

- 1 (A) An employee pension plan which is covered by the
2 Employee Retirement Income Security Act;
- 3 (B) A plan described by sections 401(a), 401(k), or
4 403(b) of the Internal Revenue Code, where the
5 plan, for purposes of the Employee Retirement
6 Income Security Act, is established or maintained
7 by an employer;
- 8 (C) A governmental or church plan defined in section
9 414 of the Internal Revenue Code or a deferred
10 compensation plan of a state or local government
11 or a tax exempt organization under section 457 of
12 the Internal Revenue Code; or
- 13 (D) A non-qualified deferred compensation arrangement
14 established or maintained by an employer or plan
15 sponsor;
- 16 (4) Structured settlement annuities;
- 17 (5) Annuities transferred under a charitable gift annuity
18 agreement under section 431:1-204; and
- 19 (6) Premium deposit funds under section 431:10D-111.
- 20 (b) Notwithstanding subsection 431:10D-A(a)(3), this part
21 shall apply to annuities:



- 1 (1) Used to fund a plan or arrangement that is funded
- 2 solely by contributions an employee elects to make
- 3 whether on a pre-tax or after-tax basis; and
- 4 (2) Where the insurance company has been notified that
- 5 plan participants may choose from among two or more
- 6 fixed annuity providers; and
- 7 (3) There is a direct solicitation of an individual
- 8 employee by a producer for the purchase of an annuity
- 9 contract.

10 As used in this subsection, direct solicitation shall not
11 include any meeting held by a producer solely for the purpose of
12 educating or enrolling employees in the plan or arrangement.

13 **§431:10D-B Definitions.** For the purposes of this part:

14 "Charitable gift annuity agreement" means a contract under
15 which an individual transfers property to a charity, conditioned
16 upon the right to receive a specific sum of money for life.

17 "Contract owner" means the owner named in the annuity
18 contract or certificate holder in the case of a group annuity
19 contract.

20 "Determinable elements" means elements that are derived
21 from processes or methods that are guaranteed at issue and not
22 subject to company discretion, but where the values or amounts

1 cannot be determined until some point after issue. These
2 elements include the premiums, credited interest rates
3 (including any bonus), benefits, values, non-interest based
4 credits, charges, or elements of formulas used to determine any
5 of these. These elements may be described as guaranteed but not
6 determined at issue. An element is considered determinable if
7 it was calculated from underlying determinable elements only, or
8 from both determinable and guaranteed elements.

9 "Generic name" means a short title descriptive of the
10 annuity contract being applied for or illustrated such as
11 "single premium deferred annuity."

12 "Guaranteed elements" means the premiums, credited interest
13 rates (including any bonus), benefits, values, non-interest
14 based credits, charges or elements of formulas used to determine
15 any of these, that are guaranteed and determined at issue. An
16 element is considered guaranteed if all of the underlying
17 elements that go into its calculation are guaranteed.

18 "Non-guaranteed elements" means the premiums, credited
19 interest rates (including any bonus), benefits, values, non-
20 interest based credits, charges, or elements of formulas used to
21 determine any of these, that are subject to company discretion
22 and are not guaranteed at issue. An element is considered non-



1 guaranteed if any of the underlying non-guaranteed elements are
2 used in its calculation.

3 "Premium deposit funds" means a life insurance agreement
4 under section 431:10D-111.

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

10 **§431:10D-C Disclosure document and buyer's guide required.**

11 (a) Where the application for an annuity contract is taken in a
12 face-to-face meeting, the applicant shall at or before the time
13 of application be given both the disclosure document, described
14 in subsections (d) and (e), and a buyer's guide, as approved by
15 the insurance commissioner.

16 (b) Where the application for an annuity contract is taken
17 by means other than in a face-to-face meeting, the applicant
18 shall be sent both the disclosure document and the buyer's guide
19 no later than five business days after the completed application
20 is received by the insurer.

21 (1) For an application received as a direct solicitation
22 through the mail, a disclosure document and a buyer's



1 guide provided in a mailing inviting prospective
2 applicants to apply for an annuity contract satisfies
3 the requirements that the disclosure document and the
4 buyer's guide be provided no later than five business
5 days after receipt of the application.

6 (2) For an application received via the internet,
7 reasonable steps taken by the insurer to make the
8 disclosure document and the buyer's guide available
9 for viewing and printing on the insurer's website
10 satisfies the requirements that the disclosure
11 document and the buyer's guide be provided no later
12 than five business days after receipt of the
13 application.

14 (3) A solicitation for an annuity contract provided in
15 other than a face-to-face meeting shall include a
16 statement that the proposed applicant may contact the
17 insurance division for a free annuity buyer's guide.
18 In lieu of this statement, an insurer may include a
19 statement that the prospective applicant may contact
20 the insurer for a free annuity buyer's guide.

21 (c) Where the disclosure document and the buyer's guide
22 are not provided at or before the time of application, a period



1 of no less than fifteen days shall be provided for the applicant
2 to return the annuity contract without penalty.

3 (d) The following information shall be included in the
4 disclosure document:

5 (1) The generic name of the contract; the company product
6 name, if different from the generic name of the
7 contract; the form number; and the fact that the
8 contract is an annuity;

9 (2) The insurer's name and address;

10 (3) A description of the contract and its benefits,
11 emphasizing the contract's long-term nature and
12 including examples where appropriate of:

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

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

21 (C) Periodic income options both on a guaranteed and
22 non-guaranteed basis;



- 1 (D) Any value reductions caused by withdrawals from
- 2 or surrender of the contract;
- 3 (E) How values in the contract can be accessed;
- 4 (F) The death benefit, if available, and how it will
- 5 be calculated;
- 6 (G) A summary of the federal tax status of the
- 7 contract and any penalties applicable on
- 8 withdrawal of values from the contract; and
- 9 (H) The impact of any rider, such as a long-term care
- 10 rider.

11 (4) Specific dollar amount or percentage charges and fees
12 and an explanation of how these charges and fees
13 apply; and

14 (5) Information about the current guaranteed rate for new
15 contracts that contains a clear notice that the rate
16 is subject to change.

17 (e) Insurers shall define terms used in the disclosure
18 statement in language that facilitates the understanding by a
19 typical person within the segment of the public to which the
20 disclosure statement is directed.

21 **§431:10D-D Annual report to contract owners.** For
22 annuities in the payout period with changes in non-guaranteed



1 elements and for the accumulation period of a deferred annuity,
2 the insurer shall provide each contract owner with an annual
3 report on the status of the contract. This report shall contain
4 the following information:

- 5 (1) The beginning and end date of the current report
6 period;
- 7 (2) The accumulation and cash surrender value, if any, at
8 the end of the previous report period and at the end
9 of the current report period;
- 10 (3) The total amounts, if any, that have been credited,
11 charged to the contract value, or paid during the
12 current report period; and
- 13 (4) The amount of outstanding loans, if any, as of the end
14 of the current report period.

15 **§431:10D-E Penalties.** In addition to penalties provided
16 under other law, an insurer or producer that violates a
17 requirement of this part shall be guilty of a violation of
18 section 431:13-102."

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



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

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

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



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



1 circular, pamphlet, letter, or poster, or over any
2 radio or television station, or in any other way, an
3 advertisement, announcement, or statement containing
4 any assertion, representation, or statement with
5 respect to the business of insurance or with respect
6 to any person in the conduct of the person's insurance
7 business, which is untrue, deceptive, or misleading;

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

17 (4) Boycott, coercion, and intimidation.

18 (A) Entering into any agreement to commit, or by any
19 action committing, any act of boycott, coercion,
20 or intimidation resulting in or tending to result
21 in unreasonable restraint of, or monopoly in, the
22 business of insurance; or



- 1 (B) Entering into any agreement on the condition,
2 agreement, or understanding that a policy will
3 not be issued or renewed unless the prospective
4 insured contracts for another class or an
5 additional policy of the same class of insurance
6 with the same insurer;
- 7 (5) False financial statements.
 - 8 (A) Knowingly filing with any supervisory or other
9 public official, or knowingly making, publishing,
10 disseminating, circulating, or delivering to any
11 person, or placing before the public, or
12 knowingly causing, directly or indirectly, to be
13 made, published, disseminated, circulated,
14 delivered to any person, or placed before the
15 public, any false statement of a material fact as
16 to the financial condition of an insurer; or
 - 17 (B) Knowingly making any false entry of a material
18 fact in any book, report, or statement of any
19 insurer with intent to deceive any agent or
20 examiner lawfully appointed to examine into its
21 condition or into any of its affairs, or any
22 public official to whom the insurer is required

1 by law to report, or who has authority by law to
2 examine into its condition or into any of its
3 affairs, or, with like intent, knowingly omitting
4 to make a true entry of any material fact
5 pertaining to the business of the insurer in any
6 book, report, or statement of the insurer;

7 (6) Stock operations and advisory board contracts.

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

15 (7) Unfair discrimination.

16 (A) Making or permitting any unfair discrimination
17 between individuals of the same class and equal
18 expectation of life in the rates charged for any
19 contract of life insurance or of life annuity or
20 in the dividends or other benefits payable
21 thereon, or in any other of the terms and
22 conditions of the contract;



- 1 (B) Making or permitting any unfair discrimination in
2 favor of particular individuals or persons, or
3 between insureds or subjects of insurance having
4 substantially like insuring, risk, and exposure
5 factors, or expense elements, in the terms or
6 conditions of any insurance contract, or in the
7 rate or amount of premium charge therefor, or in
8 the benefits payable or in any other rights or
9 privilege accruing thereunder;
- 10 (C) Making or permitting any unfair discrimination
11 between individuals or risks of the same class
12 and of essentially the same hazards by refusing
13 to issue, refusing to renew, canceling, or
14 limiting the amount of insurance coverage on a
15 property or casualty risk because of the
16 geographic location of the risk, unless:
- 17 (i) The refusal, cancellation, or limitation is
18 for a business purpose which is not a mere
19 pretext for unfair discrimination; or
- 20 (ii) The refusal, cancellation, or limitation is
21 required by law or regulatory mandate;



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



- 1 (F) Terminating or modifying coverage, or refusing to
2 issue or renew any property or casualty policy or
3 contract of insurance solely because the
4 applicant or insured or any employee of either is
5 mentally or physically impaired; provided that
6 this subparagraph shall not apply to accident and
7 health or sickness insurance sold by a casualty
8 insurer; provided further that this subparagraph
9 shall not be interpreted to modify any other
10 provision of law relating to the termination,
11 modification, issuance, or renewal of any
12 insurance policy or contract;
- 13 (G) Refusing to insure, refusing to continue to
14 insure, or limiting the amount of coverage
15 available to an individual based solely upon the
16 individual's having taken a human
17 immunodeficiency virus (HIV) test prior to
18 applying for insurance; or
- 19 (H) Refusing to insure, refusing to continue to
20 insure, or limiting the amount of coverage
21 available to an individual because the individual
22 refuses to consent to the release of information



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

14 (8) Rebates. Except as otherwise expressly provided by
15 law:

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



1 any special favor or advantage in the dividends
2 or other benefits, or any valuable consideration
3 or inducement not specified in the contract; or
4 (B) Giving, selling, or purchasing, or offering to
5 give, sell, or purchase as inducement to the
6 insurance or in connection therewith, any stocks,
7 bonds, or other securities of any insurance
8 company or other corporation, association, or
9 partnership, or any dividends or profits accrued
10 thereon, or anything of value not specified in
11 the contract;

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

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

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

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

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

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

21 (A) Where damages are recovered by judgment or
22 settlement of a third-party claim, reimbursement



1 of past benefits paid shall be allowed pursuant
2 to section 663-10;

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

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

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

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

21 Any individual who knows or reasonably should
22 know that the individual may have a third-party



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

- 11 (11) Unfair claim settlement practices. Committing or
12 performing with such frequency as to indicate a
13 general business practice any of the following:
- 14 (A) Misrepresenting pertinent facts or insurance
15 policy provisions relating to coverages at issue;
 - 16 (B) With respect to claims arising under its
17 policies, failing to respond with reasonable
18 promptness, in no case more than fifteen working
19 days, to communications received from:
 - 20 (i) The insurer's policyholder;
 - 21 (ii) Any other persons, including the
22 commissioner; or



1 (iii) The insurer of a person involved in an
2 incident in which the insurer's policyholder
3 is also involved.

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

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

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

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

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

21 (G) Failing to provide the insured, or when
22 applicable the insured's beneficiary, with a

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



1 setting forth the coverage under which the
2 payments are being made;

3 (M) Making known to insureds or claimants a policy of
4 appealing from arbitration awards in favor of
5 insureds or claimants for the purpose of
6 compelling them to accept settlements or
7 compromises less than the amount awarded in
8 arbitration;

9 (N) Delaying the investigation or payment of claims
10 by requiring an insured, claimant, or the
11 physician of either to submit a preliminary claim
12 report and then requiring the subsequent
13 submission of formal proof of loss forms, both of
14 which submissions contain substantially the same
15 information;

16 (O) Failing to promptly settle claims, where
17 liability has become reasonably clear, under one
18 portion of the insurance policy coverage to
19 influence settlements under other portions of the
20 insurance policy coverage;

21 (P) Failing to promptly provide a reasonable
22 explanation of the basis in the insurance policy

1 in relation to the facts or applicable law for
2 denial of a claim or for the offer of a
3 compromise settlement; and

4 (Q) Indicating to the insured on any payment draft,
5 check, or in any accompanying letter that the
6 payment is "final" or is "a release" of any claim
7 if additional benefits relating to the claim are
8 probable under coverages afforded by the policy;
9 unless the policy limit has been paid or there is
10 a bona fide dispute over either the coverage or
11 the amount payable under the policy;

12 (12) Failure to maintain complaint handling procedures.
13 Failure of any insurer to maintain a complete record
14 of all the complaints which it has received since the
15 date of its last examination under section 431:2-302.
16 This record shall indicate the total number of
17 complaints, their classification by line of insurance,
18 the nature of each complaint, the disposition of these
19 complaints, and the time it took to process each
20 complaint. For purposes of this section, "complaint"
21 means any written communication primarily expressing a
22 grievance; [and]



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

7 (14) Failure to disclose annuities' information. Failure
8 of any insurer to comply with disclosure requirements
9 of part of chapter 431, article 10D."

10 SECTION 4. Statutory material to be repealed is bracketed
11 and stricken. New statutory material is underscored.

12 SECTION 5. This Act shall take effect upon its approval.

13

INTRODUCED BY: Donovan
By Request

SB 2095

Report Title:

Life Insurance; Annuities Disclosure

Description:

Requires a disclosure statement containing annuity contract information and a buyer's guide to be given to an applicant for an annuity contract. Codifies the failure to disclose annuities' information as an unfair practice.

