
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 amend various
2 portions of title 24 of the Hawaii Revised Statutes, to update
3 and improve existing provisions and promote consumer protection,
4 including:

5 (1) Adding the National Association of Insurance
6 Commissioners Travel Insurance Model Law definition of
7 "travel insurance" and removing outdated and obsolete
8 limited lines products for travel insurance vending
9 machines or selling certain policies as a promotional
10 device to improve newspaper circulation;

11 (2) Amending the regulation of third party administrators
12 by excluding dental insurers and dental service
13 corporations and adding audited financial statements as
14 part of required annual report filings; and

15 (3) Adopting the revised National Association of Insurance
16 Commissioners Suitability in Annuity Transactions
17 Model Regulation, which requires producers to act in



1 the best interest of the consumer when making a
2 recommendation of an annuity and requires insurers to
3 establish and maintain a system to supervise
4 recommendations.

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

8 **"§431:10D-A Care obligation of insurers and producers.**

9 (a) The producer, in making a recommendation, shall exercise
10 reasonable diligence, care, and skill to:

11 (1) Know the consumer's financial situation, insurance
12 needs, and financial objectives;

13 (2) Understand the available recommendation options after
14 making a reasonable inquiry into options available to
15 the producer;

16 (3) Have a reasonable basis to believe the recommended
17 option effectively addresses the consumer's financial
18 situation, insurance needs, and financial objectives
19 over the life of the product, as evaluated in light of
20 the consumer profile information; and

21 (4) Communicate the basis or bases of the recommendation.



1 (b) To fulfill the obligation under subsection (a), a
2 producer shall:

3 (1) Make reasonable efforts to obtain consumer profile
4 information from the consumer prior to the
5 recommendation of an annuity;

6 (2) Consider the types of products the producer is
7 authorized and licensed to recommend or sell that
8 address the consumer's financial situation, insurance
9 needs, and financial objectives; provided that this
10 paragraph shall not require analysis or consideration
11 of any products outside the authority and license of
12 the producer or other possible alternative products or
13 strategies available in the market at the time of the
14 recommendation. Producers shall be held to standards
15 applicable to producers with similar authority and
16 licensure; and

17 (3) Have a reasonable basis to believe that the consumer
18 would benefit from certain features of the annuity,
19 such as annuitization, death, or living benefit, or
20 other insurance-related features.

21 (c) This section shall not be construed to create a



1 fiduciary obligation or relationship and shall only create a
2 regulatory obligation as established in this part.

3 (d) The consumer profile information, characteristics of
4 the insurer, and product costs, rates, benefits, and features
5 shall be those factors generally relevant in making a
6 determination whether an annuity effectively addresses the
7 consumer's financial situation, insurance needs, and financial
8 objectives; provided that the level of importance of each factor
9 may vary depending on the facts and circumstances of a
10 particular case; provided further that each factor shall not be
11 considered in isolation.

12 (e) A producer's obligation under subsection (a):

13 (1) Shall apply to the particular annuity as a whole and
14 the underlying subaccounts to which funds are
15 allocated at the time of purchase or exchange of an
16 annuity, and riders and similar producer enhancements,
17 if any;

18 (2) Shall not be construed to mean the annuity with the
19 lowest one-time or multiple occurrence compensation
20 structure shall necessarily be recommended; and



1 (3) Shall not be construed to mean the producer has
2 ongoing monitoring obligations under this section;
3 provided that an obligation may be separately owed
4 under the terms of a fiduciary, consulting, investment
5 advising, or financial planning agreement between the
6 consumer and the producer.

7 (f) In the case of an exchange or replacement of an
8 annuity, the producer shall consider the whole transaction,
9 including taking into consideration whether:

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

16 (2) The replacing product would substantially benefit the
17 consumer in comparison to the replaced product over
18 the life of the product; and

19 (3) The consumer has had another annuity exchange or
20 replacement and, in particular, an exchange or
21 replacement within the preceding sixty months.



1 (g) Nothing in this part shall be construed to require a
2 producer to obtain any license other than a producer license
3 with the appropriate line of authority to sell, solicit, or
4 negotiate insurance in this State, including but not limited to
5 any securities license to fulfill the duties and obligations
6 contained in this part; provided that the producer shall not
7 give advice or provide services that are otherwise subject to
8 securities laws or engage in any other activity requiring other
9 professional licenses.

10 **§431:10D-B Disclosure obligation of insurers and**
11 **producers.** (a) Before the recommendation or sale of an
12 annuity, the producer shall prominently disclose to the consumer
13 on a form substantially similar to Appendix A of the Spring
14 2020, National Association of Insurance Commissioners
15 Suitability in Annuity Transactions Model Regulation:

16 (1) A description of the scope and terms of the
17 relationship with the consumer and the role of the
18 producer in the transaction;

19 (2) An affirmative statement on whether the producer is
20 licensed and authorized to sell the following
21 products:



1 (A) Fixed annuities;

2 (B) Fixed indexed annuities;

3 (C) Variable annuities;

4 (D) Life insurance;

5 (E) Mutual funds;

6 (F) Stocks and bonds; and

7 (G) Certificates of deposit;

8 (3) An affirmative statement describing the insurers for
9 whom the producer is authorized, contracted,
10 appointed, or otherwise able to sell insurance
11 products, using the following descriptions:

12 (A) From one insurer;

13 (B) From two or more insurers; or

14 (C) From two or more insurers, although primarily
15 contracted with one insurer;

16 (4) A description of the sources and types of cash
17 compensation and non-cash compensation to be received
18 by the producer, including whether the producer is to
19 be compensated for the sale of a recommended annuity
20 by commission as part of premium or other remuneration
21 received from the insurer, intermediary, or other



1 producer or by fee as a result of a contract for
2 advice or consulting services; and

3 (5) A notice of the consumer's right to request additional
4 information regarding cash compensation as described
5 in subsection (b).

6 (b) Upon request of the consumer or the consumer's
7 designated representative, the producer shall disclose:

8 (1) A reasonable estimate of the amount of cash
9 compensation to be received by the producer, which may
10 be stated as a range of amounts or percentages; and

11 (2) Whether the cash compensation is a one-time or
12 multiple occurrence amount, and, if a multiple
13 occurrence amount, the frequency and amount of the
14 occurrence, which may be stated as a range of amounts
15 or percentages.

16 (c) Before or at the time of the recommendation or sale of
17 an annuity, the producer shall have a reasonable basis to
18 believe the consumer has been informed of various features of
19 the annuity, such as the potential surrender period and
20 surrender charge; potential tax penalty if the consumer sells,
21 exchanges, surrenders, or annuitizes the annuity; mortality and



expense fees; investment advisory fees; any annual fees;
potential charges for and features of riders or other options of
the annuity; limitations on interest returns; potential changes
in non-guaranteed elements of the annuity; insurance and
investment components; and market risk.

§431:10D-C Conflicts of interest obligation of insurers
and producers. A producer shall identify and avoid or
reasonably manage and disclose material conflicts of interest,
including material conflicts of interest related to an ownership
interest.

§431:10D-D Documentation obligation of insurers and
producers. (a) A producer shall at the time of recommendation
or sale:

- (1) Make a written record of any recommendation and the
basis for the recommendation subject to this part;
- (2) Obtain a consumer signed statement on a form
substantially similar to Appendix B of the Spring
2020, National Association of Insurance Commissioners
Suitability in Annuity Transactions Model Regulation,
documenting:



1 (A) A consumer's refusal to provide the consumer
2 profile information, if any; and

3 (B) A consumer's understanding of the ramifications
4 of not providing the consumer's consumer profile
5 information or providing insufficient consumer
6 profile information; and

7 (3) Obtain a consumer signed statement on a form
8 substantially similar to Appendix C of the Spring
9 2020, National Association of Insurance Commissioners
10 Suitability in Annuity Transactions Model Regulation,
11 acknowledging the annuity transaction is not
12 recommended if a consumer decides to enter into an
13 annuity transaction that is not based on the
14 producer's recommendation.

15 (b) Any requirement applicable to a producer under this
16 part shall apply to every producer who has exercised material
17 control or influence in the making of a recommendation and has
18 received direct compensation as a result of the recommendation
19 or sale, regardless of whether the producer has had any direct
20 contact with the consumer. Activities such as providing or
21 delivering marketing or educational materials, product



1 wholesaling or other back office product support, and general
2 supervision of a producer do not, in and of themselves,
3 constitute material control or influence."

4 SECTION 3. Section 431:9A-107.5, Hawaii Revised Statutes,
5 is amended by amending subsection (a) to read as follows:

6 "(a) Notwithstanding any other provision of this article,
7 the commissioner may issue:

8 ~~[(1) A limited license to persons selling travel tickets of~~
9 ~~a common carrier of persons or property who shall act~~
10 ~~only as to travel ticket policies of accident and~~
11 ~~health or sickness insurance or baggage insurance on~~
12 ~~personal effects;~~

13 ~~-(2) A limited license to each individual who has charge of~~
14 ~~vending machines used in this State for the~~
15 ~~effectuation of travel insurance;~~

16 ~~-(3) A limited license to any individual who sells policies~~
17 ~~of accident and health or sickness insurance as a~~
18 ~~promotional device to improve the circulation of a~~
19 ~~newspaper in this State;]~~

20 (1) A limited license to persons selling travel insurance.

21 For purposes of this paragraph, "travel insurance"



1 means insurance coverage for personal risks incident
2 to planned travel, including:

3 (A) Interruption or cancellation of trip or event;

4 (B) Loss of baggage or personal effects;

5 (C) Damages to accommodations or rental vehicles;

6 (D) Sickness, accident, disability, or death
7 occurring during travel;

8 (E) Emergency evacuation;

9 (F) Repatriation of remains; or

10 (G) Any other contractual obligations to indemnify or
11 pay a specified amount to the traveler upon
12 determinable contingencies related to travel as
13 approved by the commissioner.

14 "Travel insurance" does not include major medical
15 plans that provide comprehensive medical protection
16 for travelers with trips lasting longer than six
17 months, including those working or residing overseas
18 as an expatriate, or any other insurance product that
19 requires a specific insurance producer license;



1 ~~[(4)]~~ (2) A limited line credit insurance producer license
2 to any individual who sells, solicits, or negotiates
3 limited line credit insurance; or

4 ~~[(5)]~~ (3) A limited license to any owner of a self-service
5 storage facility, as defined in section 507-61, to
6 sell stored property insurance, as defined in section
7 431:9A-171."

8 SECTION 4. Section 431:9J-101, Hawaii Revised Statutes, is
9 amended by amending the definition of "administrator" or "third
10 party administrator" to read as follows:

11 ""Administrator" or "third party administrator" means a
12 person who collects charges or premiums from, or who adjusts or
13 settles claims on, residents of this State in connection with
14 self-insurance, stop-loss, or life insurance coverage, accident
15 and health or sickness insurance coverage, or article 1 of
16 chapter 432, except the following:

17 (1) An employer on behalf of its employees or the
18 employees of a subsidiary or an affiliated corporation
19 of the employer;

20 (2) A union on behalf of its members;



(3) An insurer authorized to transact insurance in this State with respect to a policy lawfully issued and delivered in and pursuant to the laws of this State or another state;

(4) A dental insurer holding a certificate of authority pursuant to chapter 432G;

(5) A dental service corporation established under chapter 423;

~~[(4)]~~ (6) A producer licensed to sell life insurance coverage or accident and health or sickness insurance coverage in this State, whose activities are limited exclusively to the sale of insurance;

~~[(5)]~~ (7) A managing general agent licensed in this State whose activities are limited exclusively to the scope of activities conveyed under that license;

~~[(6)]~~ (8) An individual adjuster licensed in this State whose activities are limited exclusively to the scope of activities conveyed under that license;

~~[(7)]~~ (9) An individual who adjusts or settles claims in the normal course of practice or employment as an attorney at law and who does not collect charges or



1 premiums in connection with life insurance coverage or
2 accident and health or sickness insurance coverage;

3 ~~[(+8)]~~ (10) A creditor on behalf of its debtors with respect
4 to insurance covering a debt between the creditor and
5 its debtors;

6 ~~[(+9)]~~ (11) A trust established in conformity with title 29
7 United States Code section 186 and trustees, agents,
8 and employees acting under that trust;

9 ~~[(+10)]~~ (12) A trust exempt from taxation under title 26
10 United States Code section 501(a) and trustees and
11 employees acting under that trust, or a custodian and
12 the custodian's agents and employees acting under a
13 custodian account that meets the requirements of title
14 26 United States Code section 401(f);

15 ~~[(+11)]~~ (13) A financial institution subject to supervision
16 or examination by federal or state banking
17 authorities, or a mortgage lender that collects and
18 remits premiums to licensed producers or authorized
19 insurers in connection with loan payments;

20 ~~[(+12)]~~ (14) A credit card issuing company advancing for and
21 collecting premiums or charges from its credit card



1 holders who have authorized collection; provided that
2 the company does not adjust or settle claims; and
3 ~~[(13)]~~ (15) A person who acts solely as an administrator of
4 one or more employee benefit plans established by an
5 employer or an employee organization."

6 SECTION 5. Section 431:9J-103, Hawaii Revised Statutes, is
7 amended to read as follows:

8 "~~[(1)]~~**\$431:9J-103[(1)] Surety bond required.** ~~[Prior to]~~ (a)
9 Before the issuance of the administrator license, the
10 administrator shall file with the commissioner, and maintain in
11 force while so licensed, a surety bond of at least \$100,000, in
12 the form and penal sum acceptable to the commissioner, and shall
13 provide that the bond may not be canceled or otherwise
14 terminated until two years have elapsed from the last day the
15 applicant was an administrator, unless the commissioner has
16 given prior written consent. The surety bond shall be
17 undertaken and may be enforced in the name of "Commissioner of
18 Insurance, State of Hawaii".

19 (b) For each subsequent annual report filing, the surety
20 bond amount shall be at least \$100,000 and filed in accordance
21 with section 431:9J-112."



SECTION 6. Section 431:9J-112, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~431:9J-112~~]~~ Annual report required. (a) An administrator shall file an annual report for the preceding calendar year with the commissioner on or before March 1 of each year, in a form and manner prescribed by the commissioner.

(b) The annual report shall include ~~[the]~~:

(1) The names and addresses of all insurers with which the administrator had an agreement during the preceding calendar year~~[-]~~;

(2) A renewal certificate for the surety bond required in section 431:9J-103 and an updated surety bond form, if needed; and

(3) An audited financial statement prepared by an independent certified public accountant."

SECTION 7. Chapter 431, article 10D, part VII, Hawaii Revised Statutes, is amended to read as follows:

"[~~§~~PART VII.~~]~~ SUITABILITY IN ANNUITY TRANSACTIONS

§431:10D-621 Scope. (a) This part applies to any recommendation ~~[to purchase, exchange, or replace]~~ or sale of an annuity ~~[made to a consumer by an insurance producer, or an~~



1 ~~insurer where no producer is involved, that results in the~~
2 ~~purchase, exchange, or replacement recommended].~~

3 (b) This part does not apply to transactions involving:

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

7 (2) Contracts used to fund:

8 (A) An employee pension or welfare benefit plan that
9 is covered by the Employee Retirement ~~[and]~~
10 Income Security Act~~[+]~~ of 1974, P.L. 93-406, as
11 amended;

12 (B) A plan described by ~~[sections]~~ section 401(a),
13 401(k), 403(b), 408(k), or 408(p) of the Internal
14 Revenue Code of 1986, as amended, if established
15 or maintained by an employer;

16 (C) A ~~[governmental]~~ government plan or church plan
17 defined in section 414 of the Internal Revenue
18 Code of 1986, as amended, a government or church
19 welfare benefit plan, or a deferred compensation
20 plan of a state or local government or tax exempt



1 organization subject to section 457 of the
2 Internal Revenue Code of 1986, as amended; or
3 (D) A non-qualified deferred compensation arrangement
4 established or maintained by an employer or plan
5 sponsor;
6 ~~[(E)]~~ (3) Settlements of or assumptions of liabilities
7 associated with personal injury litigation or any
8 dispute or claim resolution process; or
9 ~~[(F)]~~ (4) Formal prepaid funeral contracts.
10 (c) Nothing in this part shall be construed to affect in
11 any manner any provision of chapter 485A.
12 **§431:10D-622 Definitions.** For the purposes of this part:
13 "Annuity" means an annuity that is an insurance product
14 under state law that is individually solicited, whether the
15 product is classified as an individual or group annuity.
16 "Approved continuing education course provider" means an
17 individual or entity that is approved to offer continuing
18 education courses pursuant to article 9A.
19 "Cash compensation" means any discount, concession, fee,
20 service fee, commission, sales charge, loan, override, or cash
21 benefit received by a producer in connection with the



1 recommendation or sale of an annuity from an insurer,
2 intermediary, or directly from the consumer.

3 "Comparable standards" means:

4 (1) With respect to broker-dealers and registered
5 representatives of broker-dealers, applicable United
6 States Securities and Exchange Commission and
7 Financial Industry Regulatory Authority rules
8 pertaining to best interest obligations and
9 supervision of annuity recommendations and sales,
10 including but not limited to Regulation Best Interest,
11 title 17 Code of Federal Regulations section 240.151-
12 1, and any amendments or successor regulations
13 thereto;

14 (2) With respect to investment advisers registered under
15 federal or state securities laws or investment adviser
16 representatives, the fiduciary duties and all other
17 requirements imposed on the investment advisers or
18 investment adviser representatives by contract or
19 under the Rules and Regulations, Investment Company
20 Act of 1940, title 17 Code of Federal Regulations part



1 270, or applicable state securities law, including but
2 not limited to the Form ADV and interpretations; and
3 (3) With respect to fiduciaries or plan fiduciaries, the
4 duties, obligations, prohibitions, and all other
5 requirements attendant to such status under the
6 Employee Retirement Income Security Act of 1974, P.L.
7 93-406, or the Internal Revenue Code of 1986, as
8 amended, and any amendments or successor statutes
9 thereto.

10 "Consumer profile information" means information that is
11 reasonably appropriate to determine whether a recommendation
12 addresses the consumer's financial situation, insurance needs
13 and financial objectives, including, at a minimum, the
14 following:

- 15 (1) Age;
16 (2) Annual income;
17 (3) Financial situation and needs, including debts and
18 other obligations;
19 (4) Financial experience;
20 (5) Insurance needs;
21 (6) Financial objectives;



- 1 (7) Intended use of the annuity;
2 (8) Financial times horizon;
3 (9) Existing assets or financial products, including
4 investment, annuity, and insurance holdings;
5 (10) Liquidity needs;
6 (11) Liquid net worth;
7 (12) Risk tolerance, including but not limited to
8 willingness to accept non-guaranteed elements in the
9 annuity;
10 (13) Financial resources used to fund the annuity; and
11 (14) Tax status.

12 "Continuing education credit" means one continuing
13 education credit hour. For the purposes of this [paragraph,
14 definition, "credit hour" has the same meaning as set forth in
15 section 431:9A-102.

16 "Financial professional" means a producer that is regulated
17 and acting as:

- 18 (1) A broker-dealer registered under federal or state
19 securities laws or a registered representative of a
20 broker-dealer;



1 (2) An investment adviser registered under federal or
2 state securities laws or an investment adviser
3 representative associated with the federal or state
4 registered investment adviser; or

5 (3) A plan fiduciary under section 3(21) of the Employee
6 Retirement Income Security Act of 1974, P.L. 93-406,
7 or fiduciary under section 4975(E)(3) of the Internal
8 Revenue Code of 1986, as amended, or any amendments or
9 successor statutes thereto.

10 ~~["Insurance producer" means a person required to be~~
11 ~~licensed under the laws of this State to sell, solicit, or~~
12 ~~negotiate insurance, including annuities.]~~

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

16 "Intermediary" means an entity contracted directly with an
17 insurer or with another entity contracted with an insurer to
18 facilitate the sale of the insurer's annuities by producers.

19 "Material conflict of interest" means a financial interest
20 of the producer in the sale of an annuity that a reasonable
21 person would expect to influence the impartiality of a



1 recommendation. "Material conflict of interest" does not
2 include cash compensation or non-cash compensation.

3 "Non-cash compensation" means any form of compensation that
4 is not cash compensation, including but not limited to health
5 insurance, office rent, office support, and retirement benefits.

6 "Non-guaranteed elements" means the premiums, credited
7 interest rates (including any bonus), benefits, values,
8 dividends, non-interest based credits, charges, or elements of
9 formulas used to determine any of these, that are subject to
10 company discretion and are not guaranteed at issue. An element
11 shall be considered non-guaranteed if any of the underlying non-
12 guaranteed elements are used in its calculation.

13 "Producer" means a person or entity required to be licensed
14 under the laws of this State to sell, solicit, or negotiate
15 insurance, including annuities. "Producer" includes an insurer
16 where no producer is involved.

17 "Recommendation" means advice provided by [an insurance] a
18 producer[, or an insurer where no producer is involved,] to an
19 individual consumer that [results] was intended to result or
20 does result in a purchase, an exchange, or a replacement of an
21 annuity in accordance with that advice. "Recommendation" does



1 not include general communication to the public, generalized
2 customer services assistance or administrative support, general
3 educational information and tools, prospectuses, or other
4 product and sales material.

5 "Replacement" means a transaction [~~for the purchase of a~~
6 ~~new policy or contract that~~] in which a new annuity is to be
7 purchased, and it is known or should be known to the proposing
8 producer, or to the proposing insurer [~~if there is no producer,~~
9 ~~knows or has reason to know will cause an existing policy or~~
10 ~~contract to be~~] whether or not a producer is involved, that by
11 reason of the transaction, an existing annuity or other
12 insurance policy has been or may be any of the following:

- 13 (1) Terminated, lapsed, forfeited, or surrendered,
14 partially surrendered, or assigned to the replacing
15 insurer;
- 16 (2) Converted to reduced paid-up insurance, continued as
17 extended term insurance, or otherwise reduced in value
18 by the use of nonforfeiture benefits or other policy
19 values;



(3) Amended to effect a reduction in either benefits or the term for which coverage would otherwise remain in force or for which benefits would be paid;

(4) Reissued with any reduction in cash value; or

(5) Used in a finance purchase.

~~["Suitability information" means information about the consumer that is reasonably related to the determination of the appropriateness of a recommendation, including the following:~~

~~(1) Age;~~

~~(2) Annual income;~~

~~(3) Financial situation and needs, including the financial resources used for funding the annuity at issue;~~

~~(4) Financial experience;~~

~~(5) Financial objectives;~~

~~(6) Intended use of the annuity;~~

~~(7) Financial time horizon;~~

~~(8) Existing assets, including investment and life insurance holdings;~~

~~(9) Liquidity needs;~~

~~(10) Liquid net worth;~~

~~(11) Risk tolerance; and~~



1 ~~(12) Tax status.]~~

2 **§431:10D-623 Duties of insurers and [insurance] producers.**

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

12 ~~(1) The consumer has been reasonably informed of the~~
13 ~~various features of the annuity, including the~~
14 ~~potential surrender period and surrender charge;~~
15 ~~potential tax penalty if the consumer sells,~~
16 ~~exchanges, surrenders or annuitizes the annuity;~~
17 ~~mortality and expense fees; investment advisory fees;~~
18 ~~potential charges for and features of riders;~~
19 ~~limitations on interest returns; insurance and~~
20 ~~investment components; and market risk;~~



- ~~(2) The consumer would benefit from certain features of the annuity, including tax-deferred growth, annuitization, or death or living benefit;~~
- ~~(3) The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of the purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable and, in the case of an exchange or replacement, the transaction as a whole is suitable for the particular consumer; and~~
- ~~(4) In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable for the particular consumer taking into consideration whether:~~
- ~~(A) The consumer will incur a surrender charge; be subject to the commencement of a new surrender period; lose existing benefits such as death, living, or other contractual benefits; or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;~~



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

~~(C) The consumer has had another annuity exchange or
replacement, particularly an exchange or
replacement within the preceding thirty-six
months.~~

~~(b) Prior to the execution of a purchase, exchange, or
replacement of an annuity resulting from a recommendation, an
insurance producer, or an insurer where no producer is involved,
shall make reasonable efforts to obtain the consumer's
suitability information.~~

~~(c) Except as permitted under subsection (d), an insurer
shall not issue an annuity that has been recommended to a
consumer unless the insurer has a reasonable basis to believe
the annuity is suitable for the particular consumer based on the
consumer's suitability information.]~~

(a) A producer, when
making a recommendation of an annuity, shall act in the best
interest of the consumer under the circumstances known at the
time the recommendation is made, without placing the producer's
or the insurer's financial interest ahead of the consumer's
interest. A producer has acted in the best interest of the



1 consumer if the producer has satisfied the obligations regarding
2 care, disclosure, conflict of interest, and documentation as set
3 forth in this part.

4 ~~[(d)(1)]~~ (b)(1) Except as provided under paragraph (2),

5 ~~[neither an insurance]~~ a producer ~~[nor an insurer]~~

6 shall have ~~[any]~~ no obligation to a consumer under

7 section 431:10D-A related to any annuity transaction

8 if:

9 (A) No recommendation is made;

10 (B) A recommendation was made based on materially
11 inaccurate information provided by the consumer;

12 (C) A consumer refuses to provide relevant

13 ~~[suitability]~~ consumer profile information and
14 the annuity transaction is not recommended; or

15 (D) A consumer decides to enter into an annuity
16 transaction that is not based on a recommendation
17 of ~~[the insurer or]~~ the ~~[insurance]~~ producer~~[+]~~
18 ~~and]~~.

19 (2) An insurer's issuance of an annuity subject to
20 paragraph (1) shall be reasonable under all the



1 circumstances actually known to the insurer at the
2 time the annuity is issued.

3 ~~[(e) An insurance producer or a representative of the~~
4 ~~insurer, where no insurance producer is involved, shall at the~~
5 ~~time of sale.~~

6 ~~(1) Make a record of any recommendation subject to this~~
7 ~~section;~~

8 ~~(2) Obtain a signed statement from the consumer~~
9 ~~documenting the customer's refusal to provide~~
10 ~~suitability information, if applicable; and~~

11 ~~(3) Obtain a signed statement from the consumer~~
12 ~~acknowledging that an annuity transaction is not~~
13 ~~recommended if a consumer decides to enter into an~~
14 ~~annuity transaction that is not based on the insurance~~
15 ~~producer's or insurer's recommendation.~~

16 ~~(f)]~~ (c) Except as permitted under subsection (b), an
17 insurer shall not issue an annuity recommended to a consumer
18 unless there is a reasonable basis to believe the annuity would
19 effectively address the particular consumer's financial
20 situation, insurance needs, and financial objectives based on
21 the consumer profile information.



1 (d) An insurer shall establish and maintain a supervision
2 system that is reasonably designed to achieve the insurer's and
3 its ~~[insurance]~~ producers' compliance with this part, including:

4 (1) Reasonable procedures to inform the insurer's
5 ~~[insurance]~~ producers of the requirements of this
6 part, including incorporating the requirements of this
7 part into relevant ~~[insurance]~~ producer training
8 manuals;

9 (2) Standards for ~~[insurance]~~ producer product training,
10 including reasonable procedures to require its
11 ~~[insurance]~~ producers to comply with section 431:10D-
12 626;

13 (3) Product-specific training and training materials that
14 explain all material features of its annuity products
15 to its ~~[insurance]~~ producers;

16 (4) Procedures for the review of each recommendation prior
17 to the issuance of an annuity to ensure ~~[that]~~ there
18 is a reasonable basis to determine ~~[the suitability of~~
19 ~~a recommendation that may include additional review of~~
20 ~~selected transactions through electronic, physical, or~~
21 ~~other means; provided that the insurer may specify~~



1 ~~criteria for selection of transactions for additional~~
2 ~~review;~~] that the recommended annuity would
3 effectively address the particular consumer's
4 financial situation, insurance needs, and financial
5 objectives. The review procedures may apply a
6 screening system for the purpose of identifying
7 selected transactions for additional review and may be
8 accomplished electronically or through other means
9 including but not limited to physical review. An
10 electronic or other system may be designed to require
11 additional review only of those transactions
12 identified for additional review by the selection
13 criteria;

- 14 (5) Reasonable procedures to detect recommendations that
15 are not [~~suitable, including~~] in compliance with
16 subsections (b), (g), and (h), and sections 431:10D-A,
17 431:10D-B, 431:10D-C, and 431:10D-D. The reasonable
18 procedures may include confirmation of [consumer
19 suitability] the consumer profile information,
20 systematic consumer surveys, producer and consumer
21 interviews, confirmation letters, producer statements



1 or attestations, and programs of internal monitoring;
2 provided that nothing in this paragraph shall prevent
3 an insurer applying sampling procedures or confirming
4 [suitability] the consumer profile information or
5 other required information under this section after
6 issuance or delivery of the annuity;

7 (6) Reasonable procedures to assess, before or upon
8 issuance or delivery of an annuity, whether a producer
9 has provided to the consumer the information required
10 to be provided under this section;

11 (7) Reasonable procedures to identify and address
12 suspicious consumer refusals to provide consumer
13 profile information;

14 (8) Reasonable procedures to identify and eliminate any
15 sales contests, sale quotas, bonuses, and non-cash
16 compensation that are based on the sales of specific
17 annuities within a limited period of time. The
18 requirements of this paragraph shall not prohibit the
19 receipt of health insurance, office rent, office
20 support, retirement benefits, or other employee
21 benefits by employees; provided that those benefits



1 are not based upon the volume of sales of a specific
2 annuity within a limited period of time;

3 ~~[(6)]~~ (9) Annual review and testing of the supervision
4 system ~~[which]~~ that shall be documented in a written
5 report to the insurer's senior management, including
6 the senior manager responsible for audit functions, to
7 determine the effectiveness of the supervision system,
8 the exceptions found, and corrective action taken or
9 recommended, if any;

10 ~~[(7)]~~ (10) Procedures for monitoring contracts and, as
11 appropriate, conducting audits to assure that any
12 contracted functions are properly performed; and

13 ~~[(8)]~~ (11) Annual certification based on reasonable facts
14 from a senior manager who has responsibility for
15 contracted functions that the contracted functions are
16 properly performed.

17 ~~[(g)]~~ (e) An insurer may contract for performance of any
18 functions, including maintenance of procedures, required by
19 subsection ~~[(f)(1) to (6)]~~ (d)(1) to (9); provided that an
20 insurer shall be responsible for taking any appropriate
21 corrective action and may be subject to sanctions and penalties



1 pursuant to section 431:10D-624 regardless of whether the
2 insurer contracts for performance of a function and regardless
3 of the insurer's compliance with subsection ~~[(f)]~~ (d).

4 ~~[(h)]~~ (f) An insurer ~~[is]~~ shall not be required to include
5 in its system of supervision ~~[an insurance]~~:

6 (1) A producer's recommendations to consumers of products
7 other than the annuities offered by the insurer~~[-]~~; or

8 (2) Consideration of or comparison to options available to
9 the producer or compensation relating to those options
10 other than annuities or other products offered by the
11 insurer.

12 ~~[(i) An insurance producer shall not]~~ (g) Neither a
13 producer nor an insurer shall dissuade, or attempt to dissuade,
14 a consumer from:

15 (1) Truthfully responding to an insurer's request for
16 confirmation of ~~[suitability]~~ the consumer profile
17 information;

18 (2) Filing a complaint; or

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

20 ~~[(j) Sales]~~ (h) Recommendations and sales of annuities
21 made in compliance with ~~[requirements of the Financial Industry~~



1 ~~Regulatory Authority or its successor agency pertaining to~~
2 ~~suitability and supervision of annuity transactions]~~ comparable
3 standards shall satisfy the requirements of this ~~[section;~~
4 ~~provided that an insurer that issues an annuity subject to this~~
5 ~~part shall:]~~ part. This section shall apply to all
6 recommendations and sales of annuities made by financial
7 professionals in compliance with business rules, controls, and
8 procedures that satisfy a comparable standard even if the
9 standard would not otherwise apply to the product or
10 recommendation at issue. Nothing in this subsection shall limit
11 the commissioner's ability to investigate and enforce the
12 provisions of this part. Nothing in this subsection shall limit
13 the insurer's obligation to comply with subsection (c); provided
14 that the insurer may base its analysis on information received
15 from either the financial professional or the entity supervising
16 the financial professional.

17 (i) For subsection (h) to apply, an insurer shall:

18 (1) Monitor the [sales by entities registered as broker-
19 dealers with the Financial Industry Regulatory
20 Authority of annuities issued by the insurer] relevant
21 conduct of the financial professional seeking to rely



1 on subsection (h) or the entity responsible for
2 supervising the financial professional, such as the
3 financial professional's broker-dealer or an
4 investment adviser registered under federal or state
5 securities laws using information collected in the
6 normal course of an insurer's business; and

7 (2) Provide to the entity [~~subject to paragraph (1) with~~
8 ~~any~~] responsible for supervising the financial
9 professional seeking to rely on subsection (h), such
10 as the financial professional's broker-dealer or
11 investment adviser registered under federal or state
12 securities laws, information and reports that are
13 reasonably [~~necessary~~] appropriate to assist the
14 entity [~~in maintaining the~~] to maintain its
15 supervision system [~~required by the Financial Industry~~
16 Regulatory Authority.

17 ~~This subsection shall apply to sales of variable annuities and~~
18 ~~fixed annuities where suitability and supervision requirements~~
19 ~~are similar to those applied to variable annuity sales. Nothing~~
20 ~~in this subsection shall limit the insurance commissioner's~~
21 ~~ability to enforce this part].~~



1 §431:10D-624 Compliance mitigation; penalties[-];
2 enforcement. (a) An insurer shall be responsible for
3 compliance with this part. If a violation occurs because of the
4 action or inaction of the insurer or its [insurance] producer,
5 the commissioner may order:

6 (1) An insurer to take reasonably appropriate corrective
7 action for any consumer harmed by a failure to comply
8 with this part by the [insurer's] insurer, an entity
9 contracted to perform the insurer's supervisory
10 duties, or [its insurance producer's violation of this
11 part,] by the producer;

12 (2) A business entity, general agency, independent agency,
13 or the [insurance] producer to take reasonably
14 appropriate corrective action for any consumer harmed
15 by the [insurance] producer's violation of this part;
16 and

17 (3) Appropriate penalties and sanctions.

18 (b) Any penalty applicable to an insurer, a managing
19 general agent, independent agencies, or a producer under article
20 13 of chapter 431 may be applicable to a violation of this part;
21 provided that penalties may be reduced or eliminated if



1 corrective action for the consumer was taken promptly after a
2 violation was discovered or if the violation was not part of a
3 pattern or practice.

4 (c) The authority to enforce compliance with this part is
5 vested exclusively with the commissioner.

6 **§431:10D-625 Recordkeeping.** Insurers, managing general
7 agents, independent agencies, and [~~insurance~~] producers shall
8 maintain or make available to the commissioner records of the
9 information collected from the consumer; disclosures made to the
10 consumer, including summaries of oral disclosures; and other
11 information used in making the recommendations that were the
12 basis for insurance transactions for five years after the
13 insurance transaction has been completed by the insurer. An
14 insurer may maintain documentation on behalf of [~~an insurance~~] a
15 producer.

16 **§431:10D-626 [~~Insurance producer~~] Producer training.** (a)
17 [~~An insurance~~] A producer shall not solicit the sale of an
18 annuity product unless the [~~insurance~~] producer has adequate
19 knowledge of the product to recommend the annuity and the
20 [~~insurance~~] producer is in compliance with the insurer's
21 standards for product training. [~~An insurance~~] A producer may



1 rely on insurer-provided, product-specific training standards
2 and materials to comply with this subsection.

3 (b) ~~[Any insurance]~~ A producer who is authorized to sell
4 annuity products on or before ~~[January 31, 2012,]~~ December 31,
5 2022, shall complete by ~~[January 31, 2012,]~~ July 1, 2023, a one-
6 time training course on annuity products meeting the
7 requirements of subsection (d) ~~[.]~~, by completing either:

8 (1) A new four-credit training course approved by the
9 commissioner after December 31, 2022; or

10 (2) An additional one-credit training course approved by
11 the commissioner and provided by an approved education
12 provider on appropriate sales practices, replacement,
13 and disclosure requirements under this part.

14 (c) ~~[An insurance]~~ A producer who obtains a life or
15 variable life and variable annuity products line of authority
16 after ~~[January 31, 2012,]~~ December 31, 2022, shall not engage in
17 the sale of annuities until the ~~[insurance]~~ producer has
18 completed training meeting the requirements of subsection (d).

19 (d) The training required by this section shall be
20 approved by the commissioner, be conducted by an approved



1 continuing education course provider, and meet the following
2 requirements:

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

6 (2) The training shall include information on the
7 following topics:

8 (A) The types and various classifications of
9 annuities available on the market;

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 standard of conduct, sales practices,
17 replacement, and disclosure requirements; and

18 (3) The training shall not include any marketing
19 information for products of any particular insurer or
20 training on sales techniques.



1 (e) A provider of an annuity training course intending to
2 comply with this section shall register as an approved
3 continuing education course provider in this State and comply
4 with the rules and guidelines applicable to [~~insurance~~] producer
5 continuing education courses as set forth in article 9A.

6 (f) Annuity training courses may be conducted and
7 completed by classroom or self-study methods in accordance with
8 article 9A.

9 (g) Providers of annuity training shall comply with the
10 reporting requirements and shall issue certificates of
11 completion in accordance with article 9A.

12 (h) The satisfaction of the training requirements of
13 another state that are substantially similar to the provisions
14 of this section shall be deemed to satisfy the training
15 requirements of this section in this State.

16 (i) The satisfaction of the components of the training
17 requirements of any course or courses with components determined
18 by the commissioner to be substantially similar to the
19 provisions of this section shall be deemed to satisfy the
20 training requirements of this section.



1 ~~[(i)]~~ (j) An insurer shall verify that ~~[an insurance]~~ the
2 producer has completed the annuity training course required by
3 this section before allowing the producer to sell an annuity
4 product for the insurer. An insurer may satisfy its
5 responsibility under this subsection by obtaining certificates
6 of completion of the training course or from a reasonably
7 reliable commercial database vendor that has a reporting
8 arrangement with approved continuing education course
9 providers."

10 SECTION 8. The insurance commissioner may delay the
11 enforcement of sections 3 and 6 of this Act until no later than
12 March 31, 2023.

13 SECTION 9. In codifying the new sections added by section
14 2 of this Act, the revisor of statutes shall substitute
15 appropriate section numbers for the letters used in designating
16 the new sections in this Act.

17 SECTION 10. Statutory material to be repealed is bracketed
18 and stricken. New statutory material is underscored.

19 SECTION 11. This Act shall take effect on July 1, 2022;
20 provided that sections 2 and 7 shall take effect on January 1,
21 2023.



Report Title:

Insurance Code; Limited Lines Producer Licenses; Producers;
Surety Bonds; Third Party Administrators; Annuity Transactions

Description:

Amends the limited lines producer license to include all aspects of travel insurance. Removes references to outdated and obsolete limited lines product offerings. Excludes dental insurers and dental service corporations as third party administrators. Requires renewal certificates and audited financial statements in the annual reports of third party administrators. Beginning 1/1/2023, adopts the revised National Association of Insurance Commissioners' Suitability in Annuity Transactions Model Regulation. (CD1)

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

