
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 the Act is to amend various
2 portions of title 24 of the Hawaii Revised Statutes, to update
3 and improve existing provisions and promote consumer protection,
4 including:

5 (1) Adding the National Association of Insurance
6 Commissioners Travel Insurance Model Law definition of
7 "travel insurance" and eliminating optional limited
8 licenses for travel insurance vending machines or
9 selling certain policies as a promotional device to
10 improve newspaper circulation;

11 (2) Amending the definition of "administrator" or "third
12 party administrator" to exclude dental insurers and
13 dental service corporations; increasing the surety
14 bond threshold amount for consistency with
15 requirements for other entities; and adding audited
16 financial statements as part of required annual report
17 filings; and

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(3) Adopting the National Association of Insurance Commissioners revised Suitability in Annuity Transactions Model Regulation provisions, which require producers to act in the best interest of the consumer when making a recommendation of an annuity, and require insurers to establish and maintain a system to supervise recommendations.

SECTION 2. Section 431:9A-107.5, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) Notwithstanding any other provision of this article, the commissioner may issue:

~~(1) A limited license to persons selling travel tickets of a common carrier of persons or property who shall act only as to travel ticket policies of accident and health or sickness insurance or baggage insurance on personal effects;~~

~~(2) A limited license to each individual who has charge of vending machines used in this State for the effectuation of travel insurance;~~

~~(3) A limited license to any individual who sells policies of accident and health or sickness insurance as a~~

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~~promotional device to improve the circulation of a
newspaper in this State;]~~

- (1) A limited license to persons selling travel insurance,
which means insurance coverage for personal risks
incident to planned travel, including:
- (A) Interruption or cancellation of trip or event;
 - (B) Loss of baggage or personal effects;
 - (C) Damages to accommodations or rental vehicles;
 - (D) Sickness, accident, disability, or death
occurring during travel;
 - (E) Emergency evacuation;
 - (F) Repatriation of remains; or
 - (G) Any other contractual obligations to indemnify or
pay a specified amount to the traveler upon
determinable contingencies related to travel as
approved by the commissioner.

Travel insurance does not include major medical plans
that provide comprehensive medical protection for
travelers with trips lasting longer than six months,
including those working or residing overseas as an
expatriate, or any other insurance product that
requires a specific insurance producer license.

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1 [~~4~~] (2) A limited line credit insurance producer license
2 to any individual who sells, solicits, or negotiates
3 limited line credit insurance; or

4 [~~5~~] (3) A limited license to any owner of a self-service
5 storage facility, as defined in section 507-61, to
6 sell stored property insurance, as defined in section
7 431:9A-171."

8 SECTION 3. Section 431:9J-101, Hawaii Revised Statutes, is
9 amended by amending the definition of "administrator" or "third
10 party administrator" to read as follows:

11 "'Administrator" or "third party administrator" means a
12 person who collects charges or premiums from, or who adjusts or
13 settles claims on, residents of this State in connection with
14 self-insurance, stop-loss, or life insurance coverage, accident
15 and health or sickness insurance coverage, or article 1 of
16 chapter 432, except the following:

17 (1) An employer on behalf of its employees or the
18 employees of a subsidiary or an affiliated corporation
19 of the employer;

20 (2) A union on behalf of its members;

21 (3) An insurer authorized to transact insurance in this

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1 State with respect to a policy lawfully issued and
2 delivered in and pursuant to the laws of this State or
3 another state;

4 (4) A dental insurer licensed under chapter 432G;

5 (5) A dental service corporation licensed under chapter
6 423;

7 [~~4~~] (6) A producer licensed to sell life insurance
8 coverage or accident and health or sickness insurance
9 coverage in this State, whose activities are limited
10 exclusively to the sale of insurance;

11 [~~5~~] (7) A managing general agent licensed in this State
12 whose activities are limited exclusively to the scope
13 of activities conveyed under that license;

14 [~~6~~] (8) An individual adjuster licensed in this State
15 whose activities are limited exclusively to the scope
16 of activities conveyed under that license;

17 [~~7~~] (9) An individual who adjusts or settles claims in
18 the normal course of practice or employment as an
19 attorney at law and who does not collect charges or
20 premiums in connection with life insurance coverage or
21 accident and health or sickness insurance coverage;

22 [~~8~~] (10) A creditor on behalf of its debtors with

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1 respect to insurance covering a debt between the
2 creditor and its debtors;

3 ~~[(+9)]~~ (11) A trust established in conformity with title 29
4 United States Code section 186 and trustees, agents,
5 and employees acting under that trust;

6 ~~[(+10)]~~ (12) A trust exempt from taxation under title 26
7 United States Code section 501(a) and trustees and
8 employees acting under that trust, or a custodian and
9 the custodian's agents and employees acting under a
10 custodian account that meets the requirements of title
11 26 United States Code section 401(f);

12 ~~[(+11)]~~ (13) A financial institution subject to supervision
13 or examination by federal or state banking
14 authorities, or a mortgage lender that collects and
15 remits premiums to licensed producers or authorized
16 insurers in connection with loan payments;

17 ~~[(+12)]~~ (14) A credit card issuing company advancing for
18 and collecting premiums or charges from its credit
19 card holders who have authorized collection; provided
20 that the company does not adjust or settle claims; and

21 ~~[(+13)]~~ (15) A person who acts solely as an administrator

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1 of one or more employee benefit plans established by
2 an employer or an employee organization."

3 SECTION 4. Section 431:9J-103, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "~~[§]~~**431:9J-103**~~[§]~~ **Surety bond required.** (a) Prior to
6 the issuance of the administrator license, the administrator
7 shall file with the commissioner, and maintain in force while so
8 licensed, a surety bond of at least \$100,000~~[7]~~ for the first
9 two years, and at least \$300,000 from the third year, in the
10 form and penal sum acceptable to the commissioner, and shall
11 provide that the bond may not be canceled or otherwise
12 terminated until two years have elapsed from the last day the
13 applicant was an administrator, unless the commissioner has
14 given prior written consent. The surety bond shall be
15 undertaken and may be enforced in the name of "Commissioner of
16 Insurance, State of Hawaii".

17 (b) At the third renewal, and each subsequent renewal, the
18 surety bond amount shall be at least \$300,000 and filed in
19 accordance with section 431:9J-112."

20 SECTION 5. Section 431:9J-112, Hawaii Revised Statutes, is
21 amended to read as follows:

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1 "[~~f~~]**\$431:9J-112**[~~f~~] **Annual report required.** (a) An
2 administrator shall file an annual report for the preceding
3 calendar year with the commissioner on or before March 1 of each
4 year, in a form and manner prescribed by the commissioner.

5 (b) The annual report shall include the names and
6 addresses of all insurers with which the administrator had an
7 agreement during the preceding calendar year.

8 (c) The annual report shall include a renewal certificate
9 for the surety bond required in section 431:9J-103(a) and (b)
10 and an updated surety bond form, if needed.

11 (d) The annual report shall include an audited financial
12 statement prepared by an independent certified public
13 accountant."

14 SECTION 6. Chapter 431, article 10D, part VII, Hawaii
15 Revised Statutes, is amended to read as follows:

16 "[~~f~~]**PART VII.**[~~f~~] **SUITABILITY IN ANNUITY TRANSACTIONS**

17 **\$431:10D-621 Scope.** (a) This part applies to any sale or
18 recommendation [~~to purchase, exchange, or replace~~] of an annuity
19 [~~made to a consumer by an insurance producer, or an insurer~~
20 ~~where no producer is involved, that results in the purchase,~~
21 ~~exchange, or replacement recommended~~].

22 (b) This part does not apply to transactions involving:

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- 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[+] of 1974, P.L. 93-406;
- 8 (B) A plan described by [~~sections~~] section 401(a),
9 401(k), 403(b), 408(k), or 408(p) of the Internal
10 Revenue Code of 1986, as amended, if established
11 or maintained by an employer;
- 12 (C) A [~~governmental~~] government plan or church plan
13 defined in section 414 of the Internal Revenue
14 Code of 1986, as amended, a government or church
15 welfare benefit plan, or a deferred compensation
16 plan of a state or local government or tax exempt
17 organization subject to section 457 of the
18 Internal Revenue Code of 1986, as amended; or
- 19 (D) A non-qualified deferred compensation arrangement
20 established or maintained by an employer or plan
21 sponsor;

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

4 [~~(F)~~] (4) Formal prepaid funeral contracts.

5 (c) Nothing in this part shall be construed to affect in
6 any manner any provision of chapter 485A.

7 **§431:10D-622 Definitions.** For the purposes of this part:

8 "Annuity" means an annuity that is an insurance product
9 under state law that is individually solicited, whether the
10 product is classified as an individual or group annuity.

11 "Approved continuing education course provider" means an
12 individual or entity that is approved to offer continuing
13 education courses pursuant to article 9A.

14 "Cash compensation" means any discount, concession, fee,
15 service fee, commission, sales charge, loan, override, or cash
16 benefit received by a producer in connection with the
17 recommendation or sale of an annuity from an insurer,
18 intermediary, or directly from the consumer.

19 "Comparable standards" means:

20 (1) With respect to broker-dealers and registered
21 representatives of broker-dealers, applicable United
22 States Securities and Exchange Commission and

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1 Financial Industry Regulatory Authority rules
2 pertaining to best interest obligations and
3 supervision of annuity recommendations and sales,
4 including, but not limited to, Regulation Best
5 Interest, title 17 Code of Federal Regulations section
6 240.151-1, and any amendments or successor regulations
7 thereto;

8 (2) With respect to investment advisers registered under
9 federal or state securities laws or investment adviser
10 representatives, the fiduciary duties and all other
11 requirements imposed on such investment advisers or
12 investment adviser representatives by contract or
13 under the Rules and Regulations, Investment Company
14 Act of 1940, title 17 Code of Federal Regulations part
15 270, or applicable state securities law, including but
16 not limited to, the Form ADV and interpretations; and

17 (3) With respect to plan fiduciaries or fiduciaries, the
18 duties, obligations, prohibitions and all other
19 requirements attendant to such status under Employee
20 Retirement Income Security Act of 1974, P.L. 93-406,
21 or the Internal Revenue Code of 1986, as amended, and
22 any amendments or successor statutes thereto.

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1 "Consumer profile information" means information that is
2 reasonably appropriate to determine whether a recommendation
3 addresses the consumer's financial situation, insurance needs
4 and financial objectives, including, at a minimum, the
5 following:
6 (1) Age;
7 (2) Annual income;
8 (3) Financial situation and needs, including debts and
9 other obligations;
10 (4) Financial experience;
11 (5) Insurance needs;
12 (6) Financial objectives;
13 (7) Intended use of the annuity;
14 (8) Financial times horizon;
15 (9) Existing assets or financial products, including
16 investment, annuity and insurance holdings;
17 (10) Liquidity needs;
18 (11) Liquid net worth;
19 (12) Risk tolerance, including but not limited to,
20 willingness to accept non-guaranteed elements in the
21 annuity;
22 (13) Financial resources used to fund the annuity; and

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1 (14) Tax status.

2 "Continuing education credit" means one continuing
3 education credit hour. For the purposes of this paragraph,
4 "credit hour" has the same meaning as set forth in section
5 431:9A-102.

6 "Financial professional" means a producer that is regulated
7 and acting as:

8 (1) A broker-dealer registered under federal or state
9 securities laws or a registered representative of a
10 broker-dealer;

11 (2) An investment adviser registered under federal or
12 state securities laws or an investment adviser
13 representative associated with the federal or state
14 registered investment adviser; or

15 (3) A plan fiduciary under section 3(21) of the Employee
16 Retirement Income Security Act of 1974, P.L. 93-406,
17 or fiduciary under section 4975(E) (3) of the Internal
18 Revenue Code of 1986, as amended, or any amendments or
19 successor statutes thereto.

20 ~~["Insurance producer" means a person required to be~~
21 ~~licensed under the laws of this State to sell, solicit, or~~
22 ~~negotiate insurance, including annuities.]~~

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1 "Insurer" means a company required to be licensed under the
2 laws of this State to provide insurance products, including
3 annuities.

4 "Intermediary" means an entity contracted directly with an
5 insurer or with another entity contracted with an insurer to
6 facilitate the sale of the insurer's annuities by producers.

7 "Material conflict of interest" means a financial interest
8 of the insurance producer in the sale of an annuity that a
9 reasonable person would expect to influence the impartiality of
10 a recommendation. "Material conflict of interest" does not
11 include cash compensation or non-cash compensation.

12 "Non-cash compensation" means any form of compensation that
13 is not cash compensation, including, but not limited to, health
14 insurance, office rent, office support, and retirement benefits.

15 "Non-guaranteed elements" means the premiums, credited
16 interest rates (including any bonus), benefits, values,
17 dividends, non-interest based credits, charges, or elements of
18 formulas used to determine any of these, that are subject to
19 company discretion and are not guaranteed at issue. An element
20 is considered non-guaranteed if any of the underlying non-
21 guaranteed elements are used in its calculation.

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1 "Producer" means a person or entity required to be licensed
2 under the laws of this State to sell, solicit, or negotiate
3 insurance, including annuities. For purposes of this part,
4 "producer" includes an insurer where no producer is involved.

5 "Recommendation" means advice provided by ~~[an insurance]~~ a
6 producer~~[, or an insurer where no producer is involved,]~~ to an
7 individual consumer that ~~[results]~~ was intended to result or
8 does result in a purchase, an exchange, or a replacement of an
9 annuity in accordance with that advice. "Recommendation" does
10 not include general communication to the public, generalized
11 customer services assistance or administrative support, general
12 educational information and tools, prospectuses, or other
13 product and sales material.

14 "Replacement" means a transaction ~~[for the purchase of a~~
15 ~~new policy or contract that]~~ in which a new annuity is to be
16 purchased, and it is known or should be known to the proposing
17 producer, or to the proposing insurer ~~[if there is no producer,~~
18 ~~knows or has reason to know will cause an existing policy or~~
19 ~~contract to be:]~~ whether or not a producer is involved, that by
20 reason of the transaction, an existing annuity or other
21 insurance policy has been or is to be any of the following:

22 (1) Terminated, lapsed, forfeited, or surrendered,

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1 partially surrendered, or assigned to the replacing
2 insurer;

3 (2) Converted to reduced paid-up insurance, continued as
4 extended term insurance, or otherwise reduced in value
5 by the use of nonforfeiture benefits or other policy
6 values;

7 (3) Amended to effect a reduction in either benefits or the
8 term for which coverage would otherwise remain in force
9 or for which benefits would be paid;

10 (4) Reissued with any reduction in cash value; or

11 (5) Used in a finance purchase.

12 ~~["Suitability information" means information about the~~
13 ~~consumer that is reasonably related to the determination of the~~
14 ~~appropriateness of a recommendation, including the following:~~

15 ~~(1) Age;~~

16 ~~(2) Annual income;~~

17 ~~(3) Financial situation and needs, including the financial~~
18 ~~resources used for funding the annuity at issue;~~

19 ~~(4) Financial experience;~~

20 ~~(5) Financial objectives;~~

21 ~~(6) Intended use of the annuity;~~

22 ~~(7) Financial time horizon;~~

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~~(8) Existing assets, including investment and life~~

~~insurance holdings;~~

~~(9) Liquidity needs;~~

~~(10) Liquid net worth;~~

~~(11) Risk tolerance; and~~

~~(12) Tax status.]~~

§431:10D-623 Duties of insurers and [insurance]

producers. ~~[(a) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer based on the facts, including the consumer's suitability information, disclosed by the consumer about the consumer's investments, other insurance products, financial situation, and needs and that:~~

~~(1) The consumer has been reasonably informed of the various features of the annuity, including the potential surrender period and surrender charge, potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity, mortality and expense fees, investment advisory fees, potential~~

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~~charges for and features of riders; limitations on
interest returns; insurance and investment components;
and market risk;~~

~~(2) The consumer would benefit from certain features of
the annuity, including tax-deferred growth,
annuitization, or death or living benefit;~~

~~(3) The particular annuity as a whole, the underlying
subaccounts to which funds are allocated at the time of
the purchase or exchange of the annuity, and riders and
similar product enhancements, if any, are suitable and,
in the case of an exchange or replacement, the
transaction as a whole is suitable for the particular
consumer; and~~

~~(4) In the case of an exchange or replacement of an
annuity, the exchange or replacement is suitable for
the particular consumer taking into consideration
whether:~~

~~(A) The consumer will incur a surrender charge; be
subject to the commencement of a new surrender
period; lose existing benefits such as death,
living, or other contractual benefits; or be
subject to increased fees, investment advisory~~

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1 ~~fees, or charges for riders and similar product~~
2 ~~enhancements;~~

3 ~~(B) The consumer would benefit from product~~
4 ~~enhancements and improvements; and~~

5 ~~(C) The consumer has had another annuity exchange or~~
6 ~~replacement, particularly an exchange or~~
7 ~~replacement within the preceding thirty-six~~
8 ~~months.~~

9 ~~(b) Prior to the execution of a purchase, exchange, or~~
10 ~~replacement of an annuity resulting from a recommendation, an~~
11 ~~insurance producer, or an insurer where no producer is involved,~~
12 ~~shall make reasonable efforts to obtain the consumer's~~
13 ~~suitability information.~~

14 ~~(c) Except as permitted under subsection (d), an insurer~~
15 ~~shall not issue an annuity that has been recommended to a~~
16 ~~consumer unless the insurer has a reasonable basis to believe~~
17 ~~the annuity is suitable for the particular consumer based on the~~
18 ~~consumer's suitability information.]~~

19 (a) A producer, when making a recommendation of an annuity,
20 shall act in the best interest of the consumer under the
21 circumstances known at the time the recommendation is made,
22 without placing the producer's or the insurer's financial

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1 interest ahead of the consumer's interest. A producer has acted
2 in the best interest of the consumer if the producer has
3 satisfied the obligations regarding care, disclosure, conflict
4 of interest, and documentation as set forth in this part.

5 ~~[(d)(1)]~~ (b)(1) Except as provided under paragraph (2),
6 ~~[neither an insurance]~~ a producer ~~[nor an insurer]~~
7 shall have ~~[any]~~ no obligation to a consumer under
8 section 431:10D-623.1 related to any annuity
9 transaction if:

- 10 (A) No recommendation is made;
- 11 (B) A recommendation was made based on materially
12 inaccurate information provided by the consumer;
- 13 (C) A consumer refuses to provide relevant
14 ~~[suitability]~~ consumer profile information and
15 the annuity transaction is not recommended; or
- 16 (D) A consumer decides to enter into an annuity
17 transaction that is not based on a recommendation
18 of ~~[the insurer or]~~ the ~~[insurance]~~ producer~~[+~~
19 ~~and]~~.

20 (2) An insurer's issuance of an annuity subject to

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paragraph (1) shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

~~[(e) An insurance producer or a representative of the insurer, where no insurance producer is involved, shall at the time of sale:~~

~~(1) Make a record of any recommendation subject to this section;~~

~~(2) Obtain a signed statement from the consumer documenting the customer's refusal to provide suitability information, if applicable; and~~

~~(3) Obtain a signed statement from the consumer acknowledging that an annuity transaction is not recommended if a consumer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.~~

~~+(f)]~~ (c) Except as permitted under subsection (b), an insurer may not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity would effectively address the particular consumer's financial situation, insurance needs, and financial objectives based on the consumer's consumer profile information.

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1 (d) An insurer shall establish and maintain a supervision
2 system that is reasonably designed to achieve the insurer's and
3 its ~~[insurance]~~ producers' compliance with this part, including:

4 (1) Reasonable procedures to inform the insurer's
5 ~~[insurance]~~ producers of the requirements of this
6 part, including incorporating the requirements of this
7 part into relevant ~~[insurance]~~ producer training
8 manuals;

9 (2) Standards for ~~[insurance]~~ producer product training,
10 including reasonable procedures to require its
11 ~~[insurance]~~ producers to comply with section 431:10D-
12 626;

13 (3) Product-specific training and training materials that
14 explain all material features of its annuity products
15 to its ~~[insurance]~~ producers;

16 (4) Procedures for the review of each recommendation prior
17 to the issuance of an annuity to ensure ~~[that]~~ there
18 is a reasonable basis to determine ~~[the suitability of~~
19 ~~a recommendation that may include additional review of~~
20 ~~selected transactions through electronic, physical, or~~
21 ~~other means; provided that the insurer may specify~~
22 ~~criteria for selection of transactions for additional~~

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1 ~~review,~~ that the recommended annuity would
2 effectively address the particular consumer's
3 financial situation, insurance needs, and financial
4 objectives. The review procedures may apply a
5 screening system for the purpose of identifying
6 selected transactions for additional review and may be
7 accomplished electronically or through other means
8 including, but not limited to, physical review. An
9 electronic or other system may be designed to require
10 additional review only of those transactions
11 identified for additional review by the selection
12 criteria;

- 13 (5) Reasonable procedures to detect recommendations that
14 are not [~~suitable, including~~] in compliance with
15 subsections (b), (g), and (h), and sections 431:10D-
16 623.1, 431:10D-623.2, 431:10D-623.3, and 431:10D-
17 623.4. This may include confirmation of [consumer
18 ~~suitability~~] the consumer's consumer profile
19 information, systematic consumer surveys, producer and
20 consumer interviews, confirmation letters, producer
21 statements or attestations, and programs of internal
22 monitoring; provided that nothing in this paragraph

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1 shall prevent an insurer applying sampling procedures
2 or confirming [~~suitability~~] the consumer profile
3 information or other required information under this
4 section after issuance or delivery of the annuity;

5 (6) Reasonable procedures to assess, prior to or
6 upon issuance or delivery of an annuity, whether a
7 producer has provided to the consumer the information
8 required to be provided under this section;

9 (7) Reasonable procedures to identify and address
10 suspicious consumer refusals to provide consumer
11 profile information;

12 (8) Reasonable procedures to identify and eliminate any
13 sales contests, sale quotas, bonuses, and non-cash
14 compensation that are based on the sales of specific
15 annuities within a limited period of time. The
16 requirements of this paragraph are not intended to
17 prohibit the receipt of health insurance, office rent,
18 office support, retirement benefits, or other employee
19 benefits by employees as long as those benefits are
20 not based upon the volume of sales of a specific
21 annuity within a limited period of time;

22 [~~+6~~] (9) Annual review and testing of the supervision

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1 system ~~[which]~~ that shall be documented in a written
2 report to the insurer's senior management, including
3 the senior manager responsible for audit functions, to
4 determine the effectiveness of the supervision system,
5 the exceptions found, and corrective action taken or
6 recommended, if any;

7 ~~[(7)]~~ (10) Procedures for monitoring contracts and, as
8 appropriate, conducting audits to assure that any
9 contracted functions are properly performed; and

10 ~~[(8)]~~ (11) Annual certification based on reasonable
11 facts from a senior manager who has responsibility for
12 contracted functions that the contracted functions are
13 properly performed.

14 ~~[(9)]~~ (e) An insurer may contract for performance of any
15 functions, including maintenance of procedures, required by
16 subsection ~~[(f)(1) to (6)]~~ (d)(1) to (9); provided that an
17 insurer shall be responsible for taking any appropriate
18 corrective action and may be subject to sanctions and penalties
19 pursuant to section 431:10D-624 regardless of whether the
20 insurer contracts for performance of a function and regardless
21 of the insurer's compliance with subsection ~~[(f)]~~ (d).

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1 ~~[(h)]~~ (f) An insurer is not required to include in its
2 system of supervision ~~[an insurance]~~:

- 3 (1) A producer's recommendations to consumers of products
4 other than the annuities offered by the insurer~~[-]~~; or
5 (2) Consideration of or comparison to options available to
6 the producer or compensation relating to those options
7 other than annuities or other products offered by the
8 insurer.

9 ~~[(i) An insurance producer shall not]~~ (g) Neither a
10 producer nor an insurer shall dissuade, or attempt to dissuade,
11 a consumer from:

- 12 (1) Truthfully responding to an insurer's request for
13 confirmation of ~~[suitability]~~ the consumer profile
14 information;
15 (2) Filing a complaint; or
16 (3) Cooperating with the investigation of a complaint.

17 ~~[(j) Sales]~~ (h) Recommendations and sales of annuities
18 made in compliance with ~~[requirements of the Financial Industry~~
19 ~~Regulatory Authority or its successor agency pertaining to~~
20 ~~suitability and supervision of annuity transactions]~~ comparable
21 standards shall satisfy the requirements of this ~~[section]~~
22 ~~provided that an insurer that issues an annuity subject to this~~

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1 ~~part shall:]~~ part. This section applies to all recommendations
2 and sales of annuities made by financial professionals in
3 compliance with business rules, controls, and procedures that
4 satisfy a comparable standard even if such standard would not
5 otherwise apply to the product or recommendation at issue.
6 However, nothing in this subsection shall limit the insurance
7 commissioner's ability to investigate and enforce the provisions
8 of this part. Nothing in this subsection shall limit the
9 insurer's obligation to comply with subsection (c), although the
10 insurer may base its analysis on information received from
11 either the financial professional or the entity supervising the
12 financial professional.

13 (i) For subsection (h) to apply, an insurer shall:

14 (1) Monitor the [~~sales by entities registered as broker-~~
15 ~~dealers with the Financial Industry Regulatory~~
16 ~~Authority of annuities issued by the insurer]~~ relevant
17 conduct of the financial professional seeking to rely
18 on subsection (h) or the entity responsible for
19 supervising the financial professional, such as the
20 financial professional's broker-dealer or an
21 investment adviser registered under federal or state

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1 securities laws using information collected in the
 2 normal course of an insurer's business; and
 3 (2) Provide to the entity [~~subject to paragraph (1) with~~
 4 ~~any~~] responsible for supervising the financial
 5 professional seeking to rely on subsection (h), such
 6 as the financial professional's broker-dealer or
 7 investment adviser registered under federal or state
 8 securities laws, information and reports that are
 9 reasonably [~~necessary~~] appropriate to assist the
 10 entity [~~in maintaining the~~] to maintain its
 11 supervision system [~~required by the Financial Industry~~
 12 ~~Regulatory Authority.~~

13 ~~This subsection shall apply to sales of variable annuities and~~
 14 ~~fixed annuities where suitability and supervision requirements~~
 15 ~~are similar to those applied to variable annuity sales. Nothing~~
 16 ~~in this subsection shall limit the insurance commissioner's~~
 17 ~~ability to enforce this part].~~

§431:10D-623.1 Care obligation of insurers and producers.

19 (a) The producer, in making a recommendation, shall exercise
 20 reasonable diligence, care, and skill to:

21 (1) Know the consumer's financial situation, insurance
 22 needs, and financial objectives;

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(2) Understand the available recommendation options after making a reasonable inquiry into options available to the producer;

(3) Have a reasonable basis to believe the recommended option effectively addresses the consumer's financial situation, insurance needs, and financial objectives over the life of the product, as evaluated in light of the consumer profile information; and

(4) Communicate the basis or bases of the recommendation.

(b) The requirements under subsection (a) include:

(1) Making reasonable efforts to obtain consumer profile information from the consumer prior to the recommendation of an annuity; and

(2) Considering the types of products the producer is authorized and licensed to recommend or sell that address the consumer's financial situation, insurance needs, and financial objectives.

This does not require analysis or consideration of any products outside the authority and license of the producer or other possible alternative products or strategies available in the market at the time of the recommendation. Producers shall be

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1 held to standards applicable to producers with similar authority
2 and licensure.

3 (c) The requirements under this section do not create a
4 fiduciary obligation or relationship and only create a
5 regulatory obligation as established in this regulation.

6 (d) The consumer profile information, characteristics of
7 the insurer, and product costs, rates, benefits, and features
8 are those factors generally relevant in making a determination
9 whether an annuity effectively addresses the consumer's
10 financial situation, insurance needs, and financial objectives,
11 but the level of importance of each factor may vary depending on
12 the facts and circumstances of a particular case. However, each
13 factor may not be considered in isolation.

14 (e) The requirements under subsection (a):

15 (1) Include having a reasonable basis to believe the
16 consumer would benefit from certain features of the
17 annuity, such as annuitization, death, or living
18 benefit, or other insurance-related features;

19 (2) Apply to the particular annuity as a whole and the
20 underlying subaccounts to which funds are allocated at
21 the time of purchase or exchange of an annuity, and
22 riders and similar producer enhancements, if any;

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(3) Do not mean the annuity with the lowest one-time or multiple occurrence compensation structure shall necessarily be recommended; and

(4) Do not mean the producer has ongoing monitoring obligations under this section, although such an obligation may be separately owed under the terms of a fiduciary, consulting, investment advising, or financial planning agreement between the consumer and the producer.

(f) In the case of an exchange or replacement of an annuity, the producer shall consider the whole transaction, which includes taking into consideration whether:

(1) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits, such as death, living, or other contractual benefits, or be subject to increased fees, investment advisory fees, or charges for riders and similar product enhancements;

(2) The replacing product would substantially benefit the consumer in comparison to the replaced product over the life of the product; and

(3) The consumer has had another annuity exchange or

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1 replacement and, in particular, an exchange or
2 replacement within the preceding sixty months.

3 (g) Nothing in this part should be construed to require a
4 producer to obtain any license other than a producer license
5 with the appropriate line of authority to sell, solicit, or
6 negotiate insurance in this State, including but not limited to
7 any securities license in order to fulfill the duties and
8 obligations contained in this part; provided that the producer
9 does not give advice or provide services that are otherwise
10 subject to securities laws or engage in any other activity
11 requiring other professional licenses.

12 **§431:10D-623.2 Disclosure obligation of insurers and**
13 **producers.** (a) Prior to the recommendation or sale of an
14 annuity, the producer shall prominently disclose to the consumer
15 on a form substantially similar to Appendix A of the Spring
16 2020, National Association of Insurance Commissioners
17 Suitability In Annuity Transactions Model Regulation:

18 (1) A description of the scope and terms of the
19 relationship with the consumer and the role of the
20 producer in the transaction;

21 (2) An affirmative statement on whether the producer is

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1 licensed and authorized to sell the following
2 products:

3 (A) Fixed annuities;

4 (B) Fixed indexed annuities;

5 (C) Variable annuities;

6 (D) Life insurance;

7 (E) Mutual funds;

8 (F) Stocks and bonds; and

9 (G) Certificates of deposit;

10 (3) An affirmative statement describing the insurers the
11 producer is authorized, contracted, appointed, or
12 otherwise able to sell insurance products for, using
13 the following descriptions:

14 (A) One insurer;

15 (B) From two or more insurers; or

16 (C) From two or more insurers although primarily
17 contracted with one insurer;

18 (4) A description of the sources and types of cash
19 compensation and non-cash compensation to be received
20 by the producer, including whether the producer is to
21 be compensated for the sale of a recommended annuity
22 by commission as part of premium or other remuneration

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1 received from the insurer, intermediary, or other
2 producer or by fee as a result of a contract for
3 advice or consulting services; and

4 (5) A notice of the consumer's right to request additional
5 information regarding cash compensation described in
6 subsection (b).

7 (b) Upon request of the consumer or the consumer's
8 designated representative, the producer shall disclose:

9 (1) A reasonable estimate of the amount of cash
10 compensation to be received by the producer, which may
11 be stated as a range of amounts or percentages; and

12 (2) Whether the cash compensation is a one-time or
13 multiple occurrence amount, and, if a multiple
14 occurrence amount, the frequency and amount of the
15 occurrence, which may be stated as a range of amounts
16 or percentages.

17 (c) Prior to or at the time of the recommendation or sale
18 of an annuity, the producer shall have a reasonable basis to
19 believe the consumer has been informed of various features of
20 the annuity, such as the potential surrender period and
21 surrender charge, potential tax penalty if the consumer sells,
22 exchanges, surrenders, or annuitizes the annuity, mortality and

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expense fees, investment advisory fees, any annual fees,
potential charges for and features of riders or other options of
the annuity, limitations on interest returns, potential changes
in non-guaranteed elements of the annuity, insurance and
investment components, and market risk.

§431:10D-623.3 Conflicts of interest obligation of
insurers and producers. A producer shall identify and avoid or
reasonably manage and disclose material conflicts of interest,
including material conflicts of interest related to an ownership
interest.

§431:10D-623.4 Documentation obligation of insurers and
producers. (a) A producer shall at the time of recommendation
or sale:

(1) Make a written record of any recommendation and the
basis for the recommendation subject to this part;

(2) Obtain a consumer signed statement on a form
substantially similar to Appendix B of the Spring
2020, National Association of Insurance Commissioners
Suitability In Annuity Transactions Model Regulation,
documenting:

(A) A customer's refusal to provide the consumer
profile information, if any; and

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(B) A customer's understanding of the ramifications
of not providing his or her consumer profile
information or providing insufficient consumer
profile information; and

(3) Obtain a consumer signed statement on a form
substantially similar to Appendix C of the Spring
2020, National Association of Insurance Commissioners
Suitability In Annuity Transactions Model Regulation,
acknowledging the annuity transaction is not
recommended if a customer decides to enter into an
annuity transaction that is not based on the
producer's recommendation.

(b) Any requirement applicable to a producer under this
part shall apply to every producer who has exercised material
control or influence in the making of a recommendation and has
received direct compensation as a result of the recommendation
or sale, regardless of whether the producer has had any direct
contact with the consumer. Activities such as providing or
delivering marketing or educational materials, product
wholesaling or other back office product support, and general
supervision of a producer do not, in and of themselves,
constitute material control or influence.

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1 §431:10D-624 Compliance mitigation; penalties[-];

2 enforcement. (a) An insurer shall be responsible for
3 compliance with this part. If a violation occurs because of the
4 action or inaction of the insurer or its [~~insurance~~] producer,
5 the commissioner may order:

6 (1) An insurer to take reasonably appropriate corrective
7 action for any consumer harmed by a failure to comply
8 with this part by the [~~insurer's~~] insurer, an entity
9 contracted to perform the insurer's supervisory
10 duties, or [~~its insurance producer's violation of this~~
11 part,] by the producer;

12 (2) A business entity, general agency, independent agency,
13 or the [~~insurance~~] producer to take reasonably
14 appropriate corrective action for any consumer harmed
15 by the [~~insurance~~] producer's violation of this part;
16 and

17 (3) Appropriate penalties and sanctions.

18 (b) Any penalty applicable to an insurer, a managing
19 general agent, independent agencies, or a producer under article
20 13 of chapter 431 may be applicable to a violation of this part;
21 provided that penalties may be reduced or eliminated if
22 corrective action for the consumer was taken promptly after a

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1 violation was discovered or if the violation was not part of a
2 pattern or practice.

3 (c) The authority to enforce compliance with this part is
4 vested exclusively with the commissioner.

5 **§431:10D-625 Recordkeeping.** Insurers, managing general
6 agents, independent agencies, and [~~insurance~~] producers shall
7 maintain or make available to the commissioner records of the
8 information collected from the consumer, disclosures made to the
9 consumer, including summaries of oral disclosures, and other
10 information used in making the recommendations that were the
11 basis for insurance transactions for five years after the
12 insurance transaction has been completed by the insurer. An
13 insurer may maintain documentation on behalf of [~~an insurance~~] a
14 producer.

15 **§431:10D-626 [~~Insurance producer~~] Producer**
16 **training.** (a) [~~An insurance~~] A producer shall not solicit the
17 sale of an annuity product unless the [~~insurance~~] producer has
18 adequate knowledge of the product to recommend the annuity and
19 the [~~insurance~~] producer is in compliance with the insurer's
20 standards for product training. [~~An insurance~~] A producer may
21 rely on insurer-provided product-specific training standards and
22 materials to comply with this subsection.

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1 (b) ~~[Any insurance]~~ A producer who is authorized to sell
2 annuity products on or before January 31, 2012, shall complete
3 by January 31, 2012, a one-time training course on annuity
4 products meeting the requirements of subsection (d). A producer
5 who has completed an annuity training course approved by the
6 commissioner prior to July 1, 2022, shall, within six months
7 after July 1, 2022, complete either:

8 (1) A new four credit training course approved by the
9 commissioner after July 1, 2022; or

10 (2) An additional one-credit training course
11 approved by the commissioner and provided by an
12 approved education provider on appropriate sales
13 practices, replacement, and disclosure requirements
14 under this part.

15 (c) ~~[An insurance]~~ A producer who obtains a life or
16 variable life and variable annuity products line of authority
17 after January 31, 2012, shall not engage in the sale of
18 annuities until the insurance producer has completed training
19 meeting the requirements of subsection (d).

20 (d) The training required by this section shall be
21 approved by the commissioner, be conducted by an approved

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1 continuing education course provider, and meet the following
2 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 standard of conduct, sales practices,
17 replacement, and disclosure requirements; and

18 (3) The training shall not include any marketing
19 information for products of any particular insurer or
20 training on sales techniques.

21 (e) A provider of an annuity training course intending to
22 comply with this section shall register as an approved

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1 continuing education course provider in this State and comply
2 with the rules and guidelines applicable to [~~insurance~~] producer
3 continuing education courses as set forth in article 9A.

4 (f) Annuity training courses may be conducted and
5 completed by classroom or self-study methods in accordance with
6 article 9A.

7 (g) Providers of annuity training shall comply with the
8 reporting requirements and shall issue certificates of
9 completion in accordance with article 9A.

10 (h) The satisfaction of the training requirements of
11 another state that are substantially similar to the provisions
12 of this section shall be deemed to satisfy the training
13 requirements of this section in this State.

14 (i) The satisfaction of the components of the training
15 requirements of any course or courses with components determined
16 by the commissioner to be substantially similar to the
17 provisions of this section shall be deemed to satisfy the
18 training requirements of this section.

19 [~~(i)~~] (j) An insurer shall verify that [~~an insurance~~] the
20 producer has completed the annuity training course required by
21 this section before allowing the producer to sell an annuity
22 product for the insurer. An insurer may satisfy its

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1 responsibility under this subsection by obtaining certificates
2 of completion of the training course or from a reasonably
3 reliable commercial database vendor that has a reporting
4 arrangement with approved continuing education course
5 providers."

6 SECTION 7. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 8. This Act shall take effect upon its approval;
9 provided that section 1 shall take effect on December 31, 2022.

10

11

INTRODUCED BY: 

12

BY REQUEST

JAN 24 2022

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Report Title:

Limited License, Travel Insurance, Administrator, Third Party Administrator, Dental Insurer, Dental Service Corporation, Surety Bond, Annual Report, Audited Financial Statement, Annuity, Annuity Recommendation, Consumer Profile Information, Producer, Insurer, Intermediary, Material Conflict of Interest

Description:

Amends various portions of title 24 of the Hawaii Revised Statutes to update and improve existing provisions.

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

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JUSTIFICATION SHEET

DEPARTMENT: Commerce and Consumer Affairs

TITLE: A BILL FOR AN ACT RELATING TO INSURANCE.

PURPOSE: To amend various portions of title 24 of the Hawaii Revised Statutes (HRS) to update and improve existing provisions, including:

- (1) Amending section 431:9A-107.5(a), HRS, by adding the National Association of Insurance Commissioners Travel Insurance Model Law definition of "travel insurance" and by removing the option of limited licenses for individuals who are in charge of travel insurance vending machines or who sell policies of accident and health or sickness insurance as a promotional device to improve newspaper circulation (section 1 of bill);
- (2) Amending the definition of "administrator" or "third party administrator" (TPA) in section 431:9J-101, HRS, to exclude dental insurers and dental service corporations; increasing the surety bond threshold amount to \$300,000 from the third year in section 431:9J-103, HRS; and adding audited financial statements as part of the required annual report filing in section 431:9J-112, HRS (sections 2, 3, 4);
- (3) Amending chapter 431, article 10D, part VII, HRS, to adopt the National Association of Insurance Commissioners revised Suitability in Annuity Transactions Model Regulation, that requires producers to act in the best interest of the consumer when making a recommendation of an annuity and

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requires insurers to establish and maintain a system to supervise recommendations (section 5).

MEANS: Amend sections 431:9A-107.5(a), 431:9J-101, 431:9J-103, 431:9J-112, and part VII of article 10D of chapter 431, HRS.

JUSTIFICATION: (1) While section 431:9A-107.5(a) allows limited lines producers to sell travel baggage insurance or travel disability insurance, the limited lines producer license does not cover other general travel insurance products such as trip interruption or cancellation, damages to accommodations or rental vehicles, emergency evacuations, or repatriation of remains. The absence of coverage creates potential confusion for consumers and gaps in product offerings for those with this license. Additionally, some insurance products covered under section 431:9A-107.5(a) are outdated and obsolete. (Section 1)

(2) Currently, dental insurers and dental service corporations are subject to Third Party Administrators (TPA) regulation codified in chapter 431, article 9J. Additionally, existing TPA regulation requires the TPA to obtain a \$100,000 surety bond for licensure, which is a lower amount compared to surety bond requirements for other regulated insurance entities. Further, licensed TPAs are currently not required to include an audited financial statement in their annual report to the Insurance Commissioner. Increasing the surety bond amount and requiring audited financial statements in annual filings will promote financial stability of these entities and increase consumer protection. (Sections 2, 3, 4)

(3) Under chapter 431, article 10D, part VII, insurance producers are not required to act in the best interest of the consumer when making annuity recommendations.

Rather, the current standard for insurance producers making annuity recommendations is a suitability standard, which may not provide adequate consumer protection. In 2020, the NAIC adopted a revised Suitability in Annuity Transactions Model Regulation to address this issue. Failure to adopt this revised model regulation by 2025 may subject states to federal preemption in this area. (Section 5)

Impact on the public: This bill will enhance consumer protection by making necessary updates and improvements to title 24, HRS.

Impact on the department and other agencies:
None.

GENERAL FUNDS: None.

OTHER FUNDS: None.

PPBS PROGRAM
DESIGNATION: CCA-106.

OTHER AFFECTED
AGENCIES: None.

EFFECTIVE DATE: Upon approval; provided that section 1 shall take effect on December 31, 2022.