to the relationship between 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 of time that an unconditional refund must remain
22 available with respect to certain annuity contracts;
23 making such unconditional refunds available to all
24 prospective annuity contract buyers without regard to
25 the buyer's age; revising requirements for cover pages
26 of annuity contracts; providing an effective date.

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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

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 it is known or should
62 be known to the proposing insurer or its agent that by reason of
63 such transaction an existing policy or contract will be:

64 1. Lapsed, forfeited, surrendered or partially
65 surrendered, assigned to the replacing insurer, or otherwise
66 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 that 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
- 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
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
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
190 consumer 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
 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
 212 is 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, but not limited to, physical
229 review. Such electronic or other system may be designed to
230 require additional review only of those transactions identified
231 for additional review using established selection criteria;
232 e. Maintaining reasonable procedures to detect
233 recommendations that are not suitable. These may include, but
234 are not limited to, confirmation of consumer suitability
235 information, systematic customer surveys, consumer interviews,
236 confirmation letters, and internal monitoring programs. This
237 sub-subparagraph does not prevent an insurer from using sampling
238 procedures or from confirming suitability information after the
239 issuance or delivery of the 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
247 supervision system agent recommendations to consumers of
248 products other than 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
 262 corrective action and may be subject to sanctions and penalties
 263 pursuant to subsection (8) 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 shall satisfy the requirements of this section.
 275 This paragraph applies to FINRA broker-dealer sales of variable
 276 annuities and fixed annuities if the suitability and supervision
 277 is similar to those applied to variable annuity sales. However,
 278 this paragraph does not limit the ability of the office or the
 279 department to enforce, including investigate, the provisions of
 280 this section. For this paragraph to apply, an insurer must:

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

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

287 (6) RECORDKEEPING.—

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

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

299 (7) COMPLIANCE MITIGATION; PENALTIES.—

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

306 (b) The department may order:

307 1. An insurance agent to take reasonably appropriate
 308 corrective action, including monetary restitution of penalties

309 or fees incurred by the consumer for any consumer harmed by a
310 violation of this section by the insurance agent and impose
311 appropriate penalties and sanctions.

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

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

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

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

334 (8) PROHIBITED CHARGES.—An annuity contract issued to a
335 senior consumer age 65 or older may not contain a surrender or
336 deferred sales charge for a withdrawal of money from an annuity

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

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

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

349 626.99 Life insurance solicitation.—

350 (4) DISCLOSURE REQUIREMENTS.—

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

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

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

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

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

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

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

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

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

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

403

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

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

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