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ACT 71

H.B. NO. 2434

A Bill for an Act Relating to Insurance.

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

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

“PART . ANNUITY DISCLOSURE

§431:10D-A Definitions. Whenever used in this part, unless a different meaning clearly appears from the context:

“Buyer’s guide” means:

- (1) A buyer’s guide to fixed deferred annuities approved by the commissioner; or

- (2) The National Association of Insurance Commissioners Buyer's Guide to Fixed Deferred Annuities.

"Contract owner" means the owner named in the annuity contract or certificate holder in the case of a group annuity contract.

"Determinable elements" means elements that are derived from processes or methods that are guaranteed at issue and not subject to company discretion but where the values or amounts cannot be determined until some point after issue. These elements include:

- (1) Premiums;
- (2) Credited interest rates, including any bonus;
- (3) Benefits;
- (4) Values;
- (5) Non-interest-based credits;
- (6) Charges; or
- (7) Elements of formulas used to determine any of the above.

These elements may be described as guaranteed but not determined at issue. An element is considered determinable if it was calculated from underlying determinable elements only, or from both determinable and guaranteed elements.

"Disclosure document" means a document provided by an insurer to applicants or prospective applicants for an annuity contract that explains the terms of the contract and contains the information required in section 431:10D-C(d).

"Funding agreement" means an agreement for an insurer to:

- (1) Accept and accumulate funds; and
- (2) Make one or more payments at future dates in amounts that are not based on mortality or morbidity contingencies.

"Generic name" means a short title descriptive of the annuity contract being applied for or illustrated, such as "single premium deferred annuity".

"Guaranteed elements" means:

- (1) Premiums;
- (2) Credited interest rates, including any bonus;
- (3) Benefits;
- (4) Values;
- (5) Non-interest-based credits;
- (6) Charges; or
- (7) Elements of formulas used to determine any of the above,

which are guaranteed and determined at issue. An element is considered guaranteed if all of the underlying elements used in its calculation are guaranteed.

"Non-guaranteed elements" means:

- (1) Premiums;
- (2) Credited interest rates, including any bonus;
- (3) Benefits;
- (4) Values;
- (5) Non-interest-based credits;
- (6) Charges; or
- (7) Elements of formulas used to determine any of the above,

which are subject to company discretion and are not guaranteed at issue. An element is considered non-guaranteed if any of the underlying non-guaranteed elements are used in its calculation.

"Structured settlement annuity" means:

- (1) A "qualified funding asset" as defined in section 130(d) of the Internal Revenue Code; or
- (2) An annuity that would be a "qualified funding asset" but for the fact that it is not owned by an assignee under a qualified assignment.

§431:10D-B Applicability of standards for disclosure. (a)¹ This part shall apply to all group and individual annuity contracts and certificates, except:

- (1) Registered or non-registered variable annuities or other registered products;
- (2) Immediate and deferred annuities that contain no non-guaranteed elements;
- (3) Annuities used to fund:
 - (A) An employee pension plan that is covered by the Employee Retirement Income Security Act;
 - (B) A plan under section 401(a), 401(k), or 403(b) of the Internal Revenue Code, where the plan, for purposes of the Employee Retirement Income Security Act, is established or maintained by an employer;
 - (C) A governmental or church plan defined in section 414 of the Internal Revenue Code;
 - (D) A deferred compensation plan of a state or any of its political subdivisions under section 457 of the Internal Revenue Code;
 - (E) A tax-exempt organization under section 457 of the Internal Revenue Code; or
 - (F) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

provided that this part shall apply to annuities used to fund a plan or arrangement that is funded solely by contributions that an employee elects to make on a pre-tax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more fixed annuity providers and there is a direct solicitation of an individual employee by a producer for the purchase of an annuity contract.

For the purposes of this paragraph, “direct solicitation” does not include any meeting held by a producer solely for the purpose of educating or enrolling employees in the plan or arrangement;

- (4) Structured settlement annuities;
- (5) Funding agreements; and
- (6) Charitable gift annuities issued pursuant to paragraphs (1) to (4) of section 431:1-204(c).

§431:10D-C Standards for the disclosure document and buyer’s guide.

(a) Where the application for an annuity contract is taken:

- (1) In a personal meeting, both the buyer’s guide and disclosure document shall be given to the applicant at or before the time of application;
- (2) By means other than in a personal meeting, both the buyer’s guide and disclosure document shall be sent to the applicant no later than five business days after the completed application is received by the insurer;
- (3) By means of a direct solicitation through the mail, providing both the buyer’s guide and disclosure document in the mailing inviting the prospective applicant to apply for the annuity contract shall be deemed to satisfy the requirement that the buyer’s guide and disclosure statement be provided no later than five business days after receipt of the application; and
- (4) By means of the insurer’s internet website, the insurer’s reasonable steps to make the buyer’s guide available for viewing and printing on the insurer’s website shall be deemed to satisfy the requirement that the buyer’s guide and disclosure statement be provided no later than five business days after receipt of the application; and²

(b) A solicitation for an annuity contract provided in other than a personal meeting shall include a statement that the prospective applicant may contact the insurance division for a free buyer's guide. In lieu of the foregoing statement, an insurer may include a statement that the prospective applicant may contact the insurer for a free buyer's guide.

(c) If the buyer's guide and disclosure document are not provided at or before the time of application, a free-look period of no less than fifteen days shall be provided for the applicant to return the annuity contract without penalty, which period shall run concurrently with any other free-look period provided by law.

(d) The disclosure document shall include at least the following information:

- (1) The generic name of the contract;
- (2) The company product name, if different from the generic name;
- (3) The form number;
- (4) The fact that the product is an annuity;
- (5) The insurer's name and address;
- (6) A description of the contract and its benefits, which shall emphasize its long-term nature and include examples, where appropriate, such as:
 - (A) The guaranteed, non-guaranteed, and determinable elements of the contract, their limitations, if any, and an explanation of how they operate; and
 - (B) An explanation of the initial crediting rate, specifying any bonus or introductory portion, the duration of the rate, and the fact that rates may change from time to time and are not guaranteed;
- (7) Periodic income options on both a guaranteed and non-guaranteed basis;
- (8) Any value reductions caused by withdrawals from or surrender of the contract;
- (9) How values in the contract can be accessed;
- (10) The death benefit, if available, and how it will be calculated;
- (11) A summary of the federal tax status of the contract and any penalties applicable on withdrawal of values from the contract;
- (12) The effect of any rider, such as a long-term-care rider;
- (13) A listing of specific dollar-amount or percentage charges and fees and an explanation of how they apply; and
- (14) Information about the current guaranteed rate for new contracts that contains a clear notice that the rate is subject to change.

(e) Insurers shall define terms used in the disclosure statement in language that facilitates comprehension by the average person within the segment of the public to which the disclosure statement is directed.

§431:10D-D Report to contract owners. (a)¹ For annuities in the payout period with changes in non-guaranteed elements, and for the accumulation period of a deferred annuity, the insurer shall at least annually provide each contract owner with a report of the status of the contract that contains at least the following information:

- (1) The beginning and ending dates of the current report period;
- (2) The accumulation and cash surrender value, if any, at the end of the previous report period and at the end of the current report period;
- (3) The total amounts, if any, that have been credited, charged to the contract value, or paid during the current report period; and
- (4) The amount of outstanding loans, if any, as of the end of the current report period.

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§431:10D-E Penalties. In addition to any other penalties provided by law, violation of any requirement of this part is an unfair method of competition or unfair or deceptive act or practice under section 431:13-102.”

SECTION 2. In codifying the new sections added by section 1 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters used in designating the new sections in this Act.

SECTION 3. If any provision of this Act, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act, which can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

SECTION 4. This Act does not affect rights and duties that matured, penalties that were incurred, and proceedings that were begun, before its effective date.

SECTION 5. This Act shall take effect on January 1, 2007.

(Approved May 2, 2006.)

Notes

1. No subsection (b).
2. So in original.