

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 79

BY BUSINESS COMMITTEE

AN ACT

1 RELATING TO THE ANNUITY CONSUMER PROTECTIONS ACT; REPEALING SECTION
2 41-1940, IDAHO CODE, RELATING TO SUITABILITY OF ANNUITY SALES TO CON-
3 SUMERS; AMENDING CHAPTER 19, TITLE 41, IDAHO CODE, BY THE ADDITION OF
4 A NEW SECTION 41-1940, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING
5 ANNUITY CONSUMER PROTECTIONS; AMENDING CHAPTER 19, TITLE 41, IDAHO
6 CODE, BY THE ADDITION OF A NEW SECTION 41-1940A, IDAHO CODE, TO PRO-
7 VIDE SUITABILITY DUTIES; AMENDING CHAPTER 19, TITLE 41, IDAHO CODE,
8 BY THE ADDITION OF A NEW SECTION 41-1940B, IDAHO CODE, TO PROVIDE FOR A
9 SUPERVISION SYSTEM; AMENDING CHAPTER 19, TITLE 41, IDAHO CODE, BY THE
10 ADDITION OF A NEW SECTION 41-1940C, IDAHO CODE, TO PROVIDE FOR PRODUCER
11 TRAINING; AMENDING CHAPTER 19, TITLE 41, IDAHO CODE, BY THE ADDITION OF
12 A NEW SECTION 41-1940D, IDAHO CODE, TO PROVIDE FOR COMPLIANCE MITIGA-
13 TION; AMENDING CHAPTER 19, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW
14 SECTION 41-1940E, IDAHO CODE, TO PROVIDE FOR RECORDKEEPING; AMENDING
15 SECTION 41-1941, IDAHO CODE, TO REVISE PROVISIONS REGARDING DISCLO-
16 SURES; AMENDING SECTION 41-1942, IDAHO CODE, TO REVISE TERMINOLOGY; AND
17 PROVIDING SEVERABILITY.
18

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

20 SECTION 1. That Section [41-1940](#), Idaho Code, be, and the same is hereby
21 repealed.

22 SECTION 2. That Chapter 19, Title 41, Idaho Code, be, and the same is
23 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
24 ignated as Section 41-1940, Idaho Code, and to read as follows:

25 41-1940. ANNUITY CONSUMER PROTECTIONS ACT. (1) Sections 41-1940
26 through 41-1943, Idaho Code, shall be known and may be cited as the "Annuity
27 Consumer Protections Act."

28 (2) As used in the annuity consumer protections act:

29 (a) "Annuity" means an annuity that is an insurance product under state
30 law that is individually solicited, whether classified as an individual
31 or group annuity.

32 (b) "Best interest obligations" means that a producer, when making a
33 recommendation of an annuity, shall act in the best interest of the con-
34 sumer under the circumstances known at the time the recommendation is
35 made without placing the producer's or the insurer's financial interest
36 ahead of the consumer's interest.

37 (c) "Cash compensation" means any discount, concession, fee, service
38 fee, commission, sales charge, loan, override, or cash benefit received
39 by a producer in connection with the recommendation or sale of an annu-
40 ity from an insurer, intermediary, or directly from the consumer.

1 (d) "Consumer profile information" means information that is reason-
2 ably appropriate to determine whether a recommendation addresses the
3 consumer's financial situation, insurance needs, and financial objec-
4 tives, including, at a minimum, the following:

- 5 (i) Age;
6 (ii) Annual income;
7 (iii) Financial situation and needs, including debts and other
8 obligations;
9 (iv) Financial experience;
10 (v) Insurance needs;
11 (vi) Financial objectives;
12 (vii) Intended use of the annuity;
13 (viii) Financial time horizon;
14 (ix) Existing assets or financial products, including invest-
15 ment, annuity, and insurance holdings;
16 (x) Liquidity needs;
17 (xi) Liquid net worth;
18 (xii) Risk tolerance, including but not limited to willingness to
19 accept non-guaranteed elements in the annuity;
20 (xiii) Financial resources used to fund the annuity; and
21 (xiv) Tax status.

22 (e) "Continuing education provider" or "CE provider" means an individ-
23 ual or entity approved by the department to offer continuing education
24 courses.

25 (f) "Contract owner" means the owner named in the annuity contract or
26 the certificate holder in the case of a group annuity contract.

27 (g) "Determinable elements" means elements that are derived from pro-
28 cesses or methods that are guaranteed at issue and that are not subject
29 to company discretion, but where the values or amounts cannot be deter-
30 mined until some point after issue. These elements may include the pre-
31 miums, credited interest rates (including any bonus), benefits, val-
32 ues, noninterest-based credits, charges, or elements of formulas used
33 to determine any of these. An element is considered determinable only
34 if it is calculated from underlying determinable elements or from both
35 determinable and guaranteed elements.

36 (h) "FINRA" means the financial industry regulatory authority or suc-
37 ceeding agency.

38 (i) "Generic name" means a short title descriptive of the annuity
39 contract being applied for or illustrated, such as "single premium de-
40 ferred annuity."

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

47 (k) "Insurance producer" or "producer" has the same meaning as provided
48 in chapter 10, title 41, Idaho Code. For purposes of the annuity con-
49 sumer protections act, "producer" includes an insurer where no producer
50 is involved.

1 (l) "Insurer" means a company required to be licensed under the laws of
2 this state to provide insurance products, including annuities.

3 (m) "Intermediary" means an entity contracted directly with an insurer
4 or with another entity contracted with an insurer to facilitate the sale
5 of the insurer's annuities by producers.

6 (n) "Material conflict of interest" means a financial interest of the
7 producer in the sale of an annuity that a reasonable person would expect
8 to influence the impartiality of a recommendation. It does not include
9 cash compensation or noncash compensation.

10 (o) "Noncash compensation" means any form of compensation that is not
11 cash, including but not limited to health insurance, office rent, of-
12 fice support, and retirement benefits.

13 (p) "Non-guaranteed elements" means the premiums, credited interest
14 rates including any bonus, benefits, values, dividends, noninterest-
15 based credits, charges, or elements of formulas used to determine any of
16 these that are subject to company discretion and that are not guaranteed
17 at issue. An element is considered non-guaranteed if any of the under-
18 lying non-guaranteed elements are used in its calculation.

19 (q) "Recommendation" means advice provided by a producer to an individ-
20 ual consumer that was intended to result or does result in a purchase,
21 exchange, or replacement of an annuity in accordance with that advice.
22 It does not include general communication to the public, generalized
23 customer services assistance or administrative support, general educa-
24 tional information and tools, prospectuses, or other product and sales
25 material.

26 (r) "Replacement" means a transaction in which a new policy or contract
27 is purchased and in which it is known or should be known to the proposing
28 producer or insurer that, by reason of the transaction, an existing pol-
29 icy or contract has been or is to be:

30 (i) Lapsed, forfeited, surrendered or partially surrendered, as-
31 signed to the replacing insurer, or terminated;

32 (ii) Converted to reduced paid-up insurance, continued as ex-
33 tended term insurance, or reduced in value by the use of nonforfei-
34 ture benefits or other policy values;

35 (iii) Amended to effect either a reduction in benefits or in the
36 term for which coverage would remain in force or for which benefits
37 would be paid;

38 (iv) Reissued with any reduction in cash value; or

39 (v) Used in a financed purchase.

40 (s) "SEC" means the United States securities and exchange commission.

41 (3) Unless otherwise specifically included, the annuity consumer pro-
42 tectio ns act shall not apply to transactions involving:

43 (a) Contracts used to fund:

44 (i) An employee pension or welfare benefit plan that is covered by
45 the employee retirement and income security act of 1974 (ERISA);

46 (ii) A plan described by sections 401(a), 401(k), 403(b), 408(k),
47 or 408(p) of the Internal Revenue Code, as amended, if established
48 or maintained by an employer;

49 (iii) A governmental or church plan defined in section 414 of the
50 Internal Revenue Code, a governmental or church welfare benefit

1 plan, or a deferred compensation plan of a state or local govern-
 2 ment or tax-exempt organization under section 457 of the Internal
 3 Revenue Code; or

4 (iv) A nonqualified deferred compensation arrangement estab-
 5 lished or maintained by an employer or plan sponsor;

6 (b) Settlements of or assumptions of liabilities associated with per-
 7 sonal injury litigation or any dispute or claim resolution process; or

8 (c) Formal prepaid funeral contracts, also known as prepaid prear-
 9 rangement sales or prearrangement sales contracts, as defined under
 10 section 54-1131(7), Idaho Code, and as regulated in chapter 11, title
 11 54, Idaho Code.

12 (4) The director may promulgate rules implementing the provisions of
 13 the annuity consumer protections act for the protection of consumers in an-
 14 nuity transactions.

15 (5) Nothing in the annuity consumer protections act shall be construed
 16 to create or imply a private cause of action for a violation of the annuity
 17 consumer protections act or rules promulgated pursuant thereto.

18 SECTION 3. That Chapter 19, Title 41, Idaho Code, be, and the same is
 19 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
 20 ignated as Section 41-1940A, Idaho Code, and to read as follows:

21 41-1940A. ANNUITY CONSUMER PROTECTIONS -- SUITABILITY DUTIES. (1)
 22 This section through section 41-1940E, Idaho Code, shall apply to any sale or
 23 recommendation of an annuity.

24 (a) The purpose of these sections is to require producers, as defined in
 25 the annuity consumer protections act, to act in the best interest of the
 26 consumer when making a recommendation of an annuity and to require in-
 27 surers to establish and maintain a system to supervise recommendations
 28 so that the insurance needs and financial objectives of consumers at the
 29 time of the transaction are effectively addressed.

30 (b) Nothing in the annuity consumer protections act shall be construed
 31 to subject a producer to civil liability under the best interest stan-
 32 dard of care outlined in this section or under standards governing the
 33 conduct of a fiduciary or a fiduciary relationship.

34 (2) Unless otherwise specifically included, this section through sec-
 35 tion 41-1940E, Idaho Code, shall not apply to transactions involving:

36 (a) Contracts excluded by section 41-1940(3), Idaho Code; or

37 (b) Direct response solicitations where there is no recommendation
 38 based on information collected from the consumer pursuant to this sec-
 39 tion.

40 (3) Best interest obligations. A producer, when making a recommenda-
 41 tion of an annuity, shall act in the best interest of the consumer under the
 42 circumstances known at the time the recommendation is made without placing
 43 the producer's or the insurer's financial interest ahead of the consumer's
 44 interest. A producer has acted in the best interest of the consumer if he has
 45 satisfied the following obligations regarding care, disclosure, conflict of
 46 interest, and documentation:

47 (a) Care obligation. The producer, in making a recommendation, shall
 48 exercise reasonable diligence, care, and skill to:

1 (i) Know the consumer's financial situation, insurance needs,
2 and financial objectives;

3 (ii) Understand the available recommendation options after mak-
4 ing a reasonable inquiry into options available to the producer;

5 (iii) Have a reasonable basis to believe the recommended option
6 effectively addresses the consumer's financial situation, insur-
7 ance needs, and financial objectives over the life of the product,
8 as evaluated in light of the consumer profile information; and

9 (iv) Communicate the basis or bases of the recommendation.

10 (b) The requirements under paragraph (a) of this subsection include
11 making reasonable efforts to obtain consumer profile information from
12 the consumer prior to the recommendation of an annuity.

13 (c) The requirements under paragraph (a) of this subsection require a
14 producer to consider the types of products the producer is authorized
15 and licensed to recommend or sell that address the consumer's financial
16 situation, insurance needs, and financial objectives. This does not
17 require analysis or consideration of any products outside the author-
18 ity and license of the producer or other possible alternative products
19 or strategies available in the market at the time of the recommendation.
20 Producers shall be held to standards applicable to producers with simi-
21 lar authority and licensure.

22 (d) The requirements under this subsection do not create a fiduciary
23 obligation or relationship and create only a regulatory obligation as
24 established in this section.

25 (e) The consumer profile information, characteristics of the insurer,
26 and product costs, rates, benefits, and features are those factors
27 generally relevant in making a determination whether an annuity effec-
28 tively addresses the consumer's financial situation, insurance needs,
29 and financial objectives, but the level of importance of each factor
30 under the care obligation of this subsection may vary depending on the
31 facts and circumstances of a particular case. However, each factor may
32 not be considered in isolation.

33 (f) The requirements under paragraph (a) of this subsection include
34 having a reasonable basis to believe the consumer would benefit from
35 certain features of the annuity, such as annuitization, death or living
36 benefit, or other insurance-related features.

37 (g) The requirements under paragraph (a) of this subsection apply to
38 the particular annuity as a whole and the underlying subaccounts to
39 which funds are allocated at the time of purchase or exchange of an annu-
40 ity and to riders and similar producer enhancements, if any.

41 (h) The requirements under paragraph (a) of this subsection do not mean
42 the annuity with the lowest onetime or multiple occurrence compensation
43 structure shall necessarily be recommended.

44 (i) The requirements under paragraph (a) of this subsection do not mean
45 the producer has ongoing monitoring obligations under the care obli-
46 gation pursuant to this subsection, although such an obligation may be
47 separately owed under the terms of a fiduciary, consulting, investment
48 advising, or financial planning agreement between the consumer and the
49 producer.

1 (j) In the case of an exchange or replacement of an annuity, the pro-
2 ducer shall consider the whole transaction, which includes taking into
3 consideration whether:

4 (i) The consumer will incur a surrender charge, be subject to
5 the commencement of a new surrender period, lose existing benefits
6 such as death, living, or other contractual benefits, or be sub-
7 ject to increased fees, investment advisory fees, or charges for
8 riders and similar product enhancements;

9 (ii) The replacing product would substantially benefit the con-
10 sumer in comparison to the replaced product over the life of the
11 product; and

12 (iii) The consumer has had another annuity exchange or replacement
13 and, in particular, an exchange or replacement within the preced-
14 ing sixty (60) months.

15 (k) Nothing in this section shall be construed to require a producer
16 to obtain any license other than a producer license with the appropri-
17 ate line of authority to sell, solicit, or negotiate insurance in this
18 state, including but not limited to any securities license, in order to
19 fulfill the duties and obligations contained in this section; provided
20 the producer does not give advice or provide services that are other-
21 wise subject to securities laws or engage in any other activity requir-
22 ing other professional licenses.

23 (4) Disclosure obligation.

24 (a) Prior to the recommendation or sale of an annuity, the producer
25 shall prominently disclose to the consumer on a form prescribed by the
26 director or substantially similar thereto the following:

27 (i) A description of the scope and terms of the relationship with
28 the consumer and the role of the producer in the transaction;

29 (ii) An affirmative statement on whether the producer is licensed
30 and authorized to sell the following products:

- 31 1. Fixed annuities;
- 32 2. Fixed indexed annuities;
- 33 3. Variable annuities;
- 34 4. Life insurance;
- 35 5. Mutual funds;
- 36 6. Stocks and bonds; and
- 37 7. Certificates of deposit;

38 (iii) An affirmative statement describing the insurers the pro-
39 ducer is authorized, contracted (or appointed), or otherwise able
40 to sell insurance products for, using the following descriptions:

- 41 1. From one (1) insurer;
- 42 2. From two (2) or more insurers; or
- 43 3. From two (2) or more insurers although primarily con-
44 tracted with one (1) insurer;

45 (iv) A description of the sources and types of cash compensation
46 and noncash compensation to be received by the producer, including
47 whether the producer is to be compensated for the sale of a recom-
48 mended annuity by commission as part of premium or other remunera-
49 tion received from the insurer, intermediary, or other producer or

1 by fee as a result of a contract for advice or consulting services;
2 and

3 (v) A notice of the consumer's right to request additional infor-
4 mation regarding cash compensation described in paragraph (b) of
5 this subsection.

6 (b) Upon request of the consumer or the consumer's designated represen-
7 tative, the producer shall disclose:

8 (i) A reasonable estimate of the amount of cash compensation to be
9 received by the producer, which may be stated as a range of amounts
10 or percentages; and

11 (ii) Whether the cash compensation is a onetime or multiple occur-
12 rence amount and, if a multiple occurrence amount, the frequency
13 and amount of the occurrence, which may be stated as a range of
14 amounts or percentages.

15 (c) Prior to or at the time of the recommendation or sale of an annu-
16 ity, the producer shall have a reasonable basis to believe the consumer
17 has been informed of various features of the annuity, such as the po-
18 tential surrender period and surrender charge, potential tax penalty if
19 the consumer sells, exchanges, surrenders, or annuitizes the annuity,
20 mortality and expense fees, investment advisory fees, any annual fees,
21 potential charges for and features of riders or other options of the an-
22 nuity, limitations on interest returns, potential changes in non-guar-
23 anteed elements of the annuity, insurance and investment components,
24 and market risk. The disclosure requirements under this subsection are
25 intended to supplement and not replace the disclosure requirements un-
26 der section 41-1941, Idaho Code.

27 (5) Conflict of interest obligation. A producer shall identify and
28 avoid or reasonably manage and disclose material conflicts of interest, in-
29 cluding material conflicts of interest related to an ownership interest.

30 (6) Documentation obligation. A producer shall at the time of recom-
31 mendation or sale:

32 (a) Make a written record of any recommendation and the basis for the
33 recommendation subject to this section;

34 (b) Obtain a consumer-signed statement on a form prescribed by the di-
35 rector or substantially similar to such form, documenting:

36 (i) A customer's refusal to provide the consumer profile informa-
37 tion, if any; and

38 (ii) A customer's understanding of the ramifications of not pro-
39 viding his consumer profile information or providing insufficient
40 consumer profile information; and

41 (c) Obtain a consumer-signed statement on a form prescribed by the di-
42 rector or substantially similar to such form, acknowledging the annuity
43 transaction is not recommended if a customer decides to enter into an
44 annuity transaction that is not based on the producer's recommendation.

45 (7) Application of the best interest obligation. Any requirement ap-
46 plicable to a producer under this section shall apply to every producer who
47 has exercised material control or influence in the making of a recommenda-
48 tion and has received direct compensation as a result of the recommendation
49 or sale, regardless of whether the producer has had any direct contact with
50 the consumer. Activities such as providing or delivering marketing or ed-

1 ucational materials, product wholesaling or other back office product sup-
2 port, and general supervision of a producer do not, in and of themselves,
3 constitute material control or influence.

4 (8) Transactions not based on a recommendation.

5 (a) Except as provided under paragraph (b) of this subsection, a pro-
6 ducer shall have no obligation to a consumer under subsection (3) of
7 this section related to any annuity transaction if:

8 (i) No recommendation is made;

9 (ii) A recommendation was made and was later found to have been
10 prepared based on materially inaccurate information provided by
11 the consumer;

12 (iii) A consumer refuses to provide relevant consumer profile in-
13 formation and the annuity transaction is not recommended; or

14 (iv) A consumer decides to enter into an annuity transaction that
15 is not based on a recommendation of the producer.

16 (b) An insurer's issuance of an annuity subject to paragraph (a) of this
17 subsection shall be reasonable under all the circumstances actually
18 known to the insurer at the time the annuity is issued.

19 (9) Prohibited practices. Neither a producer nor an insurer shall dis-
20 suade, or attempt to dissuade, a consumer from:

21 (a) Truthfully responding to an insurer's request for confirmation of
22 the consumer profile information;

23 (b) Filing a complaint; or

24 (c) Cooperating with the investigation of a complaint.

25 (10) Safe harbor for financial professionals.

26 (a) Recommendations and sales of annuities made in compliance with com-
27 parable standards shall satisfy the requirements under this section.
28 This subsection applies to all recommendations and sales of annuities
29 made by financial professionals in compliance with business rules, con-
30 trols, and procedures that satisfy a comparable standard even if such
31 standard would not otherwise apply to the product or recommendation at
32 issue. However, nothing in this subsection shall limit the insurance
33 director's ability to investigate and enforce the provisions of this
34 section.

35 (b) Nothing in paragraph (a) of this subsection shall limit the in-
36 surer's obligation to comply with section 41-1940B(1), Idaho Code,
37 although the insurer may base its analysis on information received from
38 either the financial professional or the entity supervising the finan-
39 cial professional.

40 (c) For paragraph (a) of this subsection to apply, an insurer shall:

41 (i) Monitor the relevant conduct of the financial professional
42 seeking to rely on paragraph (a) of this subsection or the entity
43 responsible for supervising the financial professional, such as
44 the financial professional's broker-dealer or an investment ad-
45 viser registered under federal securities laws, using information
46 collected in the normal course of an insurer's business; and

47 (ii) Provide to the entity responsible for supervising the finan-
48 cial professional seeking to rely on paragraph (a) of this subsec-
49 tion, such as the financial professional's broker-dealer or in-
50 vestment adviser registered under federal securities laws, infor-

- 1 mation and reports that are reasonably appropriate to assist such
2 entity to maintain its supervision system.
- 3 (d) For purposes of this subsection, "financial professional" means a
4 producer that is regulated and acting as:
- 5 (i) A broker-dealer registered under federal securities laws or a
6 registered representative of a broker-dealer;
- 7 (ii) An investment adviser registered under federal securities
8 laws or an investment adviser representative associated with the
9 federal registered investment adviser; or
- 10 (iii) A plan fiduciary under section 3(21) of the employee retire-
11 ment income security act of 1974 (ERISA) or a fiduciary under sec-
12 tion 4975(e) (3) of the Internal Revenue Code or any amendments or
13 successor statutes thereto.
- 14 (e) For purposes of this subsection, "comparable standards" means:
- 15 (i) With respect to broker-dealers and registered representa-
16 tives of broker-dealers, applicable SEC and FINRA rules pertain-
17 ing to best interest obligations and supervision of annuity recom-
18 mendations and sales, including but not limited to regulation best
19 interest and any amendments or successor regulations thereto;
- 20 (ii) With respect to investment advisers registered under federal
21 securities laws or investment adviser representatives, the fidu-
22 ciary duties and all other requirements imposed on such investment
23 advisers or investment adviser representatives by contract or un-
24 der the investment advisers act of 1940, including but not limited
25 to the form ADV and interpretations; and
- 26 (iii) With respect to plan fiduciaries or fiduciaries, the duties,
27 obligations, prohibitions, and all other requirements attendant
28 to such status under ERISA or the Internal Revenue Code and any
29 amendments or successor statutes thereto.

30 SECTION 4. That Chapter 19, Title 41, Idaho Code, be, and the same is
31 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
32 ignated as Section 41-1940B, Idaho Code, and to read as follows:

33 41-1940B. ANNUITY CONSUMER PROTECTION -- SUPERVISION SYSTEM. (1) Ex-
34 cept as permitted under section 41-1940A(8), Idaho Code, an insurer may not
35 issue an annuity recommended to a consumer unless there is a reasonable basis
36 to believe the annuity would effectively address the particular consumer's
37 financial situation, insurance needs, and financial objectives based on the
38 consumer's consumer profile information.

39 (2) An insurer shall establish and maintain a supervision system that
40 is reasonably designed to achieve the insurer's and its producers' compli-
41 ance with the annuity consumer protections act, including but not limited to
42 the following:

43 (a) The insurer shall establish and maintain reasonable procedures to
44 inform its producers of the requirements of the annuity consumer pro-
45 tections act and shall incorporate the requirements of such act into
46 relevant producer training manuals;

47 (b) The insurer shall establish and maintain standards for producer
48 product training and shall establish and maintain reasonable pro-

1 cedures to require its producers to comply with the requirements of
2 section 41-1940C, Idaho Code;

3 (c) The insurer shall provide product-specific training and training
4 materials that explain all material features of its annuity products to
5 its producers;

6 (d) The insurer shall establish and maintain procedures for the review
7 of each recommendation prior to issuance of an annuity that are designed
8 to ensure there is a reasonable basis to determine that the recommended
9 annuity would effectively address the particular consumer's financial
10 situation, insurance needs, and financial objectives. Such review pro-
11 cedures may apply a screening system for the purpose of identifying se-
12 lected transactions for additional review and may be accomplished elec-
13 tronically or through other means, including but not limited to physi-
14 cal review. Such an electronic or other system may be designed to re-
15 quire additional review only of those transactions identified for addi-
16 tional review by the selection criteria;

17 (e) The insurer shall establish and maintain reasonable procedures
18 to detect recommendations that are not in compliance with section
19 41-1940A, Idaho Code. This may include but is not limited to confirma-
20 tion of the consumer's consumer profile information, systematic cus-
21 tomer surveys, producer and consumer interviews, confirmation letters,
22 producer statements or attestations, and programs of internal monitor-
23 ing. Nothing in this paragraph prevents an insurer from complying with
24 this paragraph by applying sampling procedures or by confirming the
25 consumer profile information or other required information under that
26 section after issuance or delivery of the annuity;

27 (f) The insurer shall establish and maintain reasonable procedures to
28 assess, prior to or upon issuance or delivery of an annuity, whether a
29 producer has provided to the consumer the information required to be
30 provided under the annuity consumer protections act;

31 (g) The insurer shall establish and maintain reasonable procedures to
32 identify and address suspicious consumer refusals to provide consumer
33 profile information;

34 (h) The insurer shall establish and maintain reasonable procedures to
35 identify and eliminate any sales contests, sales quotas, bonuses, and
36 noncash compensation that are based on the sales of specific annuities
37 within a limited period of time. The requirements of this paragraph are
38 not intended to prohibit the receipt of health insurance, office rent,
39 office support, retirement benefits, or other employee benefits by em-
40 ployees as long as those benefits are not based on the volume of sales of
41 a specific annuity within a limited period of time; and

42 (i) The insurer shall annually provide a written report to senior
43 management, including to the senior manager responsible for audit func-
44 tions, which report shall detail a review, with appropriate testing,
45 reasonably designed to determine the effectiveness of the supervision
46 system, the exceptions found, and corrective action taken or recom-
47 mended, if any.

48 (3) Nothing in this section restricts an insurer from contracting for
49 performance of a function, including maintenance of procedures, required
50 under this section.

1 (a) An insurer is responsible for taking appropriate corrective ac-
2 tion and may be subject to sanctions and penalties pursuant to section
3 41-1940D, Idaho Code, regardless of whether the insurer contracts for
4 performance of a function and regardless of the insurer's compliance
5 with paragraph (b) of this subsection.

6 (b) An insurer's supervision system under this section shall include
7 supervision of contractual performance under this section. This in-
8 cludes but is not limited to the following:

9 (i) Monitoring and, as appropriate, conducting audits to assure
10 that the contracted function is properly performed; and

11 (ii) Annually obtaining a certification from a senior manager who
12 has responsibility for the contracted function that the manager
13 has a reasonable basis to represent, and does represent, that the
14 function is properly performed.

15 (4) An insurer is not required to include in its system of supervision:

16 (a) A producer's recommendations to consumers of products other than
17 the annuities offered by the insurer; or

18 (b) Consideration of or comparison to options available to the producer
19 or compensation relating to those options other than annuities or other
20 products offered by the insurer.

21 SECTION 5. That Chapter 19, Title 41, Idaho Code, be, and the same is
22 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
23 ignated as Section 41-1940C, Idaho Code, and to read as follows:

24 41-1940C. ANNUITY CONSUMER PROTECTION -- PRODUCER TRAINING. (1) A
25 producer shall not solicit the sale of an annuity product unless the producer
26 has adequate knowledge of the product to recommend the annuity and the pro-
27 ducer is in compliance with the insurer's standards for product training. A
28 producer may rely on insurer-provided product-specific training standards
29 and materials to comply with this subsection.

30 (2) A producer who engages in the sale of annuity products shall com-
31 plete a onetime four (4) credit training course approved by the department
32 and provided by the department-approved education provider. Individuals
33 who obtain a life insurance line of authority on or after July 1, 2021, may
34 not engage in the sale of annuities until the annuity training course re-
35 quired under this section has been completed.

36 (a) The minimum length of the training required under this subsection
37 shall be sufficient to qualify for at least four (4) continuing educa-
38 tion credits but may be longer.

39 (b) The training required under this subsection shall include informa-
40 tion on the following topics:

41 (i) The types of annuities and various classifications of annu-
42 ities;

43 (ii) Identification of the parties to an annuity;

44 (iii) How product-specific annuity contract features affect con-
45 sumers;

46 (iv) The application of income taxation of qualified and nonqual-
47 ified annuities;

48 (v) The primary uses of annuities; and

1 (vi) Appropriate standard of conduct, sales practices, replace-
2 ment, and disclosure requirements.

3 (c) Providers of courses intended to comply with this subsection shall
4 cover all topics listed in the prescribed outline and shall not present
5 any marketing information or provide training on sales techniques or
6 provide specific information about a particular insurer's products.
7 Additional topics may be offered in conjunction with and in addition to
8 the required outline.

9 (d) A provider of an annuity training course intended to comply with
10 this subsection shall register as a continuing education provider in
11 this state and comply with the rules and guidelines applicable to pro-
12 ducer continuing education courses as set forth by the department.

13 (e) A producer who has completed an annuity training course approved by
14 the department of insurance prior to July 1, 2021, shall, within six (6)
15 months after July 1, 2021, complete either:

16 (i) A new four (4) credit training course approved by the depart-
17 ment of insurance after July 1, 2021; or

18 (ii) An additional onetime one (1) credit training course ap-
19 proved by the department and provided by the department-approved
20 education provider on appropriate sales practices, replacement,
21 and disclosure requirements under the annuity consumer protec-
22 tions act.

23 (f) Providers of annuity training shall comply with the reporting re-
24 quirements and shall issue certificates of completion as set forth by
25 the department.

26 (g) The satisfaction of the training requirements of another state that
27 are substantially similar to the provisions of this subsection shall be
28 deemed to satisfy the training requirements of this subsection in this
29 state.

30 (h) The satisfaction of the components of the training requirements of
31 any course or courses with components substantially similar to the pro-
32 visions of this subsection shall be deemed to satisfy the training re-
33 quirements of this subsection in this state.

34 (i) An insurer shall verify that a producer has completed the annuity
35 training course required under this subsection before allowing the
36 producer to sell an annuity product for that insurer. An insurer may
37 satisfy its responsibility under this subsection by obtaining cer-
38 tificates of completion of the training course or obtaining reports
39 provided by director-sponsored database systems or vendors or from a
40 reasonably reliable commercial database vendor that has a reporting
41 arrangement with approved insurance education providers.

42 SECTION 6. That Chapter 19, Title 41, Idaho Code, be, and the same is
43 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
44 ignated as Section 41-1940D, Idaho Code, and to read as follows:

45 41-1940D. ANNUITY CONSUMER PROTECTION -- COMPLIANCE MITIGATION. An
46 insurer is responsible for compliance with the annuity consumer protections
47 act. If a violation occurs, either because of the action or inaction of the
48 insurer or its producer, the director may order:

1 (1) An insurer to take reasonably appropriate corrective action for any
2 consumer harmed by a failure to comply with this regulation by the insurer,
3 by an entity contracted to perform the insurer's supervisory duties, or by
4 the producer;

5 (2) A general agency, an independent agency, or the producer to take
6 reasonably appropriate corrective action for any consumer harmed by the pro-
7 ducer's violation of this regulation; and

8 (3) Appropriate penalties and sanctions.

9 SECTION 7. That Chapter 19, Title 41, Idaho Code, be, and the same is
10 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
11 ignated as Section 41-1940E, Idaho Code, and to read as follows:

12 41-1940E. ANNUITY CONSUMER PROTECTION -- RECORDKEEPING. (1) Insur-
13 ers, general agents, independent agencies, and producers shall maintain
14 or be able to make available to the director records of the information
15 collected from the consumer, disclosures made to the consumer including
16 summaries of oral disclosures, and other information used in making the
17 recommendations that were the basis for insurance transactions for five (5)
18 years after the natural life of the contract. An insurer is permitted but
19 shall not be required to maintain documentation on behalf of a producer.

20 (2) Records required to be maintained by the annuity consumer pro-
21 tections act may be maintained in paper, photographic, micro-process,
22 magnetic, mechanical, or electronic media or by any process that accurately
23 reproduces the actual document.

24 SECTION 8. That Section 41-1941, Idaho Code, be, and the same is hereby
25 amended to read as follows:

26 41-1941. ~~ANNUITY SALES TO CONSUMERS~~ PROTECTIONS -- DISCLOSURES. (1)
27 In this section, the following definitions shall apply unless the context
28 otherwise requires:

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

31 ~~(b) "Determinable elements" means elements that are derived from pro-~~
32 ~~cesses or methods that are guaranteed at issue and that are not subject~~
33 ~~to company discretion, but where the values or amounts cannot be deter-~~
34 ~~mined until some point after issue. These elements may include the pre-~~
35 ~~miums, credited interest rates (including any bonus), benefits, val-~~
36 ~~ues, noninterest-based credits, charges or elements of formulas used to~~
37 ~~determine any of these. An element is considered determinable if it is~~
38 ~~calculated from underlying determinable elements only or from both de-~~
39 ~~terminable and guaranteed elements.~~

40 ~~(c) "Generic name" means a short title descriptive of the annuity con-~~
41 ~~tract being applied for or illustrated such as "single premium deferred~~
42 ~~annuity."~~

43 ~~(d) "Guaranteed elements" means the premiums, credited interest rates~~
44 ~~(including any bonus), benefits, values, noninterest-based credits,~~
45 ~~charges or elements of formulas used to determine any of these that are~~
46 ~~promised and determined at issue. An element is considered guaranteed~~

1 if all of the underlying elements that go into its calculation are guar-
2 anteed.

3 ~~(e) "Insurance producer" or "producer" has the same meaning as in chap-~~
4 ~~ter 10, title 41, Idaho Code.~~

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

11 ~~(g) "Structured settlement annuity" means a qualified funding asset~~
12 ~~as defined in section 130(d) of the Internal Revenue Code or an annuity~~
13 ~~that would be a qualified funding asset under section 130(d) of the In-~~
14 ~~ternal Revenue Code but for the fact that it is not owned by an assignee~~
15 ~~under a qualified assignment.~~

16 ~~(2) The provisions of this section shall apply to all group and individ-~~
17 ~~ual annuity contracts and certificates except:~~

18 (a) Registered or nonregistered variable annuities or other registered
19 products;

20 (b) Immediate and deferred annuities that contain no non-guaranteed
21 elements; and

22 (c) Annuities used to fund:

23 ~~(i) An employee pension plan that is covered by the employee~~
24 ~~retirement income security act of 1974, title 29, U.S.C. 1001~~
25 ~~through 1461;~~

26 ~~(ii) A plan described in section 401(a), 401(k) or 403(b) of the~~
27 ~~Internal Revenue Code, where the plan, for purposes of the em-~~
28 ~~ployee retirement income security act of 1974, is established or~~
29 ~~maintained by an employer;~~

30 ~~(iii) A governmental or church plan as defined in section 414 of~~
31 ~~the Internal Revenue Code or a deferred compensation plan of a~~
32 ~~state or local government or a tax-exempt organization pursuant to~~
33 ~~section 457 of the Internal Revenue Code; or~~

34 ~~(iv) A nonqualified deferred compensation arrangement estab-~~
35 ~~lished or maintained by an employer or plan sponsor.~~

36 ~~(d) Structured settlement annuities. Contracts excluded by section~~
37 ~~41-1940(3), Idaho Code.~~

38 (32) If the application for an annuity contract is taken in a face-to-
39 face meeting, the applicant, at or before the time of application and at the
40 time of contract delivery, shall be given both the disclosure document and
41 the buyer's guide in the form prescribed by the director. The disclosure
42 document shall be dated and signed by the prospective annuity owner and pro-
43 ducer and the company shall maintain a signed copy for a period of five (5)
44 years after the natural life of the contract.

45 (43) If the application for an annuity contract is taken by means other
46 than in a face-to-face meeting, the applicant shall be sent both the disclo-
47 sure document and the buyer's guide at the time of application and at the time
48 of contract delivery. The producer and the company shall maintain a signed
49 copy of the disclosure document for a period of five (5) years after the natu-
50 ral life of the contract.

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

4 (65) At a minimum, the following information shall be included in the
5 disclosure document required to be provided under this section in a form or
6 forms prescribed by the director or substantially similar to such form or
7 forms:

8 (a) The generic name of the contract, the company product name, if dif-
9 ferent, the form number and the fact that it is an annuity;

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

11 (c) A description of the contract and its benefits, emphasizing its
12 long-term nature and including the following examples where appropri-
13 ate:

14 (i) The guaranteed, non-guaranteed and determinable elements of
15 the contract, their limitations, if any, and an explanation of how
16 they operate;

17 (ii) An explanation of the initial crediting rate, specifying any
18 bonus or introductory portion, the duration of the rate and the
19 fact that rates may change from time to time and are not guaran-
20 teed;

21 (iii) The periodic income options both on a guaranteed and non-
22 guaranteed basis;

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

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

26 (vi) The death benefit, if available, and how it will be calcu-
27 lated;

28 (vii) A summary of the federal tax status of the contract and any
29 penalties applicable on withdrawal of values from the contract;
30 and

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

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

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

36 (f) Whenever projections for non-guaranteed elements of a contract are
37 provided in the disclosure document, equal prominence shall be given to
38 guaranteed elements; and

39 (g) Terms used in the disclosure document shall be defined in clear and
40 concise language that facilitates the understanding of a typical person
41 within the segment of the public to which the disclosure document is di-
42 rected.

43 (76) For annuities in the payout period with changes in nonguaranteed
44 elements and for the accumulation period of a deferred annuity, the insurer
45 shall provide each contract owner with a report, at least annually, on the
46 status of the contract. Such report shall contain at a minimum the following
47 information:

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

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

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

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

5 ~~(8) The director may promulgate rules pursuant to this section includ-~~
6 ~~ing, but not limited to, more fully implementing model rules or laws devel-~~
7 ~~oped by the national association of insurance commissioners that provide~~
8 ~~standards for the disclosure of certain minimum information in connection~~
9 ~~with the sale of annuity contracts.~~

10 ~~(9) Nothing in this section shall be construed to create or imply a pri-~~
11 ~~vate cause of action for a violation of the provisions of this section or~~
12 ~~rules promulgated pursuant to this section.~~

13 SECTION 9. That Section 41-1942, Idaho Code, be, and the same is hereby
14 amended to read as follows:

15 41-1942. ADVERTISEMENT OF INTEREST-INDEXED ANNUITIES. No issuer of
16 interest-~~issued~~indexed annuity contracts shall advertise interest-indexed
17 annuity contracts, regardless of the advertising medium, without prior
18 approval of such advertisement from the director. For purposes of this
19 section, "interest-indexed annuity" means a type of annuity whose credited
20 interest is linked to an external reference at any time during the term of
21 the contract and shall include contracts, application forms where written
22 application is required and is to be made a part of the contract, printed
23 riders, endorsements, and renewal certificates.

24 SECTION 10. SEVERABILITY. The provisions of this act are hereby de-
25 clared to be severable and if any provision of this act or the application
26 of such provision to any person or circumstance is declared invalid for any
27 reason, such declaration shall not affect the validity of the remaining por-
28 tions of this act.