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

1 misrepresent their level of expertise and credentials in the 2 marketing and sales of life insurance and annuity products. 3 PART I 4 SECTION 2. Chapter 431, Hawaii Revised Statutes, is 5 amended by adding a new section to part VII of article 10D to be 6 appropriately designated and to read as follows: 7 "§431:10D-A Insurance producer training. (a) An 8 insurance producer shall not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of 9 10 the product to recommend the annuity and the insurance producer 11 is in compliance with the insurer's standards for product 12 training. An insurance producer may rely on insurer-provided 13 product-specific training and materials to comply with this 14 subsection. 15 (b) Any insurance producer who is authorized to sell life 16 or accident and health or sickness insurance and who engages in the sale of annuity products shall complete by January 31, 2012, 17 18 a one-time training course on annuity products that is approved 19 by the commissioner and is conducted by an approved continuing 20 education course provider. An insurance producer who obtains a

life insurance line of authority after January 31, 2012, shall

1	not engag	e in the sale of annuities until the insurance provider
2	has compl	eted 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		<u>and</u>
19	<u>(3)</u>	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	"[+]\$431:10D-621[+] Scope. (a) This part applies to any
14	recommendation to purchase [or], 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 $[\frac{\partial r}{\partial t}]_{\underline{t}}$
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

recommendation based on information collected from the

consumer pursuant to this part; or

21

1	(2)	Cont	racts 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 [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 [under] subject to 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.

1	[+](c)[+] Nothing in this [+]part[+] shall be construed to
2	affect in	any manner any provision of chapter 485A."
3	SECT	ION 4. Section 431:10D-622, Hawaii Revised Statutes,
4	is amende	d as follows:
5	1.	By adding two new definitions to be appropriately
6	inserted	and to read:
7	" "Re	placement" means a transaction for the purchase of a
8	new polic	y 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)	Used in a finance purchase.

1 "Suitability information" means information about the consumer that is reasonably related to the determination of the 2 appropriateness of a recommendation, including the following: 3 4 (1) Age; 5 (2) Annual income; (3) Financial situation and needs, including the financial 6 7 resources used for funding the annuity at issue; 8 (4) Financial experience; 9 (5) Financial objectives; 10 (6) Intended use of the annuity; (7) Financial time horizon; 11 (8) Existing assets, including investment and life 12 13 insurance holdings; (9) Liquidity needs; 14 15 (10) Liquid net worth; (11) Risk tolerance; and 16 17 (12) Tax status." By amending the definitions of "annuity" and 18 2. "recommendation" to read as follows: 19 ""Annuity" means [a fixed or variable] an annuity that is 20

an insurance product under state law that is individually

solicited, whether the product is classified as an individual or 1 2 group annuity. "Recommendation" means advice provided by an insurance 3 producer, or an insurer where no producer is involved, to an 4 individual consumer that results in a purchase [or], exchange, 5 or replacement of an annuity in accordance with that advice." 6 SECTION 5. Section 431:10D-623, Hawaii Revised Statutes, 7 is amended to read as follows: 8 "[+]§431:10D-623[+] Duties of insurers and insurance 9 producers. (a) In recommending to a consumer the purchase of 10 an annuity or the exchange of an annuity that results in another 11 insurance transaction or series of insurance transactions, the 12 insurance producer, or the insurer where no producer is 13 involved, shall have reasonable grounds for believing that the 14 recommendation is suitable for the consumer [on the basis of] **15** based on the facts, including the consumer's suitability 16 information, disclosed by the consumer about the consumer's **17** investments, other insurance products, financial situation, and 18 needs[-] and that: 19 (1) The consumer has been reasonably informed of the 20 various features of the annuity, including the 21

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:
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 [or], 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 [concerning:
17	(1) The	consumer's financial status;
18	(2) The	consumer's tax status;
19	(3) The	consumer's investment objectives; and
20	(4) Such	other information used or considered to be
21	reas	onable by the insurance producer, or the insurer

1	where	e no producer is involved, in making
2	recor	mmendations to the consumer].
3	(c) Excep	ot as permitted under subsection (d), an insurer
4	shall not issue	e an annuity that has been recommended to a
5	consumer unless	the insurer has a reasonable basis to believe
6	the annuity is	suitable for the particular consumer based on the
7	consumer's suit	cability information.
8	[(c)] <u>(d)</u>	(1) Except as provided under paragraph (2),
9	neither an insu	rance producer[7] nor an insurer [where no
10	producer is in	volved,] shall have any obligation to a consumer
11	related to any	[recommendation] annuity transaction if [a
12	consumer]:	
13	(A)	No recommendation is made;
14	(B)	A recommendation was made based on materially
15		inaccurate information provided by the consumer;
16	[-(A)-	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	[(B)	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 $\underline{ the}$
2		insurance producer[; or
3		(C) Fails to provide complete or accurate
4		information].
. 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 [of the recommendation.] the annuity is
10	:	issued.
11	(e)	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

1	annuity transaction that is not based on the insurance
2	producer's or insurer's recommendation.
3	[(d)] <u>(f)</u> An insurer shall [either ensure that a system to
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 [is
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	(e) 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	to:
20	(1) Maintaining written procedures; and

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, to comply 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	(g) An insurer shall make reasonable inquiry to ensure
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:

1		(A) The person is a senior manager with
2		responsibility for the delegated functions; and
3		(B) The person has a reasonable basis for making the
4		certification; and
5	(2)	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		functions. The insurer shall perform those procedures
10		to conduct the review that are reasonable under the
11		circumstances.
12	(h)	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;

1	<u>(3)</u>	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 which 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	<u>(5)</u>	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	<u>(6)</u>	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

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	<u>(8)</u>	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	<u>(g)</u>	An insurer may contract for performance of any
13	functions	, including maintenance of procedures, required by
14	subsection	n (f)(1) to (6); provided that an insurer shall be
15	responsib	le for taking any appropriate corrective action and may
16	be subject	t to sanctions and penalties pursuant to section
17	431:10D-6	24 regardless of whether the insurer contracts for
18	performand	ce of a function and regardless of the insurer's
19	compliance	e with subsection (f).
20	[(i)]	<u>(h)</u> An insurer[, managing general agent, or
21	independer	nt agency] is not required [by subsections (d) and (e)
22	to:	

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1	-(1) -	Review, or provide for review of, all insurance
2		producer solicited transactions; or
3	(2)	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[, managing general agent, or independent
7		agency].
8	[(j)	- A managing general agent or independent agency who
9	contracts	with an insurer under subsection (f) shall promptly,
10	when requ	ested by the insurer under subsection (g), give a
11	certifica	tion as described in subsection (g) or give a clear
12	statement	that it is unable to satisfy the certification
13	criteria.]
14	(i)	An insurance producer shall not dissuade, or attempt
15	to dissua	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	[-(k) -	<u>(j)</u> [Compliance with the National Association of
21	Securitie	Section 3 Dealers Conduct Rules Sales made in compliance with
22	requiremen	nts of the Financial Industry Regulatory Authority or
	* CERTAIN OF STATE SOURCE STATE STAT	1 HMS 2011-3115

1	its succe	ssor agency pertaining to suitability and supervision			
2	of annuity transactions shall satisfy the requirements [under]				
3	of this section [for recommending variable annuities.]; provided				
4	that an insurer 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 t	o enforce this part."			
21	SECT	ION 6. Section 431:10D-624, Hawaii Revised Statutes,			
22	is amende	d to read as follows:			

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1	LTJ	3451:10D-024[] MICIGACION OF LESPONSIDIFICY.]
2	Complianc	e 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[$ au$] or
8		$[rac{by}{2}]$ 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 a	gent, independent agencies, or a producer under article
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- 1 13 of chapter 431 may apply for a violation [of section 431:10D-
- 2 623(a), (b), and (c)] of this part; provided that penalties may
- 3 be reduced or eliminated if corrective action for the consumer
- 4 was taken promptly after a violation was discovered[-] or if the
- 5 violation was not part of a pattern or practice."
- 6 PART II
- 7 SECTION 7. Chapter 431, Hawaii Revised Statutes, is
- 8 amended by adding a new part to article 10D to be appropriately
- 9 designated and to read as follows:
- 10 "PART . USE OF SENIOR-SPECIFIC DESIGNATIONS AND
- 11 PROFESSIONAL DESIGNATIONS
- 12 §431:10D-B Purpose. The purpose of this part is to
- 13 protect consumers from misleading and fraudulent marketing
- 14 practices with respect to the use of senior-specific
- 15 certifications and professional designations in the solicitation
- 16 of, sale of, or purchase of, or advice given in connection with
- 17 a life insurance or annuity product.
- 18 §431:10D-C Prohibited uses of senior-specific
- 19 certifications and professional designations. (a) It is an
- 20 unfair and deceptive act or practice in the business of
- 21 insurance within the meaning of article 13 for an insurance
- 22 producer to use a senior-specific certification or professional



- 1 designation that indicates or implies in such a way as to
- 2 mislead a purchaser or prospective purchaser that the insurance
- 3 producer has a special certification or training in advising or
- 4 servicing seniors in connection with the solicitation, sale, or
- 5 purchase of a life insurance or annuity product or in providing
- 6 advice as to the value of or the advisability of purchasing or
- 7 selling a life insurance or annuity product either directly or
- 8 indirectly through publications or writings or by issuing or
- 9 promulgating analyses or reports related to a life insurance or
- 10 annuity product.
- 11 (b) The prohibited use of senior-specific certifications
- 12 or professional designations includes the following:
- 13 (1) Use of a certification or professional designation by
- an insurance producer who has not actually earned or
- is otherwise ineligible to use the certification or
- 16 designation;
- 17 (2) Use of a non-existent, false, or self-conferred
- 18 certification or professional designation;
- 19 (3) Use of a certification or professional designation
- that indicates or implies a level of occupational
- 21 qualifications obtained through education, training,

1		or e	experience that the insurance producer using the
2		cert	cification or designation does not have; and
3	(4)	Use	of a certification or professional designation
4		that	was obtained from a certifying or designating
5		orga	enization that:
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;
11		(C)	Does not have reasonable standards or procedures
12			for monitoring and penalizing its certificants or
13			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.
17	(C)	Ther	re is a rebuttable presumption that a certifying or
18	designati	ng or	ganization is not disqualified for purposes of
19	subsection	n (b)	when the certification or designation issued from
20	the organ	izati	on does not primarily apply to sales or marketing
21	and when	the c	organization or the certification or designation in

question has been accredited by:

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1
         (1)
              The American National Standards Institute:
 2
              The National Commission for Certifying Agencies; or
         (2)
 3
              Any organization that is on the United States
         (3)
 4
              Department of Education's list entitled "Accrediting
 5
              Agencies Recognized for Title IV Purposes".
 6
         (d)
              In determining whether a combination of words or an
 7
    acronym standing for a combination of words constitutes a
 8
    certification or professional designation indicating or implying
 9
    that a person has special certification or training in advising
    or servicing seniors, factors to be considered shall include:
10
11
         (1) Use of one or more words such as "senior",
12
              "retirement", "elder", or like words combined with one
13
              or more words such as "certified", "registered",
14
              "chartered", "adviser", "specialist", "consultant",
              "planner", or like words, in the name of the
15
16
              certification or professional designation; and
              The manner in which those words are combined.
17
         (2)
18
              For purposes of this section, a job title within an
19
    organization that is licensed or registered by a state or
20
    federal financial services regulatory agency is not a
21
    certification or professional designation unless it is used in a
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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 upon its approval;
- 15 provided that sections 2, 5, and 6 of this Act shall take effect
- 16 on January 1, 2012.

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. (SB1278 HD1)

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