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# A BILL FOR AN ACT

RELATING TO INSURANCE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

1           SECTION 1. Chapter 431:10D, Hawaii Revised Statutes, is  
2 amended by adding a new part to be appropriately designated and  
3 to read as follows:

4                                   **"PART . ANNUITY DISCLOSURE**

5           **§431:10D-A Definitions.** Whenever used in this part,  
6 unless a different meaning clearly appears from the context:

7           "Buyer's guide" means:

- 8           (1) A buyer's guide to fixed deferred annuities approved  
9                 by the commissioner; or
- 10           (2) The National Association of Insurance Commissioners  
11                 Buyer's Guide to Fixed Deferred Annuities.

12           "Contract owner" means the owner named in the annuity  
13 contract or certificate holder in the case of a group annuity  
14 contract.

15           "Determinable elements" means elements that are derived  
16 from processes or methods that are guaranteed at issue and not  
17 subject to company discretion but where the values or amounts



1 cannot be determined until some point after issue. These  
2 elements include:

- 3 (1) Premiums;
- 4 (2) Credited interest rates, including any bonus;
- 5 (3) Benefits;
- 6 (4) Values;
- 7 (5) Non-interest-based credits;
- 8 (6) Charges; or
- 9 (7) Elements of formulas used to determine any of the  
10 above.

11 These elements may be described as guaranteed but not determined  
12 at issue. An element is considered determinable if it was  
13 calculated from underlying determinable elements only, or from  
14 both determinable and guaranteed elements.

15 "Disclosure document" means a document provided by an  
16 insurer to applicants or prospective applicants for an annuity  
17 contract that explains the terms of the contract and contains  
18 the information required in section 431:10D-C(d).

19 "Funding agreement" means an agreement for an insurer to:  
20 (1) Accept and accumulate funds; and



1           (2) Make one or more payments at future dates in amounts  
2                   that are not based on mortality or morbidity  
3                   contingencies.

4           "Generic name" means a short title descriptive of the  
5 annuity contract being applied for or illustrated, such as  
6 "single premium deferred annuity".

7           "Guaranteed elements" means:

- 8           (1) Premiums;
- 9           (2) Credited interest rates, including any bonus;
- 10          (3) Benefits;
- 11          (4) Values;
- 12          (5) Non-interest-based credits;
- 13          (6) Charges; or
- 14          (7) Elements of formulas used to determine any of the  
15               above,

16 which are guaranteed and determined at issue. An element is  
17 considered guaranteed if all of the underlying elements used in  
18 its calculation are guaranteed.

19          "Non-guaranteed elements" means:

- 20          (1) Premiums;
- 21          (2) Credited interest rates, including any bonus;
- 22          (3) Benefits;



- 1 (4) Values;
- 2 (5) Non-interest-based credits;
- 3 (6) Charges; or
- 4 (7) Elements of formulas used to determine any of the
- 5 above,

6 which are subject to company discretion and are not guaranteed  
7 at issue. An element is considered non-guaranteed if any of the  
8 underlying non-guaranteed elements are used in its calculation.

9 "Structured settlement annuity" means:

- 10 (1) A "qualified funding asset" as defined in section
- 11 130(d) of the Internal Revenue Code; or
- 12 (2) An annuity that would be a "qualified funding asset"
- 13 but for the fact that it is not owned by an assignee
- 14 under a qualified assignment.

15 **§431:10D-B Applicability of standards for disclosure.** (a)

16 This part shall apply to all group and individual annuity  
17 contracts and certificates, except:

- 18 (1) Registered or non-registered variable annuities or
- 19 other registered products;
- 20 (2) Immediate and deferred annuities that contain no non-
- 21 guaranteed elements;
- 22 (3) Annuities used to fund:



- 1 (A) An employee pension plan that is covered by the
- 2 Employee Retirement Income Security Act;
- 3 (B) A plan under section 401(a), 401(k), or 403(b) of
- 4 the Internal Revenue Code, where the plan, for
- 5 purposes of the Employee Retirement Income
- 6 Security Act, is established or maintained by an
- 7 employer;
- 8 (C) A governmental or church plan defined in section
- 9 414 of the Internal Revenue Code;
- 10 (D) A deferred compensation plan of a state or any of
- 11 its political subdivisions under section 457 of
- 12 the Internal Revenue Code;
- 13 (E) A tax-exempt organization under section 457 of
- 14 the Internal Revenue Code; or
- 15 (F) A nonqualified deferred compensation arrangement
- 16 established or maintained by an employer or plan
- 17 sponsor;
- 18 provided that this part shall apply to annuities used
- 19 to fund a plan or arrangement that is funded solely by
- 20 contributions that an employee elects to make on a
- 21 pre-tax or after-tax basis, and where the insurance
- 22 company has been notified that plan participants may



1 choose from among two or more fixed annuity providers  
2 and there is a direct solicitation of an individual  
3 employee by a producer for the purchase of an annuity  
4 contract.

5 For the purposes of this paragraph, "direct  
6 solicitation" does not include any meeting held by a  
7 producer solely for the purpose of educating or  
8 enrolling employees in the plan or arrangement;

9 (4) Structured settlement annuities;

10 (5) Funding agreements; and

11 (6) Charitable gift annuities issued pursuant to  
12 paragraphs (1) to (4) of section 431:1-204(c).

13 **§431:10D-C Standards for disclosure.** (a) Where the  
14 application for an annuity contract is taken:

15 (1) In a personal meeting, both the buyer's guide and  
16 disclosure document shall be given to the applicant at  
17 or before the time of application;

18 (2) By means other than in a personal meeting, both the  
19 buyer's guide and disclosure document shall be sent to  
20 the applicant no later than five business days after  
21 the completed application is received by the insurer;



1           (3) By means of a direct solicitation through the mail,  
2           both the buyer's guide and disclosure document shall  
3           have been sent to the applicant in the mailing  
4           inviting the prospective applicant to apply for the  
5           annuity contract; and

6           (4) By means of the insurer's Internet website, the  
7           insurer shall have taken reasonable steps to make the  
8           buyer's guide available for viewing and printing on  
9           the insurer's website; and

10          (b) A solicitation for an annuity contract provided in  
11 other than a personal meeting shall include a statement that the  
12 prospective applicant may contact the insurance division for a  
13 free buyer's guide. In lieu of the foregoing statement, an  
14 insurer may include a statement that the prospective applicant  
15 may contact the insurer for a free buyer's guide.

16          (c) If the buyer's guide and disclosure document are not  
17 provided at or before the time of application, a free-look  
18 period of no less than fifteen days shall be provided for the  
19 applicant to return the annuity contract without penalty, which  
20 period shall run concurrently with any other free-look period  
21 provided by law.



1 (d) The disclosure document shall include at least the  
2 following information:

3 (1) The generic name of the contract;

4 (2) The company product name, if different from the  
5 generic name;

6 (3) The form number;

7 (4) The fact that the product is an annuity;

8 (5) The insurer's name and address;

9 (6) A description of the contract and its benefits, which  
10 shall emphasize its long-term nature and include  
11 examples, where appropriate, such as:

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

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

19 (7) Periodic income options on both a guaranteed and non-  
20 guaranteed basis;

21 (8) Any value reductions caused by withdrawals from or  
22 surrender of the contract;





- 1           (9) How values in the contract can be accessed;
- 2           (10) The death benefit, if available, and how it will be
- 3                 calculated;
- 4           (11) A summary of the federal tax status of the contract
- 5                 and any penalties applicable on withdrawal of values
- 6                 from the contract;
- 7           (12) The effect of any rider, such as a long-term-care
- 8                 rider;
- 9           (13) A listing of specific dollar-amount or percentage
- 10                charges and fees and an explanation of how they apply;
- 11                and
- 12           (14) Information about the current guaranteed rate for new
- 13                contracts that contains a clear notice that the rate
- 14                is subject to change.

15           (e) Insurers shall define terms used in the disclosure  
16 statement in language that facilitates comprehension by the  
17 average person within the segment of the public to which the  
18 disclosure statement is directed.

19           **§431:10D-D Report to contract owners.** (a) For annuities  
20 in the payout period with changes in non-guaranteed elements,  
21 and for the accumulation period of a deferred annuity, the  
22 insurer shall at least annually provide each contract owner with



1 a report of the status of the contract that contains at least  
2 the following information:

3 (1) The beginning and ending dates of the current report  
4 period;

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

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

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

13 **§431:10D-E Penalties.** In addition to any other penalties  
14 provided by law, violation of any requirement of this part is an  
15 unfair method of competition or unfair or deceptive act or  
16 practice under section 431:13-102."

17 SECTION 2. In codifying the new sections added by section  
18 1 of this Act, the revisor of statutes shall substitute  
19 appropriate section numbers for the letters used in designating  
20 the new sections in this Act.

21 SECTION 3. If any provision of this Act, or the  
22 application thereof to any person or circumstance is held



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1 invalid, the invalidity does not affect other provisions or  
2 applications of the Act, which can be given effect without the  
3 invalid provision or application, and to this end the provisions  
4 of this Act are severable.

5 SECTION 4. This Act does not affect rights and duties that  
6 matured, penalties that were incurred, and proceedings that were  
7 begun, before its effective date.

8 SECTION 5. This Act shall take effect upon its approval.  
9

INTRODUCED BY: \_\_\_\_\_

*DW*

JAN 23 2006



**Report Title:**

Annuity disclosure

**Description:**

Requires insurers to provide applicants for annuity contracts with a buyer's guide and disclosure document.

