LEGISLATURE OF THE STATE OF IDAHO

Sixty-fifth Legislature Second Regular Session - 2020

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 526

BY WAYS AND MEANS COMMITTEE

AN ACT

RELATING TO INSURANCE; AMENDING SECTION 41-1941, IDAHO CODE, TO REVISE PROVISIONS REGARDING ANNUITY SALES TO CONSUMERS AND DISCLOSURES; AMENDING CHAPTER 19, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-1942, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING ADVERTISEMENT OF INTEREST-INDEXED ANNUITIES; AND AMENDING CHAPTER 19, TITLE 41, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 41-1943, IDAHO CODE, TO ESTABLISH PROVISIONS REGARDING STANDARDS FOR POLICY PROVISIONS FOR ANNUITIES.

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

SECTION 1. That Section 41-1941, Idaho Code, be, and the same is hereby amended 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.

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

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

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

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

(c) Annuities used to fund:

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

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

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

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

(d) Structured settlement annuities.

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

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

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

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

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

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

(b) The insurer's name and address;

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

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

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

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

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

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

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

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

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

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

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

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

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

(~~8~~7) For annuities in the payout period with changes in nonguaranteed elements and for the accumulation period of a deferred annuity, the insurer shall provide each contract owner with a report, at least annually, on the status of the contract. Such report shall contain at a minimum the following information:

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

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

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

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

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

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

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

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

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

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

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

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