

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 526

BY WAYS AND MEANS COMMITTEE

AN ACT

1 RELATING TO INSURANCE; AMENDING SECTION 41-1941, IDAHO CODE, TO REVISE PRO-  
2 VISIONS REGARDING ANNUITY SALES TO CONSUMERS AND DISCLOSURES; AMEND-  
3 ING CHAPTER 19, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION  
4 41-1942, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING ADVERTISEMENT  
5 OF INTEREST-INDEXED ANNUITIES; AND AMENDING CHAPTER 19, TITLE 41, IDAHO  
6 CODE, BY THE ADDITION OF A NEW SECTION 41-1943, IDAHO CODE, TO ESTABLISH  
7 PROVISIONS REGARDING STANDARDS FOR POLICY PROVISIONS FOR ANNUITIES.  
8

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

10 SECTION 1. That Section 41-1941, Idaho Code, be, and the same is hereby  
11 amended to read as follows:

12 41-1941. ANNUITY SALES TO CONSUMERS -- DISCLOSURES. (1) In this sec-  
13 tion, the following definitions shall apply unless the context otherwise re-  
14 quires:

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

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

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

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

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

37 (f) "Nonguaranteed elements" means the premiums, credited interest  
38 rates (including any bonus), benefits, values, noninterest-based cred-  
39 its, charges or elements of formulas used to determine any of these,  
40 that are subject to company discretion and that are not guaranteed at  
41 issue. An element is considered nonguaranteed if any of the underlying  
42 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 In-  
4 ternal Revenue Code but for the fact that it is not owned by an assignee  
5 under a qualified assignment.

6 (2) The provisions of this section shall apply to all group and individ-  
7 ual 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 el-  
11 ements;

12 (c) Annuities used to fund:

13 (i) An employee pension plan that is covered by the employee re-  
14 tirement 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 the  
17 Internal Revenue Code, where the plan, for purposes of the em-  
18 ployee 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 estab-  
25 lished 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 face-to-  
28 face meeting, the applicant, at or before the time of application and at the  
29 time of contract delivery, shall be given both the disclosure document and  
30 the buyer's guide in the form prescribed by the director. The disclosure  
31 document shall be dated and signed by the prospective annuity owner and pro-  
32 ducer and the company shall maintain a signed copy for ~~the~~ a period of five  
33 (5) years after the natural life of the contract.

34 (4) If the application for an annuity contract is taken by means other  
35 than in a face-to-face meeting, the applicant shall be sent both the disclo-  
36 sure document and the buyer's guide ~~in the manner and form prescribed by the~~  
37 ~~director no later than five (5) business days after the completed applica-~~  
38 ~~tion is received by the insurer at the time of application and at the time of~~  
39 contract delivery. The producer and the company shall maintain a signed copy  
40 of the disclosure document for a period of five (5) years after the natural  
41 life of the contract.

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

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

1       ~~(7)~~ At a minimum, the following information shall be included in the  
2 disclosure document required to be provided under this section in a form or  
3 forms prescribed by the director:

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

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

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

10       (i) The guaranteed, nonguaranteed and determinable elements of  
11 the contract, their limitations, if any, and an explanation of how  
12 they operate;

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

17       (iii) The periodic income options both on a guaranteed and  
18 nonguaranteed basis;

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

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

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

24       (vii) A summary of the federal tax status of the contract and any  
25 penalties applicable on withdrawal of values from the contract;  
26 and

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

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

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

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

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

39       ~~(8)~~ For annuities in the payout period with changes in nonguaranteed  
40 elements and for the accumulation period of a deferred annuity, the insurer  
41 shall provide each contract owner with a report, at least annually, on the  
42 status of the contract. Such report shall contain at a minimum the following  
43 information:

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

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

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

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

1           (98) The director may promulgate rules pursuant to this section in-  
2 cluding, but not limited to, more fully implementing model rules or laws  
3 developed by the national association of insurance commissioners that  
4 provide standards for the disclosure of certain minimum information in con-  
5 nection with the sale of annuity contracts.

6           (109) Nothing in this section shall be construed to create or imply a  
7 private cause of action for a violation of the provisions of this section or  
8 rules promulgated pursuant to this section.

9           SECTION 2. 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 41-1942, Idaho Code, and to read as follows:

12           41-1942. ADVERTISEMENT OF INTEREST-INDEXED ANNUITIES. No issuer of  
13 interest-issued annuity contracts shall advertise interest-indexed annuity  
14 contracts, regardless of the advertising medium, without prior approval of  
15 such advertisement from the director. For purposes of this section, "in-  
16 terest-indexed annuity" means a type of annuity whose credited interest is  
17 linked to an external reference at any time during the term of the contract  
18 and shall include contracts, application forms where written application is  
19 required and is to be made a part of the contract, printed riders, endorse-  
20 ments, and renewal certificates.

21           SECTION 3. 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 41-1943, Idaho Code, and to read as follows:

24           41-1943. STANDARDS FOR POLICY PROVISIONS FOR ANNUITIES. No annuity  
25 shall be delivered or issued for delivery in this state that contains:

26           (1) Surrender charges that persist past ten (10) years from the time of  
27 deposit; or

28           (2) Surrender charges that exceed ten percent (10%) in the first year  
29 and decrease one percent (1%) per year in subsequent years.