



- 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 pursuant to section 431:2-201(c)(1).

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 or producer to comply with disclosure  
9 requirements 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 on January 1, 2007.



SB2095, SD1

**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. (SD1)

