

By Senator Richter

23-00193B-13

2013166__

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; deleting a
18 provision providing a cap on surrender or deferred
19 sales charges; prohibiting specified charges for
20 annuities issued to persons 65 years of age or older;
21 amending s. 626.99, F.S.; increasing the period of
22 time that an unconditional refund must remain
23 available with respect to certain annuity contracts;
24 making such unconditional refunds available to all
25 prospective annuity contract buyers without regard to
26 the buyer's age; revising requirements for cover pages
27 of annuity contracts; providing an effective date.

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

23-00193B-13

2013166

30
31 Section 1. Section 627.4554, Florida Statutes, is amended
32 to read:

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

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

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

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

48 (a) "Agent" has the same meaning as provided in s. 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 or
57 its agent to a consumer which would result in the purchase,
58 exchange, or replacement of an annuity in accordance with that

23-00193B-13

2013166__

59 advice.

60 (f) "Replacement" means a transaction in which a new policy
61 or contract is to be purchased and it is known or should be
62 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 surrendered,
65 assigned to the replacing insurer, or otherwise terminated;

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

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

72 4. Reissued with a reduction in cash value; or

73 5. Used in a financed purchase.

74 (g) "Suitability information" means information related to
75 the consumer which is reasonably appropriate to determine the
76 suitability of a recommendation made to the consumer, including
77 the following:

78 1. Age;

79 2. Annual income;

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

82 4. Financial experience;

83 5. Financial objectives;

84 6. Intended use of the annuity;

85 7. Financial time horizon;

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

23-00193B-13

2013166

88 9. Liquidity needs;

89 10. Liquid net worth;

90 11. Risk tolerance; and

91 12. Tax status.

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

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

97 (b) Contracts used to fund:

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

101 2. A plan described by s. 401(a), s. 401(k), s. 403(b), s.
102 408(k), or s. 408(p) of the Internal Revenue Code, if
103 established or maintained by an employer;

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

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

111 5. Settlements or assumptions of liabilities associated
112 with personal injury litigation or a dispute or claim-resolution
113 process; or

114 6. Formal prepaid funeral contracts.

115 (5) DUTIES OF INSURERS AND AGENTS.—

116 (a) When recommending the purchase or exchange of an

23-00193B-13

2013166

117 annuity to a consumer which results in an insurance transaction
118 or series of insurance transactions, the agent, or the insurer
119 where no agent is involved, must have reasonable grounds for
120 believing that the recommendation is suitable for the consumer,
121 based on the consumer's suitability information, and that there
122 is a reasonable basis to believe all of the following:

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

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

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

140 4. In the case of an exchange or replacement of an annuity,
141 the exchange or replacement is suitable after considering
142 whether the consumer:

143 a. Will incur a surrender charge; be subject to the
144 commencement of a new surrender period; lose existing benefits,
145 such as death, living, or other contractual benefits; or be

23-00193B-13

2013166

146 subject to increased fees, investment advisory fees, or charges
147 for riders and similar product enhancements;

148 b. Would benefit from product enhancements and
149 improvements; and

150 c. Has had another annuity exchange or replacement,
151 including an exchange or replacement within the preceding 36
152 months.

153 (b) Before executing a purchase, exchange, or replacement
154 of an annuity resulting from a recommendation, an insurer or its
155 agent must make reasonable efforts to obtain the consumer's
156 suitability information. The information shall be collected on
157 form DFS-H1-1980, which is hereby incorporated by reference, and
158 completed and signed by the applicant and agent. Questions
159 requesting this information must be presented in at least 12-
160 point type and be sufficiently clear so as to be readily
161 understandable by both the agent and the consumer. A true and
162 correct executed copy of the form must be provided by the agent
163 to the insurer, or to the person or entity that has contracted
164 with the insurer to perform this function as authorized by this
165 section, within 10 days after execution of the form, and shall
166 be provided to the consumer no later than the date of delivery
167 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

23-00193B-13

2013166

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 consumer
189 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 form DFS-H1-1981, which is hereby incorporated by
200 reference, information that compares the differences between the
201 existing annuity contract and the annuity contract being
202 recommended in order to determine the suitability of the
203 recommendation and its benefit to the consumer. A true and

23-00193B-13

2013166

204 correct executed copy of this form must be provided by the agent
205 to the insurer, or to the person or entity that has contracted
206 with the insurer to perform this function as authorized by this
207 section, within 10 days after execution of the form, and must be
208 provided to the consumer no later than the date of delivery of
209 the contract or contracts.

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

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

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

217 b. Establishing standards for agent product training;

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

221 d. Maintaining procedures for the review of each
222 recommendation before issuance of an annuity which are designed
223 to ensure that there is a reasonable basis for determining that
224 a recommendation is suitable. Such review procedures may use a
225 screening system for identifying selected transactions for
226 additional review and may be accomplished electronically or
227 through other means, including physical review. Such electronic
228 or other system may be designed to require additional review
229 only of those transactions identified for additional review
230 using established selection criteria;

231 e. Maintaining reasonable procedures to detect
232 recommendations that are not suitable, such as confirmation of

23-00193B-13

2013166

233 consumer suitability information, systematic customer surveys,
234 consumer interviews, confirmation letters, and internal
235 monitoring programs. This sub-subparagraph does not prevent an
236 insurer from using sampling procedures or from confirming
237 suitability information after the issuance or delivery of the
238 annuity; and

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

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

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

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

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

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

260 b. An insurer is responsible for taking appropriate
261 corrective action and may be subject to sanctions and penalties

23-00193B-13

2013166

262 pursuant to subsection (7) regardless of whether the insurer
263 contracts for performance of a function and regardless of the
264 insurer's compliance with sub-subparagraph a.

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

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

269 2. Filing a complaint; or

270 3. Cooperating with the investigation of a complaint.

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

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

23-00193B-13

2013166__

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 subsection
294 may be maintained in paper, photographic, microprocess,
295 magnetic, mechanical, or electronic media, or by any process
296 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 which results in harm to a consumer,
301 the office may order the insurer to take reasonably appropriate
302 corrective action for the consumer and may impose appropriate
303 penalties and sanctions.

304 (b) The department may order:

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

23-00193B-13

2013166

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 Code
326 for a violation of this section shall be reduced or eliminated
327 according to a schedule adopted by the office or the department,
328 as appropriate, if corrective action for the consumer was taken
329 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 age 65 or older may not contain a surrender or
334 deferred sales charge for a withdrawal of money from an annuity
335 exceeding 10 percent of the amount withdrawn. The charge shall
336 be reduced so that no surrender or deferred sales charge exists
337 after the end of the 10th policy year or 10 years after the date
338 of each premium payment if multiple premiums are paid, whichever
339 is later. This subsection does not apply to annuities purchased
340 by an accredited investor, as defined in Regulation D as adopted
341 by the United States Securities and Exchange Commission, or to
342 those annuities specified in paragraph (4) (b).

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

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

347 626.99 Life insurance solicitation.—

348 (4) DISCLOSURE REQUIREMENTS.—

23-00193B-13

2013166__

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

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

23-00193B-13

2013166

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

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

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

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

401
402 The cover page is part of the policy and is subject to review by
403 the office pursuant to s. 627.410.

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

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