

# H.B. NO. 1051

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## A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1           SECTION 1. The purpose of this Act is to protect consumers  
2 and particularly, seniors, from abusive financial services  
3 practices by adopting model regulations of the National  
4 Association of Insurance Commissioners ("NAIC") and to comply  
5 with the senior investor protections in section 989A of the  
6 federal Dodd-Frank Wall Street Reform and Consumer Protection  
7 Act of 2010. In 2007, the legislature passed Act 257, Session  
8 Laws of Hawaii 2007, which established standards and procedures  
9 for insurers and insurance producers that make recommendations  
10 to consumers regarding the purchase or exchange of annuities.  
11 Part I of this Act adopts the updated version of the NAIC  
12 Suitability in Annuity Transactions Model Regulation (March  
13 2010). Part II of this Act adopts the NAIC Model Regulation on  
14 the Use of Senior-Specific Certifications and Professional  
15 Designations in the Sale of Life Insurance and Annuities. Part  
16 II is intended to protect seniors against producers who

1 misrepresent their level of expertise and credentials during the  
2 marketing and sales of life insurance and annuity products.

3 PART I

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

7 "§431:10D-A Insurance producer training. (a) An  
8 insurance producer shall not solicit the sale of an annuity  
9 product unless the insurance producer has adequate knowledge of  
10 the product to recommend the annuity and the insurance producer  
11 is in compliance with the insurer's standards for product  
12 training. An insurance producer may rely on insurer-provided  
13 product-specific training standards and materials to comply with  
14 this subsection.

15 (b) Any insurance producer who is authorized to sell life  
16 or accident and health or sickness insurance and who engages in  
17 the sale of annuity products shall complete by January 31, 2012,  
18 a one-time training course approved by the commissioner and  
19 conducted by a valid continuing education course provider. Any  
20 insurance producer who obtains a life insurance line of  
21 authority after January 31, 2012, may not engage in the sale of

1 annuities until the requirements of this subsection have been  
2 met:

3 (1) The minimum length of training required under this  
4 subsection shall be sufficient to qualify for at least  
5 four continuing education credits;

6 (2) The training required under this subsection shall  
7 include information on the following topics:

8 (A) The types of annuities and various  
9 classifications of annuities;

10 (B) Identification of the parties to an annuity;

11 (C) How fixed, variable, and indexed annuity contract  
12 provisions affect consumers;

13 (D) The application of income taxation to qualified  
14 and non-qualified annuities;

15 (E) The primary uses of annuities; and

16 (F) Appropriate sales practices, replacement, and  
17 disclosure requirements; and

18 (3) A course provider shall not present any marketing  
19 information or provide training on sales techniques or  
20 provide specific information about a particular  
21 insurer's products.

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1        (c) An insurer shall verify that an insurance producer has  
2 completed the annuity training course required under this  
3 section before allowing the producer to sell an annuity product  
4 for the insurer. An insurer may satisfy its responsibility  
5 under this section by obtaining certificates of completion of  
6 the training course or by obtaining reports provided by  
7 commissioner-sponsored database systems or vendors, or from a  
8 reasonably reliable commercial database vendor that has a  
9 reporting arrangement with approved insurance continuing  
10 education providers."

11        SECTION 3. Section 431:10D-621, Hawaii Revised Statutes,  
12 is amended to read as follows:

13        "[~~f~~]**\$431:10D-621**[~~f~~] **Scope.** (a) This part applies to any  
14 recommendation to purchase [~~or~~], exchange, or replace an annuity  
15 made to a consumer by an insurance producer, or an insurer where  
16 no producer is involved, that results in the purchase [~~or~~],  
17 exchange, or replacement recommended.

18        (b) This part does not apply to [~~recommendations~~]  
19 transactions involving:

20        (1) Direct-response solicitations where there is no  
21 recommendation based on information collected from the  
22 consumer pursuant to this part; or

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- 1           (2) Contracts used to fund:
- 2                   (A) An employee pension or welfare benefit plan that
- 3                           is covered by the Employee Retirement and Income
- 4                           Security Act;
- 5                   (B) A plan described by sections 401(a), 401(k),
- 6                           403(b), 408(k), or 408(p) of the Internal Revenue
- 7                           Code of 1986, as amended, if established or
- 8                           maintained by an employer;
- 9                   (C) A government or church plan defined in section
- 10                           414 of the Internal Revenue Code of 1986, as
- 11                           amended, a government or church welfare benefit
- 12                           plan, or a deferred compensation plan of a state
- 13                           or local government or tax exempt organization
- 14                           under section 457 of the Internal Revenue Code of
- 15                           1986, as amended;
- 16                   (D) A non-qualified deferred compensation arrangement
- 17                           established or maintained by an employer or plan
- 18                           sponsor;
- 19                   (E) Settlements of or assumptions of liabilities
- 20                           associated with personal injury litigation or any
- 21                           dispute or claim resolution process; or
- 22                   (F) Formal prepaid funeral contracts.

1           [+] (c) [+] Nothing in this [+]part[+] shall be construed to  
2 affect in any manner any provision of chapter 485A."

3           SECTION 4. Section 431:10D-622, Hawaii Revised Statutes,  
4 is amended as follows:

5           1. By amending the definitions of "annuity" and  
6 "recommendation" to read as follows:

7           "Annuity" means [~~a fixed or variable annuity~~] a contract  
8 sold by insurers that provides an income benefit for the life of  
9 one or more persons or for a specified period of time, is an  
10 insurance product under state law, and is individually  
11 solicited, whether the product is classified as an individual or  
12 group annuity.

13           "Recommendation" means advice provided by an insurance  
14 producer, or an insurer where no producer is involved, to an  
15 individual consumer that results in a purchase [~~or~~], exchange,  
16 or replacement of an annuity in accordance with that advice."

17           2. By adding definitions of "FINRA", "replacement", and  
18 "suitability information" to be appropriately inserted and to  
19 read as follows:

20           "FINRA" means the Financial Industry Regulatory Authority  
21 or successor agency.

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1       "Replacement" means a transaction in which a new policy or  
2 contract is to be purchased, as it is known or should be known  
3 to the proposing producer, or to the proposing insurer if there  
4 is no producer, that by reason of the transaction, an existing  
5 policy or contract has been or is to be:

- 6       (1) Lapsed, forfeited, surrendered or partially  
7       surrendered, assigned to the replacing insurer, or  
8       otherwise terminated;
- 9       (2) Converted to reduced paid-up insurance, continued as  
10       extended term insurance, or otherwise reduced in value  
11       by the use of nonforfeiture benefits or other policy  
12       values;
- 13       (3) Amended so as to effect either a reduction in benefits  
14       or in the term for which coverage would otherwise  
15       remain in force or for which benefits would be paid;
- 16       (4) Reissued with any reduction in cash value; or
- 17       (5) Used in a finance purchase.

18       "Suitability information" means information that is  
19 reasonably related to the determination of the appropriateness  
20 of a recommendation including the following:

- 21       (1) Age;
- 22       (2) Annual income;

- 1        (3) Financial situation and needs, including the financial
- 2                resources used for the funding of the annuity;
- 3        (4) Financial experience;
- 4        (5) Financial objectives;
- 5        (6) Intended use of the annuity;
- 6        (7) Financial time horizon;
- 7        (8) Existing assets, including investment and life
- 8                insurance holdings;
- 9        (9) Liquidity needs;
- 10       (10) Liquid net worth;
- 11       (11) Risk tolerance; and
- 12       (12) Tax status."

13        SECTION 5. Section 431:10D-623, Hawaii Revised Statutes,  
14 is amended to read as follows:

15        "[+]§431:10D-623[+] **Duties of insurers and insurance**  
16 **producers.** (a) In recommending to a consumer the purchase of  
17 an annuity or the exchange of an annuity that results in another  
18 insurance transaction or series of insurance transactions, the  
19 insurance producer, or the insurer where no producer is  
20 involved, shall have reasonable grounds for believing that the  
21 recommendation is suitable for the consumer on the basis of the  
22 facts disclosed by the consumer about the consumer's



1 investments, other insurance products, financial situation, and  
2 needs[~~+~~], including the consumer's suitability information, and  
3 that there is a reasonable basis to believe all of the  
4 following:

5 (1) The consumer has been reasonably informed of various  
6 features of the annuity, such as the potential  
7 surrender period and surrender charge, potential tax  
8 penalty if the consumer sells, exchanges, surrenders  
9 or annuitizes the annuity, mortality and expense fees,  
10 investment advisory fees, potential charges for and  
11 features or riders, limitations on interest returns,  
12 insurance and investment components, and market risk;

13 (2) The consumer would benefit from certain features of  
14 the annuity, such as tax-deferred growth,  
15 annuitization, or death or living benefit;

16 (3) The particular annuity as a whole, the underlying  
17 subaccounts to which funds are allocated at the time  
18 of the purchase or exchange of the annuity, and riders  
19 and similar product enhancements, if any, are suitable  
20 and, in the case of an exchange or replacement, the  
21 transaction as a whole is suitable for the particular

1           consumer based on the consumer's suitability  
2           information; and

3       (4) In the case of an exchange or replacement of an  
4           annuity, the exchange or replacement is suitable  
5           including taking into consideration whether:

6           (A) The consumer will incur a surrender charge, be  
7           subject to the commencement of a new surrender  
8           period, lose existing benefits such as death,  
9           living, or other contractual benefits, or be  
10          subject to increased fees, investment advisory  
11          fees, or charges for riders and similar product  
12          enhancements;

13          (B) The consumer would benefit from product  
14          enhancements and improvements; and

15          (C) The consumer has had another annuity exchange or  
16          replacement and, in particular, an exchange or  
17          replacement within the preceding thirty-six  
18          months.

19       (b) Prior to the execution of a purchase~~[or]~~, exchange, or  
20 replacement of an annuity resulting from a recommendation, an  
21 insurance producer, or an insurer where no producer is involved,

1 shall make reasonable efforts to obtain the consumer's  
2 suitability information [~~concerning:~~

3 ~~(1) The consumer's financial status;~~

4 ~~(2) The consumer's tax status;~~

5 ~~(3) The consumer's investment objectives; and~~

6 ~~(4) Such other information used or considered to be~~

7 ~~reasonable by the insurance producer, or the insurer~~

8 ~~where no producer is involved, in making~~

9 ~~recommendations to the consumer].~~

10 (c) Except as permitted under subsection (d), an insurer  
11 shall not issue an annuity recommended to a consumer unless  
12 there is a reasonable basis to believe the annuity is suitable  
13 based on the consumer's suitability information.

14 [~~(e)~~] (d) (1) Except as provided under paragraph (2),  
15 neither an insurance producer~~[7]~~ nor an insurer [~~where no~~  
16 ~~producer is involved,~~] shall have any obligation to a consumer  
17 related to any [~~recommendation~~] annuity transaction if [~~a~~  
18 ~~consumer~~]:

19 (A) No recommendation is made;

20 (B) A recommendation was made and was later found to  
21 have been prepared based on materially inaccurate  
22 information provided by the consumer;

1           ~~[(A) Refuses]~~ (C) A consumer refuses to provide  
2                    relevant suitability information ~~[requested by~~  
3                    ~~the insurer or insurance producer;]~~ and the  
4                    annuity transaction is not recommended; or

5           ~~[(B) Decides]~~ (D) A consumer decides to enter into an  
6                    ~~[insurance]~~ annuity transaction that is not based  
7                    on a recommendation of the insurer or the  
8                    insurance producer ~~[, or~~

9           ~~(C) Fails to provide complete or accurate~~  
10                   ~~information].~~

11           (2) An ~~[insurer or insurance producer's recommendation]~~  
12                   insurer's issuance of an annuity subject to paragraph  
13                    (1) shall be reasonable under all the circumstances  
14                    actually known to the insurer ~~[or insurance producer]~~  
15                    at the time ~~[of the recommendation.]~~ the annuity is  
16                    issued.

17           (e) An insurance producer or the responsible insurer  
18           representative, where no insurance producer is involved, shall  
19           at the time of sale:

20           (1) Make a record of any recommendation subject to this  
21           section;

1        (2) Obtain a customer signed statement documenting a  
2        customer's refusal to provide suitability information,  
3        if applicable; and

4        (3) Obtain a customer signed statement acknowledging that  
5        an annuity transaction is not recommended if a  
6        customer decided to enter into an annuity transaction  
7        that is not based on the insurance producer's or  
8        insurer's recommendation.

9        [~~(d)~~] (f) An insurer shall [~~either ensure that a system to~~  
10 ~~supervise recommendations]~~ establish a supervision system that  
11 is reasonably designed to achieve the insurer's and its  
12 insurance producers' compliance with this part [~~is established~~  
13 ~~and maintained by complying with subsections (f), (g), and (h),~~  
14 ~~or establish and maintain such a system, which shall include but~~  
15 ~~not be limited to:~~

16        ~~(1) Maintaining written procedures; and~~  
17        ~~(2) Conducting a periodic review of the insurer's records~~  
18        ~~that is reasonably designed to assist in detecting and~~  
19        ~~preventing violations of this part.]~~

20        [~~(e)~~] ~~A managing general agent and independent agency shall~~  
21 ~~adopt a system established by an insurer to supervise~~  
22 ~~recommendations of its insurance producers that is reasonably~~

1 ~~designed to achieve compliance with this part, or establish and~~  
2 ~~maintain such a system, which shall include but not be limited~~  
3 ~~to:~~

4 ~~(1) Maintaining written procedures; and~~

5 ~~(2) Conducting a periodic review of records that is~~  
6 ~~reasonably designed to assist in detecting and~~  
7 ~~preventing violations of this part.~~

8 ~~(f) An insurer may contract with a third party, including~~  
9 ~~a managing general agent or independent agency, to comply with~~  
10 ~~the requirement of subsection (d) to establish and maintain a~~  
11 ~~system of supervision of insurance producers under contract with~~  
12 ~~or employed by the third party.~~

13 ~~(g) An insurer shall make reasonable inquiry to ensure~~  
14 ~~that the third party contracting under subsection (f) is~~  
15 ~~performing the functions required under subsection (d) and shall~~  
16 ~~take such action as is reasonable under the circumstances to~~  
17 ~~enforce the contractual obligation to perform the functions. An~~  
18 ~~insurer may comply with its obligation to make reasonable~~  
19 ~~inquiry by:~~

20 ~~(1) Annually obtaining a certification from a third party~~  
21 ~~senior manager who has responsibility for the~~  
22 ~~delegated functions that the manager has a reasonable~~

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1 ~~basis to represent, and does represent, that the third~~  
2 ~~party is performing the required functions; provided~~  
3 ~~that no person may provide a certification unless:~~

4 ~~(A) The person is a senior manager with responsibility~~  
5 ~~for the delegated functions; and~~

6 ~~(B) The person has a reasonable basis for making the~~  
7 ~~certification; and~~

8 ~~(2) Based on reasonable selection criteria, periodically~~  
9 ~~reviewing the performance of selected third parties~~  
10 ~~contracting under subsection (f) to determine whether~~  
11 ~~the third parties are performing the required~~  
12 ~~functions. The insurer shall perform those procedures~~  
13 ~~to conduct the review that are reasonable under the~~  
14 ~~circumstances.~~

15 ~~(h) An insurer that contracts with a third party pursuant~~  
16 ~~to subsection (f) and that complies with the requirements to~~  
17 ~~supervise in subsection (g) shall have fulfilled its~~  
18 ~~responsibilities under subsection (d).] including the following:~~

19 (1) The insurer shall maintain reasonable procedures to  
20 inform its insurance producers of the requirements of  
21 this part and shall incorporate the requirements of

1           this part into relevant insurance producer training  
2           manuals;

3       (2) The insurer shall establish standards for insurance  
4           producer product training and shall maintain  
5           reasonable procedures to require its insurance  
6           producers to comply with the requirements of section  
7           431:10D-A;

8       (3) The insurer shall provide product-specific training  
9           and training materials which explain all material  
10          features of its annuity products to its insurance  
11          producers;

12       (4) Prior to issuance of an annuity, the insurer shall  
13          maintain procedures for review of each recommendation  
14          that are designed to ensure that there is a reasonable  
15          basis to determine that a recommendation is suitable.  
16          These review procedures may apply a screening system  
17          for the purpose of identifying selected transactions  
18          for additional review and may be accomplished  
19          electronically or through other means including, but  
20          not limited to, physical review. An electronic or  
21          other system may be designed to require additional



1 review only of those transactions identified for  
2 additional review by the selection criteria;

3 (5) The insurer shall maintain reasonable procedures to  
4 detect recommendations that are not suitable. These  
5 may include, but are not limited to, confirmation of  
6 consumer suitability information, systematic customer  
7 surveys, interviews, confirmation letters, and  
8 programs of internal monitoring. Nothing in this  
9 paragraph prevents an insurer from complying with this  
10 paragraph by applying sampling procedures or by  
11 confirming suitability information after issuance or  
12 delivery of the annuity; and

13 (6) The insurer shall annually provide a report to senior  
14 management, including to the senior manager  
15 responsible for audit functions, which details a  
16 review, with appropriate testing, reasonably designed  
17 to determine the effectiveness of the supervision  
18 system, the exceptions found, and corrective action  
19 taken or recommended, if any.

20 (g) Nothing in this section restricts an insurer from  
21 contracting for performance of a function, including maintenance  
22 of procedures, required under subsection (f). An insurer is

1 responsible for taking appropriate corrective action and may be  
2 subject to sanctions and penalties pursuant to section 431:10D-  
3 624 regardless of whether the insurer contracts for performance  
4 of a function and regardless of the insurer's compliance with  
5 subsection (h).

6 (h) An insurer's supervision system shall include  
7 supervision of contractual performance under this section,  
8 including the following:

9 (1) Monitoring and, as appropriate, conducting audits to  
10 assure that the contracted function is properly  
11 performed; and

12 (2) Annually obtaining a certification from a senior  
13 manager, who has responsibility for the contracted  
14 function, that the manager has a reasonable basis to  
15 represent and does represent that the function is  
16 properly performed.

17 (i) An insurer [~~managing general agent, or independent~~  
18 ~~agency]~~ is not required [~~by subsections (d) and (e) to:~~

19 ~~(1) Review, or provide for review of, all insurance~~  
20 ~~producer solicited transactions; or~~

21 ~~(2) Include]~~ to include in its system of supervision an  
22 insurance producer's recommendations to consumers of

1 products other than the annuities offered by the  
2 insurer [~~, managing general agent, or independent~~  
3 ~~agency~~].

4 [~~(j) A managing general agent or independent agency who~~  
5 ~~contracts with an insurer under subsection (f) shall promptly,~~  
6 ~~when requested by the insurer under subsection (g), give a~~  
7 ~~certification as described in subsection (g) or give a clear~~  
8 ~~statement that it is unable to satisfy the certification~~  
9 ~~criteria.~~]

10 (j) An insurance producer shall not dissuade, or attempt  
11 to dissuade, a consumer from:

12 (1) Truthfully responding to an insurer's request for  
13 confirmation of suitability information;

14 (2) Filing a complaint; or

15 (3) Cooperating with the investigation of a complaint.

16 (k) [~~Compliance with the National Association of~~  
17 ~~Securities Dealers Conduct Rules~~] Sales made in compliance with  
18 FINRA requirements pertaining to suitability and supervision of  
19 annuity transactions shall satisfy the requirements under this  
20 section [~~for recommending variable annuities.~~]; provided that an  
21 insurer shall:

- 1        (1) Monitor the FINRA member broker-dealer using  
2                    information collected in the normal course of an  
3                    insurer's business; and  
4        (2) Provide to the FINRA member broker-dealer information  
5                    and reports that are reasonably appropriate to assist  
6                    the FINRA member broker-dealer to maintain its  
7                    supervision system.

8        This subsection applies to FINRA broker-dealer sales of variable  
9        annuities and fixed annuities if the suitability and supervision  
10       is similar to those applied to variable annuity sales. Nothing  
11       in this subsection shall limit the insurance commissioner's  
12       ability to enforce this part."

13       SECTION 6. Section 431:10D-624, Hawaii Revised Statutes,  
14       is amended to read as follows:

15       "~~[f]§431:10D-624 [f]—Mitigation of responsibility.~~

16       **Compliance mitigation; penalties.** (a) [The] An insurer is  
17       responsible for compliance with this part. If a violation  
18       occurs, either because of the action or inaction of the insurer  
19       or its insurance producer, the commissioner may order:

- 20       (1) An insurer to take reasonably appropriate corrective  
21                    action for any consumer harmed by the insurer's, or by  
22                    its insurance producer's, violation of this part;

1 (2) ~~[An]~~ A business entity, general agency, independent  
2 agency, or the insurance producer to take reasonably  
3 appropriate corrective action for any consumer harmed  
4 by the insurance producer's violation of this part;  
5 and

6 ~~[(3) A general agency or independent agency that employs~~  
7 ~~or contracts with an insurance producer to sell or~~  
8 ~~solicit the sale of annuities to consumers, to take~~  
9 ~~reasonably appropriate corrective action for any~~  
10 ~~consumer harmed by the insurance producer's violation~~  
11 ~~of this part.]~~

12 (3) Appropriate penalties and sanctions.

13 (b) Any penalty applicable to an insurer, a managing  
14 general agent, independent agencies, or a producer under article  
15 13 of chapter 431 may apply for a violation ~~[of section 431:10D-~~  
16 ~~623(a), (b), and (c)]~~ of this part and may be reduced or  
17 eliminated if corrective action for the consumer was taken  
18 promptly after a violation was discovered~~[.]~~ or the violation  
19 was not part of a pattern or practice."

20 PART II

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

4 "PART

5 USE OF SENIOR-SPECIFIC DESIGNATIONS

6 AND PROFESSIONAL DESIGNATIONS

7 §431:10D-B Purpose. The purpose of this part is to  
8 protect consumers from misleading and fraudulent marketing  
9 practices with respect to the use of senior-specific  
10 certifications and professional designations in the  
11 solicitation, sale, or purchase of, or advice made in connection  
12 with, a life insurance or annuity product.

13 §431:10D-C Prohibited uses of senior-specific  
14 certifications and professional designations. (a) It is an  
15 unfair and deceptive act or practice in the business of  
16 insurance within the meaning of article 13 for an insurance  
17 producer to use a senior-specific certification or professional  
18 designation that indicates or implies in such a way as to  
19 mislead a purchaser or prospective purchaser that the insurance  
20 producer has a special certification or training in advising or  
21 servicing seniors in connection with the solicitation, sale, or  
22 purchase of a life insurance or annuity product or in providing

1 advice as to the value of or the advisability of purchasing or  
2 selling a life insurance or annuity product, either directly or  
3 indirectly through publications or writings, or by issuing or  
4 promulgating analyses or reports related to a life insurance or  
5 annuity product.

6 (b) The prohibited use of senior-specific certifications  
7 or professional designations includes the following:

8 (1) Use of a certification or professional designation by  
9 an insurance producer who has not actually earned or  
10 is otherwise ineligible to use the certification or  
11 designation;

12 (2) Use of a non-existent, false, or self-conferred  
13 certification or professional designation;

14 (3) Use of a certification or professional designation  
15 that indicates or implies a level of occupational  
16 qualifications obtained through education, training,  
17 or experience that the insurance producer using the  
18 certification or designation does not have; and

19 (4) Use of a certification or professional designation  
20 that was obtained from a certifying or designating  
21 organization that:

- 1 (A) Is primarily engaged in the business of  
2 instruction in sales or marketing;
- 3 (B) Does not have reasonable standards or procedures  
4 for assuring the competency of its certificants  
5 or designees;
- 6 (C) Does not have reasonable standards or procedures  
7 for monitoring and disciplining its certificants  
8 or designees for improper or unethical conduct;  
9 or
- 10 (D) Does not have reasonable continuing education  
11 requirements for its certificants or designees to  
12 maintain the certificate or designation.
- 13 (c) There is a rebuttable presumption that a certifying or  
14 designating organization is not disqualified solely for purposes  
15 of subsection (b) when the certification or designation issued  
16 from the organization does not primarily apply to sales or  
17 marketing and when the organization or the certification or  
18 designation in question has been accredited by:
- 19 (1) The American National Standards Institute;
- 20 (2) The National Commission for Certifying Agencies; or



1           (3) Any organization that is on the United States  
2           Department of Education's list entitled "Accrediting  
3           Agencies Recognized for Title IV Purposes."

4           (d) In determining whether a combination of words or an  
5           acronym standing for a combination of words constitutes a  
6           certification or professional designation indicating or implying  
7           that a person has special certification or training in advising  
8           or servicing seniors, factors to be considered shall include:

9           (1) Use of one or more words such as "senior",  
10           "retirement", "elder", or like words combined with one  
11           or more words such as "certified", "registered",  
12           "chartered", "adviser", "specialist", "consultant",  
13           "planner", or like words, in the name of the  
14           certification or professional designation; and

15           (2) The manner in which those words are combined.

16           (e) For purposes of this section, a job title within an  
17           organization that is licensed or registered by a state or  
18           federal financial services regulatory agency is not a  
19           certification or professional designation, unless it is used in  
20           a manner that would confuse or mislead a reasonable consumer,  
21           when the job title:

H.B. NO. 1051

- 1 (1) Indicates seniority or standing within the
- 2 organization; or
- 3 (2) Specifies an individual's area of specialization
- 4 within the organization."

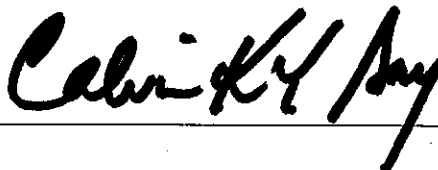
PART III

6 SECTION 8. In codifying the new sections added by sections  
7 2 and 7 of this Act, the revisor of statutes shall substitute  
8 appropriate section numbers for the letters used in designating  
9 the new sections in this Act.

10 SECTION 9. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 10. This Act shall take effect upon its approval.

13  
14 INTRODUCED BY: \_\_\_\_\_



15 BY REQUEST

JAN 24 2011

**Report Title:**

Insurance

**Description:**

Adopts model regulations of National Association of Insurance Commissioners in conformity with senior investor protections in section 989A of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010.

JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INSURANCE.

PURPOSE: To adopt model regulations of the National Association of Insurance Commissioners (NAIC) in compliance with the senior investor protections in section 989A of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act.

MEANS: Add three new sections to article 10D, chapter 431; and amend sections 431:10D-621, 431:10D-622, 431:10D-623, and 431:10D-624, Hawaii Revised Statutes (HRS).

JUSTIFICATION: The federal Dodd-Frank Wall Street Reform and Consumer Protection Act was passed to promote financial stability and transparency of the financial system and to protect consumers from abusive financial services practices.

The insurance commissioner (commissioner) continues to receive complaints from consumers, particularly seniors, about sales and marketing practices used by insurance producers with respect to annuity products.

Adopting these NAIC model laws will: (1) enhance protection to consumers, including seniors; and (2) enable the insurance division to apply for federal grants that propose activities to protect seniors from misleading or fraudulent marketing in the sale of financial products.

Impact on the public: This bill will enhance consumer protection for the public, particularly for seniors.

Impact on the department and other agencies: These amendments ensure conformity with the

federal reform of the financial services industry.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM  
DESIGNATION: CCA-106.

OTHER AFFECTED  
AGENCIES: None.

EFFECTIVE DATE: On approval.