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## A BILL FOR AN ACT

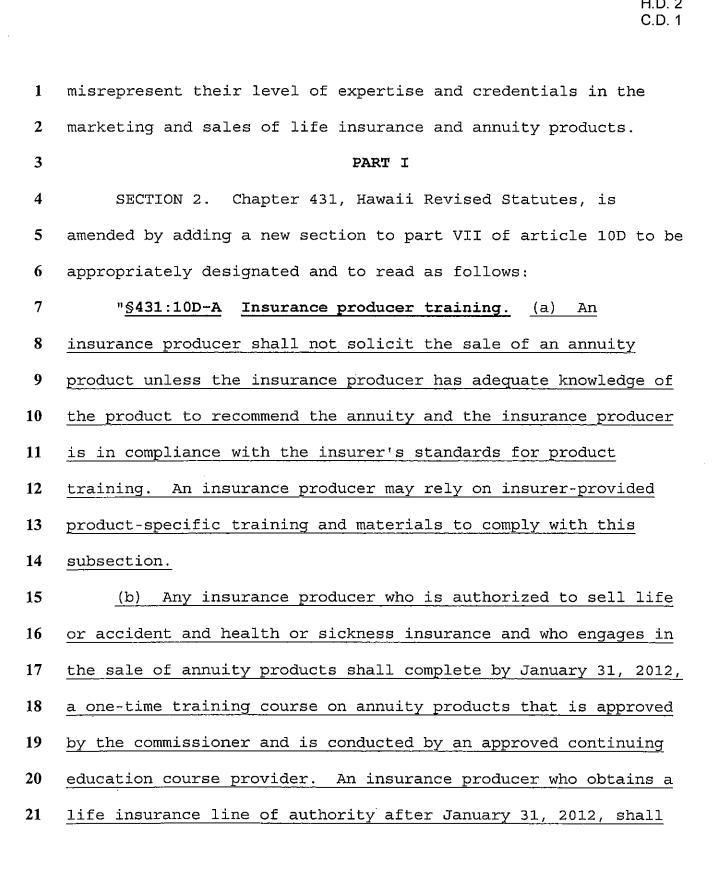
RELATING TO INSURANCE.

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

1 SECTION 1. The purpose of this Act is to protect 2 consumers, particularly seniors, from abusive financial services 3 practices by adopting model regulations of the National 4 Association of Insurance Commissioners in compliance with the 5 senior investor protections contained in Section 989A of the 6 federal Dodd-Frank Wall Street Reform and Consumer Protection 7 Act of 2010. In 2007, the legislature passed Act 257, Session 8 Laws of Hawaii 2007, which established standards and procedures 9 for insurers and insurance producers to make recommendations to 10 consumers regarding the purchase or exchange of annuities. Part 11 I of this Act adopts the updated version of the National 12 Association of Insurance Commissioners Suitability in Annuity 13 Transactions Model Regulation dated March 28, 2010. Part II of 14 this Act adopts the National Association of Insurance 15 Commissioners Model Regulation on the Use of Senior-Specific 16 Certifications and Professional Designations in the Sale of Life 17 Insurance and Annuities to protect seniors against producers who

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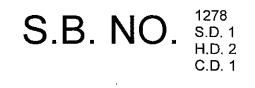
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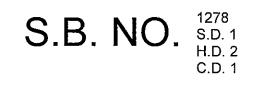


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1	not engag	e in the sale of annuities until the insurance provider	
2	has completed training that meets the following requirements:		
3	(1)	The minimum length of the training shall be sufficient	
4		to qualify for at least four continuing education	
5		credits;	
6	(2)	The training shall include information on the	
7		following topics:	
8		(A) The types and various classifications of	
9		annuities available on the market;	
10		(B) Identification of the parties to an annuity;	
11		(C) How fixed, variable, and indexed annuity contract	
12		provisions affect consumers;	
13		(D) The application of income taxation to qualified	
14		and non-qualified annuities;	
15		(E) The primary uses of annuities; and	
16		(F) Appropriate sales practices, replacement, and	
17		disclosure requirements;	
18		and	
19	(3)	The training shall not include any marketing	
20		information for products of any particular insurer or	
21		training on sales techniques.	



1	(c) An insurer shall verify that an insurance producer has	
2	completed the annuity training course required by this section	
3	before allowing the producer to sell an annuity product for the	
4	insurer. An insurer may satisfy its responsibility under this	
5	subsection by obtaining certificates of completion from the	
6	training course provider, or by obtaining reports from the	
7	commissioner, from training course providers, or from a	
8	reasonably reliable commercial database vendor that has a	
9	reporting arrangement with approved insurance continuing	
10	education providers."	
11	SECTION 3. Section 431:10D-621, Hawaii Revised Statutes,	
12	is amended to read as follows:	
13	"[ <b>{}}§431:10D-621[<del>]</del>] Scope.</b> (a) This part applies to any	
14	recommendation to purchase [ <del>or</del> ], exchange, or replace an annuity	
15	made to a consumer by an insurance producer, or an insurer where	
16	no producer is involved, that results in the purchase $[\Theta_{T}]_{,}$	
17	exchange, or replacement recommended.	
18	(b) This part does not apply to [recommendations]	
19	transactions involving:	
20	(1) Direct-response solicitations where there is no	
21	recommendation based on information collected from the	
22	consumer pursuant to this part; or	
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1	(2)	Contracts used to fund:	
2		(A)	An employee pension or welfare benefit plan that
3			is covered by the Employee Retirement and Income
4			Security Act;
5		(B)	A plan described by sections 401(a), 401(k),
6			403(b), 408(k), or 408(p) of the Internal Revenue
7			Code of 1986, as amended, if established or
8			maintained by an employer;
9		(C)	A [ <del>government</del> ] governmental plan or church plan
10			defined in section 414 of the Internal Revenue
11			Code of 1986, as amended, a government or church
12			welfare benefit plan, or a deferred compensation
13			plan of a state or local government or tax exempt
14			organization [ <del>under</del> ] <u>subject to</u> section 457 of
15			the Internal Revenue Code of 1986, as amended;
16		(D)	A non-qualified deferred compensation arrangement
17			established or maintained by an employer or plan
18			sponsor;
19		(E)	Settlements of or assumptions of liabilities
20			associated with personal injury litigation or any
21		•	dispute or claim resolution process; or
22		(F)	Formal prepaid funeral contracts.

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1	[+] (	c)[ <del>]</del> ] Nothing in this [ <del>]</del> ]part[ <del>]</del> ] shall be construed to		
2	affect in any manner any provision of chapter 485A."			
3	SECTION 4. Section 431:10D-622, Hawaii Revised Statutes,			
4	is amended	d as follows:		
5	1. ]	By adding two new definitions to be appropriately		
6	inserted and to read:			
7	""Replacement" means a transaction for the purchase of a			
8	new policy or contract that the proposing producer, or the			
9	proposing	insurer if there is no producer, knows or has reason		
10	to know w	ill cause an existing policy or contract to be:		
11	(1)	Terminated, lapsed, forfeited, or surrendered,		
12		partially surrendered, or assigned to the replacing		
13		insurer;		
14	(2)	Converted to reduced paid-up insurance, continued as		
15		extended term insurance, or otherwise reduced in value		
16		by the use of nonforfeiture benefits or other policy		
17		values;		
18	(3)	Amended to effect a reduction in either benefits or		
19		the term for which coverage would otherwise remain in		
20		force or for which benefits would be paid;		
21	(4)	Reissued with any reduction in cash value; or		
22	(5)	<u>Used in a finance purchase.</u>		
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<u>"Sui</u>	tability information" means information about the
consumer	that is reasonably related to the determination of the
appropria	teness of a recommendation, including the following:
(1)	Age;
(2)	Annual income;
(3)	Financial situation and needs, including the financial
	resources used for funding the annuity at issue;
(4)	Financial experience;
(5)	Financial objectives;

- Intended use of the annuity; 10 (6)
- 11 (7) Financial time horizon;
- Existing assets, including investment and life 12 (8)
- 13 insurance holdings;
- 14 (9) Liquidity needs;
- 15 (10) Liquid net worth;
- 16 Risk tolerance; and (11)
- 17 (12) Tax status."
- By amending the definitions of "annuity" and 18 2.
- 19 "recommendation" to read as follows:
- 20 ""Annuity" means [a fixed or variable] an annuity that is
- an insurance product under state law that is individually 21

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solicited, whether the product is classified as an individual or
 group annuity.

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3 "Recommendation" means advice provided by an insurance
4 producer, or an insurer where no producer is involved, to an
5 individual consumer that results in a purchase [er], exchange,
6 or replacement of an annuity in accordance with that advice."
7 SECTION 5. Section 431:10D-623, Hawaii Revised Statutes,
8 is amended to read as follows:

9 "[+]\$431:10D-623[+] Duties of insurers and insurance 10 producers. (a) In recommending to a consumer the purchase of 11 an annuity or the exchange of an annuity that results in another 12 insurance transaction or series of insurance transactions, the 13 insurance producer, or the insurer where no producer is 14 involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer [on the basis of] 15 16 based on the facts, including the consumer's suitability 17 information, disclosed by the consumer about the consumer's investments, other insurance products, financial situation, and 18 19 needs [-] and that:

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

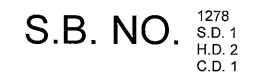


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1		potential tax penalty if the consumer sells,
2		exchanges, surrenders or annuitizes the annuity;
3		mortality and expense fees; investment advisory fees;
4		potential charges for and features of riders;
5		limitations on interest returns; insurance 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:
21		(A) The consumer will incur a surrender charge; be
22		subject to the commencement of a new surrender

1		period; lose existing benefits such as death,
2		living, or other contractual benefits; or be
3		subject to increased fees, investment advisory
4		fees, or charges for riders and similar product
5		enhancements;
6	<u>(B)</u>	The consumer would benefit from product
7		enhancements and improvements; and
8	<u>(C)</u>	The consumer has had another annuity exchange or
9		replacement, particularly an exchange or
10		replacement within the preceding thirty-six
11		months.
12	(b) Prio	r to the execution of a purchase [ <del>or</del> ], exchange,
13	or replacement	of an annuity resulting from a recommendation, an
14	insurance prod	ucer, or an insurer where no producer is involved,
15	shall make rea	sonable efforts to obtain the consumer's
16	suitability in	formation [ <del>concerning:</del>
17	<del>(1)</del> <del>The</del>	consumer's-financial status;
18	<del>(2)</del> The	consumer's tax status;
19	<del>(3)</del> The	consumer's investment objectives; and
20	<del>(4)</del> Such	other-information used or-considered to be
21	rease	onable by the insurance producer, or the insurer

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1	wher	e-no-producer-is-involved,-in-making	
2	reco	mmendations to the consumer].	
3	(c) Exce	pt as permitted under subsection (d), an insurer	
4	shall not issu	e an annuity that has been recommended to a	
5	consumer unles	s the insurer has a reasonable basis to believe	
6	the annuity is	suitable for the particular consumer based on the	
7	consumer's sui	tability information.	
8	[ <del>-(c)</del> ] <u>(d)</u>	(1) Except as provided under paragraph (2),	
9	neit	her an insurance producer $[-7]$ nor an insurer $[where$	
10	<del>no-p</del>	roducer is involved,] shall have any obligation to	
11	a consumer related to any [recommendation] annuity		
12	tran	saction if [ <del>a consumer</del> ]:	
13	<u>(A)</u>	No recommendation is made;	
14	<u>(B)</u>	A recommendation was made based on materially	
15		inaccurate information provided by the consumer;	
16	[ <del>-(A)-</del>	Refuses] (C) A consumer refuses to provide	
17		relevant suitability information [requested by	
18		the insurer or-insurance-producer;] and the	
19		annuity transaction is not recommended; or	
20	[ <del>(B)</del> -	Decides] (D) A consumer decides to enter into an	
21		[insurance] annuity transaction that is not based	

1		on a recommendation of the insurer or the
2		insurance producer[ <del>; or</del>
3		(C) Fails to provide complete or accurate
4		information.]; and
5	(2)	An [insurer or insurance producer's recommendation]
6		insurer's issuance of an annuity subject to paragraph
7		(1) shall be reasonable under all the circumstances
8		actually known to the insurer [or insurance-producer]
9		at the time [ <del>of the recommendation.</del> ] the annuity is
10		issued.
11	<u>(e)</u>	An insurance producer or a representative of the
12	insurer,	where no insurance producer is involved, shall at the
13	time of s	ale:
14	(1)	Make a record of any recommendation subject to this
15		section;
16	(2)	Obtain a signed statement from the consumer
17		documenting the customer's refusal to provide
18		suitability information, if applicable; and
19	(3)	Obtain a signed statement from the consumer
20		acknowledging that an annuity transaction is not
21		recommended if a consumer decides to enter into an



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1	annuity transaction that is not based on the insurance
2	producer's or insurer's recommendation.
3	[ <del>(d)</del> ] <u>(f)</u> An insurer shall [ <del>either ensure that a system to</del>
4	supervise recommendations] establish and maintain a supervision
5	system that is reasonably designed to achieve the insurer's and
6	its insurance producers' compliance with this part [ <del>is</del>
7	established-and maintained by complying with-subsections (f),
8	-(g), and (h), or establish and maintain such a system, which
9	shall-include but not be limited to:
10	(1) Maintaining written procedures; and
11	(2) Conducting a periodic review of the insurer's records
12	that is reasonably designed to assist in detecting and
13	preventing violations of this part.
14	(c) A managing general agent and independent agency-shall
15	adopt a system established by an insurer-to supervise
16	recommendations of its insurance producers-that is reasonably
17	designed to achieve compliance with this part, or establish and
18	maintain such a system, which shall include but not be limited
19	<del>to:</del>
20	(1) Maintaining written procedures; and

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1	(2) Conducting a periodic-review of records that is
2	reasonably designed to assist in detecting and
3	preventing violations of this part.
4	(f) An insurer may contract with a third party, including
5	a managing general agent or independent agency, tocomply with
6	the requirement of subsection (d) to establish and maintain a
7	system of supervision of insurance-producers under contract with
8	or employed by the third party.
9	<del>(g) An insurer shall make reasonable inquiry to ensure</del>
10	that the third party contracting under subsection (f) is
11	performing the functions required under subsection-(d) and shall
12	take such action as is reasonable under the circumstances to
13	enforce the contractual obligation to perform the functions. An
14	insurer may comply with its obligation to make reasonable
15	inquiry by:
16	(1) Annually obtaining a certification from a third party
17	senior manager who has responsibility for the
18	delegated functions that the manager has a reasonable
19	basis to represent, and does represent, that the third
20	party is performing the required functions; provided
21	that no person may-provide a certification unless:

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1		(A) The person is a senior manager with
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2		responsibility for the delegated functions; and
3		(B) The person has a reasonable basis for making the
4		certification; and
5	<del>(2)</del>	Based on reasonable selection criteria, periodically
6		reviewing the performance of selected third parties
7		contracting under-subsection(f) to determine whether
8		the third parties are performing the required
9		functionsThe insurer shall perform those procedures
10		to conduct-the review-that are reasonable under the
11		<del>circumstances.</del>
12	- <del>(h)</del>	An insurer that contracts with a third party pursuant
13	to subsec	tion (f) and that complies with the requirements to
14	supervise	in subsection (g) shall have fulfilled its
15	responsib	ilities under subsection (d).], including:
16	(1)	Reasonable procedures to inform the insurer's
17		insurance producers of the requirements of this part,
18		including incorporating the requirements of this part
19		into relevant insurance producer training manuals;
20	(2)	Standards for insurance producer product training,
21		including reasonable procedures to require its
22		insurance producers to comply with section 431:10D-A;
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1	(3)	Product-specific training and training materials that
2		explain all material features of its annuity products
3		to its insurance producers;
4	(4)	Procedures for review of each recommendation prior to
5		the issuance of an annuity to ensure that there is a
6		reasonable basis to determine the suitability of a
7		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;
12	(5)	Reasonable procedures to detect recommendations that
13		are not suitable, including confirmation of consumer
14		suitability information, systematic consumer surveys,
15		interviews, confirmation letters, and programs of
16		internal monitoring; provided that nothing in this
17		paragraph shall prevent an insurer applying sampling
18		procedures or confirming suitability information after
19		issuance or delivery of the annuity;
20	(6)	Annual review and testing of the supervision system
21		which shall be documented in a report to the insurer's
22		senior management, including the senior manager

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1	responsible for audit functions, to determine the		
2	effectiveness of the supervision system, the		
3	exceptions found, and corrective action taken or		
4	recommended, if any;		
5	(7) Procedures for monitoring contracts and, as		
6	appropriate, conducting audits to assure that any		
7	contracted functions are properly performed; and		
8	(8) Annual certification based on reasonable facts from a		
9	senior manager who has responsibility for contracted		
10	functions that the contracted functions are properly		
11	performed.		
12	(g) An insurer may contract for performance of any		
13	functions, including maintenance of procedures, required by		
14	subsection (f)(1) to (6); provided that an insurer shall be		
15	responsible for taking any appropriate corrective action and may		
16	be subject to sanctions and penalties pursuant to section		
17	431:10D-624 regardless of whether the insurer contracts for		
18	performance of a function and regardless of the insurer's		
19	compliance with subsection (f).		
20	[ <del>(i)</del> ] (h) An insurer[ <del>, managing general agent, or</del>		
21	independent agency] is not required [by_subsections (d) and (e)		
22	<del>to:</del>		
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1	<del>(1)</del>	Review, or provide-for review of, all insurance
2		producer solicited transactions; or
3	<del>(2)</del>	Include] to include in its system of supervision an
4		insurance producer's recommendations to consumers of
5		products other than the annuities offered by the
6		insurer[ <del>, managing general agent, or independent</del>
7		agency].
8	[ <del>(j)</del>	A managing general agent or independent agency who
9	<del>contracts</del>	with an insurer under-subsection (f) shall promptly,
10	when reque	ested by the insurer under subsection (g), give a
11	certificat	tion as described in subsection (g) or give a clear
12	statement	that is unable to satisfy the certification
13	<del>criteria.</del>	]
14	<u>(i)</u>	An insurance producer shall not dissuade, or attempt
15	to dissuad	de, a consumer from:
16	(1)	Truthfully responding to an insurer's request for
17		confirmation of suitability information;
18	(2)	Filing a complaint; or
19	(3)	Cooperating with the investigation of a complaint.
20	[ <del>-(k)</del> -]	(j) [Compliance with the National Association of
21	Securities	- Dealers Conduct Rules] Sales made in compliance with
22	requiremen	nts of the Financial Industry Regulatory Authority or
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1	its succe	ssor agency pertaining to suitability and supervision
2	of annuit	y transactions shall satisfy the requirements [under]
3	<u>of</u> this s	ection [for recommending variable annuities.]; provided
4	<u>that an i</u>	nsurer that issues an annuity subject to this part
5	shall:	
6	(1)	Monitor the sales by entities registered as broker-
7		dealers with the Financial Industry Regulatory
8		Authority of annuities issued by the insurer using
9		information collected in the normal course of an
10		insurer's business; and
11	(2)	Provide the entity subject to paragraph (1) with any
12		information and reports that are reasonably necessary
13		to assist the entity in maintaining the supervision
14		system required by the Financial Industry Regulatory
15		Authority.
16	This subs	ection shall apply to sales of variable annuities and
17	fixed ann	uities where suitability and supervision requirements
18	are simil.	ar to those applied to variable annuity sales. Nothing
19	in this s	ubsection shall limit the insurance commissioner's
20	ability to	o enforce this part."
21	SECT	ION 6. Section 431:10D-624, Hawaii Revised Statutes,

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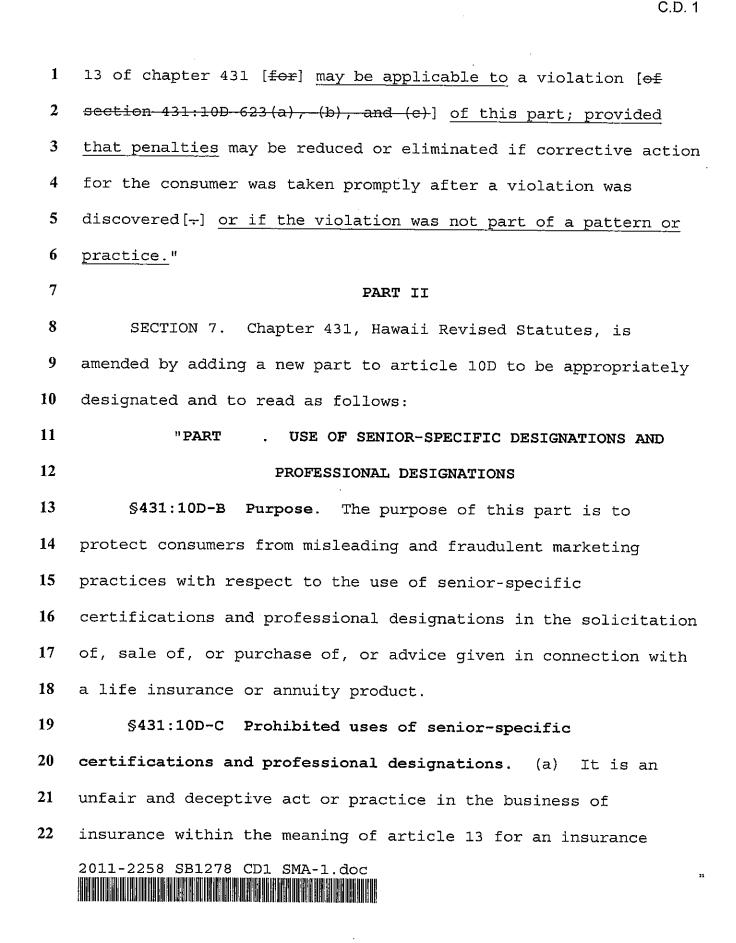
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22 is amended to read as follows:



1	. "[+]	§431:10D-624[ <del>] Mitigation of responsibility.</del> ]	
2	Compliance mitigation; penalties. (a) [The] An insurer shall		
3	be respon	sible for compliance with this part. If a violation	
4	occurs be	cause of the action or inaction of the insurer or its	
5	insurance	producer, the commissioner may order:	
6	(1)	An insurer to take reasonably appropriate corrective	
7		action for any consumer harmed by the insurer's $[-7]$ or	
8		$[by]$ its insurance producer's $[\tau]$ violation of this	
9		part;	
10	(2)	[An] A business entity, general agency, independent	
11		agency, or the insurance producer to take reasonably	
12		appropriate corrective action for any consumer harmed	
13		by the insurance producer's violation of this part;	
14		and	
15	(3)	[A general agency or independent agency that employs	
16		or contracts with an insurance producer to sell or	
17		solicit the-sale of annuities-to consumers, to take	
18		reasonably appropriate corrective action for any	
19		consumer harmed by the insurance producer's violation	
20		of this part.] Appropriate penalties and sanctions.	
21	(b)	Any penalty applicable to an insurer, a managing	
22	general ag	gent, independent agencies, or a producer under article	
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1 producer to use a senior-specific certification or professional 2 designation that indicates or implies in such a way as to 3 mislead a purchaser or prospective purchaser that the insurance 4 producer has a special certification or training in advising or 5 servicing seniors in connection with the solicitation, sale, or 6 purchase of a life insurance or annuity product or in providing 7 advice as to the value of or the advisability of purchasing or 8 selling a life insurance or annuity product either directly or 9 indirectly through publications or writings or by issuing or 10 promulgating analyses or reports related to a life insurance or 11 annuity product.

12 (b) The prohibited use of senior-specific certifications13 or professional designations includes the following:

14 (1) Use of a certification or professional designation by
15 an insurance producer who has not actually earned or
16 is otherwise ineligible to use the certification or
17 designation;

18 (2) Use of a non-existent, false, or self-conferred
19 certification or professional designation;

20 (3) Use of a certification or professional designation
 21 that indicates or implies a level of occupational
 22 qualifications obtained through education, training,

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or experience that the insurance producer using the certification or designation does not have; and
(4) Use of a certification or professional designation that was obtained from a certifying or designating organization that:

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- 6 (A) Is primarily engaged in the business of
  7 instruction in sales or marketing;
- 8 (B) Does not have reasonable standards or procedures
  9 for assuring the competency of its certificants
  10 or designees;
- (C) Does not have reasonable standards or procedures
  for monitoring and penalizing its certificants or
  designees for improper or unethical conduct; or
- 14 (D) Does not have reasonable continuing education
  15 requirements for its certificants or designees to
  16 maintain the certificate or designation.

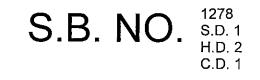
(c) There is a rebuttable presumption that a certifying or designating organization is not disqualified for purposes of subsection (b) when the certification or designation issued from the organization does not primarily apply to sales or marketing and when the organization or the certification or designation in question has been accredited by:

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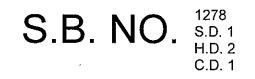
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(1)	The American National Standards Institute;
(2)	The National Commission for Certifying Agencies; or
(3)	Any organization that is on the United States
	Department of Education's list entitled "Accrediting
	Agencies Recognized for Title IV Purposes".
(d)	In determining whether a combination of words or an
acronym s	tanding for a combination of words constitutes a
certifica	tion or professional designation indicating or implying
that a pe	rson has special certification or training in advising
or servic	ing seniors, factors to be considered shall include:
(1)	Use of one or more words such as "senior",
	"retirement", "elder", or like words combined with one
	or more words such as "certified", "registered",
	"chartered", "adviser", "specialist", "consultant",
	"planner", or like words, in the name of the
	certification or professional designation; and
(2)	The manner in which those words are combined.
(e)	For purposes of this section, a job title within an
organizat	ion that is licensed or registered by a state or
federal f	inancial services regulatory agency is not a
certifica	tion or professional designation unless it is used in a
	acronym s certifica that a pe or servic (1) (2) (e) organizat federal f

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1 manner that would confuse or mislead a reasonable consumer when 2 the job title: 3 (1)Indicates seniority or standing within the 4 organization; or 5 (2) Specifies an individual's area of specialization 6 within the organization." 7 PART III 8 SECTION 8. In codifying the new sections added by sections 9 2 and 7 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 9. Statutory material to be repealed is bracketed 13 and stricken. New statutory material is underscored. 14 SECTION 10. This Act shall take effect on July 1, 2011; 15 provided that sections 2 through 6 of this Act shall take effect 16 on January 1, 2012.



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Report Title: Insurance; Conformity

#### Description:

Adopts model regulations of National Association of Insurance Commissioners in conformity with senior investor protections in Section 989A of the federal Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010. (CD1)

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

