

ACT 121

S.B. NO. 1069

A Bill for an Act Relating to Insurance.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. Section 431:2-202.5, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§431:2-202.5]]~~ **Approval; when deemed effective.** ~~[Unless specifically exempted from this section,]~~ Except as provided otherwise, any approval required by law shall be deemed granted on the thirtieth calendar day following the filing of the request for approval if the commissioner does not take any affirmative action to grant or deny the approval within thirty calendar days of the request.”

SECTION 2. Section 431:10D-503, Hawaii Revised Statutes, is amended by amending subsection (e) to read as follows:

“(e) Except as provided in section ~~[431:10D-504(6),]~~ 431:10D-505(c), in connection with a replacement transaction, the producer shall submit to the insurer to which an application for a policy or contract is presented, a copy of each document required by this section, a statement identifying any preprinted or electronically presented company-approved sales materials used, and copies of any individualized sales materials, including any illustrations related to the specific contract or policy purchased.”

SECTION 3. Section 431:10D-504, Hawaii Revised Statutes, is amended to read as follows:

“~~[[§431:10D-504]]~~ **Duties of insurers that use producers.** Each insurer shall:

- (1) Maintain a system of supervision and control to insure compliance with the requirements of this part that shall include at least the following:
 - (A) Inform its producers of the requirements of this part and incorporate the requirements of this part into all relevant producer training manuals prepared by the insurer;
 - (B) Provide to each producer a written statement of the company’s position with respect to the acceptability of replacements pro-

viding guidance to its producer as to the appropriateness of these transactions;

- (C) A system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with ~~[paragraph (2);]~~ subparagraph (B);
 - (D) Procedures to confirm that the requirements of this part have been met; and
 - (E) Procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or producer.
- Compliance with this section may include but shall not be limited to systematic customer surveys, interviews, confirmation letters, or programs of internal monitoring;
- (2) Have the capacity to monitor each producer's life insurance policy and annuity contract for replacements for the insurer, and shall produce, upon request, and make such records available to the commissioner. The capacity to monitor shall include the ability to produce records for each producer's:
 - (A) Life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;
 - (B) Number of lapses of policies by the producer as a percentage of the producer's total annual sales for life insurance;
 - (C) Annuity contract replacements as a percentage of the producer's total annual contract sales;
 - (D) Number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the company's monitoring system as required by paragraph (1)(E); and
 - (E) Replacements, indexed by replacing producer and existing insurer;
 - (3) Require with or as a part of each application for life insurance or an annuity a signed statement by both the applicant and the producer as to whether the applicant has existing policies or contracts;
 - (4) Require with each application for life insurance or an annuity that indicates an existing policy or contract a completed notice as required by section 431:10D-503(b) regarding replacements;
 - (5) When the applicant has existing policies or contracts, each insurer shall be able to produce copies of any sales material as required by section 431:10D-503(e), the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the producer's and applicant's signed statements with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract;
 - (6) Ascertain that the sales material and illustrations required by section 431:10D-503(e) meet the requirements of this part and are complete and accurate for the proposed policy or contract;
 - (7) If an application does not meet the requirements of this part, notify the producer and applicant and fulfill the outstanding requirements; and
 - (8) Maintain records in paper, photograph, microprocess, mechanical, or electronic media, or by any process that accurately reproduces the actual paper document."

SECTION 4. Section 431:10D-505, Hawaii Revised Statutes, is amended by amending subsection (c) to read as follows:

ACT 121

“(c) If an insurer prohibits the use of sales material other than that approved by the company, as an alternative to the requirements made of an insurer pursuant to section ~~[431:10D-504,]~~ 431:10D-503(e), the insurer may:

- (1) Require with each application a statement signed by the producer that:
 - (A) Represents that the producer used only company-approved sales material; and
 - (B) States that copies of all sales material were left with the applicant in accordance with section 431:10D-503(d); and
- (2) Within ten days of the issuance of the policy or contract:
 - (A) Notify the applicant by sending a letter or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the producer has represented that copies of all sales material have been left with the applicant in accordance with section 431:10D-503(d);
 - (B) Provide the applicant with a toll free number to contact company personnel involved in the compliance function if such is not the case; and
 - (C) Stress the importance of retaining copies of the sales material for future reference; and
- (3) Be able to produce a copy of the letter or other verification in the policy file for at least five years after the termination or expiration of the policy or contract.”

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

SECTION 6. This Act shall take effect on July 1, 2001.

(Approved May 18, 2001.)