### A BILL FOR AN ACT

RELATING TO INSURANCE.

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

SECTION 1. The purpose of this Act is to amend various
 portions of title 24 of the Hawaii Revised Statutes, to update
 and improve existing provisions and promote consumer protection,
 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7		"travel insurance" and removing outdated and obsolete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

## 2022-3144 HB2111 CD1 HMSO-1

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	SECT	ION 2. Chapter 431, Hawaii Revised Statutes, is	
6	amended b	y adding four new sections to part VII of article 10D	
7	to be app	ropriately designated and to read as follows:	
8	" <u>§</u> 43	1:10D-A Care obligation of insurers and producers.	
9	(a) The	producer, in making a recommendation, shall exercise	
10	reasonabl	e 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.	



Page 2

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H.B.		2111 H.D. 1
	NO.	S.D. 1 C.D. 1

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	regulator	y obligation as established in this part.
3	(d)	The consumer profile information, characteristics of
4	the insur	er, and product costs, rates, benefits, and features
5	shall be	those factors generally relevant in making a
6	determina	tion whether an annuity effectively addresses the
7	consumer':	s financial situation, insurance needs, and financial
8	objective	s; provided that the level of importance of each factor
9	may vary (	depending on the facts and circumstances of a
10	particula	r case; provided further that each factor shall not be
11	considere	d in isolation.
12	<u>(e)</u>	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

2022-3144 HB2111 CD1 HMSO-1

H.B.	NO.	2111 H.D. 1
		S.D. 1
		C.D. 1

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	<u>§431:10D-B</u> Disclosure obligation of insurers and		
11	<b>producers.</b> (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) <u>Certificates of deposit;</u>
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



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H.B.	NO.	
		C.D. 1

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	<u>(b)</u>	Upon request of the consumer or the consumer's
7	designate	d 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	<u>an annuit</u>	y, the producer shall have a reasonable basis to
18	believe t	he consumer has been informed of various features of
19	the annui	ty, such as the potential surrender period and
20	surrender	charge; potential tax penalty if the consumer sells,
21	<u>exchanges</u>	, surrenders, or annuitizes the annuity; mortality and



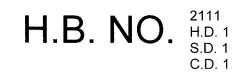
1	<u>expense</u> f	ees; investment advisory fees; any annual fees;
2	potential	charges for and features of riders or other options of
3	the annui	ty; limitations on interest returns; potential changes
4	<u>in non-gu</u>	aranteed elements of the annuity; insurance and
5	investmen	t components; and market risk.
6	<u>§</u> 431	:10D-C Conflicts of interest obligation of insurers
7	and produ	cers. A producer shall identify and avoid or
8	reasonabl	y manage and disclose material conflicts of interest,
9	including	material conflicts of interest related to an ownership
10	interest.	
11	<u>§431</u>	:10D-D Documentation obligation of insurers and
12	producers	. (a) A producer shall at the time of recommendation
13	or sale:	
14	(1)	Make a written record of any recommendation and the
15		basis for the recommendation subject to this part;
16	(2)	Obtain a consumer signed statement on a form
17		substantially similar to Appendix B of the Spring
18		2020, National Association of Insurance Commissioners
19		Suitability in Annuity Transactions Model Regulation,

H.B.	NO.	2111 H.D. 1 S.D. 1
		S.D. 1 C.D. 1

1		<u>(A)</u>	A consumer's refusal to provide the consumer
2			profile information, if any; and
3		<u>(B)</u>	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)	<u>Obta</u>	in a consumer signed statement on a form
8		subs	tantially similar to Appendix C of the Spring
9		2020	, National Association of Insurance Commissioners
10		<u>Suit</u>	ability in Annuity Transactions Model Regulation,
11		ackn	owledging the annuity transaction is not
12		reco	mmended if a consumer decides to enter into an
13		annu	ity transaction that is not based on the
14		prod	ucer's recommendation.
15	(b)	Any	requirement applicable to a producer under this
16	part shal	l app	ly to every producer who has exercised material
17	<u>control o</u>	r inf	luence in the making of a recommendation and has
18	received	direc	t compensation as a result of the recommendation
19	or sale,	regar	dless of whether the producer has had any direct
20	<u>contact</u> w	ith t	he consumer. Activities such as providing or
21	deliverin	g mar	keting or educational materials, product



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1	wholesali	ng or other back office product support, and general
2	supervisi	on of a producer do not, in and of themselves,
3	constitut	e material control or influence."
4	SECT	ION 3. Section 431:9A-107.5, Hawaii Revised Statutes,
5	is amende	d by amending subsection (a) to read as follows:
6	"(a)	Notwithstanding any other provision of this article,
7	the commi	ssioner may issue:
8	[ <del>-(1)</del>	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		<del>personal-effects;</del>
13	<del>(2)</del>	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	<del>(3)</del>	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"

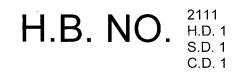
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1	means insurance coverage for personal risks incident
2	to planned travel, including:
3	(A) Interruption or cancellation of trip or event;
4	(B) Loss of baggage or personal effects;
5	(C) Damages to accommodations or rental vehicles;
6	(D) Sickness, 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;

H.B. NO. <sup>2111</sup> H.D. 1 S.D. 1 C.D. 1

1	[ <del>(4)</del> ] <u>(2)</u> A limited line credit insurance producer license
2	to any individual who sells, solicits, or negotiates
3	limited line credit insurance; or
4	[ <del>(5)</del> ] <u>(3)</u> 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;

# 2022-3144 HB2111 CD1 HMSO-1



1	(3)	An insurer authorized to transact insurance in this
2		State with respect to a policy lawfully issued and
3		delivered in and pursuant to the laws of this State or
4		another state;
5	(4)	<u>A dental insurer holding a certificate of authority</u>
6		pursuant to chapter 432G;
7	(5)	A dental service corporation established under chapter
8		423;
9	[ <del>-(4)</del> ]	(6) A producer licensed to sell life insurance
10		coverage or accident and health or sickness insurance
11		coverage in this State, whose activities are limited
12		exclusively to the sale of insurance;
13	[ <del>(5)</del> ]	(7) A managing general agent licensed in this State
14		whose activities are limited exclusively to the scope
15		of activities conveyed under that license;
16	[ <del>(6)</del> ]	(8) An individual adjuster licensed in this State
17		whose activities are limited exclusively to the scope
18		of activities conveyed under that license;
19	[-(7)]	(9) An individual who adjusts or settles claims in
20		the normal course of practice or employment as an
21		attorney at law and who does not collect charges or

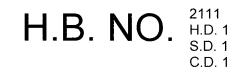
2022-3144 HB2111 CD1 HMSO-1

1		premiums in connection with life insurance coverage or
2		accident and health or sickness insurance coverage;
3	[ <del>(8)</del> ]	(10) A creditor on behalf of its debtors with respect
4		to insurance covering a debt between the creditor and
5		its debtors;
6	[ <del>(9)</del> ]	(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	[ <del>(10)</del> ]	(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	[ <del>(11)</del> ]	(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	[ <del>(12)</del> ]	(14) A credit card issuing company advancing for and
21		collecting premiums or charges from its credit card

2022-3144 HB2111 CD1 HMSO-1

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 one or more employee benefit plans established by an 4 5 employer or an employee organization." 6 SECTION 5. Section 431:9J-103, Hawaii Revised Statutes, is 7 amended to read as follows: 8 "[**+**]§**431:9J-103[+**] 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."

2022-3144 HB2111 CD1 HMSO-1



1	SECTION 6. Section 431:9J-112, Hawaii Revised Statutes, is
2	amended to read as follows:
3	"[ <b>-f]§431:9J-112[<del>]</del>] Annual report required.</b> (a) An
4	administrator shall file an annual report for the preceding
5	calendar year with the commissioner on or before March 1 of each
6	year, in a form and manner prescribed by the commissioner.
7	(b) The annual report shall include [the]:
8	(1) The names and addresses of all insurers with which the
9	administrator had an agreement during the preceding
10	calendar year[+] <u>;</u>
11	(2) A renewal certificate for the surety bond required in
12	section 431:9J-103 and an updated surety bond form, if
13	needed; and
14	(3) An audited financial statement prepared by an
15	independent certified public accountant."
16	SECTION 7. Chapter 431, article 10D, part VII, Hawaii
17	Revised Statutes, is amended to read as follows:
18	"[+]PART VII.[+] SUITABILITY IN ANNUITY TRANSACTIONS
19	<b>§431:10D-621 Scope.</b> (a) This part applies to any
20	recommendation [to-purchase, exchange, or replace] or sale of an
21	annuity [made to a consumer by an insurance producer, or an



1	insurer w	here :	no producer is involved, that results in the
2	<del>purchase,</del>	exch	ange, or replacement recommended].
3	(b)	This	part does not apply to transactions involving:
4	(1)	Dire	ct-response solicitations where there is no
5		reco	mmendation based on information collected from the
6		cons	umer pursuant to this part; or
7	(2)	Cont	racts used to fund:
8		(A)	An employee pension or welfare benefit plan that
9			is covered by the Employee Retirement [ <del>and</del> ]
10			Income Security Act[+] of 1974, P.L. 93-406, as
11			amended;
12		(B)	A plan described by [ <del>sections</del> ] <u>section</u> 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 [ <del>governmental</del> ] <u>government</u> 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

2022-3144 HB2111 CD1 HMSO-1

1		organization subject to section 457 of the
2		Internal Revenue Code of 1986, as amended; <u>or</u>
3	(D)	A non-qualified deferred compensation arrangement
4		established or maintained by an employer or plan
5		sponsor;
6	[ <del>-(E)</del> ]	(3) Settlements of or assumptions of liabilities
7	asso	ciated with personal injury litigation or any
8	dispu	ute or claim resolution process; or
9	[ <del>-(F)</del> ]	(4) Formal prepaid funeral contracts.
10	(c) Noth	ing in this part shall be construed to affect in
11	any manner any	provision of chapter 485A.
12	§431:10D-0	622 Definitions. For the purposes of this part:
13	"Annuity"	means an annuity that is an insurance product
14	under state la	w that is individually solicited, whether the
15	product is cla	ssified as an individual or group annuity.
16	"Approved	continuing education course provider" means an
17	individual or e	entity that is approved to offer continuing
18	education cours	ses pursuant to article 9A.
19	"Cash com	pensation" means any discount, concession, fee,
20	service fee, co	ommission, sales charge, loan, override, or cash
21	benefit receive	ed by a producer in connection with the
21		ed by a producer in connection with the

2022-3144 HB2111 CD1 HMSO-1

#### H.B. NO. <sup>2111</sup> H.D. 1 S.D. 1 C.D. 1

1	recommenda	ation or sale of an annuity from an insurer,
2	intermedia	ary, or directly from the consumer.
3	"Com	parable 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

2022-3144 HB2111 CD1 HMSO-1

Page 21

H.B.	NO.	2111 H.D. 1 S.D. 1 C.D. 1
		U.D. 1

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	<u>.</u>		
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;		

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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	"Con	tinuing education credit" means one continuing	
13	education credit hour. For the purposes of this [ <del>paragraph,</del> ]		
14	definition, "credit hour" has the same meaning as set forth in		
15	section 431:9A-102.		
16	"Fin	ancial professional" means a producer that is regulated	
17	and actin	g as:	
18	(1)	A broker-dealer registered under federal or state	
19		securities laws or a registered representative of a	
20		broker-dealer;	

2022-3144 HB2111 CD1 HMSO-1

Page 23

H.B.	NO.	2111 H.D. 1 S.D. 1 C.D. 1
		C.D. T

(2)	An investment adviser registered under federal or	
	state securities laws or an investment adviser	
representative associated with the federal or state		
	registered investment adviser; or	
(3)	A plan fiduciary under section 3(21) of the Employee	
	Retirement Income Security Act of 1974, P.L. 93-406,	
	or fiduciary under section 4975(E)(3) of the Internal	
	Revenue Code of 1986, as amended, or any amendments or	
	successor statutes thereto.	
["Insurance-producer" means a person-required to be		
<del>licensed</del>	under the laws of this State to sell, solicit, or	
negotiate-insurance, including annuities.]		
"Insurer" means a company required to be licensed under the		
laws of this State to provide insurance products, including		
annuities.		
"Intermediary" means an entity contracted directly with an		
insurer or with another entity contracted with an insurer to		
facilitat	e the sale of the insurer's annuities by producers.	
"Mat	erial conflict of interest" means a financial interest	
of the producer in the sale of an annuity that a reasonable		
person would expect to influence the impartiality of a		
	(3) ["In licensed negotiate "Ins laws of t annuities <u>"Int</u> insurer o facilitat <u>"Mat</u> of the pr	



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] <u>a</u>		
18	producer[ <del>, or an insurer where no producer is involved,</del> ] to an		
19	individual consumer that [results] was intended to result or		
20	<u>does result</u> in a purchase, <u>an</u> exchange, or <u>a</u> replacement of an		
21	annuity in accordance with that advice. "Recommendation" does		

1	not inclu	de general communication to the public, generalized
2	customer	services assistance or administrative support, general
3	education	al information and tools, prospectuses, or other
4	product a	nd sales material.
5	"Rep	lacement" means a transaction [ <del>for the purchase of a</del>
6	new polic	y 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 <u>to</u> the proposing insurer [ <del>if there is no producer,</del>
9	knows-or-	has reason to know will cause an existing policy or
10	<del>contract</del>	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;

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2022-3144 HB2111 CD1 HMSO-1

Page 25



1	(3)	Amended to effect a reduction in either benefits or
2		the term for which coverage would otherwise remain in
3		force or for which benefits would be paid;
4	(4)	Reissued with any reduction in cash value; or
5	(5)	Used in a finance purchase.
6	[ <del>"Su</del>	itability information means information about the
7	consumer-	that is reasonably related to the determination of the
8	appropria	teness of a recommendation, including the following:
9	<del>-(1-)</del>	Age;
10	<del>(2)</del>	Annual income;
11	<del>-(3)</del>	Financial situation and needs, including the financial
12		resources used for funding the annuity at issue;
13	-(4)-	Financial experience;
14	- <del>(5)</del>	Financial objectives;
15	- <del>(6)</del> -	Intended-use-of-the annuity;
16	<del>-(7)</del> -	Financial time horizon;
17	<del>(8)</del> -	Existing assets, including investment and life
18		insurance holdings;
19	<del>-(9)</del> -	Liquidity needs;
20	<del>(10)</del>	Liquid net worth;
21	<del>(11)</del>	Risk tolerance; and

(12) Tax status.

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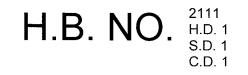


2 §431:10D-623 Duties of insurers and [insurance] producers. 3 [(a) In recommending to a consumer the purchase of an annuity 4 or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance 5 6 producer, or the insurer where no producer 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;

2022-3144 HB2111 CD1 HMSO-1

1	<del>(2)</del>	The consumer would benefit-from certain features of	
2		the annuity, including tax-deferred growth,	
3		annuitization, or death or living benefit;	
4	<del>(3)</del>	The particular annuity as a whole, the underlying	
5		subaccounts to which funds are allocated at the time	
6		of the purchase or exchange of the annuity, and riders	
7		and similar product enhancements, if any, are suitable	
8		and, in the case of an exchange or replacement, the	
9		transaction as a whole is suitable for the particular	
10		consumer; and	
11	-(-4-)-	In the case of an exchange or replacement of an	
12		annuity, the exchange or replacement is suitable for	
13		the particular consumer taking into consideration	
14		whether:	
15		(A) The consumer will incur a surrender charge; be	
16		subject to the commencement of a new surrender	
17		period; lose existing benefits such as death,	
18		living, or other contractual benefits; or be	
19		subject to increased fees, investment advisory	
20		fees, or charges for riders and similar product	
21		enhancements;	

2022-3144 HB2111 CD1 HMSO-1



1	<del>-(B)-</del>	The consumer would benefit from product
2		enhancements and improvements; and
3	<del>-(C)</del> -	The consumer has had another annuity exchange or
4		replacement, particularly an exchange or
5		replacement within the preceding thirty-six
6		months.
7	<del>(b) Prio</del>	r to the execution of a purchase, exchange, or
8	replacement of	an annuity resulting from a recommendation, an
9	insurance prod	ucer,-or an insurer where no producer is involved,
10	<del>shall make rea</del>	sonable efforts to obtain the consumer's
11	suitability in	formation.
12	<del>(с) Ехсе</del>	pt as permitted under subsection (d), an insurer
13	<del>shall not issu</del>	e an annuity that has been recommended to a
14	<del>consumer unles</del>	s-the insurer has a reasonable basis to believe
15	the annuity is	suitable for the particular consumer based on the
16	<del>consumer's sui</del>	tability information.] (a) A producer, when
17	making a recom	mendation of an annuity, shall act in the best
18	interest of th	e consumer under the circumstances known at the
19	time the recom	mendation is made, without placing the producer's
20	or the insurer	's financial interest ahead of the consumer's
21	interest. A p	roducer has acted in the best interest of the

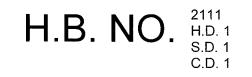


H.B. NO. <sup>2111</sup> H.D. 1 S.D. 1 C.D. 1

1	consumer	if th	e producer has satisfied the obligations regarding
2	<u>care, dis</u>	closu	re, conflict of interest, and documentation as set
3	<u>forth</u> in	this	part.
4	[ <del>(d)(1)</del> ]	(b) (	1) Except as provided under paragraph (2),
5		[ <del>nei</del>	ther an insurance] <u>a</u> producer [ <del>nor an insurer</del> ]
6		shal	l have [ <del>any</del> ] <u>no</u> obligation to a consumer <u>under</u>
7		sect	ion 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 [ <del>the insurer or</del> ] the [ <del>insurance</del> ] producer[ <del>;</del>
18			and].
19	(2)	An i	nsurer's issuance of an annuity subject to
20		para	graph (1) shall be reasonable under all the

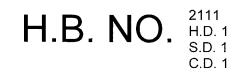
2022-3144 HB2111 CD1 HMSO-1

Page 31



1		circumstances actually known to the insurer at the
2		time the annuity is issued.
3	[ <del>(e)</del>	-An insurance producer or a representative of the
4	insurer,	where no insurance producer is involved, shall at the
5	time of s	ale:
6	<del>(1)</del>	Make a record of any recommendation subject to this
7		section;
8	<del>(2)</del>	Obtain a signed statement from the consumer
9		documenting the customer's refusal to provide
10		suitability information, if applicable; and
11	<del>-(3)</del> -	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	<del>(f)</del> ]	(c) Except as permitted under subsection (b), an
17	insurer s	hall not issue an annuity recommended to a consumer
18	unless th	ere is a reasonable basis to believe the annuity would
19	effective	ly address the particular consumer's financial
20	situation	, insurance needs, and financial objectives based on
21	the consu	mer profile information.

2022-3144 HB2111 CD1 HMSO-1



1	(d)	An insurer shall establish and maintain a supervision
2	system th	at is reasonably designed to achieve the insurer's and
3	its [ <del>insu</del>	rance] producers' compliance with this part, including:
4	(1)	Reasonable procedures to inform the insurer's
5		[ <del>insurance</del> ] producers of the requirements of this
6		part, including incorporating the requirements of this
7		part into relevant [ <del>insurance</del> ] 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 [ <del>insurance</del> ] producers;
16	(4)	Procedures for the review of each recommendation prior
17		to the issuance of an annuity to ensure [ <del>that</del> ] 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

2022-3144 HB2111 CD1 HMSO-1

# H.B. NO. 2111 H.D. 1 S.D. 1 C.D. 1

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		<u>criteria;</u>
14	(5)	Reasonable procedures to detect recommendations that
15		are not [ <del>suitable, including</del> ] <u>in compliance with</u>
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		[ <del>suitability</del> ] <u>the consumer profile</u> information <u>or</u>
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

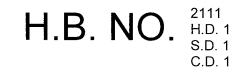
2022-3144 HB2111 CD1 HMSO-1

1		are not based upon the volume of sales of a specific
2		annuity within a limited period of time;
3	[ <del>(6)</del> ]	(9) Annual review and testing of the supervision
4		system [ <del>which</del> ] <u>that</u> shall be documented in a <u>written</u>
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	[ <del>(7)</del> ]	(10) Procedures for monitoring contracts and, as
11		appropriate, conducting audits to assure that any
12		contracted functions are properly performed; and
13	[ <del>(8)</del> ]	(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	[ <del>(g)</del> ]	] <u>(e)</u> An insurer may contract for performance of any
18	functions	, including maintenance of procedures, required by
19	subsection	n [ <del>(f)(1) to (6);</del> ] <u>(d)(1) to (9);</u> provided that an
20	insurer sl	nall be responsible for taking any appropriate
21	corrective	e action and may be subject to sanctions and penalties

# 2022-3144 HB2111 CD1 HMSO-1

1	pursuant	to section 431:10D-624 regardless of whether the
2	insurer c	ontracts for performance of a function and regardless
3	of the in	surer's compliance with subsection $[(f).]$ (d).
4	[ <del>(h)</del>	] <u>(f)</u> An insurer [ <del>is</del> ] <u>shall</u> not <u>be</u> required to include
5	in its sy	stem of supervision [ <del>an insurance</del> ] <u>:</u>
6	(1)	$\underline{A}$ producer's recommendations to consumers of products
7		other than the annuities offered by the insurer[ $\cdot$ ]; 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	[ <del>-(±)</del> -	An insurance producer shall not] (g) Neither a
13	producer	nor an insurer shall dissuade, or attempt to dissuade,
14	a consume	r from:
15	(1)	Truthfully responding to an insurer's request for
16		confirmation of [ <del>suitability</del> ] the consumer profile
17		information;
18	(2)	Filing a complaint; or
19	(3)	Cooperating with the investigation of a complaint.
20	[ <del>-(j-)</del>	Sales] (h) Recommendations and sales of annuities
21	made in c	ompliance with [ <del>requirements of the Financial Industry</del>

# 2022-3144 HB2111 CD1 HMSO-1



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

2022-3144 HB2111 CD1 HMSO-1

H.B. NO. <sup>2111</sup> H.D. 1 S.D. 1 C.D. 1

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 <u>to</u> the entity [ <del>subject to paragraph (1) with</del>
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 [ <del>necessary</del> ] <u>appropriate</u> to assist the
14		entity [ <del>in maintaining the</del> ] <u>to maintain its</u>
15		supervision system [required by the Financial Industry
16		Regulatory Authority.
17	<del>This subs</del>	ection shall apply to sales of variable annuities and
18	fixed_ann	uitics-where suitability-and supervision requirements
19	<del>are simil</del>	ar to those applied to variable annuity sales. Nothing
20	<del>in this s</del>	ubsection shall limit the insurance commissioner's
21	ability t	o enforce this part].

2022-3144 HB2111 CD1 HMSO-1

H.B. NO. <sup>2111</sup> H.D. 1 S.D. 1 C.D. 1

1	§ <b>431</b>	:10D-624 Compliance mitigation; penalties[-];
2	enforceme	<b>nt.</b> (a) An insurer shall be responsible for
3	complianc	e with this part. If a violation occurs because of the
4	action or	inaction of the ünsurer or its [ <del>insurance</del> ] producer,
5	the commi	ssioner 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		<pre>part;] by the producer;</pre>
12	(2)	A business entity, general agency, independent agency,
13		or the [ <del>insurance</del> ] 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 a	gent, independent agencies, or a producer under article
20	13 of cha	pter 431 may be applicable to a violation of this part;
21	provided	that penalties may be reduced or eliminated if

2022-3144 HB2111 CD1 HMSO-1

H.B. NO. <sup>2111</sup> H.D. 1

corrective action for the consumer was taken promptly after a
 violation was discovered or if the violation was not part of a
 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 maintain or make available to the commissioner records of the 8 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 insurance transaction has been completed by the insurer. An 13 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

### 2022-3144 HB2111 CD1 HMSO-1



1	rely on insurer-provided, product-specific training standards
2	and materials to comply with this subsection.
3	(b) [ <del>Any insurance</del> ] <u>A</u> producer who is authorized to sell
4	annuity products on or before [January 31, 2012,] December 31,
5	2022, shall complete by [ <del>January 31, 2012,</del> ] 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) [ <del>An insurance</del> ] <u>A</u> 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

2022-3144 HB2111 CD1 HMSO-1



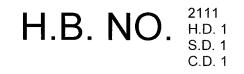
1	continuin	g education course provider, and meet the following
2	requireme	nts:
3	(1)	The minimum length of the training shall be sufficient
4		to qualify for at least four continuing education
5		credits;
6	(2)	The training shall include information on the
7		following topics:
8		(A) The types and 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.

2022-3144 HB2111 CD1 HMSO-1

H.B. NO. <sup>2111</sup> H.D. 1 S.D. 1 C.D. 1

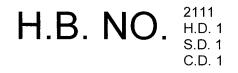
1	(e) A provider of an annuity training course intending to
2	comply with this section shall register as an approved
3	continuing education course provider in this State and comply
4	with the rules and guidelines applicable to [insurance] producer
5	continuing education courses as set forth in article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

2022-3144 HB2111 CD1 HMSO-1



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 enforcement of sections 3 and 6 of this Act until no later than 11 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; provided that sections 2 and 7 shall take effect on January 1, 20 21 2023.

### 2022-3144 HB2111 CD1 HMSO-1



#### 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)

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