

JAN 25 2006

A BILL FOR AN ACT

RELATING TO ANNUITIES.

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

1 SECTION 1. The legislature finds that it is necessary to
2 protect senior consumers who purchase annuity products. The
3 purpose of this Act is to ensure that the insurance needs and
4 financial objectives of senior consumers in a transaction
5 involving annuity products are appropriately addressed.

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

9 **"PART**

10 **SENIOR PROTECTION IN ANNUITY TRANSACTIONS**

11 **§431:10D-A Scope.** (a) This part applies to any
12 recommendation to purchase or exchange an annuity made to a
13 senior consumer by an insurance producer, or an insurer where no
14 producer is involved, that results in the purchase or exchange
15 recommended.

16 (b) This part does not apply to recommendations involving:



- 1 (1) Direct response solicitations where there is no
2 recommendation based on information collected from the
3 senior consumer pursuant to this part; or
- 4 (2) Contracts used to fund:
- 5 (A) An employee pension or welfare benefit plan that
6 is covered by the Employee Retirement and Income
7 Security Act;
- 8 (B) A plan described by sections 401(a), 401(k),
9 403(b), 408(k), or 408(p) of the Internal Revenue
10 Code, as amended, if established or maintained by
11 an employer;
- 12 (C) A government or church plan defined in section
13 414 of the Internal Revenue Code, as amended, a
14 government or church welfare benefit plan, or a
15 deferred compensation plan of a state or local
16 government or tax exempt organization under
17 section 457 of the Internal Revenue Code, as
18 amended;
- 19 (D) A non-qualified deferred compensation arrangement
20 established or maintained by an employer or plan
21 sponsor;



1 (E) Settlements of or assumptions of liabilities
2 associated with personal injury litigation or any
3 dispute or claim resolution process; or

4 (F) Formal prepaid funeral contracts.

5 **§431:10D-B Definitions.** For the purposes of this part:

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

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

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

15 "Recommendation" means advice provided by an insurance
16 producer, or an insurer where no producer is involved, to an
17 individual senior consumer that results in a purchase or
18 exchange of an annuity in accordance with that advice.

19 "Senior consumer" means a person sixty-five years of age or
20 older. In the event of a joint purchase by more than one party,
21 the purchaser will be considered to be a senior consumer if any
22 of the parties is sixty-five years of age or older.



1 **§431:10D-C Duties of insurers and insurance producers.**

2 (a) In recommending to a senior consumer the purchase of an
3 annuity or the exchange of an annuity that results in another
4 insurance transaction or series of insurance transactions, the
5 insurance producer, or the insurer where no producer is
6 involved, shall have reasonable grounds for believing that the
7 recommendation is suitable for the senior consumer on the basis
8 of the facts disclosed by the senior consumer about the senior
9 consumer's investments, other insurance products, financial
10 situation, and needs.

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

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

- 1 (c) (1) Except as provided under paragraph (2) of this
2 subsection, neither an insurance producer, nor an
3 insurer where no producer is involved, shall have
4 any obligation to a senior consumer related to
5 any recommendation if a consumer:
- 6 (A) Refuses to provide relevant information requested
7 by the insurer or insurance producer;
- 8 (B) Decides to enter into an insurance transaction
9 that is not based on a recommendation of the
10 insurer or insurance producer; or
- 11 (C) Fails to provide complete or accurate
12 information.
- 13 (2) An insurer or insurance producer's recommendation
14 subject to paragraph (1) of this subsection shall
15 be reasonable under all the circumstances
16 actually known to the insurer or insurance
17 producer at the time of the recommendation.
- 18 (d) An insurer either shall ensure that a system to
19 supervise recommendations that is reasonably designed to achieve
20 compliance with this part is established and maintained by
21 complying with subsections 431:10D-C(f) through (h), or shall



1 establish and maintain such a system, which shall include, but
2 not be limited to:

- 3 (1) Maintaining written procedures; and
- 4 (2) Conducting a periodic review of the insurer's records
5 that is reasonably designed to assist in detecting and
6 preventing violations of this part.

7 (e) A general agent and independent agency either shall
8 adopt a system established by an insurer to supervise
9 recommendations of its insurance producers that is reasonably
10 designed to achieve compliance with this part, or shall
11 establish and maintain such a system, which shall include, but
12 not be limited to:

- 13 (1) Maintaining written procedures; and
- 14 (2) Conducting a periodic review of records that is
15 reasonably designed to assist in detecting and
16 preventing violations of this part.

17 (f) An insurer may contract with a third party, including
18 a general agent or independent agency, to comply with the
19 requirement of subsection 431:10D-C(d) to establish and maintain
20 a system of supervision of insurance producers under contract
21 with or employed by the third party.



1 (g) An insurer shall make reasonable inquiry to ensure
2 that the third party contracting under subsection 431:10D-C(f)
3 is performing the functions required under subsection
4 431:10D-C(d) and shall take such action as is reasonable under
5 the circumstances to enforce the contractual obligation to
6 perform the functions. An insurer may comply with its
7 obligation to make reasonable inquiry by:

- 8 (1) Annually obtaining a certification from a third party
9 senior manager who has responsibility for the
10 delegated functions that the manager has a reasonable
11 basis to represent, and does represent, that the third
12 party is performing the required functions; and
- 13 (2) Based on reasonable selection criteria, periodically
14 reviewing the performance of selected third parties
15 contracting under subsection 431:10D-C(f) to determine
16 whether the third parties are performing the required
17 functions. The insurer shall perform those procedures
18 to conduct the review that are reasonable under the
19 circumstances.

20 (h) An insurer that contracts with a third party pursuant
21 to subsection 431:10D-C(f) and that complies with the



1 requirements to supervise in subsection 431:10D-C(g) shall have
2 fulfilled its responsibilities under subsection 431:10D-C(d).

3 (i) An insurer, general agent, or independent agency is
4 not required by subsections 431:10D-C(d) and (e) to:

5 (1) Review, or provide for review of, all insurance
6 producer-solicited transactions; or

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

11 (j) A general agent or independent agency who contracts
12 with an insurer under subsection 431:10D-C(f) shall promptly,
13 when requested by the insurer under subsection 431:10D-C(g),
14 give a certification as described in subsection 431:10D-C(g) or
15 give a clear statement that it is unable to satisfy the
16 certification criteria.

17 (k) No person may provide a certification under subsection
18 431:10D-C(g) (1) unless:

19 (1) The person is a senior manager with responsibility for
20 the delegated functions; and

21 (2) The person has a reasonable basis for making the
22 certification.



1 (1) Compliance with the National Association of Securities
2 Dealers Conduct Rules pertaining to suitability shall satisfy
3 the requirements under this section requiring recommendation of
4 variable annuities. However, nothing in this subsection shall
5 limit the insurance commissioner's ability to enforce the
6 provisions of this part.

7 **§431:10D-D Mitigation of responsibility.** (a) The
8 commissioner may order:

9 (1) An insurer to take reasonably appropriate corrective
10 action for any senior consumer harmed by the
11 insurer's, or by its insurance producer's, violation
12 of this part;

13 (2) An insurance producer to take reasonably appropriate
14 corrective action regarding any senior consumer harmed
15 by the insurance producer's violation of this part;
16 and

17 (3) A general agency or independent agency that employs or
18 contracts with an insurance producer to sell, or
19 solicit the sale, of annuities to senior consumers, to
20 take reasonably appropriate corrective action for any
21 senior consumer harmed by the insurance producer's
22 violation of this part.



1 (b) Any applicable penalty under article 13 of chapter 431
2 for a violation of subsections 431:10D-C(a), (b), and (c) may be
3 reduced or eliminated if corrective action for the senior
4 consumer was taken promptly after a violation was discovered.

5 **§431:10D-E Recordkeeping.** Insurers, general agents,
6 independent agencies, and insurance producers shall maintain or
7 make available to the commissioner records of the information
8 collected from the senior consumer and other information used in
9 making the recommendations that were the basis for insurance
10 transactions for five years after the insurance transaction is
11 completed by the insurer. An insurer is permitted, but shall
12 not be required, to maintain documentation on behalf of an
13 insurance producer."

14 SECTION 3. Section 431:10D-118, Hawaii Revised Statutes,
15 is amended to read as follows:

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



1 benefits incidental thereto), payable in fixed or variable
2 amounts or both, subject to the following:

3 (1) The income, gains and losses, realized or unrealized,
4 from assets allocated to a separate account shall be
5 credited to or charged against the account, without
6 regard to other income, gains or losses of the
7 company.

8 (2) Except as hereinafter provided, amounts allocated to
9 any separate account and accumulations thereon may be
10 invested and reinvested without regard to any
11 requirements or limitations prescribed by the laws of
12 this State governing the investments of life insurance
13 companies; provided that to the extent that the
14 company's reserve liability with regard to (A)
15 benefits guaranteed as to amount and duration, and (B)
16 funds guaranteed as to principal amount or stated rate
17 of interest is maintained in any separate account, a
18 portion of the assets of such separate account at
19 least equal to such reserve liability shall be, except
20 as the commissioner may otherwise approve, invested,
21 in accordance with the laws of this State governing
22 the investments of life insurance companies. The



1 investments in such separate account or accounts shall
2 not be taken into account in applying the investment
3 limitations otherwise applicable to the investments of
4 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 (A) by a transfer of cash, or (B) by
15 a transfer of securities having a readily determinable
16 market value, provided that such transfer of
17 securities is approved by the commissioner. The
18 commissioner may approve other transfers among such
19 accounts, if in the commissioner's opinion, such
20 transfers would not be inequitable.

21 (6) To the extent such company deems it necessary to
22 comply with any applicable federal or state laws, such



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

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



1 experience and shall contain on its first page a statement to
2 the effect that the benefits thereunder are on a variable basis.

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

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



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

7 A company which issues variable contracts and which is a

8 subsidiary of, or affiliated through common management or

9 ownership with, another life insurance company authorized to do

10 business in this State shall be deemed to have met the

11 provisions of this subsection if either it or the parent or

12 affiliated company meets the requirements of this subsection.

13 (d) Notwithstanding any other provision of law, the

14 commissioner shall have sole and exclusive authority to regulate

15 the issuance and sale of variable contracts and to provide for

16 licensing of persons selling such contracts, and to issue such

17 reasonable rules and regulations as may be appropriate to carry

18 out the purposes and provisions of this section.

19 (e) In making a final determination whether a person has

20 complied with part _____ of chapter 431, article 10D, relating to

21 annuity products, the commissioner may:

22 (1) Consult with the securities commissioner; and



1 (2) Use the resources of the securities commissioner.

2 (f) If the securities commissioner is informed of a
3 violation or suspected violation of part of section 431,
4 article 10D or other insurance laws, the securities commissioner
5 shall timely advise the commissioner of the violation or
6 suspected violation.

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



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

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

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

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



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



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

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

20 (4) Boycott, coercion, and intimidation.

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



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

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

10 (5) False financial statements.

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

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



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

10 (6) Stock operations and advisory board contracts.

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

18 (7) Unfair discrimination.

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



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

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

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

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



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



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

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

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

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



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

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

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

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

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

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



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

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

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

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

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



- 1 (A) Where damages are recovered by judgment or
- 2 settlement of a third-party claim, reimbursement
- 3 of past benefits paid shall be allowed pursuant
- 4 to section 663-10;
- 5 (B) This paragraph shall not apply to entities
- 6 licensed under chapter 386 or 431:10C; and
- 7 (C) For entities licensed under chapter 432 or 432D:
- 8 (i) It shall not be a violation of this section
- 9 to refuse to provide or limit coverage
- 10 available to an individual because the
- 11 entity determines that the individual
- 12 reasonably appears to have coverage
- 13 available under chapter 386 or 431:10C; and
- 14 (ii) Payment of claims to an individual who may
- 15 have a third-party claim for recovery of
- 16 damages may be conditioned upon the
- 17 individual first signing and submitting to
- 18 the entity documents to secure the lien and
- 19 reimbursement rights of the entity and
- 20 providing information reasonably related to
- 21 the entity's investigation of its liability
- 22 for coverage.



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

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

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

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

22 (i) The insurer's policyholder;



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

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

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

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

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

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



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

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



1 (P) Failing to promptly provide a reasonable
2 explanation of the basis in the insurance policy
3 in relation to the facts or applicable law for
4 denial of a claim or for the offer of a
5 compromise settlement; and

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

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

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

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

9 (14) Failure to obtain information. Failure of any
10 insurance producer, or an insurer where no producer is
11 involved, to comply with subsections 431:10D-C(a),
12 (b), or (c) by making reasonable efforts to obtain
13 information about a senior consumer before making a
14 recommendation to the consumer to purchase or exchange
15 an annuity."

16 SECTION 5. Statutory material to be repealed is bracketed
17 and stricken. New statutory material is underscored.

18 SECTION 6. This Act shall take effect upon its approval.

19

INTRODUCED BY: Ann Menn

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8B2226

Report Title:

Life Insurance; Annuities; Senior Protection

Description:

Requires insurers and insurance providers to make reasonable efforts to obtain information from senior consumers prior to annuities transactions. Permits insurance commissioner to consult with securities commissioner. Codifies the failure to make efforts to obtain information as an unfair practice.

