
A BILL FOR AN ACT

RELATING TO INSURANCE.

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

PART I

SECTION 1. The purpose of the 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:

(1) Adding the National Association of Insurance Commissioners Travel Insurance Model Law definition of "travel insurance" and eliminating optional limited licenses for travel insurance vending machines or selling certain policies as a promotional device to improve newspaper circulation;

(2) Amending the definition of "administrator" or "third party administrator" to exclude dental insurers and dental service corporations; increasing the surety bond threshold amount for consistency with requirements for other entities; and adding audited



1 financial statements as part of required annual report
2 filings; and

- 3 (3) Adopting the National Association of Insurance
4 Commissioners revised Suitability in Annuity
5 Transactions Model Regulation provisions, which
6 require producers to act in the best interest of the
7 consumer when making a recommendation of an annuity,
8 and require insurers to establish and maintain a
9 system to supervise recommendations.

10 PART II

11 SECTION 2. Section 431:9A-107.5, Hawaii Revised Statutes,
12 is amended by amending subsection (a) to read as follows:

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

15 ~~[(1) A limited license to persons selling travel tickets of~~
16 ~~a common carrier of persons or property who shall act~~
17 ~~only as to travel ticket policies of accident and~~
18 ~~health or sickness insurance or baggage insurance on~~
19 ~~personal effects;~~



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

4 ~~(3) A limited license to any individual who sells policies~~
5 ~~of accident and health or sickness insurance as a~~
6 ~~promotional device to improve the circulation of a~~
7 ~~newspaper in this State;]~~

8 (1) A limited license to persons selling travel insurance,
9 which means insurance coverage for personal risks
10 incident to planned travel, including:

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

12 (B) Loss of baggage or personal effects;

13 (C) Damages to accommodations or rental vehicles;

14 (D) Sickness, accident, disability, or death
15 occurring during travel;

16 (E) Emergency evacuation;

17 (F) Repatriation of remains; or

18 (G) Any other contractual obligations to indemnify or
19 pay a specified amount to the traveler upon
20 determinable contingencies related to travel as
21 approved by the commissioner.



1 For purposes of this section, "travel insurance" does
2 not include major medical plans that provide
3 comprehensive medical protection for travelers with
4 trips lasting longer than six months, including those
5 working or residing overseas as an expatriate, or any
6 other insurance product that requires a specific
7 insurance producer license.

8 ~~[(4)]~~ (2) A limited line credit insurance producer license
9 to any individual who sells, solicits, or negotiates
10 limited line credit insurance; or

11 ~~[(5)]~~ (3) A limited license to any owner of a self-service
12 storage facility, as defined in section 507-61, to
13 sell stored property insurance, as defined in section
14 431:9A-171."

15 PART III

16 SECTION 3. Section 431:9J-101, Hawaii Revised Statutes, is
17 amended by amending the definition of "'administrator" or "third
18 party administrator'" to read as follows:

19 "'Administrator" or "third party administrator" means a
20 person who collects charges or premiums from, or who adjusts or
21 settles claims on, residents of this State in connection with



1 self-insurance, stop-loss, or life insurance coverage, accident
2 and health or sickness insurance coverage, or article 1 of
3 chapter 432, except the following:

4 (1) An employer on behalf of its employees or the
5 employees of a subsidiary or an affiliated corporation
6 of the employer;

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

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

12 (4) A dental insurer licensed under chapter 432G;

13 (5) A dental service corporation licensed under chapter
14 423;

15 [~~4~~] (6) A producer licensed to sell life insurance
16 coverage or accident and health or sickness insurance
17 coverage in this State, whose activities are limited
18 exclusively to the sale of insurance;

19 [~~5~~] (7) A managing general agent licensed in this State
20 whose activities are limited exclusively to the scope
21 of activities conveyed under that license;



1 ~~[(+6)]~~ (8) An individual adjuster licensed in this State
2 whose activities are limited exclusively to the scope
3 of activities conveyed under that license;

4 ~~[(+7)]~~ (9) An individual who adjusts or settles claims in
5 the normal course of practice or employment as an
6 attorney at law and who does not collect charges or
7 premiums in connection with life insurance coverage or
8 accident and health or sickness insurance coverage;

9 ~~[(+8)]~~ (10) A creditor on behalf of its debtors with respect
10 to insurance covering a debt between the creditor and
11 its debtors;

12 ~~[(+9)]~~ (11) A trust established in conformity with title 29
13 United States Code section 186 and trustees, agents,
14 and employees acting under that trust;

15 ~~[(+10)]~~ (12) A trust exempt from taxation under title 26
16 United States Code section 501(a) and trustees and
17 employees acting under that trust, or a custodian and
18 the custodian's agents and employees acting under a
19 custodian account that meets the requirements of title
20 26 United States Code section 401(f);



1 ~~[(11)]~~ (13) A financial institution subject to supervision
2 or examination by federal or state banking
3 authorities, or a mortgage lender that collects and
4 remits premiums to licensed producers or authorized
5 insurers in connection with loan payments;

6 ~~[(12)]~~ (14) A credit card issuing company advancing for and
7 collecting premiums or charges from its credit card
8 holders who have authorized collection; provided that
9 the company does not adjust or settle claims; and

10 ~~[(13)]~~ (15) A person who acts solely as an administrator of
11 one or more employee benefit plans established by an
12 employer or an employee organization."

13 SECTION 4. Section 431:9J-103, Hawaii Revised Statutes, is
14 amended to read as follows:

15 "~~[§]~~§431:9J-103~~[§]~~ **Surety bond required.** (a) Prior to
16 the issuance of the administrator license, the administrator
17 shall file with the commissioner, and maintain in force while so
18 licensed, a surety bond of at least \$100,000~~[7]~~ for the first
19 two years of licensure, and at least \$300,000 from the third
20 year of licensure, in the form and penal sum acceptable to the
21 commissioner, and shall provide that the bond may not be



1 canceled or otherwise terminated until two years have elapsed
2 from the last day the applicant was an administrator, unless the
3 commissioner has given prior written consent. The surety bond
4 shall be undertaken and may be enforced in the name of
5 "Commissioner of Insurance, State of Hawaii".

6 (b) At the third annual report filing, and each subsequent
7 annual report filing, the surety bond amount shall be at least
8 \$300,000 and filed in accordance with section 431:9J-112."

9 SECTION 5. Section 431:9J-112, Hawaii Revised Statutes, is
10 amended to read as follows:

11 "[+]§431:9J-112[+] **Annual report required.** (a) An
12 administrator shall file an annual report for the preceding
13 calendar year with the commissioner on or before March 1 of each
14 year, in a form and manner prescribed by the commissioner.

15 (b) The annual report shall include the names and
16 addresses of all insurers with which the administrator had an
17 agreement during the preceding calendar year.

18 (c) The annual report shall include a renewal certificate
19 for the surety bond required in section 431:9J-103 and an
20 updated surety bond form, if needed.



(d) The annual report shall include an audited financial statement prepared by an independent certified public accountant."

PART IV

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

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

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

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

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

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

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



1 (b) The requirements under subsection (a) include:

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

5 (2) Considering the types of products the producer is
6 authorized and licensed to recommend or sell that
7 address the consumer's financial situation, insurance
8 needs, and financial objectives.

9 The requirements of subsection (a) shall not require analysis or
10 consideration of any products outside the authority and license
11 of the producer or other possible alternative products or
12 strategies available in the market at the time of the
13 recommendation. Producers shall be held to standards applicable
14 to producers with similar authority and licensure.

15 (c) The requirements under this section shall not create a
16 fiduciary obligation or relationship and only create a
17 regulatory obligation as established in this part.

18 (d) The consumer profile information, characteristics of
19 the insurer, and product costs, rates, benefits, and features
20 are those factors generally relevant in making a determination
21 whether an annuity effectively addresses the consumer's



1 financial situation, insurance needs, and financial objectives,
2 but the level of importance of each factor may vary depending on
3 the facts and circumstances of a particular case; provided that
4 each factor may not be considered in isolation.

5 (e) The requirements under subsection (a) shall:

6 (1) Include having a reasonable basis to believe the
7 consumer would benefit from certain features of the
8 annuity, such as annuitization, death, or living
9 benefit, or other insurance-related features;

10 (2) Apply to the particular annuity as a whole and the
11 underlying subaccounts to which funds are allocated at
12 the time of purchase or exchange of an annuity, and
13 riders and similar producer enhancements, if any;

14 (3) Not mean the annuity with the lowest one-time or
15 multiple occurrence compensation structure shall
16 necessarily be recommended; and

17 (4) Not mean the producer has ongoing monitoring
18 obligations under this section; provided that an
19 obligation may be separately owed under the terms of a
20 fiduciary, consulting, investment advising, or



1 financial planning agreement between the consumer and
2 the producer.

3 (f) In the case of an exchange or replacement of an
4 annuity, the producer shall consider the whole transaction,
5 which includes taking into consideration whether:

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

12 (2) The replacing product would substantially benefit the
13 consumer in comparison to the replaced product over
14 the life of the product; and

15 (3) The consumer has had another annuity exchange or
16 replacement and, in particular, an exchange or
17 replacement within the preceding sixty months.

18 (g) Nothing in this part may be construed to require a
19 producer to obtain any license other than a producer license
20 with the appropriate line of authority to sell, solicit, or
21 negotiate insurance in this State, including but not limited to



1 any securities license in order to fulfill the duties and
2 obligations contained in this part; provided that the producer
3 shall not give advice or provide services that are otherwise
4 subject to securities laws or engage in any other activity
5 requiring other professional licenses.

6 §431:10D-B Disclosure obligation of insurers and
7 producers. (a) Prior to the recommendation or sale of an
8 annuity, the producer shall prominently disclose to the consumer
9 on a form substantially similar to Appendix A of the Spring
10 2020, National Association of Insurance Commissioners
11 Suitability In Annuity Transactions Model Regulation:

12 (1) A description of the scope and terms of the
13 relationship with the consumer and the role of the
14 producer in the transaction;

15 (2) An affirmative statement on whether the producer is
16 licensed and authorized to sell the following
17 products:

- 18 (A) Fixed annuities;
19 (B) Fixed indexed annuities;
20 (C) Variable annuities;
21 (D) Life insurance;



1 (E) Mutual funds;

2 (F) Stocks and bonds; and

3 (G) Certificates of deposit;

4 (3) An affirmative statement describing the insurers for
5 whom the producer is authorized, contracted,
6 appointed, or otherwise able to sell insurance
7 products, using the following descriptions:

8 (A) One insurer;

9 (B) From two or more insurers; or

10 (C) From two or more insurers although primarily
11 contracted with one insurer;

12 (4) A description of the sources and types of cash
13 compensation and non-cash compensation to be received
14 by the producer, including whether the producer is to
15 be compensated for the sale of a recommended annuity
16 by commission as part of premium or other remuneration
17 received from the insurer, intermediary, or other
18 producer or by fee as a result of a contract for
19 advice or consulting services; and



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

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

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

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

14 (c) Before or at the time of the recommendation or sale of
15 an annuity, the producer shall have a reasonable basis to
16 believe the consumer has been informed of various features of
17 the annuity, such as the potential surrender period and
18 surrender charge, potential tax penalty if the consumer sells,
19 exchanges, surrenders, or annuitizes the annuity, mortality and
20 expense fees, investment advisory fees, any annual fees,
21 potential charges for and features of riders or other options of



1 the annuity, limitations on interest returns, potential changes
2 in non-guaranteed elements of the annuity, insurance and
3 investment components, and market risk.

4 §431:10D-C Conflicts of interest obligation of insurers
5 and producers. A producer shall identify and avoid or
6 reasonably manage and disclose material conflicts of interest,
7 including material conflicts of interest related to an ownership
8 interest.

9 §431:10D-D Documentation obligation of insurers and
10 producers. (a) A producer shall at the time of recommendation
11 or sale:

12 (1) Make a written record of any recommendation and the
13 basis for the recommendation subject to this part;

14 (2) Obtain a consumer signed statement on a form
15 substantially similar to Appendix B of the Spring
16 2020, National Association of Insurance Commissioners
17 Suitability In Annuity Transactions Model Regulation,
18 documenting:

19 (A) A customer's refusal to provide the consumer
20 profile information, if any; and



1 (B) A customer's understanding of the ramifications
2 of not providing his or her consumer profile
3 information or providing insufficient consumer
4 profile information; and

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

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



1 supervision of a producer do not, in and of themselves,
2 constitute material control or influence."

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

5 "[+]PART VII.[+] SUITABILITY IN ANNUITY TRANSACTIONS

6 §431:10D-621 Scope. (a) This part applies to any sale or
7 recommendation [~~to purchase, exchange, or replace~~] of an annuity
8 [~~made to a consumer by an insurance producer, or an insurer~~
9 ~~where no producer is involved, that results in the purchase,~~
10 ~~exchange, or replacement recommended~~].

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

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

15 (2) Contracts used to fund:

16 (A) An employee pension or welfare benefit plan that
17 is covered by the Employee Retirement and Income
18 Security Act[+] of 1974, P.L. 93-406;

19 (B) A plan described by [~~sections~~] section 401(a),
20 401(k), 403(b), 408(k), or 408(p) of the Internal



1 Revenue Code of 1986, as amended, if established
2 or maintained by an employer;

3 (C) A [~~governmental~~] government plan or church plan
4 defined in section 414 of the Internal Revenue
5 Code of 1986, as amended, a government or church
6 welfare benefit plan, or a deferred compensation
7 plan of a state or local government or tax exempt
8 organization subject to section 457 of the
9 Internal Revenue Code of 1986, as amended; or

10 (D) A non-qualified deferred compensation arrangement
11 established or maintained by an employer or plan
12 sponsor;

13 [~~(E)~~] (3) Settlements of or assumptions of
14 liabilities associated with personal injury litigation
15 or any dispute or claim resolution process; or

16 [~~(F)~~] (4) Formal prepaid funeral contracts.

17 (c) Nothing in this part shall be construed to affect in
18 any manner any provision of chapter 485A.

19 §431:10D-622 Definitions. For the purposes of this part:



1 "Annuity" means an annuity that is an insurance product
2 under state law that is individually solicited, whether the
3 product is classified as an individual or group annuity.

4 "Approved continuing education course provider" means an
5 individual or entity that is approved to offer continuing
6 education courses pursuant to article 9A.

7 "Cash compensation" means any discount, concession, fee,
8 service fee, commission, sales charge, loan, override, or cash
9 benefit received by a producer in connection with the
10 recommendation or sale of an annuity from an insurer,
11 intermediary, or directly from the consumer.

12 "Comparable standards" means:

13 (1) With respect to broker-dealers and registered
14 representatives of broker-dealers, applicable United
15 States Securities and Exchange Commission and
16 Financial Industry Regulatory Authority rules
17 pertaining to best interest obligations and
18 supervision of annuity recommendations and sales,
19 including but not limited to Regulation Best Interest,
20 title 17 Code of Federal Regulations section



1 240.151-1, and any amendments or successor regulations
2 thereto;

3 (2) With respect to investment advisers registered under
4 federal or state securities laws or investment adviser
5 representatives, the fiduciary duties and all other
6 requirements imposed on such investment advisers or
7 investment adviser representatives by contract or
8 under the Rules and Regulations, Investment Company
9 Act of 1940, title 17 Code of Federal Regulations part
10 270, or applicable state securities law, including but
11 not limited to, the Form ADV and interpretations; and

12 (3) With respect to fiduciaries or plan fiduciaries, the
13 duties, obligations, prohibitions, and all other
14 requirements attendant to such status under the
15 Employee Retirement Income Security Act of 1974, P.L.
16 93-406, or the Internal Revenue Code of 1986, as
17 amended, and any amendments or successor statutes
18 thereto.

19 "Consumer profile information" means information that is
20 reasonably appropriate to determine whether a recommendation
21 addresses the consumer's financial situation, insurance needs,



1 and financial objectives, including, at a minimum, the
2 following:

- 3 (1) Age;
- 4 (2) Annual income;
- 5 (3) Financial situation and needs, including debts and
6 other obligations;
- 7 (4) Financial experience;
- 8 (5) Insurance needs;
- 9 (6) Financial objectives;
- 10 (7) Intended use of the annuity;
- 11 (8) Financial times horizon;
- 12 (9) Existing assets or financial products, including
13 investment, annuity and insurance holdings;
- 14 (10) Liquidity needs;
- 15 (11) Liquid net worth;
- 16 (12) Risk tolerance, including but not limited to,
17 willingness to accept non-guaranteed elements in the
18 annuity;
- 19 (13) Financial resources used to fund the annuity; and
- 20 (14) Tax status.



1 "Continuing education credit" means one continuing
2 education credit hour. For the purposes of this paragraph,
3 "credit hour" has the same meaning as set forth in section
4 431:9A-102.

5 "Financial professional" means a producer that is regulated
6 and acting as:

7 (1) A broker-dealer registered under federal or state
8 securities laws or a registered representative of a
9 broker-dealer;

10 (2) An investment adviser registered under federal or
11 state securities laws or an investment adviser
12 representative associated with the federal or state
13 registered investment adviser; or

14 (3) A plan fiduciary under section 3(21) of the Employee
15 Retirement Income Security Act of 1974, P.L. 93-406,
16 or fiduciary under section 4975(E)(3) of the Internal
17 Revenue Code of 1986, as amended, or any amendments or
18 successor statutes thereto.

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



1 "Insurer" means a company required to be licensed under the
2 laws of this State to provide insurance products, including
3 annuities.

4 "Intermediary" means an entity contracted directly with an
5 insurer or with another entity contracted with an insurer to
6 facilitate the sale of the insurer's annuities by producers.

7 "Material conflict of interest" means a financial interest
8 of the insurance producer in the sale of an annuity that a
9 reasonable person would expect to influence the impartiality of
10 a recommendation. "Material conflict of interest" does not
11 include cash compensation or non-cash compensation.

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

15 "Non-guaranteed elements" means the premiums, credited
16 interest rates (including any bonus), benefits, values,
17 dividends, non-interest based credits, charges, or elements of
18 formulas used to determine any of these, that are subject to
19 company discretion and are not guaranteed at issue. An element
20 is considered non-guaranteed if any of the underlying non-
21 guaranteed elements are used in its calculation.



1 "Producer" means a person or entity required to be licensed
2 under the laws of this State to sell, solicit, or negotiate
3 insurance, including annuities. For purposes of this part,
4 "producer" includes an insurer where no producer is involved.

5 "Recommendation" means advice provided by ~~[an insurance]~~ a
6 producer~~[, or an insurer where no producer is involved,]~~ to an
7 individual consumer that ~~[results]~~ was intended to result or
8 does result in a purchase, an exchange, or a replacement of an
9 annuity in accordance with that advice. "Recommendation" does
10 not include general communication to the public, generalized
11 customer services assistance or administrative support, general
12 educational information and tools, prospectuses, or other
13 product and sales material.

14 "Replacement" means a transaction ~~[for the purchase of a~~
15 ~~new policy or contract that]~~ in which a new annuity is to be
16 purchased, and it is known or should be known to the proposing
17 producer, or to the proposing insurer ~~[if there is no producer,~~
18 ~~knows or has reason to know will cause an existing policy or~~
19 ~~contract to be+]~~, whether or not a producer is involved, that by
20 reason of the transaction, an existing annuity or other
21 insurance policy has been or will be any of the following:



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

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

- 16 ~~(1) Age;~~
- 17 ~~(2) Annual income;~~
- 18 ~~(3) Financial situation and needs, including the financial~~
19 ~~resources used for funding the annuity at issue;~~
- 20 ~~(4) Financial experience;~~
- 21 ~~(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~~
- ~~(12) Tax status.]~~

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

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

- ~~(1) The consumer has been reasonably informed of the various features of the annuity, including the potential surrender period and surrender charge;~~



1 ~~potential tax penalty if the consumer sells,~~
2 ~~exchanges, surrenders or annuitizes the annuity,~~
3 ~~mortality and expense fees; investment advisory fees,~~
4 ~~potential charges for and features of riders,~~
5 ~~limitations on interest returns; insurance and~~
6 ~~investment components; and market risk;~~

7 ~~(2) The consumer would benefit from certain features of~~
8 ~~the annuity, including tax deferred growth,~~
9 ~~annuitization, or death or living benefit;~~

10 ~~(3) The particular annuity as a whole, the underlying~~
11 ~~subaccounts to which funds are allocated at the time~~
12 ~~of the purchase or exchange of the annuity, and riders~~
13 ~~and similar product enhancements, if any, are suitable~~
14 ~~and, in the case of an exchange or replacement, the~~
15 ~~transaction as a whole is suitable for the particular~~
16 ~~consumer; and~~

17 ~~(4) In the case of an exchange or replacement of an~~
18 ~~annuity, the exchange or replacement is suitable for~~
19 ~~the particular consumer taking into consideration~~
20 ~~whether:~~



1 ~~(A) The consumer will incur a surrender charge; be~~
2 ~~subject to the commencement of a new surrender~~
3 ~~period; lose existing benefits such as death,~~
4 ~~living, or other contractual benefits; or be~~
5 ~~subject to increased fees, investment advisory~~
6 ~~fees, or charges for riders and similar product~~
7 ~~enhancements;~~

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

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

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

19 ~~(c) Except as permitted under subsection (d), an insurer~~
20 ~~shall not issue an annuity that has been recommended to a~~
21 ~~consumer unless the insurer has a reasonable basis to believe~~



1 ~~the annuity is suitable for the particular consumer based on the~~
2 ~~consumer's suitability information.]~~ (a) A producer, when
3 making a recommendation of an annuity, shall act in the best
4 interest of the consumer under the circumstances known at the
5 time the recommendation is made, without placing the producer's
6 or the insurer's financial interest ahead of the consumer's
7 interest. A producer has acted in the best interest of the
8 consumer if the producer has satisfied the obligations regarding
9 care, disclosure, material conflict of interest, and
10 documentation as set forth in this part.

11 ~~[(d)(1)]~~ (b)(1) Except as provided under paragraph (2),
12 ~~[neither an insurancee]~~ a producer ~~[nor an insurer]~~
13 shall have ~~[any]~~ no obligation to a consumer under
14 section 431:10D-A related to any annuity transaction
15 if:

- 16 (A) No recommendation is made;
- 17 (B) A recommendation was made based on materially
18 inaccurate information provided by the consumer;
- 19 (C) A consumer refuses to provide relevant
20 ~~[suitability]~~ consumer profile information and
21 the annuity transaction is not recommended; or



1 (D) A consumer decides to enter into an annuity
2 transaction that is not based on a recommendation
3 of ~~[the insurer or]~~ the [insurantee] producer~~[,~~
4 and] .

5 (2) An insurer's issuance of an annuity subject to
6 paragraph (1) shall be reasonable under all the
7 circumstances actually known to the insurer at the
8 time the annuity is issued.

9 ~~[(c) An insurance producer or a representative of the~~
10 ~~insurer, where no insurance producer is involved, shall at the~~
11 ~~time of sale.~~

12 ~~(1) Make a record of any recommendation subject to this~~
13 ~~section,~~

14 ~~(2) Obtain a signed statement from the consumer~~
15 ~~documenting the customer's refusal to provide~~
16 ~~suitability information, if applicable, and~~

17 ~~(3) Obtain a signed statement from the consumer~~
18 ~~acknowledging that an annuity transaction is not~~
19 ~~recommended if a consumer decides to enter into an~~
20 ~~annuity transaction that is not based on the insurance~~
21 ~~producer's or insurer's recommendation.]~~



1 (c) Except as permitted under subsection (b), an
2 insurer may not issue an annuity recommended to a consumer
3 unless there is a reasonable basis to believe the annuity would
4 effectively address the particular consumer's financial
5 situation, insurance needs, and financial objectives based on
6 the consumer's consumer profile information.

7 ~~[+f+]~~ (d) An insurer shall establish and maintain a
8 supervision system that is reasonably designed to achieve the
9 insurer's and its ~~[insurantee]~~ producers' compliance with this
10 part, including:

11 (1) Reasonable procedures to inform the insurer's
12 ~~[insurantee]~~ producers of the requirements of this
13 part, including incorporating the requirements of this
14 part into relevant ~~[insurance]~~ producer training
15 manuals;

16 (2) Standards for ~~[insurantee]~~ producer product training,
17 including reasonable procedures to require its
18 ~~[insurantee]~~ producers to comply with section
19 431:10D-626;



- 1 (3) Product-specific training and training materials that
2 explain all material features of its annuity products
3 to its [insurantee] producers;
- 4 (4) Procedures for the review of each recommendation prior
5 to the issuance of an annuity to ensure [that] there
6 is a reasonable basis to determine [the suitability of
7 a recommendation that may include additional review of
8 selected transactions through electronic, physical, or
9 other means; provided that the insurer may specify
10 criteria for selection of transactions for additional
11 review;] that the recommended annuity would
12 effectively address the particular consumer's
13 financial situation, insurance needs, and financial
14 objectives. The review procedures may apply a
15 screening system for the purpose of identifying
16 selected transactions for additional review and may be
17 accomplished electronically or through other means
18 including, but not limited to, physical review. An
19 electronic or other system may be designed to require
20 additional review only of those transactions



1 identified for additional review by the selection
2 criteria;

3 (5) Reasonable procedures to detect recommendations that
4 are not ~~[suitable, including]~~ in compliance with
5 subsections (b), (g), and (h), and sections 431:10D-A,
6 431:10D-B, 431:10D-C, and 431:10D-D. This may include
7 confirmation of [consumer suitability] the consumer's
8 consumer profile information, systematic consumer
9 surveys, producer and consumer interviews,
10 confirmation letters, producer statements or
11 attestations, and programs of internal monitoring;
12 provided that nothing in this paragraph shall prevent
13 an insurer applying sampling procedures or confirming
14 ~~[suitability]~~ the consumer profile information or
15 other required information under this section after
16 issuance or delivery of the annuity;

17 (6) Reasonable procedures to assess, prior to or upon
18 issuance or delivery of an annuity, whether a producer
19 has provided to the consumer the information required
20 to be provided under this section;



1 (7) Reasonable procedures to identify and address
2 suspicious consumer refusals to provide consumer
3 profile information;

4 (8) Reasonable procedures to identify and eliminate any
5 sales contests, sale quotas, bonuses, and non-cash
6 compensation that are based on the sales of specific
7 annuities within a limited period of time. The
8 requirements of this paragraph are not intended to
9 prohibit the receipt of health insurance, office rent,
10 office support, retirement benefits, or other employee
11 benefits by employees; provided that those benefits
12 are not based upon the volume of sales of a specific
13 annuity within a limited period of time;

14 ~~[(+6)]~~ (9) Annual review and testing of the supervision
15 system [which] that shall be documented in a written
16 report to the insurer's senior management, including
17 the senior manager responsible for audit functions, to
18 determine the effectiveness of the supervision system,
19 the exceptions found, and corrective action taken or
20 recommended, if any;



1 ~~[(+7)]~~ (10) Procedures for monitoring contracts and, as
2 appropriate, conducting audits to assure that any
3 contracted functions are properly performed; and

4 ~~[(+8)]~~ (11) Annual certification based on reasonable facts
5 from a senior manager who has responsibility for
6 contracted functions that the contracted functions are
7 properly performed.

8 ~~[(+9)]~~ (e) An insurer may contract for performance of any
9 functions, including maintenance of procedures, required by
10 subsection ~~[(+f)(1) to (+6)]~~ (d)(1) to (9); provided that an
11 insurer shall be responsible for taking any appropriate
12 corrective action and may be subject to sanctions and penalties
13 pursuant to section 431:10D-624 regardless of whether the
14 insurer contracts for performance of a function and regardless
15 of the insurer's compliance with subsection ~~[(+f)]~~ (d).

16 ~~[(+h)]~~ (f) An insurer is not required to include in its
17 system of supervision ~~[an insurance]~~:

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

20 (2) Consideration of or comparison to options available to
21 the producer or compensation relating to those options



1 other than annuities or other products offered by the
2 insurer.

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

6 (1) Truthfully responding to an insurer's request for
7 confirmation of ~~[suitability]~~ the consumer profile
8 information;

9 (2) Filing a complaint; or

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

11 ~~[(j) Sales]~~ (h) Recommendations and sales of annuities
12 made in compliance with ~~[requirements of the Financial Industry~~
13 ~~Regulatory Authority or its successor agency pertaining to~~
14 ~~suitability and supervision of annuity transactions]~~ comparable
15 standards shall satisfy the requirements of this ~~[section,~~
16 ~~provided that an insurer that issues an annuity subject to this~~
17 ~~part shall:]~~ part. This section applies to all recommendations
18 and sales of annuities made by financial professionals in
19 compliance with business rules, controls, and procedures that
20 satisfy a comparable standard even if the standard may not
21 otherwise apply to the product or recommendation at issue.



1 Nothing in this subsection shall limit the insurance
2 commissioner's ability to investigate and enforce the provisions
3 of this part or limit the insurer's obligation to comply with
4 subsection (c); provided that the insurer may base its analysis
5 on information received from either the financial professional
6 or the entity supervising the financial professional.

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

8 (1) Monitor the [~~sales by entities registered as broker-~~
9 ~~dealers with the Financial Industry Regulatory~~
10 ~~Authority of annuities issued by the insurer]~~ relevant
11 conduct of the financial professional seeking to rely
12 on subsection (h) or the entity responsible for
13 supervising the financial professional, such as the
14 financial professional's broker-dealer or an
15 investment adviser registered under federal or state
16 securities laws using information collected in the
17 normal course of an insurer's business; and

18 (2) Provide to the entity [~~subject to paragraph (1) with~~
19 ~~any]~~ responsible for supervising the financial
20 professional seeking to rely on subsection (h), such
21 as the financial professional's broker-dealer or



1 investment adviser registered under federal or state
2 securities laws, information and reports that are
3 reasonably [neecessary] appropriate to assist the
4 entity [~~in maintaining the~~] to maintain its
5 supervision system [~~required by the Financial Industry~~
6 Regulatory Authority.

7 ~~This subsection shall apply to sales of variable annuities and~~
8 ~~fixed annuities where suitability and supervision requirements~~
9 ~~are similar to those applied to variable annuity sales. Nothing~~
10 ~~in this subsection shall limit the insurance commissioner's~~
11 ~~ability to enforce this part].~~

12 §431:10D-624 Compliance mitigation; penalties[-];
13 enforcement. (a) An insurer shall be responsible for
14 compliance with this part. If a violation occurs because of the
15 action or inaction of the insurer or its [~~insurancee~~] producer,
16 the commissioner may order:

- 17 (1) An insurer to take reasonably appropriate corrective
18 action for any consumer harmed by a failure to comply
19 with this part by the [~~insurer's~~] insurer, an entity
20 contracted to perform the insurer's supervisory



1 duties, or [~~its insurance producer's~~ violation of this
2 part,] by the producer;

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

8 (3) Appropriate penalties and sanctions.

9 (b) Any penalty applicable to an insurer, a managing
10 general agent, independent agencies, or a producer under article
11 13 of chapter 431 may be applicable to a violation of this part;
12 provided that penalties may be reduced or eliminated if
13 corrective action for the consumer was taken promptly after a
14 violation was discovered or if the violation was not part of a
15 pattern or practice.

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

18 **§431:10D-625 Recordkeeping.** Insurers, managing general
19 agents, independent agencies, and [~~insurance~~] producers shall
20 maintain or make available to the commissioner records of the
21 information collected from the consumer, disclosures made to the



1 consumer, including summaries of oral disclosures, and other
2 information used in making the recommendations that were the
3 basis for insurance transactions for five years after the
4 insurance transaction has been completed by the insurer. An
5 insurer may maintain documentation on behalf of ~~[an-insurancee]~~ a
6 producer.

7 §431:10D-626 ~~[Insurance-producer]~~ Producer training. (a)
8 ~~[An-insurancee]~~ A producer shall not solicit the sale of an
9 annuity product unless the ~~[insurancee]~~ producer has adequate
10 knowledge of the product to recommend the annuity and the
11 ~~[insurancee]~~ producer is in compliance with the insurer's
12 standards for product training. ~~[An-insurancee]~~ A producer may
13 rely on insurer-provided product-specific training standards and
14 materials to comply with this subsection.

15 (b) ~~[Any-insurancee]~~ A producer who engages in the sale of
16 annuity products shall complete a one-time four credit training
17 course approved by the commissioner. A producer who is
18 authorized to sell annuity products on or before ~~[January 31,~~
19 ~~2012,~~] December 31, 2022, shall complete by ~~[January 31, 2012,~~
20 July 1, 2023, a one-time training course on annuity products



1 meeting the requirements of subsection (d) ~~[-]~~ by completing
2 either:

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

5 (2) An additional one-credit training course approved by
6 the commissioner and provided by an approved education
7 provider on appropriate sales practices, replacement,
8 and disclosure requirements under this part.

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

14 (d) The training required by this section shall be
15 approved by the commissioner, be conducted by an approved
16 continuing education course provider, and meet the following
17 requirements:

18 (1) The minimum length of the training shall be sufficient
19 to qualify for at least four continuing education
20 credits;



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

3 (A) The types and various classifications of
4 annuities available on the market;

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

6 (C) How fixed, variable, and indexed annuity contract
7 provisions affect consumers;

8 (D) The application of income taxation to qualified
9 and non-qualified annuities;

10 (E) The primary uses of annuities; and

11 (F) Appropriate standard of conduct, sales practices,
12 replacement, and disclosure requirements; and

13 (3) The training shall not include any marketing
14 information for products of any particular insurer or
15 training on sales techniques.

16 (e) A provider of an annuity training course intending to
17 comply with this section shall register as an approved
18 continuing education course provider in this State and comply
19 with the rules and guidelines applicable to [insurance] producer
20 continuing education courses as set forth in article 9A.



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

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

7 (h) The satisfaction of the training requirements of
8 another state that are substantially similar to the provisions
9 of this section shall be deemed to satisfy the training
10 requirements of this section in this State.

11 (i) The satisfaction of the components of the training
12 requirements of any course or courses with components determined
13 by the commissioner to be substantially similar to the
14 provisions of this section shall be deemed to satisfy the
15 training requirements of this section.

16 ~~[(i)]~~ (j) An insurer shall verify that ~~[an insurancee]~~ the
17 producer has completed the annuity training course required by
18 this section before allowing the producer to sell an annuity
19 product for the insurer. An insurer may satisfy its
20 responsibility under this subsection by obtaining certificates
21 of completion of the training course or from a reasonably



1 reliable commercial database vendor that has a reporting
2 arrangement with approved continuing education course
3 providers."

4 PART V

5 SECTION 8. The insurance commissioner shall have the
6 authority to enforce the provisions of section 2 through section
7 5 of this Act until March 31, 2023.

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

12 SECTION 10. Statutory material to be repealed is bracketed
13 and stricken. New statutory material is underscored.

14 SECTION 11. This Act shall take effect on July 1, 2022;
15 provided that section 2, section 3, section 6, and section 7 of
16 this Act shall take effect on December 31, 2022.



Report Title:

Limited License, Travel Insurance, Administrator, Third Party Administrator, Dental Insurer, Dental Service Corporation, Surety Bond, Annual Report, Audited Financial Statement, Annuity, Annuity Recommendation, Consumer Profile Information, Producer, Insurer, Intermediary, Material Conflict of Interest

Description:

Amends various portions of title 24 of the Hawaii Revised Statutes to update and improve existing provisions. (SD1)

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

