
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 . SENIOR PROTECTION IN ANNUITY TRANSACTIONS**

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

7 "Annuity" means a fixed annuity or variable annuity that is
8 individually solicited, whether the product is classified as an
9 individual or group annuity.

10 "Insurance producer" means a person required to be licensed
11 under the laws of the State to sell, solicit, or negotiate
12 insurance, including annuities.

13 "Insurer" means a company required to be licensed under the
14 laws of the State to provide insurance products, including
15 annuities.

16 "Recommendation" means advice provided by an insurance
17 producer, or an insurer where no producer is involved, to an



1 individual senior consumer that results in a purchase or
2 exchange of an annuity in accordance with that advice.

3 "Senior consumer" means:

- 4 (1) A person sixty-five years of age or older; or
- 5 (2) Any purchaser in a joint purchase by more than one
6 party if any of the parties is sixty-five years of age
7 or older.

8 **§431:10D-B Applicability; exemptions.** (a) This part
9 shall apply to any recommendations to purchase or exchange an
10 annuity made to a senior consumer by an insurance producer, or
11 an insurer where no producer is involved, that results in the
12 purchase or exchange recommended.

13 (b) Unless otherwise specifically included, this part
14 shall not apply to recommendations involving:

- 15 (1) Direct response solicitations where there is no
16 recommendation based on information collected from the
17 senior consumer pursuant to this regulation;
- 18 (2) Contracts used to fund:
 - 19 (A) An employee pension or welfare benefit plan that
20 is covered by the Employee Retirement and Income
21 Security Act;



1 (B) A plan described by section 401(a), 401(k),
2 403(b), 408(k) or 408(p) of the Internal Revenue
3 Code, as amended, if established or maintained by
4 an employer;

5 (C) A government or church plan defined in section
6 414 of the Internal Revenue Code, a government or
7 church welfare benefit plan, or a deferred
8 compensation plan of a state or local government
9 or tax exempt organization under section 457 of
10 the Internal Revenue Code;

11 (D) A nonqualified deferred compensation arrangement
12 established or maintained by an employer or plan
13 sponsor;

14 (E) Settlements of or assumptions of liabilities
15 associated with personal injury litigation or any
16 dispute or claim resolution process; or

17 (F) Formal prepaid funeral contracts;
18 and

19 (3) Charitable gift annuities issued pursuant to
20 paragraphs (1) to (4) of section 431:1-204(c).

21 **§431:10D-C Recommendation standards and procedures.** (a)

22 In recommending to a senior consumer the purchase of an annuity



1 or the exchange of an annuity that results in another insurance
2 transaction or series of insurance transactions, the insurance
3 producer, or the insurer where no producer is involved, shall
4 have reasonable grounds for believing that the recommendation is
5 suitable for the senior consumer on the basis of the facts
6 disclosed by the senior consumer as to his or her investments
7 and other insurance products and as to his or her financial
8 situation and needs.

9 (b) Prior to the execution of a purchase or exchange of an
10 annuity resulting from a recommendation, an insurance producer,
11 or an insurer where no producer is involved, shall make
12 reasonable efforts to obtain information concerning:

- 13 (1) The senior consumer's financial status;
14 (2) The senior consumer's tax status;
15 (3) The senior consumer's investment objectives; and
16 (4) Such other information used or considered to be
17 reasonable by the insurance producer, or the insurer
18 where no producer is involved, in making
19 recommendations to the senior consumer.

20 (c) Except as provided under subsection (d), no insurance
21 producer or insurer shall have any obligation to a senior



1 consumer under subsection (a) relating to any recommendation if
2 a consumer:

3 (1) Refuses to provide relevant information requested by
4 the insurer or insurance producer;

5 (2) Decides to enter into an insurance transaction that is
6 not based on a recommendation of the insurer or
7 insurance producer; or

8 (3) Fails to provide complete or accurate information.

9 (d) A recommendation that is subject to subsection (c)
10 shall be reasonable under all of the circumstances actually
11 known to the insurer or insurance producer at the time of the
12 recommendation.

13 **§431:10D-D System to supervise recommendations.** (a) An
14 insurer shall establish and maintain a system to supervise
15 recommendations that is reasonably designed to achieve
16 compliance with this part. The system shall include the
17 maintenance or written procedures and periodic review of records
18 reasonably designed to assist in detecting and preventing
19 violations of this part.

20 (b) A general agent or independent agency shall adopt a
21 system established by an insurer pursuant to subsection (a), or
22 shall establish and maintain such a system.



1 (c) An insurer may contract with a third party, including
2 a general agent or independent agency, to establish and maintain
3 a system of supervision as required under subsection (a) with
4 respect to insurance producers under contract with or employed
5 by the third party. The insurer shall make reasonable inquiry
6 to ensure that the third party is performing the functions
7 required under subsection (a), and shall take such action as is
8 reasonable under the circumstances to enforce the contractual
9 obligation to perform the functions. An insurer may comply with
10 its obligation to make reasonable inquiry by:

11 (1) Annually obtaining a certification from a third party
12 senior manager who has responsibility for the
13 delegated functions, that the manager has a reasonable
14 basis to represent, and does represent, that the third
15 party is performing the required functions; provided
16 that no person shall provide a certification under
17 this paragraph unless the person:

- 18 (A) Is a senior manager with responsibility for the
- 19 delegated functions; and
- 20 (B) Has a reasonable basis for making the
- 21 certification;



1 (2) Using reasonable selection criteria to periodically
2 select third parties contracting under this subsection
3 for a review to determine whether the third parties
4 are performing the required functions; and

5 (3) Applying procedures that are reasonable under the
6 circumstances in conducting reviews.

7 A general agent or independent agency contracting with the
8 insurer pursuant to this subsection, upon the insurer's request,
9 shall promptly provide a certification or a clear statement that
10 it is unable to meet the certification criteria.

11 (d) This section shall not be construed to require an
12 insurer, general agent, or independent agency to:

13 (1) Review, or provide for the review of, all insurance
14 producer-solicited transactions; or

15 (2) Include in its system of supervision an insurance
16 producer's recommendations to senior consumers of
17 products other than the annuities offered by the
18 insurer, general agent, or independent agency.

19 **§431:10D-E National Association of Securities Dealers**

20 **Conduct Rules.** Compliance with the National Association of
21 Securities Dealers Conduct Rules pertaining to suitability shall
22 satisfy the requirements under sections 431:10D-C and 431:10D-D



1 for the recommendation of variable annuities; provided that
2 nothing in this section shall limit the commissioner's ability
3 to enforce the provisions of this part.

4 **§431:10D-F Mitigation of responsibility.** (a) The
5 commissioner may order:

- 6 (1) An insurer to take reasonably appropriate corrective
7 action for any senior consumer harmed by the
8 insurer's, or its insurance producer's, violation of
9 this part;
- 10 (2) An insurance producer to take reasonably appropriate
11 corrective action for any senior consumer harmed by
12 the insurance producer's violation of this part; and
- 13 (3) A general agency or independent agency that employs or
14 contracts with an insurance producer to sell or
15 solicit the sale of annuities to senior consumers, to
16 take reasonably appropriate corrective action for any
17 senior consumer harmed by the insurance producer's
18 violation of this regulation.
- 19 (b) Any applicable penalty under article 13 for a
20 violation of section 431:10D-C(a), (b), or (d) may be reduced or
21 eliminated if corrective action for the senior consumer was
22 taken promptly after a violation was discovered.



1 **§431:10D-G Recordkeeping.** (a) All insurers, general
2 agents, independent agencies, and insurance producers shall
3 maintain or otherwise make available to the commissioner records
4 of the information collected from the senior consumer and other
5 information used in making the recommendations that were the
6 basis for insurance transactions for years after the
7 insurance transaction is completed by the insurer. An insurer
8 may maintain documentation on behalf of an insurance producer.

9 (b) Records required to be maintained by this section may
10 be maintained in paper, photographic, microprocess, magnetic,
11 mechanical, or electronic media, or by any process that
12 accurately reproduces the actual document."

13 SECTION 2. Section 431:10D-118, Hawaii Revised Statutes,
14 is amended to read as follows:

15 "**§431:10D-118 Variable contracts.** (a) A domestic life
16 insurance company may, by or pursuant to resolution of its board
17 of directors, establish one or more separate accounts, and may
18 allocate thereto amounts, including without limitation proceeds
19 applied under optional modes of settlement or under dividend
20 options, to provide for life insurance or annuities (and
21 benefits incidental thereto), payable in fixed or variable
22 amounts or both, subject to the following:



- 1 (1) The income, gains and losses, realized or unrealized,
2 from assets allocated to a separate account shall be
3 credited to or charged against the account, without
4 regard to other income, gains or losses of the
5 company.
- 6 (2) Except as hereinafter provided, amounts allocated to
7 any separate account and accumulations thereon may be
8 invested and reinvested without regard to any
9 requirements or limitations prescribed by the laws of
10 this State governing the investments of life insurance
11 companies; provided that to the extent that the
12 company's reserve liability with regard to (A)
13 benefits guaranteed as to amount and duration, and (B)
14 funds guaranteed as to principal amount or stated rate
15 of interest is maintained in any separate account, a
16 portion of the assets of such separate account at
17 least equal to such reserve liability shall be, except
18 as the commissioner may otherwise approve, invested,
19 in accordance with the laws of [~~this~~] the State
20 governing the investments of life insurance companies.
21 The investments in such separate account or accounts
22 shall not be taken into account in applying the



1 investment limitations otherwise applicable to the
2 investments of the company.

3 (3) Unless otherwise approved by the commissioner, assets
4 allocated to a separate account shall be valued at
5 their market value on the date of valuation, or if
6 there is no readily available market, then as provided
7 under the terms of the contract or the rules or other
8 written agreement applicable to such separate account;
9 provided that unless otherwise approved by the
10 commissioner, a portion of the assets of such separate
11 account equal to the company's reserve liability with
12 regard to the guaranteed benefits and funds referred
13 to in [†]subparagraphs[†] (A) and (B) of subsection
14 (a)(2), if any, shall be valued in accordance with the
15 rules otherwise applicable to the company's assets.

16 (4) Amounts allocated to a separate account in the
17 exercise of the power granted by this section shall be
18 owned by the company, and the company shall not be,
19 nor hold itself out to be, a trustee with respect to
20 such amounts. That portion of the assets of any such
21 separate account equal to the reserves and other
22 contract liabilities with respect to such account



1 shall not be chargeable with liabilities arising out
2 of any other business the company may conduct.

3 (5) No sale, exchange or other transfer of assets may be
4 made by a company between any of its separate accounts
5 or between any other investment account and one or
6 more of its separate accounts unless, in case of a
7 transfer into a separate account, such transfer is
8 made solely to establish the account or to support the
9 operation of the contracts with respect to the
10 separate account to which the transfer is made, and
11 unless such transfer, whether into or from a separate
12 account, is made (A) by a transfer of cash, or (B) by
13 a transfer of securities having a readily determinable
14 market value, provided that such transfer of
15 securities is approved by the commissioner. The
16 commissioner may approve other transfers among such
17 accounts, if in the commissioner's opinion, such
18 transfers would not be inequitable.

19 (6) To the extent such company deems it necessary to
20 comply with any applicable federal or state laws, such
21 company, with respect to any separate account,
22 including without limitation any separate account



1 which is a management investment company or a unit
2 investment trust, may provide for persons having an
3 interest therein appropriate voting and other rights
4 and special procedures for the conduct of the business
5 of such account, including without limitation special
6 rights and procedures relating to investment policy,
7 investment advisory services, selection of independent
8 public accountants, and the selection of a committee,
9 the members of which need not be otherwise affiliated
10 with such company, to manage the business of such
11 account.

12 (b) (1) Any variable contract providing benefits payable
13 in variable amounts delivered or issued for delivery
14 in this [~~State~~] state shall contain a statement of the
15 essential features of the procedures to be followed by
16 the insurance company in determining the dollar amount
17 of such variable benefits. Any such contract,
18 including a group contract and any certificate in
19 evidence of variable benefits issued thereunder, shall
20 state that such dollar amount will vary to reflect
21 investment experience and shall contain on its first



1 page a statement to the effect that the benefits
2 thereunder are on a variable basis.

3 (2) Variable contracts delivered or issued for delivery in
4 this [~~State~~] state may include as an incidental
5 benefit provision for payment on death during the
6 deferred period of an amount not in excess of the
7 greater of the sum of the premiums or stipulated
8 payments paid under the contract or the value of the
9 contract at time of death. Any such provision shall
10 not be deemed to be life insurance and therefore not
11 subject to the provisions of this code governing life
12 insurance carriers. A provision for any other benefit
13 on death during the deferred period shall be subject
14 to such insurance provisions.

15 (c) No company shall deliver or issue for delivery within
16 this [~~State~~] state contracts under this section unless it is
17 licensed or organized to do a life insurance or annuity business
18 in this [~~State,~~] state, and the commissioner is satisfied that
19 its condition or method of operation in connection with the
20 issuance of such contracts will not render its operation
21 hazardous to the public or its policyholders in this State. In



1 this connection, the commissioner shall consider among other
2 things:

- 3 (1) The history and financial condition of the company;
- 4 (2) The character, responsibility and fitness of the
5 officers and directors of the company; and
- 6 (3) The law and regulation under which the company is
7 authorized in the state of domicile to issue variable
8 contracts.

9 A company which issues variable contracts and which is a
10 subsidiary of, or affiliated through common management or
11 ownership with, another life insurance company authorized to do
12 business in this [~~State~~] state shall be deemed to have met the
13 provisions of this subsection if either it or the parent or
14 affiliated company meets the requirements of this subsection.

15 (d) Notwithstanding any other provision of law, the
16 commissioner shall have sole and exclusive authority to regulate
17 the issuance and sale of variable contracts and to provide for
18 licensing of persons selling such contracts, and to issue such
19 reasonable rules and regulations as may be appropriate to carry
20 out the purposes and provisions of this section.

21 (e) With regard to a variable annuity, in making a final
22 determination regarding any issue concerning compliance with



1 section 431:10D-C or 431:10D-D, the commissioner may consult
2 with and use the resources of the securities commissioner. If
3 the securities commissioner is informed of a violation or
4 suspected violation of section 431:10D-C or 431:10D-D or other
5 insurance laws of the State, the securities commissioner shall
6 timely advise the commissioner of the violation or suspected
7 violation.

8 [~~e~~] (f) The provisions of section 431:10D-101 through
9 section 431:10D-106 and section 431:10D-109 shall be
10 inapplicable to variable contracts, nor shall any provision in
11 this code requiring contracts to be participating be deemed
12 applicable to variable contracts. The commissioner, by
13 regulation, may require that any individual variable contract,
14 delivered or issued for delivery in this State, contain
15 provisions as to grace period, reinstatement or nonforfeiture
16 which are appropriate to a variable contract. Except as
17 otherwise provided in this section, all pertinent provisions of
18 this code shall apply to separate accounts and contracts
19 relating thereto. The reserve liability for variable contracts
20 shall be established in accordance with actuarial procedures
21 that recognize the variable nature of the benefits provided and
22 any mortality guarantees."



1 SECTION 3. Section 431:13-103, Hawaii Revised Statutes, is
2 amended by amending subsection (a) to read as follows:

3 "(a) The following are defined as unfair methods of
4 competition and unfair or deceptive acts or practices in the
5 business of insurance:

6 (1) Misrepresentations and false advertising of insurance
7 policies. Making, issuing, circulating, or causing to
8 be made, issued, or circulated, any estimate,
9 illustration, circular, statement, sales presentation,
10 omission, or comparison which:

- 11 (A) Misrepresents the benefits, advantages,
12 conditions, or terms of any insurance policy;
- 13 (B) Misrepresents the dividends or share of the
14 surplus to be received on any insurance policy;
- 15 (C) Makes any false or misleading statement as to the
16 dividends or share of surplus previously paid on
17 any insurance policy;
- 18 (D) Is misleading or is a misrepresentation as to the
19 financial condition of any insurer, or as to the
20 legal reserve system upon which any life insurer
21 operates;



- 1 (E) Uses any name or title of any insurance policy or
- 2 class of insurance policies misrepresenting the
- 3 true nature thereof;
- 4 (F) Is a misrepresentation for the purpose of
- 5 inducing or tending to induce the lapse,
- 6 forfeiture, exchange, conversion, or surrender of
- 7 any insurance policy;
- 8 (G) Is a misrepresentation for the purpose of
- 9 effecting a pledge or assignment of or effecting
- 10 a loan against any insurance policy;
- 11 (H) Misrepresents any insurance policy as being
- 12 shares of stock;
- 13 (I) Publishes or advertises the assets of any insurer
- 14 without publishing or advertising with equal
- 15 conspicuousness the liabilities of the insurer,
- 16 both as shown by its last annual statement; or
- 17 (J) Publishes or advertises the capital of any
- 18 insurer without stating specifically the amount
- 19 of paid-in and subscribed capital;
- 20 (2) False information and advertising generally. Making,
- 21 publishing, disseminating, circulating, or placing
- 22 before the public, or causing, directly or indirectly,



1 to be made, published, disseminated, circulated, or
2 placed before the public, in a newspaper, magazine, or
3 other publication, or in the form of a notice,
4 circular, pamphlet, letter, or poster, or over any
5 radio or television station, or in any other way, an
6 advertisement, announcement, or statement containing
7 any assertion, representation, or statement with
8 respect to the business of insurance or with respect
9 to any person in the conduct of the person's insurance
10 business, which is untrue, deceptive, or misleading;

11 (3) Defamation. Making, publishing, disseminating, or
12 circulating, directly or indirectly, or aiding,
13 abetting, or encouraging the making, publishing,
14 disseminating, or circulating of any oral or written
15 statement or any pamphlet, circular, article, or
16 literature which is false, or maliciously critical of
17 or derogatory to the financial condition of an
18 insurer, and which is calculated to injure any person
19 engaged in the business of insurance;

20 (4) Boycott, coercion, and intimidation.

21 (A) Entering into any agreement to commit, or by any
22 action committing, any act of boycott, coercion,



1 or intimidation resulting in or tending to result
2 in unreasonable restraint of, or monopoly in, the
3 business of insurance; or

4 (B) Entering into any agreement on the condition,
5 agreement, or understanding that a policy will
6 not be issued or renewed unless the prospective
7 insured contracts for another class or an
8 additional policy of the same class of insurance
9 with the same insurer;

10 (5) False financial statements.

11 (A) Knowingly filing with any supervisory or other
12 public official, or knowingly making, publishing,
13 disseminating, circulating, or delivering to any
14 person, or placing before the public, or
15 knowingly causing, directly or indirectly, to be
16 made, published, disseminated, circulated,
17 delivered to any person, or placed before the
18 public, any false statement of a material fact as
19 to the financial condition of an insurer; or

20 (B) Knowingly making any false entry of a material
21 fact in any book, report, or statement of any
22 insurer with intent to deceive any agent or



1 examiner lawfully appointed to examine into its
2 condition or into any of its affairs, or any
3 public official to whom the insurer is required
4 by law to report, or who has authority by law to
5 examine into its condition or into any of its
6 affairs, or, with like intent, knowingly omitting
7 to make a true entry of any material fact
8 pertaining to the business of the insurer in any
9 book, report, or statement of the insurer;

10 (6) Stock operations and advisory board contracts.

11 Issuing or delivering or permitting agents, officers,
12 or employees to issue or deliver, agency company stock
13 or other capital stock, or benefit certificates or
14 shares in any common-law corporation, or securities or
15 any special or advisory board contracts or other
16 contracts of any kind promising returns and profits as
17 an inducement to insurance;

18 (7) Unfair discrimination.

19 (A) Making or permitting any unfair discrimination
20 between individuals of the same class and equal
21 expectation of life in the rates charged for any
22 contract of life insurance or of life annuity or



1 in the dividends or other benefits payable
2 thereon, or in any other of the terms and
3 conditions of the contract;

4 (B) Making or permitting any unfair discrimination in
5 favor of particular individuals or persons, or
6 between insureds or subjects of insurance having
7 substantially like insuring, risk, and exposure
8 factors, or expense elements, in the terms or
9 conditions of any insurance contract, or in the
10 rate or amount of premium charge therefor, or in
11 the benefits payable or in any other rights or
12 privilege accruing thereunder;

13 (C) Making or permitting any unfair discrimination
14 between individuals or risks of the same class
15 and of essentially the same hazards by refusing
16 to issue, refusing to renew, canceling, or
17 limiting the amount of insurance coverage on a
18 property or casualty risk because of the
19 geographic location of the risk, unless:

20 (i) The refusal, cancellation, or limitation is
21 for a business purpose which is not a mere
22 pretext for unfair discrimination; or



- 1 (ii) The refusal, cancellation, or limitation is
- 2 required by law or regulatory mandate;
- 3 (D) Making or permitting any unfair discrimination
- 4 between individuals or risks of the same class
- 5 and of essentially the same hazards by refusing
- 6 to issue, refusing to renew, canceling, or
- 7 limiting the amount of insurance coverage on a
- 8 residential property risk, or the personal
- 9 property contained therein, because of the age of
- 10 the residential property, unless:
- 11 (i) The refusal, cancellation, or limitation is
- 12 for a business purpose which is not a mere
- 13 pretext for unfair discrimination; or
- 14 (ii) The refusal, cancellation, or limitation is
- 15 required by law or regulatory mandate;
- 16 (E) Refusing to insure, refusing to continue to
- 17 insure, or limiting the amount of coverage
- 18 available to an individual because of the sex or
- 19 marital status of the individual; however,
- 20 nothing in this subsection shall prohibit an
- 21 insurer from taking marital status into account



1 for the purpose of defining persons eligible for
2 dependent benefits;

3 (F) Terminating or modifying coverage, or refusing to
4 issue or renew any property or casualty policy or
5 contract of insurance solely because the
6 applicant or insured or any employee of either is
7 mentally or physically impaired; provided that
8 this subparagraph shall not apply to accident and
9 health or sickness insurance sold by a casualty
10 insurer; provided further that this subparagraph
11 shall not be interpreted to modify any other
12 provision of law relating to the termination,
13 modification, issuance, or renewal of any
14 insurance policy or contract;

15 (G) Refusing to insure, refusing to continue to
16 insure, or limiting the amount of coverage
17 available to an individual based solely upon the
18 individual's having taken a human
19 immunodeficiency virus (HIV) test prior to
20 applying for insurance; or

21 (H) Refusing to insure, refusing to continue to
22 insure, or limiting the amount of coverage



1 available to an individual because the individual
2 refuses to consent to the release of information
3 which is confidential as provided in section 325-
4 101; provided that nothing in this subparagraph
5 shall prohibit an insurer from obtaining and
6 using the results of a test satisfying the
7 requirements of the commissioner, which was taken
8 with the consent of an applicant for insurance;
9 provided further that any applicant for insurance
10 who is tested for HIV infection shall be afforded
11 the opportunity to obtain the test results,
12 within a reasonable time after being tested, and
13 that the confidentiality of the test results
14 shall be maintained as provided by section 325-
15 101;

16 (8) Rebates. Except as otherwise expressly provided by
17 law:

18 (A) Knowingly permitting or offering to make or
19 making any contract of insurance, or agreement as
20 to the contract other than as plainly expressed
21 in the contract, or paying or allowing, or giving
22 or offering to pay, allow, or give, directly or



1 indirectly, as inducement to the insurance, any
2 rebate of premiums payable on the contract, or
3 any special favor or advantage in the dividends
4 or other benefits, or any valuable consideration
5 or inducement not specified in the contract; or

6 (B) Giving, selling, or purchasing, or offering to
7 give, sell, or purchase as inducement to the
8 insurance or in connection therewith, any stocks,
9 bonds, or other securities of any insurance
10 company or other corporation, association, or
11 partnership, or any dividends or profits accrued
12 thereon, or anything of value not specified in
13 the contract;

14 (9) Nothing in paragraph (7) or (8) shall be construed as
15 including within the definition of discrimination or
16 rebates any of the following practices:

17 (A) In the case of any contract of life insurance or
18 life annuity, paying bonuses to policyholders or
19 otherwise abating their premiums in whole or in
20 part out of surplus accumulated from
21 nonparticipating insurance; provided that any
22 bonus or abatement of premiums shall be fair and



1 equitable to policyholders and in the best
2 interests of the insurer and its policyholders;

3 (B) In the case of life insurance policies issued on
4 the industrial debit plan, making allowance to
5 policyholders who have continuously for a
6 specified period made premium payments directly
7 to an office of the insurer in an amount which
8 fairly represents the saving in collection
9 expense;

10 (C) Readjustment of the rate of premium for a group
11 insurance policy based on the loss or expense
12 experience thereunder, at the end of the first or
13 any subsequent policy year of insurance
14 thereunder, which may be made retroactive only
15 for the policy year; and

16 (D) In the case of any contract of insurance, the
17 distribution of savings, earnings, or surplus
18 equitably among a class of policyholders, all in
19 accordance with this article;

20 (10) Refusing to provide or limiting coverage available to
21 an individual because the individual may have a third-
22 party claim for recovery of damages; provided that:



1 (A) Where damages are recovered by judgment or
2 settlement of a third-party claim, reimbursement
3 of past benefits paid shall be allowed pursuant
4 to section 663-10;

5 (B) This paragraph shall not apply to entities
6 licensed under chapter 386 or 431:10C; and

7 (C) For entities licensed under chapter 432 or 432D:

8 (i) It shall not be a violation of this section
9 to refuse to provide or limit coverage
10 available to an individual because the
11 entity determines that the individual
12 reasonably appears to have coverage
13 available under chapter 386 or 431:10C; and

14 (ii) Payment of claims to an individual who may
15 have a third-party claim for recovery of
16 damages may be conditioned upon the
17 individual first signing and submitting to
18 the entity documents to secure the lien and
19 reimbursement rights of the entity and
20 providing information reasonably related to
21 the entity's investigation of its liability
22 for coverage.



1 Any individual who knows or reasonably should
2 know that the individual may have a third-party
3 claim for recovery of damages and who fails to
4 provide timely notice of the potential claim to
5 the entity, shall be deemed to have waived the
6 prohibition of this paragraph against refusal or
7 limitation of coverage. "Third-party claim" for
8 purposes of this paragraph means any tort claim
9 for monetary recovery or damages that the
10 individual has against any person, entity, or
11 insurer, other than the entity licensed under
12 chapter 432 or 432D;

13 (11) Unfair claim settlement practices. Committing or
14 performing with such frequency as to indicate a
15 general business practice any of the following:

16 (A) Misrepresenting pertinent facts or insurance
17 policy provisions relating to coverages at issue;

18 (B) With respect to claims arising under its
19 policies, failing to respond with reasonable
20 promptness, in no case more than fifteen working
21 days, to communications received from:

22 (i) The insurer's policyholder;



- 1 (ii) Any other persons, including the
- 2 commissioner; or
- 3 (iii) The insurer of a person involved in an
- 4 incident in which the insurer's policyholder
- 5 is also involved.

6 The response shall be more than an acknowledgment
7 that such person's communication has been
8 received, and shall adequately address the
9 concerns stated in the communication;

10 (C) Failing to adopt and implement reasonable
11 standards for the prompt investigation of claims
12 arising under insurance policies;

13 (D) Refusing to pay claims without conducting a
14 reasonable investigation based upon all available
15 information;

16 (E) Failing to affirm or deny coverage of claims
17 within a reasonable time after proof of loss
18 statements have been completed;

19 (F) Failing to offer payment within thirty calendar
20 days of affirmation of liability, if the amount
21 of the claim has been determined and is not in
22 dispute;



- 1 (G) Failing to provide the insured, or when
2 applicable the insured's beneficiary, with a
3 reasonable written explanation for any delay, on
4 every claim remaining unresolved for thirty
5 calendar days from the date it was reported;
- 6 (H) Not attempting in good faith to effectuate
7 prompt, fair, and equitable settlements of claims
8 in which liability has become reasonably clear;
- 9 (I) Compelling insureds to institute litigation to
10 recover amounts due under an insurance policy by
11 offering substantially less than the amounts
12 ultimately recovered in actions brought by the
13 insureds;
- 14 (J) Attempting to settle a claim for less than the
15 amount to which a reasonable person would have
16 believed the person was entitled by reference to
17 written or printed advertising material
18 accompanying or made part of an application;
- 19 (K) Attempting to settle claims on the basis of an
20 application which was altered without notice,
21 knowledge, or consent of the insured;



- 1 (L) Making claims payments to insureds or
2 beneficiaries not accompanied by a statement
3 setting forth the coverage under which the
4 payments are being made;
- 5 (M) Making known to insureds or claimants a policy of
6 appealing from arbitration awards in favor of
7 insureds or claimants for the purpose of
8 compelling them to accept settlements or
9 compromises less than the amount awarded in
10 arbitration;
- 11 (N) Delaying the investigation or payment of claims
12 by requiring an insured, claimant, or the
13 physician of either to submit a preliminary claim
14 report and then requiring the subsequent
15 submission of formal proof of loss forms, both of
16 which submissions contain substantially the same
17 information;
- 18 (O) Failing to promptly settle claims, where
19 liability has become reasonably clear, under one
20 portion of the insurance policy coverage to
21 influence settlements under other portions of the
22 insurance policy coverage;



- 1 (P) Failing to promptly provide a reasonable
2 explanation of the basis in the insurance policy
3 in relation to the facts or applicable law for
4 denial of a claim or for the offer of a
5 compromise settlement; and
- 6 (Q) Indicating to the insured on any payment draft,
7 check, or in any accompanying letter that the
8 payment is "final" or is "a release" of any claim
9 if additional benefits relating to the claim are
10 probable under coverages afforded by the policy;
11 unless the policy limit has been paid or there is
12 a bona fide dispute over either the coverage or
13 the amount payable under the policy;
- 14 (12) Failure to maintain complaint handling procedures.
15 Failure of any insurer to maintain a complete record
16 of all the complaints which it has received since the
17 date of its last examination under section 431:2-302.
18 This record shall indicate the total number of
19 complaints, their classification by line of insurance,
20 the nature of each complaint, the disposition of these
21 complaints, and the time it took to process each
22 complaint. For purposes of this section, "complaint"



1 means any written communication primarily expressing a
2 grievance; ~~and~~

3 (13) Misrepresentation in insurance applications. Making
4 false or fraudulent statements or representations on
5 or relative to an application for an insurance policy,
6 for the purpose of obtaining a fee, commission, money,
7 or other benefit from any insurer, producer, or
8 individual~~[-]~~; and

9 (14) Failure to comply with any requirement under section
10 431:10D-C or 431:10D-D."

11 SECTION 4. Section 485-1, Hawaii Revised Statutes, is
12 amended by amending the definition of "security" to read as
13 follows:

14 "(13) "Security" means any note, stock, treasury stock,
15 bond, debenture, evidence of indebtedness, certificate
16 of interest or participation in any profit-sharing
17 agreement, collateral-trust certificate,
18 preorganization certificate or subscription,
19 transferable share, investment contract, ~~[variable~~
20 ~~annuity contract,]~~ voting trust certificate,
21 certificate of deposit for a security, certificate of
22 interest in an oil, gas, or mining title or lease,



1 option on commodity futures contracts or, in general,
 2 any interest or instrument commonly known as a
 3 "security", or any certificate of interest or
 4 participation in, temporary or interim certificate
 5 for, guarantee of, or warrant or right to subscribe to
 6 or purchase, any of the foregoing. "Security" does
 7 not include any insurance or endowment policy or
 8 variable or fixed annuity contract."

9 SECTION 5. In codifying the new sections added by section
 10 1 of this Act, the revisor of statutes shall substitute
 11 appropriate section numbers for the letters used in designating
 12 the new sections in this Act.

13 SECTION 6. This Act does not affect rights and duties that
 14 matured, penalties that were incurred, and proceedings that were
 15 begun, before its effective date.

16 SECTION 7. Statutory material to be repealed is bracketed
 17 and stricken. New statutory material is underscored.

18 SECTION 8. This Act shall take effect upon its approval.
 19

INTRODUCED BY: _____

DWL

JAN 23 2006



Report Title:

Senior Protection in Annuity Transactions

Description:

Establishes standards and procedures to be followed by insurers or insurance producers when making recommendations to senior consumers who are considering the purchase or exchange of any annuity.

