

IN THE SENATE

SENATE BILL NO. 1327

BY COMMERCE AND HUMAN RESOURCES COMMITTEE

AN ACT

RELATING TO ANNUITY CONTRACTS; AMENDING CHAPTER 19, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-1941, IDAHO CODE, TO DEFINE TERMS, TO PROVIDE DISCLOSURE REQUIREMENTS FOR ANNUITY SALES TO CONSUMERS, TO PROVIDE EXCEPTIONS, TO PROVIDE REPORTING REQUIREMENTS, TO PROVIDE THE DIRECTOR OF THE DEPARTMENT OF INSURANCE WITH RULEMAKING AUTHORITY AND TO SPECIFY THAT A PRIVATE RIGHT OF ACTION IS NOT CREATED OR IMPLIED.

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

SECTION 1. That Chapter 19, Title 41, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW SECTION, to be known and designated as Section 41-1941, Idaho Code, and to read as follows:

41-1941. ANNUITY SALES TO CONSUMERS -- DISCLOSURES. (1) In this section, the following definitions shall apply unless the context otherwise requires:

(a) "Contract owner" means the owner named in the annuity contract or certified holder in the case of a group annuity contract.

(b) "Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and that are not subject to company discretion, but where the values or amounts cannot be determined until some point after issue. These elements may include the premiums, credited interest rates (including any bonus), benefits, values, noninterest based credits, charges or elements of formulas used to determine any of these. An element is considered determinable if it is calculated from underlying determinable elements only or from both determinable and guaranteed elements.

(c) "Generic name" means a short title descriptive of the annuity contract being applied for or illustrated such as "single premium deferred annuity."

(d) "Guaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, noninterest based credits, charges or elements of formulas used to determine any of these, that are promised and determined at issue. An element is considered guaranteed if all of the underlying elements that go into its calculation are guaranteed.

(e) "Insurance producer" or "producer" has the same meaning as in chapter 10, title 41, Idaho Code.

(f) "Nonguaranteed elements" means the premiums, credited interest rates (including any bonus), benefits, values, noninterest based credits, charges or elements of formulas used to determine any of these, that are subject to company discretion and that are not guaranteed at issue. An element is considered nonguaranteed if any of the underlying nonguaranteed elements are used in its calculation.

1 (g) "Structured settlement annuity" means a qualified funding asset
2 as defined in section 130(d) of the Internal Revenue Code or an annuity
3 that would be a qualified funding asset under section 130(d) of the
4 Internal Revenue Code but for the fact that it is not owned by an
5 assignee under a qualified assignment.

6 (2) The provisions of this section shall apply to all group and
7 individual annuity contracts and certificates except:

8 (a) Registered or nonregistered variable annuities or other registered
9 products;

10 (b) Immediate and deferred annuities that contain no nonguaranteed
11 elements;

12 (c) Annuities used to fund:

13 (i) An employee pension plan that is covered by the employee
14 retirement income security act of 1974, title 29, U.S.C. sections
15 1001 through 1461;

16 (ii) A plan described in section 401(a), 401(k) or 403(b) of
17 the Internal Revenue Code, where the plan, for purposes of the
18 employee retirement income security act of 1974, is established or
19 maintained by an employer;

20 (iii) A governmental or church plan as defined in section 414 of
21 the Internal Revenue Code or a deferred compensation plan of a
22 state or local government or a tax exempt organization pursuant to
23 section 457 of the Internal Revenue Code; or

24 (iv) A nonqualified deferred compensation arrangement
25 established or maintained by an employer or plan sponsor.

26 (d) Structured settlement annuities.

27 (3) If the application for an annuity contract is taken in a
28 face-to-face meeting, the applicant, at or before the time of application,
29 shall be given both the disclosure document and the buyer's guide in the
30 form prescribed by the director. The disclosure document shall be dated and
31 signed by the prospective annuity owner and producer and the company shall
32 maintain a signed copy for the life of the contract.

33 (4) If the application for an annuity contract is taken by means
34 other than in a face-to-face meeting, the applicant shall be sent both the
35 disclosure document and the buyer's guide in the manner and form prescribed
36 by the director no later than five (5) business days after the completed
37 application is received by the insurer.

38 (5) A solicitation for an annuity contract provided in other than a
39 face-to-face meeting shall include a statement that the proposed applicant
40 may contact the insurer for a free annuity buyer's guide.

41 (6) If the disclosure document and buyer's guide are not provided at or
42 before the time of application, a free look period of not less than twenty
43 (20) days shall be provided for the applicant to return the annuity contract
44 without penalty. This free look period shall run concurrently with any other
45 free look period provided in statute.

46 (7) At minimum, the following information shall be included in the
47 disclosure document required to be provided under this section:

48 (a) The generic name of the contract, the company product name, if
49 different, the form number and the fact that it is an annuity;

50 (b) The insurer's name and address;

1 (c) A description of the contract and its benefits, emphasizing
2 its long-term nature and including the following examples where
3 appropriate:

4 (i) The guaranteed, nonguaranteed and determinable elements of
5 the contract, their limitations, if any, and an explanation of how
6 they operate;

7 (ii) An explanation of the initial crediting rate, specifying
8 any bonus or introductory portion, the duration of the rate and
9 the fact that rates may change from time to time and are not
10 guaranteed;

11 (iii) The periodic income options both on a guaranteed and
12 nonguaranteed basis;

13 (iv) Any value reductions caused by withdrawals from or surrender
14 of the contract;

15 (v) How values in the contract can be accessed;

16 (vi) The death benefit, if available, and how it will be
17 calculated;

18 (vii) A summary of the federal tax status of the contract and any
19 penalties applicable on withdrawal of values from the contract;
20 and

21 (viii) The impact of any rider, such as a long-term care rider.

22 (d) The specific dollar amount or percentage charges and fees shall be
23 listed with an explanation of how they apply;

24 (e) Information about the current guaranteed rate for new contracts
25 that contains a clear notice that the rate is subject to change;

26 (f) Whenever projections for nonguaranteed elements of a contract are
27 provided in the disclosure document, equal prominence shall be given to
28 guaranteed elements; and

29 (g) Terms used in the disclosure document shall be defined in clear and
30 concise language that facilitates the understanding of a typical person
31 within the segment of the public to which the disclosure document is
32 directed.

33 (8) For annuities in the payout period with changes in nonguaranteed
34 elements and for the accumulation period of a deferred annuity, the insurer
35 shall provide each contract owner with a report, at least annually, on the
36 status of the contract. Such report shall contain at minimum the following
37 information:

38 (a) The beginning and end dates of the current report period;

39 (b) The accumulation and cash surrender value, if any, at the end of the
40 previous report period and at the end of the current report period;

41 (c) The total amounts, if any, that have been credited, charged to the
42 contract value paid during the current report period; and

43 (d) The amount of outstanding loans, if any, as of the end of the current
44 report period.

45 (9) The director may promulgate rules pursuant to this section
46 including, but not limited to, more fully implementing model rules or laws
47 developed by the national association of insurance commissioners that
48 provide standards for the disclosure of certain minimum information in
49 connection with the sale of annuity contracts.

1 (10) Nothing in this section shall be construed to create or imply a
2 private cause of action for a violation of the provisions of this section or
3 rules promulgated pursuant to this section.