



GOV. MSG. NO. 1028

EXECUTIVE CHAMBERS
HONOLULU

LINDA LINGLE
GOVERNOR

July 5, 2007

The Honorable Colleen Hanabusa, President
and Members of the Senate
Twenty-Fourth State Legislature
State Capitol, Room 409
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

This is to inform you that on July 5, 2007, the following bill was signed into law:

SB1008 SD1 HD2 CD1

A BILL FOR AN ACT RELATING TO ANNUITIES.
(ACT 257)

Sincerely,

A handwritten signature in black ink, appearing to read "Linda Lingle".

LINDA LINGLE

Approved by the Governor

on JUL 5 2007

THE SENATE
TWENTY-FOURTH LEGISLATURE, 2007
STATE OF HAWAII

ACT 257
S.B. NO. 1008
S.D. 1
H.D. 2
C.D. 1

A BILL FOR AN ACT

RELATING TO ANNUITIES.

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

1 SECTION 1. The legislature finds that it is necessary to
2 protect consumers who purchase annuity products.

3 The purpose of this Act is to ensure that the insurance
4 needs and financial objectives of consumers in a transaction
5 involving annuity products are appropriately addressed.

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

9 "PART . SUITABILITY IN ANNUITY TRANSACTIONS

10 §431:10D-A Scope. (a) This part applies to any
11 recommendation to purchase or exchange an annuity made to a
12 consumer by an insurance producer, or an insurer where no
13 producer is involved, that results in the purchase or exchange
14 recommended.

15 (b) This part does not apply to recommendations involving:



- 1 (1) Direct-response solicitations where there is no
- 2 recommendation based on information collected from the
- 3 consumer pursuant to this part; or
- 4 (2) Contracts used to fund:
 - 5 (A) An employee pension or welfare benefit plan that
 - 6 is covered by the Employee Retirement and Income
 - 7 Security Act;
 - 8 (B) A plan described by sections 401(a), 401(k),
 - 9 403(b), 408(k), or 408(p) of the Internal Revenue
 - 10 Code of 1986, as amended, if established or
 - 11 maintained by an employer;
 - 12 (C) A government or church plan defined in section
 - 13 414 of the Internal Revenue Code of 1986, as
 - 14 amended, a government or church welfare benefit
 - 15 plan, or a deferred compensation plan of a state
 - 16 or local government or tax exempt organization
 - 17 under section 457 of the Internal Revenue Code of
 - 18 1986, as amended;
 - 19 (D) A non-qualified deferred compensation arrangement
 - 20 established or maintained by an employer or plan
 - 21 sponsor;



1 (E) Settlements of or assumptions of liabilities
2 associated with personal injury litigation or any
3 dispute or claim resolution process; or

4 (F) Formal prepaid funeral contracts.

5 §431:10D-B Definitions. For the purposes of this part:

6 "Annuity" means a fixed or variable annuity that is
7 individually solicited, whether the product is classified as an
8 individual or group annuity.

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

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

15 "Recommendation" means advice provided by an insurance
16 producer, or an insurer where no producer is involved, to an
17 individual consumer that results in a purchase or exchange of an
18 annuity in accordance with that advice.

19 §431:10D-C Duties of insurers and insurance producers.

20 (a) In recommending to a consumer the purchase of an annuity or
21 the exchange of an annuity that results in another insurance
22 transaction or series of insurance transactions, the insurance



1 producer, or the insurer where no producer is involved, shall
2 have reasonable grounds for believing that the recommendation is
3 suitable for the consumer on the basis of the facts disclosed by
4 the consumer about the consumer's investments, other insurance
5 products, financial situation, and needs.

6 (b) Prior to the execution of a purchase or exchange of an
7 annuity resulting from a recommendation, an insurance producer,
8 or an insurer where no producer is involved, shall make
9 reasonable efforts to obtain information concerning:

- 10 (1) The consumer's financial status;
- 11 (2) The consumer's tax status;
- 12 (3) The consumer's investment objectives; and
- 13 (4) Such other information used or considered to be
14 reasonable by the insurance producer, or the insurer
15 where no producer is involved, in making
16 recommendations to the consumer.

17 (c) (1) Except as provided under paragraph (2), neither
18 an insurance producer, nor an insurer where no
19 producer is involved, shall have any obligation to a
20 consumer related to any recommendation if a consumer:

- 21 (A) Refuses to provide relevant information requested
22 by the insurer or insurance producer;



1 (B) Decides to enter into an insurance transaction
2 that is not based on a recommendation of the
3 insurer or insurance producer; or

4 (C) Fails to provide complete or accurate
5 information.

6 (2) An insurer or insurance producer's recommendation
7 subject to paragraph (1) shall be reasonable under all
8 the circumstances actually known to the insurer or
9 insurance producer at the time of the recommendation.

10 (d) An insurer shall either ensure that a system to
11 supervise recommendations that is reasonably designed to achieve
12 compliance with this part is established and maintained by
13 complying with subsections (f), (g), and (h), or establish and
14 maintain such a system, which shall include but not be limited
15 to:

- 16 (1) Maintaining written procedures; and
- 17 (2) Conducting a periodic review of the insurer's records
18 that is reasonably designed to assist in detecting and
19 preventing violations of this part.

20 (e) A managing general agent and independent agency shall
21 adopt a system established by an insurer to supervise
22 recommendations of its insurance producers that is reasonably



1 designed to achieve compliance with this part, or establish and
2 maintain such a system, which shall include but not be limited
3 to:

- 4 (1) Maintaining written procedures; and
- 5 (2) Conducting a periodic review of records that is
6 reasonably designed to assist in detecting and
7 preventing violations of this part.

8 (f) An insurer may contract with a third party, including
9 a managing general agent or independent agency, to comply with
10 the requirement of subsection (d) to establish and maintain a
11 system of supervision of insurance producers under contract with
12 or employed by the third party.

13 (g) An insurer shall make reasonable inquiry to ensure
14 that the third party contracting under subsection (f) is
15 performing the functions required under subsection (d) and shall
16 take such action as is reasonable under the circumstances to
17 enforce the contractual obligation to perform the functions. An
18 insurer may comply with its obligation to make reasonable
19 inquiry by:

- 20 (1) Annually obtaining a certification from a third party
21 senior manager who has responsibility for the
22 delegated functions that the manager has a reasonable



1 basis to represent, and does represent, that the third
2 party is performing the required functions; provided
3 that no person may provide a certification unless:

- 4 (A) The person is a senior manager with
5 responsibility for the delegated functions; and
- 6 (B) The person has a reasonable basis for making the
7 certification;

8 and

- 9 (2) Based on reasonable selection criteria, periodically
10 reviewing the performance of selected third parties
11 contracting under subsection (f) to determine whether
12 the third parties are performing the required
13 functions. The insurer shall perform those procedures
14 to conduct the review that are reasonable under the
15 circumstances.

16 (h) An insurer that contracts with a third party pursuant
17 to subsection (f) and that complies with the requirements to
18 supervise in subsection (g) shall have fulfilled its
19 responsibilities under subsection (d).

20 (i) An insurer, managing general agent, or independent
21 agency is not required by subsections (d) and (e) to:



- 1 (1) Review, or provide for review of, all insurance
- 2 producer-solicited transactions; or
- 3 (2) Include in its system of supervision an insurance
- 4 producer's recommendations to consumers of products
- 5 other than the annuities offered by the insurer,
- 6 managing general agent, or independent agency.

7 (j) A managing general agent or independent agency who
8 contracts with an insurer under subsection (f) shall promptly,
9 when requested by the insurer under subsection (g), give a
10 certification as described in subsection (g) or give a clear
11 statement that it is unable to satisfy the certification
12 criteria.

13 (k) Compliance with the National Association of Securities
14 Dealers Conduct Rules pertaining to suitability shall satisfy
15 the requirements under this section for recommending variable
16 annuities. Nothing in this subsection shall limit the insurance
17 commissioner's ability to enforce this part.

18 **§431:10D-D Mitigation of responsibility.** (a) The
19 commissioner may order:

- 20 (1) An insurer to take reasonably appropriate corrective
- 21 action for any consumer harmed by the insurer's, or by
- 22 its insurance producer's, violation of this part;



1 (2) An insurance producer to take reasonably appropriate
2 corrective action for any consumer harmed by the
3 insurance producer's violation of this part; and

4 (3) A general agency or independent agency that employs or
5 contracts with an insurance producer to sell or
6 solicit the sale of annuities to consumers, to take
7 reasonably appropriate corrective action for any
8 consumer harmed by the insurance producer's violation
9 of this part.

10 (b) Any penalty applicable to an insurer, a managing
11 general agent, independent agencies, or a producer under article
12 13 of chapter 431 for a violation of section 431:10D-C(a), (b),
13 and (c) may be reduced or eliminated if corrective action for
14 the consumer was taken promptly after a violation was
15 discovered.

16 **§431:10D-E Recordkeeping.** Insurers, managing general
17 agents, independent agencies, and insurance producers shall
18 maintain or make available to the commissioner records of the
19 information collected from the consumer and other information
20 used in making the recommendations that were the basis for
21 insurance transactions for five years after the insurance



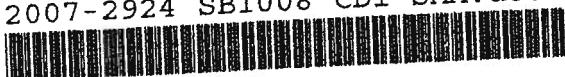
1 transaction has been completed by the insurer. An insurer may
2 maintain documentation on behalf of an insurance producer."

3 SECTION 3. Section 431:13-103, Hawaii Revised Statutes, is
4 amended by amending subsection (a) to read as follows:

5 "(a) The following are defined as unfair methods of
6 competition and unfair or deceptive acts or practices in the
7 business of insurance:

8 (1) Misrepresentations and false advertising of insurance
9 policies. Making, issuing, circulating, or causing to
10 be made, issued, or circulated, any estimate,
11 illustration, circular, statement, sales presentation,
12 omission, or comparison which:

- 13 (A) Misrepresents the benefits, advantages,
14 conditions, or terms of any insurance policy;
- 15 (B) Misrepresents the dividends or share of the
16 surplus to be received on any insurance policy;
- 17 (C) Makes any false or misleading statement as to the
18 dividends or share of surplus previously paid on
19 any insurance policy;
- 20 (D) Is misleading or is a misrepresentation as to the
21 financial condition of any insurer, or as to the



- 1 legal reserve system upon which any life insurer
2 operates;
- 3 (E) Uses any name or title of any insurance policy or
4 class of insurance policies misrepresenting the
5 true nature thereof;
- 6 (F) Is a misrepresentation for the purpose of
7 inducing or tending to induce the lapse,
8 forfeiture, exchange, conversion, or surrender of
9 any insurance policy;
- 10 (G) Is a misrepresentation for the purpose of
11 effecting a pledge or assignment of or effecting
12 a loan against any insurance policy;
- 13 (H) Misrepresents any insurance policy as being
14 shares of stock;
- 15 (I) Publishes or advertises the assets of any insurer
16 without publishing or advertising with equal
17 conspicuousness the liabilities of the insurer,
18 both as shown by its last annual statement; or
- 19 (J) Publishes or advertises the capital of any
20 insurer without stating specifically the amount
21 of paid-in and subscribed capital;



- 1 (2) False information and advertising generally. Making,
2 publishing, disseminating, circulating, or placing
3 before the public, or causing, directly or indirectly,
4 to be made, published, disseminated, circulated, or
5 placed before the public, in a newspaper, magazine, or
6 other publication, or in the form of a notice,
7 circular, pamphlet, letter, or poster, or over any
8 radio or television station, or in any other way, an
9 advertisement, announcement, or statement containing
10 any assertion, representation, or statement with
11 respect to the business of insurance or with respect
12 to any person in the conduct of the person's insurance
13 business, which is untrue, deceptive, or misleading;
- 14 (3) Defamation. Making, publishing, disseminating, or
15 circulating, directly or indirectly, or aiding,
16 abetting, or encouraging the making, publishing,
17 disseminating, or circulating of any oral or written
18 statement or any pamphlet, circular, article, or
19 literature which is false, or maliciously critical of
20 or derogatory to the financial condition of an
21 insurer, and which is calculated to injure any person
22 engaged in the business of insurance;



- 1 (4) Boycott, coercion, and intimidation.
- 2 (A) Entering into any agreement to commit, or by any
- 3 action committing, any act of boycott, coercion,
- 4 or intimidation resulting in or tending to result
- 5 in unreasonable restraint of, or monopoly in, the
- 6 business of insurance; or
- 7 (B) Entering into any agreement on the condition,
- 8 agreement, or understanding that a policy will
- 9 not be issued or renewed unless the prospective
- 10 insured contracts for another class or an
- 11 additional policy of the same class of insurance
- 12 with the same insurer;
- 13 (5) False financial statements.
- 14 (A) Knowingly filing with any supervisory or other
- 15 public official, or knowingly making, publishing,
- 16 disseminating, circulating, or delivering to any
- 17 person, or placing before the public, or
- 18 knowingly causing, directly or indirectly, to be
- 19 made, published, disseminated, circulated,
- 20 delivered to any person, or placed before the
- 21 public, any false statement of a material fact as
- 22 to the financial condition of an insurer; or



- 1 (B) Knowingly making any false entry of a material
- 2 fact in any book, report, or statement of any
- 3 insurer with intent to deceive any agent or
- 4 examiner lawfully appointed to examine into its
- 5 condition or into any of its affairs, or any
- 6 public official to whom the insurer is required
- 7 by law to report, or who has authority by law to
- 8 examine into its condition or into any of its
- 9 affairs, or, with like intent, knowingly omitting
- 10 to make a true entry of any material fact
- 11 pertaining to the business of the insurer in any
- 12 book, report, or statement of the insurer;

- 13 (6) Stock operations and advisory board contracts.
- 14 Issuing or delivering or permitting agents, officers,
- 15 or employees to issue or deliver, agency company stock
- 16 or other capital stock, or benefit certificates or
- 17 shares in any common-law corporation, or securities or
- 18 any special or advisory board contracts or other
- 19 contracts of any kind promising returns and profits as
- 20 an inducement to insurance;

- 21 (7) Unfair discrimination.



- 1 (A) Making or permitting any unfair discrimination
2 between individuals of the same class and equal
3 expectation of life in the rates charged for any
4 [~~contract~~] policy of life insurance or [~~of life~~]
5 annuity contract or in the dividends or other
6 benefits payable thereon, or in any other of the
7 terms and conditions of the contract;
- 8 (B) Making or permitting any unfair discrimination in
9 favor of particular individuals or persons, or
10 between insureds or subjects of insurance having
11 substantially like insuring, risk, and exposure
12 factors, or expense elements, in the terms or
13 conditions of any insurance contract, or in the
14 rate or amount of premium charge therefor, or in
15 the benefits payable or in any other rights or
16 privilege accruing thereunder;
- 17 (C) Making or permitting any unfair discrimination
18 between individuals or risks of the same class
19 and of essentially the same hazards by refusing
20 to issue, refusing to renew, canceling, or
21 limiting the amount of insurance coverage on a



1 property or casualty risk because of the
2 geographic location of the risk, unless:
3 (i) The refusal, cancellation, or limitation is
4 for a business purpose which is not a mere
5 pretext for unfair discrimination; or
6 (ii) The refusal, cancellation, or limitation is
7 required by law or regulatory mandate;
8 (D) Making or permitting any unfair discrimination
9 between individuals or risks of the same class
10 and of essentially the same hazards by refusing
11 to issue, refusing to renew, canceling, or
12 limiting the amount of insurance coverage on a
13 residential property risk, or the personal
14 property contained therein, because of the age of
15 the residential property, unless:
16 (i) The refusal, cancellation, or limitation is
17 for a business purpose which is not a mere
18 pretext for unfair discrimination; or
19 (ii) The refusal, cancellation, or limitation is
20 required by law or regulatory mandate;
21 (E) Refusing to insure, refusing to continue to
22 insure, or limiting the amount of coverage



1 available to an individual because of the sex or
2 marital status of the individual; however,
3 nothing in this subsection shall prohibit an
4 insurer from taking marital status into account
5 for the purpose of defining persons eligible for
6 dependent benefits;

7 (F) Terminating or modifying coverage, or refusing to
8 issue or renew any property or casualty policy or
9 contract of insurance solely because the
10 applicant or insured or any employee of either is
11 mentally or physically impaired; provided that
12 this subparagraph shall not apply to accident and
13 health or sickness insurance sold by a casualty
14 insurer; provided further that this subparagraph
15 shall not be interpreted to modify any other
16 provision of law relating to the termination,
17 modification, issuance, or renewal of any
18 insurance policy or contract;

19 (G) Refusing to insure, refusing to continue to
20 insure, or limiting the amount of coverage
21 available to an individual based solely upon the
22 individual's having taken a human



1 immunodeficiency virus (HIV) test prior to
2 applying for insurance; or
3 (H) Refusing to insure, refusing to continue to
4 insure, or limiting the amount of coverage
5 available to an individual because the individual
6 refuses to consent to the release of information
7 which is confidential as provided in section
8 325-101; provided that nothing in this
9 subparagraph shall prohibit an insurer from
10 obtaining and using the results of a test
11 satisfying the requirements of the commissioner,
12 which was taken with the consent of an applicant
13 for insurance; provided further that any
14 applicant for insurance who is tested for HIV
15 infection shall be afforded the opportunity to
16 obtain the test results, within a reasonable time
17 after being tested, and that the confidentiality
18 of the test results shall be maintained as
19 provided by section 325-101;
20 (8) Rebates. Except as otherwise expressly provided by
21 law:



- 1 (A) Knowingly permitting or offering to make or
2 making any contract of insurance, or agreement as
3 to the contract other than as plainly expressed
4 in the contract, or paying or allowing, or giving
5 or offering to pay, allow, or give, directly or
6 indirectly, as inducement to the insurance, any
7 rebate of premiums payable on the contract, or
8 any special favor or advantage in the dividends
9 or other benefits, or any valuable consideration
10 or inducement not specified in the contract; or
11 (B) Giving, selling, or purchasing, or offering to
12 give, sell, or purchase as inducement to the
13 insurance or in connection therewith, any stocks,
14 bonds, or other securities of any insurance
15 company or other corporation, association, or
16 partnership, or any dividends or profits accrued
17 thereon, or anything of value not specified in
18 the contract;
- 19 (9) Nothing in paragraph (7) or (8) shall be construed as
20 including within the definition of discrimination or
21 rebates any of the following practices:



- 1 (A) In the case of any [~~contract of~~] life insurance
2 policy or [~~life~~] annuity[~~7~~] contract, paying
3 bonuses to policyholders or otherwise abating
4 their premiums in whole or in part out of surplus
5 accumulated from nonparticipating insurance;
6 provided that any bonus or abatement of premiums
7 shall be fair and equitable to policyholders and
8 in the best interests of the insurer and its
9 policyholders;
- 10 (B) In the case of life insurance policies issued on
11 the industrial debit plan, making allowance to
12 policyholders who have continuously for a
13 specified period made premium payments directly
14 to an office of the insurer in an amount which
15 fairly represents the saving in collection
16 expense;
- 17 (C) Readjustment of the rate of premium for a group
18 insurance policy based on the loss or expense
19 experience thereunder, at the end of the first or
20 any subsequent policy year of insurance
21 thereunder, which may be made retroactive only
22 for the policy year; and



- 1 (D) In the case of any contract of insurance, the
- 2 distribution of savings, earnings, or surplus
- 3 equitably among a class of policyholders, all in
- 4 accordance with this article;

- 5 (10) Refusing to provide or limiting coverage available to
- 6 an individual because the individual may have a third-
- 7 party claim for recovery of damages; provided that:

- 8 (A) Where damages are recovered by judgment or
- 9 settlement of a third-party claim, reimbursement
- 10 of past benefits paid shall be allowed pursuant
- 11 to section 663-10;

- 12 (B) This paragraph shall not apply to entities
- 13 licensed under chapter 386 or 431:10C; and

- 14 (C) For entities licensed under chapter 432 or 432D:
- 15 (i) It shall not be a violation of this section
- 16 to refuse to provide or limit coverage
- 17 available to an individual because the
- 18 entity determines that the individual
- 19 reasonably appears to have coverage
- 20 available under chapter 386 or 431:10C; and

- 21 (ii) Payment of claims to an individual who may
- 22 have a third-party claim for recovery of



1 damages may be conditioned upon the
2 individual first signing and submitting to
3 the entity documents to secure the lien and
4 reimbursement rights of the entity and
5 providing information reasonably related to
6 the entity's investigation of its liability
7 for coverage.

8 Any individual who knows or reasonably should
9 know that the individual may have a third-party
10 claim for recovery of damages and who fails to
11 provide timely notice of the potential claim to
12 the entity, shall be deemed to have waived the
13 prohibition of this paragraph against refusal or
14 limitation of coverage. "Third-party claim" for
15 purposes of this paragraph means any tort claim
16 for monetary recovery or damages that the
17 individual has against any person, entity, or
18 insurer, other than the entity licensed under
19 chapter 432 or 432D;

- 20 (11) Unfair claim settlement practices. Committing or
21 performing with such frequency as to indicate a
22 general business practice any of the following:



- 1 (A) Misrepresenting pertinent facts or insurance
- 2 policy provisions relating to coverages at issue;
- 3 (B) With respect to claims arising under its
- 4 policies, failing to respond with reasonable
- 5 promptness, in no case more than fifteen working
- 6 days, to communications received from:
 - 7 (i) The insurer's policyholder;
 - 8 (ii) Any other persons, including the
 - 9 commissioner; or
 - 10 (iii) The insurer of a person involved in an
 - 11 incident in which the insurer's policyholder
 - 12 is also involved.
- 13 The response shall be more than an acknowledgment
- 14 that such person's communication has been
- 15 received, and shall adequately address the
- 16 concerns stated in the communication;
- 17 (C) Failing to adopt and implement reasonable
- 18 standards for the prompt investigation of claims
- 19 arising under insurance policies;
- 20 (D) Refusing to pay claims without conducting a
- 21 reasonable investigation based upon all available
- 22 information;



- 1 (E) Failing to affirm or deny coverage of claims
- 2 within a reasonable time after proof of loss
- 3 statements have been completed;
- 4 (F) Failing to offer payment within thirty calendar
- 5 days of affirmation of liability, if the amount
- 6 of the claim has been determined and is not in
- 7 dispute;
- 8 (G) Failing to provide the insured, or when
- 9 applicable the insured's beneficiary, with a
- 10 reasonable written explanation for any delay, on
- 11 every claim remaining unresolved for thirty
- 12 calendar days from the date it was reported;
- 13 (H) Not attempting in good faith to effectuate
- 14 prompt, fair, and equitable settlements of claims
- 15 in which liability has become reasonably clear;
- 16 (I) Compelling insureds to institute litigation to
- 17 recover amounts due under an insurance policy by
- 18 offering substantially less than the amounts
- 19 ultimately recovered in actions brought by the
- 20 insureds;
- 21 (J) Attempting to settle a claim for less than the
- 22 amount to which a reasonable person would have



- 1 believed the person was entitled by reference to
- 2 written or printed advertising material
- 3 accompanying or made part of an application;
- 4 (K) Attempting to settle claims on the basis of an
- 5 application which was altered without notice,
- 6 knowledge, or consent of the insured;
- 7 (L) Making claims payments to insureds or
- 8 beneficiaries not accompanied by a statement
- 9 setting forth the coverage under which the
- 10 payments are being made;
- 11 (M) Making known to insureds or claimants a policy of
- 12 appealing from arbitration awards in favor of
- 13 insureds or claimants for the purpose of
- 14 compelling them to accept settlements or
- 15 compromises less than the amount awarded in
- 16 arbitration;
- 17 (N) Delaying the investigation or payment of claims
- 18 by requiring an insured, claimant, or the
- 19 physician of either to submit a preliminary claim
- 20 report and then requiring the subsequent
- 21 submission of formal proof of loss forms, both of



- 1 which submissions contain substantially the same
2 information;
- 3 (O) Failing to promptly settle claims, where
4 liability has become reasonably clear, under one
5 portion of the insurance policy coverage to
6 influence settlements under other portions of the
7 insurance policy coverage;
- 8 (P) Failing to promptly provide a reasonable
9 explanation of the basis in the insurance policy
10 in relation to the facts or applicable law for
11 denial of a claim or for the offer of a
12 compromise settlement; and
- 13 (Q) Indicating to the insured on any payment draft,
14 check, or in any accompanying letter that the
15 payment is "final" or is "a release" of any claim
16 if additional benefits relating to the claim are
17 probable under coverages afforded by the policy;
18 unless the policy limit has been paid or there is
19 a bona fide dispute over either the coverage or
20 the amount payable under the policy;
- 21 (12) Failure to maintain complaint handling procedures.
22 Failure of any insurer to maintain a complete record



1 of all the complaints which it has received since the
2 date of its last examination under section 431:2-302.
3 This record shall indicate the total number of
4 complaints, their classification by line of insurance,
5 the nature of each complaint, the disposition of these
6 complaints, and the time it took to process each
7 complaint. For purposes of this section, "complaint"
8 means any written communication primarily expressing a
9 grievance; [and]

10 (13) Misrepresentation in insurance applications. Making
11 false or fraudulent statements or representations on
12 or relative to an application for an insurance policy,
13 for the purpose of obtaining a fee, commission, money,
14 or other benefit from any insurer, producer, or
15 individual[-]; and

16 (14) Failure to obtain information. Failure of any
17 insurance producer, or an insurer where no producer is
18 involved, to comply with section 431:10D-C(a), (b), or
19 (c) by making reasonable efforts to obtain information
20 about a consumer before making a recommendation to the
21 consumer to purchase or exchange an annuity."



1 SECTION 4. Nothing in this Act shall be construed to
2 affect in any manner any provision of chapter 485, Hawaii
3 Revised Statutes.

4 SECTION 5. Nothing in this Act shall be construed to
5 affect in any manner any provision of chapter 485A, Hawaii
6 Revised Statutes.

7 SECTION 6. This Act does not affect rights and duties that
8 matured, penalties that were incurred, and proceedings that were
9 begun, before its effective date.

10 SECTION 7. In codifying the new part added to chapter 431,
11 Hawaii Revised Statutes, by section 2 of this Act, the revisor
12 of statutes shall substitute the appropriate section numbers for
13 letters used in designating the new sections in this Act.

14 SECTION 8. Statutory material to be repealed is bracketed
15 and stricken. New statutory material is underscored.

16 SECTION 9. This Act shall take effect on January 1, 2008;
17 provided that section 5 shall take effect on July 1, 2008;
18 provided further that section 4 shall be repealed on July 1,
19 2008.



S.B. NO. 1008
S.D. 1
H.D. 2
C.D. 1

GOVERNOR OF THE STATE OF HAWAII

Approved this day: JUL 5 2007