HOUSE OF REPRESENTATIVES
FINAL BILL ANALYSIS

BILL #:	CS/HB 167	**FINAL HOUSE FLOOR ACTION:**	
SPONSOR(S):	Insurance & Banking Subcommittee; Broxson and others	116 **Y's**	0 **N's**
COMPANION BILLS:	(CS/CS/SB 166)	**GOVERNOR'S ACTION:**	Approved

SUMMARY ANALYSIS

CS/HB 167 passed the House on April 30, 2013 as CS/CS/SB 166. The bill incorporates into Florida law the most current version of the National Association of Insurance Commissioners' (NAIC's) model regulation on annuity transactions.

Section 627.4554, F.S., provides protections for consumers 65 years of age and older in annuity transactions. The section, enacted in 2004, adopted the NAIC's "Senior Protection in Annuity Transactions Model Regulation of 2003." In 2008, the Legislature amended the law to provide additional safeguards for senior consumers that are not in the NAIC's model regulation. In 2010, the Legislature also increased the unconditional refund period for senior consumers to 21 days and required insurers to attach a cover page, with specified information, to any annuity policy sold.

The bill amends s. 627.4554, F.S., to incorporate into Florida law the most current version of the NAIC model regulation on annuity transactions (the 2010 NAIC Model), while maintaining most of the provisions adopted by Florida in 2008 and 2010. The 2010 NAIC Model, which has been enacted by 25 states, including California and New York, provides annuity protections for consumers of any age; insurer review of every annuity transaction; and clarifies that insurers are responsible for compliance with annuity protection provisions, even when they contract with third parties.

The bill requires insurers to file revised contract forms with the Office of Insurance Regulation (OIR). The OIR indicates any fiscal impact associated with the bill is insignificant and will be absorbed within current resources.

The bill was approved by the Governor on June 14, 2013, ch. 2013-163, L.O.F., and will become effective on October 1, 2013.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background on annuities[1]

An annuity is a contract between a buyer and an insurance company that provides guaranteed payments over a period of time. Annuities are designed to meet retirement and long-range planning goals and are long-term contracts that typically restrict an investor's ability to access his/her money.

There are two basic types of annuities, fixed and variable. Fixed annuities guarantee both the rate of return and the amount of payout. Variable annuities do not guarantee the rate of return, which can fluctuate based on the performance of underlying investment options chosen by the purchaser. Another product, equity indexed annuities, is considered a hybrid of both fixed and variable annuities.

Annuities can be either immediate or deferred. With immediate annuities, the premium is paid in a single lump sum, and the purchaser receives an immediate and regular stream of payments for a period of time. By contrast, purchasers of deferred annuities pay one or more premiums over time (the accumulation period) and begin to receive annuity payments at a future point in time (the payout period or annuitization phase).

Fixed annuities are considered insurance contracts because of the mortality risk associated with payout options, and are regulated by state insurance departments. With a variable annuity, premium dollars are placed into a variety of investment options called subaccounts. Because variable annuities involve risk and provide no guarantee of principal, they are considered investments and fall within the jurisdiction of both securities regulators and state insurance departments. Agents selling variable annuities must hold a variable annuity license from the state and also possess a securities license and hold an active securities registration with a broker dealer. As investments, variable annuities also have accompanying prospectuses with disclosures regarding risk. All sales of variable annuities are subject to suitability standards established by the Financial Industry Regulatory Authority (FINRA).[2] Variable annuities generally involve an accumulation phase and a payout phase.

Equity indexed annuities provide a minimum guaranteed interest rate in combination with an index-linked component. A guaranteed minimum interest rate may still create a loss of principal if the guarantee is based on an amount less than the amount of premium or initial payment. Investors who find it necessary to cancel an annuity to access funds prior to maturity of the contract may also lose principal through detrimental features such as surrender charges, hidden penalties, costs, fees, and massive multi-year surrender charges.

Determining whether an Annuity is a Suitable Investment for a Consumer: Suitability Issues

In 2003, the National Association of Insurance Commissioners (NAIC) adopted "Senior Protection in Annuity Transactions Model Regulation" (Model Regulation), designed to help protect senior citizens when they purchase or exchange annuity products. In 2004, Florida adopted the Model Regulation in s. 627.4554, F.S. This section provides protection for senior citizens in annuity transactions, requiring insurance companies and agents offering these products to clearly document the basis for selling the product, including consideration of a senior citizen's financial and tax status, as well as investment objectives. In 2006, the NAIC removed the age restriction from its Model Regulation, extending the annuity protections to consumers of any age.

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[1] *See* "2008 White Paper on Annuities," Roxanne Rehm, Assistant General Counsel, Department of Financial Services in 2008. On file with staff of the Insurance & Banking Subcommittee. *See also* "Life Insurance and Annuities: A Guide for Consumers," Florida Department of Financial Services. Available at http://www.myfloridacfo.com (last accessed: January 28, 2013).

[2] The Financial Industry Regulatory Authority (FINRA) is the largest independent regulator for all securities firms doing business in the United States.

In 2008, Florida amended s. 627.4554, F.S. Although the legislation did not incorporate the 2006 change to the Model Regulation, it provided additional safeguards for senior consumers, including:

- Requiring insurers and agents to have an “objectively” reasonable basis for recommending a particular annuity product;
- Specifying the minimum information that an insurer or agent must obtain and use to determine the suitability of a recommendation before executing a purchase or exchange of a policy;
- Requiring suitability information obtained from a consumer to be recorded on a Department of Financial Services’ (DFS) form, which must be completed and signed by the applicant and the agent, with a copy given to the consumer;
- Requiring the insurer or agent, in exchange situations, to provide the consumer with specified information on a DFS form concerning differences between the policy being recommended for purchase and an existing policy that would be surrendered or replaced;
- Increasing the “free look” refund period; and
- Authorizing the Office of Insurance Regulation (OIR) to rescind an annuity and provide a full refund of premiums paid or the accumulation value, whichever is greater, when a consumer is harmed by a violation of the suitability statute.

In 2010, the Legislature also increased the unconditional refund period for senior consumers in annuity transactions to 21 days and required insurers to attach a cover page with specified information, including notice of the refund period, contact information, and the name of the issuing company and selling agent, to each annuity sold.[3]

In March 2010, the NAIC revised its Model Regulation to clarify that insurers are responsible for compliance with the model’s requirements, even if the insurer contracts with a third party; requiring insurers to review all annuity transactions; and establishing both general and product-specific training requirements for insurance agents.

To date, 25 states, including New York and California, have adopted the 2010 version of the NAIC’s Model Regulation.[4]

Effect of the Bill

The bill amends s. 627.4554, F.S., to incorporate into Florida law the most recent version of the NAIC’s Model Regulation on protections in annuity transactions. The bill makes the following changes to this section:

- Extends the protections currently afforded senior consumers in annuity transactions to consumers of any age. However, the bill retains current law that provides a cap on surrender or deferred sales charges only for senior consumers.
- Specifies that the section applies to any recommendation made to a consumer to “purchase, exchange, or replace an annuity” by an insurer or agent that results in the recommended transaction.
- Revises definitions[5] and defines additional terms relevant to annuity transactions, including Agent, FINRA (Financial Industry Regulatory Authority), Insurer, Replacement, and Suitability Information.

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[3] Section 626.99, F.S.

[4] The American Council of Life Insurers (ACLI) reports that 25 states have adopted the 2010 version of the NAIC model as of February 6, 2013. Correspondence on file with staff of the Insurance & Banking Subcommittee.

[5] Currently, s. 627.4554, F.S., defines” annuity contract” (a fixed annuity, equity indexed annuity, fixed equity indexed annuity, or variable annuity that is individually solicited, whether the product is classified as an individual annuity or a group annuity), but does not define the term “annuity.” The bill deletes the definition of annuity contract and defines an annuity to mean “an insurance product under state law which is individually solicited, whether classified as an individual or group annuity.”

- Defines Suitability Information as information related to the consumer that is reasonably appropriate to determine the suitability of a recommendation made to the consumer, including the consumer's age, annual income, financial situation and needs, financial experience and objectives, financial time horizon; liquid net worth; liquidity needs, and risk tolerance.
- Specifies the DFS form (form DFS-H1-1980) to be used by agents in collecting suitability information from consumers.
- Requires agents or insurers, when recommending the purchase or exchange of annuity products that results in an insurance transaction, to have reasonable grounds[6] for believing that the recommendation is suitable for the consumer based on the consumer's suitability information and that there are reasonable grounds to believe that:
    - The consumer has been reasonably informed of various features of the annuity, such as the potential surrender period and surrender charges;
    - The consumer would benefit from the product recommended;
    - The annuity as a whole (or the transaction as a whole in the case of exchange or replacement) is suitable for the consumer based on the consumer's suitability information; and
    - The exchange or replacement is suitable to the consumer after taking into account specified information.
- Specifies the DFS form (form DFS-H1-1981) to be used to provide annuity consumers with comparative information when an existing annuity is to be replaced or exchanged.
- Prohibits insurers from issuing an annuity recommended to a consumer unless there is a reasonable basis to believe that the annuity is suitable for the consumer.
- Requires that the issuance of an annuity by an insurer must be reasonable based on all the information actually known to the insurer at that time of issuance, and specifies circumstances under which an insurer or agent does not have an obligation to a consumer related to an annuity transaction, e.g., when a recommendation is based on information from the consumer that is later found to have been materially inaccurate.
- Requires agents or their representatives at the time of sale to:
    - Make a record of any recommendation made to the consumer; and
    - Obtain the consumer's signed statement:
        - Documenting the consumer's refusal to provide suitability information, if applicable, and
        - Acknowledging that an annuity transaction is not recommended if the transaction is not based on the insurer's or agent's recommendation, if applicable.
- Prohibits agents from dissuading, or attempting to dissuade, a consumer from truthfully responding to an insurer's request for confirmation of suitability information, from filing a complaint, or from cooperating with the investigation of a complaint.
- Clarifies that compliance with FINRA requirements constitutes compliance with s. 627.4554, F.S., and includes FINRA broker-dealer sales of variable and fixed annuities when certain conditions are met.
- Provides that insurers are responsible for ensuring compliance with the law.
- Requires insurers to establish a supervision system that is reasonably designed to achieve insurer and agent compliance with this section, which must include procedures for the review of each recommendation before issuance of an annuity; standards for agent product training; and product-specific training and training materials that explain all material features of the insurer's annuity products to its agents.
- Permits insurers to contract with a third party as to any aspect of the supervision system, but provides that insurers remain responsible for compliance.
- Maintains the respective authority of OIR and DFS to take reasonably appropriate action against insurers and agents or agencies for misconduct that harms a consumer. However, the bill amends current law to delete language that specifically authorizes the OIR to rescind an annuity

[6] Currently, insurers or agents must have an "objectively reasonable basis" for believing that the recommendation is suitable for the consumer.

and provide a full refund of premiums paid or the accumulation value, whichever is greater, when a consumer is harmed by a violation of the suitability statute.
- Specifies that a violation of s. 627.4554, F.S., does not create or imply a private cause of action.

The bill also amends s. 626.99, F.S., to:

- Increase the unconditional refund period to 21 days for all purchasers of annuities;
- Provide an alternative basis to the cash surrender value, a refund of all premiums paid, for calculating the amount of an unconditional refund; and
- Require that the cover page to an annuity contract contain specified disclosures, which must be set forth in bold, 12-point type or a larger point size.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

To the extent that the bill provides for enactment of the most recent version of the NAIC model regulation on annuity transactions, it will bring further uniformity to the sale of annuity products by insurers conducting business in multiple states.

D. FISCAL COMMENTS:

According to the OIR, there may be an increase in workload associated with the revised contract forms that insurers will have to file for approval with the OIR. However, the OIR indicates that any increase in workload can be absorbed within current resources.[7]

[7] Correspondence from the OIR dated January 29, 2013 on file with staff of the Insurance & Banking Subcommittee.