
A BILL FOR AN ACT

RELATING TO ANNUITIES.

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
21 or 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:

13 (A) [~~benefits~~] Benefits guaranteed as to amount and
14 duration[~~7~~]; and

15 (B) [~~funds~~] Funds guaranteed as to principal amount
16 or stated rate of interest is maintained in any
17 separate account, a portion of the assets of such
18 separate account at least equal to such reserve
19 liability shall be, except as the commissioner
20 may otherwise approve, invested, in accordance
21 with the laws of [~~this~~] the State governing the
22 investments of life insurance companies. The



1 investments in such separate account or accounts
2 shall not be taken into account in applying the
3 investment limitations otherwise applicable to
4 the investments of the company.

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

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



1 separate account equal to the reserves and other
2 contract liabilities with respect to such account
3 shall not be chargeable with liabilities arising out
4 of any other business the company may conduct.

5 (5) No sale, exchange, or other transfer of assets may be
6 made by a company between any of its separate accounts
7 or between any other investment account and one or
8 more of its separate accounts unless, in case of a
9 transfer into a separate account, such transfer is
10 made solely to establish the account or to support the
11 operation of the contracts with respect to the
12 separate account to which the transfer is made, and
13 unless such transfer, whether into or from a separate
14 account, is made:

15 (A) ~~by~~ By a transfer of cash~~]~~i or

16 (B) ~~by~~ By a transfer of securities having a readily
17 determinable market value~~]~~i

18 provided that such transfer of securities is approved
19 by the commissioner. The commissioner may approve
20 other transfers among such accounts, if in the
21 commissioner's opinion, such transfers would not be
22 inequitable.



1 (6) To the extent such company deems it necessary to
2 comply with any applicable federal or state laws, such
3 company, with respect to any separate account,
4 including without limitation any separate account
5 which is a management investment company or a unit
6 investment trust, may provide for persons having an
7 interest therein appropriate voting and other rights
8 and special procedures for the conduct of the business
9 of such account, including without limitation special
10 rights and procedures relating to investment policy,
11 investment advisory services, selection of independent
12 public accountants, and the selection of a committee,
13 the members of which need not be otherwise affiliated
14 with such company, to manage the business of such
15 account.

16 (b) (1) Any variable contract providing benefits payable
17 in variable amounts delivered or issued for delivery
18 in this [~~State~~] state shall contain a statement of the
19 essential features of the procedures to be followed by
20 the insurance company in determining the dollar amount
21 of such variable benefits. Any such contract,
22 including a group contract and any certificate in



1 evidence of variable benefits issued thereunder, shall
2 state that such dollar amount will vary to reflect
3 investment experience and shall contain on its first
4 page a statement to the effect that the benefits
5 thereunder are on a variable basis.

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

18 (c) No company shall deliver or issue for delivery within
19 this [~~State~~] state, contracts under this section unless it is
20 licensed or organized to do a life insurance or annuity business
21 in this [~~State~~,] state, and the commissioner is satisfied that
22 its condition or method of operation in connection with the



1 issuance of such contracts will not render its operation
2 hazardous to the public or its policyholders in this [~~State~~]
3 state. In this connection, the commissioner shall consider
4 among other things:

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

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

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



1 (e) With regard to a variable annuity, in making a final
2 determination regarding any issue concerning compliance with
3 section 431:10D-C or 431:10D-D, the commissioner may consult
4 with and use the resources of the securities commissioner. If
5 the securities commissioner is informed of a violation or
6 suspected violation of section 431:10D-C, 431:10D-D, or other
7 insurance laws of the State, the securities commissioner shall
8 timely advise the commissioner of the violation or suspected
9 violation.

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



1 that recognize the variable nature of the benefits provided and
2 any mortality guarantees."

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

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

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

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



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



- 1 (2) False information and advertising generally. Making,
2 publishing, disseminating, circulating, or placing
3 before the public, or causing, directly or indirectly,
4 to be made, published, disseminated, circulated, or
5 placed before the public, in a newspaper, magazine, or
6 other publication, or in the form of a notice,
7 circular, pamphlet, letter, or poster, or over any
8 radio or television station, or in any other way, an
9 advertisement, announcement, or statement containing
10 any assertion, representation, or statement with
11 respect to the business of insurance or with respect
12 to any person in the conduct of the person's insurance
13 business, which is untrue, deceptive, or misleading;
- 14 (3) Defamation. Making, publishing, disseminating, or
15 circulating, directly or indirectly, or aiding,
16 abetting, or encouraging the making, publishing,
17 disseminating, or circulating of any oral or written
18 statement or any pamphlet, circular, article, or
19 literature which is false, or maliciously critical of
20 or derogatory to the financial condition of an
21 insurer, and which is calculated to injure any person
22 engaged in the business of insurance;



- 1 (4) Boycott, coercion, and intimidation.
- 2 (A) Entering into any agreement to commit, or by any
- 3 action committing, any act of boycott, coercion,
- 4 or intimidation resulting in or tending to result
- 5 in unreasonable restraint of, or monopoly in, the
- 6 business of insurance; or
- 7 (B) Entering into any agreement on the condition,
- 8 agreement, or understanding that a policy will
- 9 not be issued or renewed unless the prospective
- 10 insured contracts for another class or an
- 11 additional policy of the same class of insurance
- 12 with the same insurer;
- 13 (5) False financial statements.
- 14 (A) Knowingly filing with any supervisory or other
- 15 public official, or knowingly making, publishing,
- 16 disseminating, circulating, or delivering to any
- 17 person, or placing before the public, or
- 18 knowingly causing, directly or indirectly, to be
- 19 made, published, disseminated, circulated,
- 20 delivered to any person, or placed before the
- 21 public, any false statement of a material fact as
- 22 to the financial condition of an insurer; or



- 1 (B) Knowingly making any false entry of a material
2 fact in any book, report, or statement of any
3 insurer with intent to deceive any agent or
4 examiner lawfully appointed to examine into its
5 condition or into any of its affairs, or any
6 public official to whom the insurer is required
7 by law to report, or who has authority by law to
8 examine into its condition or into any of its
9 affairs, or, with like intent, knowingly omitting
10 to make a true entry of any material fact
11 pertaining to the business of the insurer in any
12 book, report, or statement of the insurer;
- 13 (6) Stock operations and advisory board contracts.
14 Issuing or delivering or permitting agents, officers,
15 or employees to issue or deliver, agency company stock
16 or other capital stock, or benefit certificates or
17 shares in any common-law corporation, or securities or
18 any special or advisory board contracts or other
19 contracts of any kind promising returns and profits as
20 an inducement to insurance;
- 21 (7) Unfair discrimination.



- 1 (A) Making or permitting any unfair discrimination
2 between individuals of the same class and equal
3 expectation of life in the rates charged for any
4 contract of life insurance or of life annuity or
5 in the dividends or other benefits payable
6 thereon, or in any other of the terms and
7 conditions of the contract;
- 8 (B) Making or permitting any unfair discrimination in
9 favor of particular individuals or persons, or
10 between insureds or subjects of insurance having
11 substantially like insuring, risk, and exposure
12 factors, or expense elements, in the terms or
13 conditions of any insurance contract, or in the
14 rate or amount of premium charge therefor, or in
15 the benefits payable or in any other rights or
16 privilege accruing thereunder;
- 17 (C) Making or permitting any unfair discrimination
18 between individuals or risks of the same class
19 and of essentially the same hazards by refusing
20 to issue, refusing to renew, canceling, or
21 limiting the amount of insurance coverage on a

1 property or casualty risk because of the
2 geographic location of the risk, unless:
3 (i) The refusal, cancellation, or limitation is
4 for a business purpose which is not a mere
5 pretext for unfair discrimination; or
6 (ii) The refusal, cancellation, or limitation is
7 required by law or regulatory mandate;
8 (D) Making or permitting any unfair discrimination
9 between individuals or risks of the same class
10 and of essentially the same hazards by refusing
11 to issue, refusing to renew, canceling, or
12 limiting the amount of insurance coverage on a
13 residential property risk, or the personal
14 property contained therein, because of the age of
15 the residential property, unless:
16 (i) The refusal, cancellation, or limitation is
17 for a business purpose which is not a mere
18 pretext for unfair discrimination; or
19 (ii) The refusal, cancellation, or limitation is
20 required by law or regulatory mandate;
21 (E) Refusing to insure, refusing to continue to
22 insure, or limiting the amount of coverage

1 available to an individual because of the sex or
2 marital status of the individual; however,
3 nothing in this subsection shall prohibit an
4 insurer from taking marital status into account
5 for the purpose of defining persons eligible for
6 dependent benefits;

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

19 (G) Refusing to insure, refusing to continue to
20 insure, or limiting the amount of coverage
21 available to an individual based solely upon the
22 individual's having taken a human



1 immunodeficiency virus (HIV) test prior to
2 applying for insurance; or
3 (H) Refusing to insure, refusing to continue to
4 insure, or limiting the amount of coverage
5 available to an individual because the individual
6 refuses to consent to the release of information
7 which is confidential as provided in section 325-
8 101; provided that nothing in this subparagraph
9 shall prohibit an insurer from obtaining and
10 using the results of a test satisfying the
11 requirements of the commissioner, which was taken
12 with the consent of an applicant for insurance;
13 provided further that any applicant for insurance
14 who is tested for HIV infection shall be afforded
15 the opportunity to obtain the test results,
16 within a reasonable time after being tested, and
17 that the confidentiality of the test results
18 shall be maintained as provided by section 325-
19 101;

20 (8) Rebates. Except as otherwise expressly provided by
21 law:



- 1 (A) Knowingly permitting or offering to make or
2 making any contract of insurance, or agreement as
3 to the contract other than as plainly expressed
4 in the contract, or paying or allowing, or giving
5 or offering to pay, allow, or give, directly or
6 indirectly, as inducement to the insurance, any
7 rebate of premiums payable on the contract, or
8 any special favor or advantage in the dividends
9 or other benefits, or any valuable consideration
10 or inducement not specified in the contract; or
- 11 (B) Giving, selling, or purchasing, or offering to
12 give, sell, or purchase as inducement to the
13 insurance or in connection therewith, any stocks,
14 bonds, or other securities of any insurance
15 company or other corporation, association, or
16 partnership, or any dividends or profits accrued
17 thereon, or anything of value not specified in
18 the contract;
- 19 (9) Nothing in paragraph (7) or (8) shall be construed as
20 including within the definition of discrimination or
21 rebates any of the following practices:



- 1 (A) In the case of any contract of life insurance or
2 life annuity, paying bonuses to policyholders or
3 otherwise abating their premiums in whole or in
4 part out of surplus accumulated from
5 nonparticipating insurance; provided that any
6 bonus or abatement of premiums shall be fair and
7 equitable to policyholders and in the best
8 interests of the insurer and its policyholders;
- 9 (B) In the case of life insurance policies issued on
10 the industrial debit plan, making allowance to
11 policyholders who have continuously for a
12 specified period made premium payments directly
13 to an office of the insurer in an amount which
14 fairly represents the saving in collection
15 expense;
- 16 (C) Readjustment of the rate of premium for a group
17 insurance policy based on the loss or expense
18 experience thereunder, at the end of the first or
19 any subsequent policy year of insurance
20 thereunder, which may be made retroactive only
21 for the policy year; and



1 (D) In the case of any contract of insurance, the
2 distribution of savings, earnings, or surplus
3 equitably among a class of policyholders, all in
4 accordance with this article;

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

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

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

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

15 (i) It shall not be a violation of this section
16 to refuse to provide or limit coverage
17 available to an individual because the
18 entity determines that the individual
19 reasonably appears to have coverage
20 available under chapter 386 or 431:10C; and

21 (ii) Payment of claims to an individual who may
22 have a third-party claim for recovery of



1 damages may be conditioned upon the
2 individual first signing and submitting to
3 the entity documents to secure the lien and
4 reimbursement rights of the entity and
5 providing information reasonably related to
6 the entity's investigation of its liability
7 for coverage.

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

- 20 (11) Unfair claim settlement practices. Committing or
21 performing with such frequency as to indicate a
22 general business practice any of the following:



- 1 (A) Misrepresenting pertinent facts or insurance
- 2 policy provisions relating to coverages at issue;
- 3 (B) With respect to claims arising under its
- 4 policies, failing to respond with reasonable
- 5 promptness, in no case more than fifteen working
- 6 days, to communications received from:
 - 7 (i) The insurer's policyholder;
 - 8 (ii) Any other persons, including the
 - 9 commissioner; or
 - 10 (iii) The insurer of a person involved in an
 - 11 incident in which the insurer's policyholder
 - 12 is also involved.
- 13 The response shall be more than an acknowledgment
- 14 that such person's communication has been
- 15 received, and shall adequately address the
- 16 concerns stated in the communication;
- 17 (C) Failing to adopt and implement reasonable
- 18 standards for the prompt investigation of claims
- 19 arising under insurance policies;
- 20 (D) Refusing to pay claims without conducting a
- 21 reasonable investigation based upon all available
- 22 information;



- 1 (E) Failing to affirm or deny coverage of claims
2 within a reasonable time after proof of loss
3 statements have been completed;
- 4 (F) Failing to offer payment within thirty calendar
5 days of affirmation of liability, if the amount
6 of the claim has been determined and is not in
7 dispute;
- 8 (G) Failing to provide the insured, or when
9 applicable the insured's beneficiary, with a
10 reasonable written explanation for any delay, on
11 every claim remaining unresolved for thirty
12 calendar days from the date it was reported;
- 13 (H) Not attempting in good faith to effectuate
14 prompt, fair, and equitable settlements of claims
15 in which liability has become reasonably clear;
- 16 (I) Compelling insureds to institute litigation to
17 recover amounts due under an insurance policy by
18 offering substantially less than the amounts
19 ultimately recovered in actions brought by the
20 insureds;
- 21 (J) Attempting to settle a claim for less than the
22 amount to which a reasonable person would have



- 1 believed the person was entitled by reference to
2 written or printed advertising material
3 accompanying or made part of an application;
- 4 (K) Attempting to settle claims on the basis of an
5 application which was altered without notice,
6 knowledge, or consent of the insured;
- 7 (L) Making claims payments to insureds or
8 beneficiaries not accompanied by a statement
9 setting forth the coverage under which the
10 payments are being made;
- 11 (M) Making known to insureds or claimants a policy of
12 appealing from arbitration awards in favor of
13 insureds or claimants for the purpose of
14 compelling them to accept settlements or
15 compromises less than the amount awarded in
16 arbitration;
- 17 (N) Delaying the investigation or payment of claims
18 by requiring an insured, claimant, or the
19 physician of either to submit a preliminary claim
20 report and then requiring the subsequent
21 submission of formal proof of loss forms, both of



1 which submissions contain substantially the same
2 information;

3 (O) Failing to promptly settle claims, where
4 liability has become reasonably clear, under one
5 portion of the insurance policy coverage to
6 influence settlements under other portions of the
7 insurance policy coverage;

8 (P) Failing to promptly provide a reasonable
9 explanation of the basis in the insurance policy
10 in relation to the facts or applicable law for
11 denial of a claim or for the offer of a
12 compromise settlement; and

13 (Q) Indicating to the insured on any payment draft,
14 check, or in any accompanying letter that the
15 payment is "final" or is "a release" of any claim
16 if additional benefits relating to the claim are
17 probable under coverages afforded by the policy;
18 unless the policy limit has been paid or there is
19 a bona fide dispute over either the coverage or
20 the amount payable under the policy;

21 (12) Failure to maintain complaint handling procedures.

22 Failure of any insurer to maintain a complete record

1 of all the complaints which it has received since the
 2 date of its last examination under section 431:2-302.
 3 This record shall indicate the total number of
 4 complaints, their classification by line of insurance,
 5 the nature of each complaint, the disposition of these
 6 complaints, and the time it took to process each
 7 complaint. For purposes of this section, "complaint"
 8 means any written communication primarily expressing a
 9 grievance; ~~and~~

10 (13) Misrepresentation in insurance applications. Making
 11 false or fraudulent statements or representations on
 12 or relative to an application for an insurance policy,
 13 for the purpose of obtaining a fee, commission, money,
 14 or other benefit from any insurer, producer, or
 15 individual~~[-]~~; and

16 (14) Failure to comply with any requirement under section
 17 431:10D-C or 431:10D-D."

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

21 "(13) "Security" means any note, stock, treasury stock,
 22 bond, debenture, evidence of indebtedness, certificate

1 of interest or participation in any profit-sharing
2 agreement, collateral-trust certificate,
3 preorganization certificate or subscription,
4 transferable share, investment contract, [~~variable~~
5 ~~annuity contract,~~] voting trust certificate,
6 certificate of deposit for a security, certificate of
7 interest in an oil, gas, or mining title or lease,
8 option on commodity futures contracts or, in general,
9 any interest or instrument commonly known as a
10 "security", or any certificate of interest or
11 participation in, temporary or interim certificate
12 for, guarantee of, or warrant or right to subscribe to
13 or purchase, any of the foregoing. "Security" [~~does~~
14 shall not include any insurance or endowment policy or
15 variable or fixed annuity contract."

16 SECTION 5. This Act does not affect rights and duties that
17 matured, penalties that were incurred, and proceedings that were
18 begun, before its effective date.

19 SECTION 6. In codifying the new sections added by section
20 1 of this Act, the revisor of statutes shall substitute
21 appropriate section numbers for the letters used in designating
22 the new sections in this Act.



1 SECTION 7. Statutory material to be repealed is bracketed
2 and stricken. New statutory material is underscored.

3 SECTION 8. This Act shall take effect on January 1, 2007.



HB 2969 HD 1

Report Title:

Senior Protection in Annuity Transactions

Description:

Establishes standards and procedures for insurers or insurance producers when making recommendations to senior consumers considering the purchase or exchange of any annuity. Removes variable annuities from regulation as a security, leaving jurisdiction with the Insurance Commissioner (HB2969 HD1).

