

## ACT 252

S.B NO. 2819

A Bill for an Act Relating to Insurance.

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

SECTION 1. The purpose of this Act is to update the insurance code to address developing trends in life insurance sales. Section 2 of this Act:

- (1) Establishes standards for life insurance policy illustrations that will protect consumers and foster consumer education;
- (2) Provides illustration formats;
- (3) Prescribes standards to be followed when illustrations are used; and
- (4) Specifies the disclosures that are required in connection with illustrations.

Section 2 seeks to ensure that illustrations do not mislead purchasers of life insurance. Standardization of sales illustrations will also allow consumers to more accurately compare competing products.

Section 3 of this Act:

- (1) Regulates the activities of insurers and producers with respect to the replacement of existing life insurance and annuities; and
- (2) Protects the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions by:
  - (A) Assuring that purchasers receive information with which a decision can be made in the purchaser's own best interest;
  - (B) Reducing the opportunity for misrepresentation and incomplete disclosure; and
  - (C) Establishing penalties for failure to comply with requirements of this regulation.

The two new parts being established in article 10D of chapter 431, Hawaii Revised Statutes, work in concert to ensure that consumers are accurately and sufficiently informed when making decisions regarding life insurance planning.

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

**“PART . LIFE INSURANCE POLICY ILLUSTRATIONS**

**§431:10D-A Scope.** This part shall apply to all group and individual life insurance policies and certificates except:

- (1) Variable life insurance;
- (2) Individual and group annuity contracts;
- (3) Credit life insurance; and
- (4) Life insurance policies with no illustrated death benefits for any individual exceeding \$10,000.

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

“Actuarial Standards Board” means the board established by the American Academy of Actuaries to develop and adopt standards of actuarial practice.

“Basic illustration” means a ledger or proposal used in the sale of a life insurance policy that shows both guaranteed and nonguaranteed elements.

“Contract premium” means the gross premium that is required to be paid under a fixed premium policy, including the premium for a rider for which benefits are shown in the illustration.

“Currently payable scale” means a scale of nonguaranteed elements in effect for a policy form as of the preparation date of the illustration or declared to become effective within the next ninety-five days.

“Disciplined current scale” means a scale of nonguaranteed elements constituting a limit on illustrations currently being illustrated by an insurer that is reasonably based on actual recent historical experience, as certified annually by an illustration actuary designated by the insurer. Further guidance in determining the disciplined current scale as contained in standards established by the Actuarial Standards Board may be relied upon if the standards:

- (1) Are consistent with all provisions of this part;
- (2) Limit a disciplined current scale to reflect only actions that have already been taken or events that have already occurred;
- (3) Do not permit a disciplined current scale to include any projected trends of improvements in experience or any assumed improvements in experience beyond the illustration date; and
- (4) Do not permit assumed expenses to be less than minimum assumed expenses.

“Generic name” means a short title descriptive of the policy being illustrated such as “whole life”, “term life”, or “flexible premium adjustable life.”

“Guaranteed elements” means the premiums, benefits, values, credits, or charges under a policy of life insurance that are guaranteed and determined at issue.

“Illustrated scale” means a scale of nonguaranteed elements currently being illustrated that is not more favorable to the policy owner than the lesser of:

- (1) The disciplined current scale; or
- (2) The currently payable scale.

“Illustration” means a presentation or depiction that includes nonguaranteed elements of a policy of life insurance over a period of years and that is a basic illustration, a supplemental illustration, or an in force illustration.

“Illustration actuary” means an actuary meeting the requirements of section 431:10D-I, who certifies to illustrations based on the standard of practice adopted by the Actuarial Standards Board.

“In force illustration” means an illustration furnished at any time after the policy that it depicts has been in force for one year or more.

“Lapse-supported illustration” means an illustration of a policy form failing the test of self-supporting illustration as defined in this part, under a modified persistency rate assumption using persistency rates underlying the disciplined current scale for the first five years and one hundred per cent policy persistency thereafter.

“Minimum assumed expenses” means the minimum expenses that may be used in the calculation of the disciplined current scale for a policy form. The insurer may choose to designate each year the method of determining assumed expenses for all policy forms from the following:

- (1) Fully allocated expenses;
- (2) Marginal expenses; and
- (3) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the commissioner.

Marginal expenses may be used only if greater than a generally recognized expense table. If no generally recognized expense table is approved, fully allocated expenses must be used.

“Nonguaranteed elements” means the premiums, benefits, values, credits, or charges under a policy of life insurance that are not guaranteed or not determined at issue.

“Non-term group life” means a group policy or individual policies of life insurance issued to members of an employer group or other permitted group where:

- (1) Every plan of coverage was selected by the employer or other group representative;
- (2) Some portion of the premium is paid by the group or through payroll deduction; and
- (3) Group underwriting or simplified underwriting is used.

“Policy owner” means the owner named in the policy or the certificate holder in the case of a group policy.

“Premium outlay” means the amount of premium assumed to be paid by the policy owner or other premium payer out-of-pocket.

“Self-supporting illustration” means an illustration of a policy form for which it can be demonstrated that, when using experience assumptions underlying the disciplined current scale, for all illustrated points in time on or after the fifteenth policy anniversary or the twentieth policy anniversary for second-or-later-to-die policies (or upon policy expiration if sooner), the accumulated value of all policy cash flows equals or exceeds the total policy owner value available. For this purpose, policy owner value shall include cash surrender values and any other illustrated benefit amounts available at the policy owner’s election.

“Supplemental illustration” means an illustration furnished in addition to a basic illustration that meets the applicable requirements of this part, and that may be presented in a format differing from the basic illustration, but may only depict a scale of nonguaranteed elements that is permitted in a basic illustration.

**§431:10D-C Policies to be illustrated.** (a) Each insurer marketing policies to which this part is applicable shall notify the commissioner whether a policy form is to be marketed with or without an illustration. For all policy forms being actively marketed on the effective date of this part, the insurer shall identify in writing the forms and whether or not an illustration will be used with them. For policy forms filed after the effective date of this part, the identification shall be made at the time of filing. Any previous identification may be changed by notice to the commissioner.

(b) If the insurer identifies a policy form as one to be marketed without an illustration, any use of an illustration for any policy using that form prior to the first policy anniversary is prohibited.

(c) If a policy form is identified by the insurer as one to be marketed with an illustration, a basic illustration prepared and delivered in accordance with this part is required, except that a basic illustration need not be provided to individual members of a group or to individuals insured under multiple lives coverage issued to a single applicant unless the coverage is marketed to these individuals. The illustration furnished an applicant for a group life insurance policy or policies issued to a single applicant on multiple lives may be either an individual or composite illustration representative of the coverage on the lives of members of the group or the multiple lives covered.

(d) Potential enrollees of non-term group life subject to this part shall be furnished a quotation with the enrollment materials. The quotation shall show potential policy values for sample ages and policy years on a guaranteed and nonguaranteed basis appropriate to the group and the coverage. This quotation shall not be considered an illustration for purposes of this part, but all information provided shall be consistent with the illustrated scale. A basic illustration shall be provided at delivery of the certificate to enrollees for non-term group life who enroll for more than the minimum premium necessary to provide pure death benefit protection. In addition, the insurer shall make a basic illustration available to any non-term group life enrollee who requests it.

**§431:10D-D General requirements and prohibitions.** (a) An illustration used in the sale of a life insurance policy shall satisfy the applicable requirements of this part, be clearly labeled “life insurance illustration”, and contain the following basic information:

- (1) Name of insurer;
- (2) Name and business address of producer and insurer’s authorized representative, if any;
- (3) Name, age, and sex of proposed insured, except where a composite illustration is permitted under this part;
- (4) Underwriting or rating classification upon which the illustration is based;
- (5) Generic name of policy, the company product name, if different, and form number;
- (6) Initial death benefit; and
- (7) Dividend option election or application of non-guaranteed elements, if applicable.

(b) When using an illustration in the sale of a life insurance policy, an insurer, its producers, or other authorized representatives shall not:

- (1) Represent the policy as anything other than a life insurance policy;
- (2) Use or describe nonguaranteed elements in a manner that is misleading or has the capacity or tendency to mislead;
- (3) State or imply that the payment or amount of nonguaranteed elements is guaranteed;
- (4) Use an illustration that does not comply with the requirements of this part;
- (5) Use an illustration that at any policy duration depicts policy performance more favorable to the policy owner than that produced by the illustrated scale of the insurer whose policy is being illustrated;
- (6) Provide an applicant with an incomplete illustration;
- (7) Represent in any way that premium payments will not be required for each year of the policy in order to maintain the illustrated death benefits, unless that is a fact;
- (8) Use the term “vanish” or “vanishing premium,” or a similar term that implies the policy becomes paid up, to describe a plan for using nonguaranteed elements to pay a portion of future premiums;
- (9) Except for policies that can never develop nonforfeiture values, use an illustration that is “lapse-supported”; or
- (10) Use an illustration that is not “self-supporting.”

(c) If an interest rate used to determine the illustrated nonguaranteed elements is shown, it shall not be greater than the earned interest rate underlying the disciplined current scale.

**§431:10D-E Standards for basic illustrations.** (a) The format of a basic illustration shall conform with the following requirements:

- (1) The illustration shall be labeled with the date on which it was prepared;
- (2) Each page, including any explanatory notes or pages, shall be numbered and show its relationship to the total number of pages in the illustration (e.g., the fourth page of a seven page illustration shall be labeled “page 4 of 7 pages”);
- (3) The assumed dates of payment receipt and benefit pay out within a policy year shall be clearly identified;
- (4) If the age of the proposed insured is shown as a component of the tabular detail, the age shown shall be the age of the insured at the time

the policy is issued plus the numbers of years the policy is assumed to have been in force;

- (5) The assumed payments on which the illustrated benefits and values are based shall be identified as premium outlay or contract premium, as applicable. For policies that do not require a specific contract premium, the illustrated payments shall be identified as premium outlay;
  - (6) Guaranteed death benefits and values available upon surrender, if any, for the illustrated premium outlay or contract premium shall be shown and clearly labeled guaranteed;
  - (7) If the illustration shows any nonguaranteed elements, they shall not be based on a scale more favorable to the policy owner than the insurer's illustrated scale at any duration. These elements shall be clearly labeled nonguaranteed;
  - (8) The guaranteed elements, if any, shall be shown before corresponding nonguaranteed elements and shall be specifically referred to on any page of an illustration that shows or describes only the nonguaranteed elements (e.g., "see page one for guaranteed elements");
  - (9) The account or accumulation value of a policy, if shown, shall be identified by the name this value is given in the policy being illustrated and shown in close proximity to the corresponding value available upon surrender;
  - (10) The value available upon surrender shall be identified by the name this value is given in the policy being illustrated and shall be the amount available to the policy owner in a lump sum after deduction of surrender charges, policy loans, and policy loan interest, as applicable;
  - (11) Illustrations may show policy benefits and values in graphic or chart form in addition to the tabular form;
  - (12) Any illustration of nonguaranteed elements shall be accompanied by a statement indicating that:
    - (A) The benefits and values are not guaranteed;
    - (B) The assumptions on which they are based are subject to change by the insurer; and
    - (C) Actual results may be more or less favorable;
  - (13) If the illustration shows that the premium payer may have the option to allow policy charges to be paid using nonguaranteed values, the illustration shall clearly disclose that a charge continues to be required and that, depending on actual results, the premium payer may need to continue or resume premium outlays. Similar disclosure shall be made for premium outlay of lesser amounts or shorter durations than the contract premium. If a contract premium is due, the premium outlay display shall not be left blank or show zero unless accompanied by an asterisk or similar mark to draw attention to the fact that the policy is not paid up; and
  - (14) If the applicant plans to use dividends or policy values, guaranteed or nonguaranteed, to pay all or a portion of the contract premium or policy charges, or for any other purpose, the illustration may reflect those plans and the impact on future policy benefits and values.
- (b) A basic illustration shall include a narrative summary which shall include the following:
- (1) A brief description of the policy being illustrated, including a statement that it is a life insurance policy;
  - (2) A brief description of the premium outlay or contract premium, as applicable, for the policy. For a policy that does not require payment of a specific contract premium, the illustration shall show the premium

outlay that must be paid to guarantee coverage for the term of the contract, subject to maximum premiums allowable to qualify as a life insurance policy under the applicable provisions of the Internal Revenue Code of 1986, as amended;

- (3) A brief description of any policy features, riders, or options, guaranteed or nonguaranteed, shown in the basic illustration and the impact they may have on the benefits and values of the policy;
- (4) Identification and a brief definition of column headings and key terms used in the illustration; and
- (5) A statement containing in substance the following: "This illustration assumes that the currently illustrated nonguaranteed elements will continue unchanged for all years shown. This is not likely to occur, and actual results may be more or less favorable than those shown."

(c) Following the narrative summary, a basic illustration shall include a numeric summary of the death benefits and values and the premium outlay and contract premium, as applicable, provided that:

- (1) For a policy that provides for a contract premium, the guaranteed death benefits and values shall be based on the contract premium. This summary shall be shown for at least policy years five, ten, and twenty and at age seventy, if applicable, on the three bases shown below. For multiple life policies the summary shall show policy years five, ten, twenty, and thirty. The illustration shall include:
  - (A) Policy guarantees;
  - (B) The insurer's illustrated scale;
  - (C) The insurer's illustrated scale used but with the nonguaranteed elements reduced as follows:
    - (i) Dividends at fifty per cent of the dividends contained in the illustrated scale used;
    - (ii) Nonguaranteed credited interest at rates that are the average of the guaranteed rates and the rates contained in the illustrated scale used; and
    - (iii) All nonguaranteed charges, including but not limited to, term insurance charges and mortality and expense charges, at rates that are the average of the guaranteed rates, and the rates contained in the illustrated scale used; and

- (2) If coverage would cease prior to policy maturity or age one hundred, the year in which coverage ceases shall be identified for each of the three bases.

(d) The following statements shall be included on the same page as the numeric summary and signed by the applicant, or the policy owner in the case of an illustration provided at time of delivery, as required in this part:

- (1) A statement to be signed and dated by the applicant or policy owner reading as follows: "I have received a copy of this illustration and understand that any nonguaranteed elements illustrated are subject to change and could be either higher or lower. The agent has told me they are not guaranteed."; and
- (2) A statement to be signed and dated by the insurance producer or other authorized representative of the insurer reading as follows: "I certify that this illustration has been presented to the applicant and that I have explained that any nonguaranteed elements illustrated are subject to change. I have made no statements that are inconsistent with the illustration."

(e) A basic illustration shall include the following details:

- (1) For at least each policy year from one to ten and for every fifth policy year thereafter ending at age one hundred, policy maturity or final expiration; and except for term insurance beyond the twentieth year, for any year in which the premium outlay and contract premium, if applicable, is to change:
  - (A) The premium outlay and mode the applicant plans to pay and the contract premium, as applicable;
  - (B) The corresponding guaranteed death benefit, as provided in the policy; and
  - (C) The corresponding guaranteed value available upon surrender, as provided in the policy;
- (2) For a policy that provides for a contract premium, the guaranteed death benefit and value available upon surrender shall correspond to the contract premium; and
- (3) Nonguaranteed elements may be shown if described in the contract. In the case of an illustration for a policy on which the insurer intends to credit terminal dividends, they may be shown if the insurer's current practice is to pay terminal dividends, provided that:
  - (A) If any nonguaranteed elements are shown they must be shown at the same durations as the corresponding guaranteed elements, if any; and
  - (B) If no guaranteed benefit or value is available at any duration for which a nonguaranteed benefit or value is shown, a zero shall be displayed in the guaranteed column.

**§431:10D-F Standards for supplemental illustrations.** (a) A supplemental illustration may be provided so long as:

- (1) It is appended to, accompanied by, or preceded by a basic illustration that complies with this part;
- (2) The nonguaranteed elements shown are not more favorable to the policy owner than the corresponding elements based on the scale used in the basic illustration;
- (3) It contains the same statement required of a basic illustration that nonguaranteed elements are not guaranteed; and
- (4) For a policy that has a contract premium, the contract premium underlying the supplemental illustration is equal to the contract premium shown in the basic illustration. For policies that do not require a contract premium, the premium outlay underlying the supplemental illustration shall be equal to the premium outlay shown in the basic illustration.

(b) The supplemental illustration shall include a notice referring to the basic illustration for guaranteed elements and other important information.

**§431:10D-G Delivery of illustration and record retention.** (a) If a basic illustration is used by an insurance producer or other authorized representative of the insurer in the sale of a life insurance policy and the policy is applied for as illustrated, a copy of that illustration, signed in accordance with this part, shall be submitted to the insurer at the time of policy application. A copy also shall be provided to the applicant.

(b) If the policy is issued other than as applied for, a revised basic illustration conforming to the policy as issued shall be sent with the policy. The revised illustration shall:

- (1) Conform to the requirements of this part;
- (2) Be labeled "Revised Illustration"; and

- (3) Be signed and dated by the applicant or policy owner and producer or other authorized representative of the insurer no later than the time the policy is delivered.

A copy of the revised illustration shall be provided to the insurer and the policy owner.

(c) If the policy is identified as one to be marketed with an illustration, and no illustration is used by an insurance producer or other authorized representative in the sale of a life insurance policy or if the policy is applied for other than as illustrated, the producer or representative shall certify to that effect in writing on a form provided by the insurer; provided that:

- (1) On the same form the applicant shall acknowledge that no illustration conforming to the policy applied for was provided and shall further acknowledge an understanding that an illustration conforming to the policy as issued will be provided no later than at the time of policy delivery. This form shall be submitted to the insurer at the time of policy application;
- (2) If the policy is issued, a basic illustration conforming to the policy as issued shall be sent with the policy and signed no later than the time the policy is delivered; and
- (3) A copy shall be provided to the insurer and the policy owner.

(d) If the basic illustration or revised illustration is sent to the applicant or policy owner by mail from the insurer, it shall include instructions for the applicant or policy owner to sign the duplicate copy of the numeric summary page of the illustration for the policy issued and return the signed copy to the insurer. The insurer's obligation under this subsection shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the numeric summary page. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed numeric summary page.

(e) A copy of the basic illustration and a revised basic illustration, if any, signed as applicable, along with any certification that either no illustration was used or that the policy was applied for other than as illustrated, shall be retained by the insurer until three years after the policy is no longer in force. A copy need not be retained if no policy is issued.

**§431:10D-H Annual reports and notice to policy owners.** (a) In the case of a policy designated as one for which illustrations will be used, the insurer shall provide each policy owner with an annual report on the status of the policy that shall contain at least the following information:

- (1) For universal life policies, the report shall include the following:
  - (A) The beginning and end date of the current report period;
  - (B) The policy value at the end of the previous report period and at the end of the current report period;
  - (C) The total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense, and riders);
  - (D) The current death benefit at the end of the current report period on each life covered by the policy;
  - (E) The net cash surrender value of the policy as of the end of the current report period; and
  - (F) The amount of outstanding loans, if any, as of the end of the current report period; and
- (2) For fixed premium policies: if assuming guaranteed interest, mortality, and expense loads, and continued scheduled premium payments, the



policy's net cash surrender value is such that it would not maintain insurance in force until the end of the next reporting period, a notice to this effect shall be included in the report; or

- (3) For flexible premium policies: if, assuming guaranteed interest, mortality, and expense loads, the policy's net cash surrender value will not maintain insurance in force until the end of the next reporting period unless further premium payments are made, a notice to this effect shall be included in the report; or
- (4) For all other policies, where applicable:
  - (A) Current death benefit;
  - (B) Annual contract premium;
  - (C) Current cash surrender value;
  - (D) Current dividend;
  - (E) Application of current dividend; and
  - (F) Amount of outstanding loan;
 and
- (5) Insurers writing life insurance policies that do not build nonforfeiture values shall only be required to provide an annual report with respect to these policies for those years when a change has been made to nonguaranteed policy elements by the insurer.

(b) If the annual report does not include an in-force illustration, it shall contain the following notice displayed prominently: "IMPORTANT POLICY OWNER NOTICE: You should consider requesting more detailed information about your policy to understand how it may perform in the future. You should not consider replacement of your policy or make changes in your coverage without requesting a current illustration. You may annually request, without charge, such an illustration by calling [insurer's phone number], writing to [insurer's name] at [insurer's address], or contacting your agent. If you do not receive a current illustration of your policy within thirty days from your request, you should contact your state insurance department."

(c) Upon the request of the policy owner, the insurer shall furnish an in-force illustration of current and future benefits and values based on the insurer's present illustrated scale. This illustration shall comply with the requirements of sections 431:10D-D(a), 431:10D-D(b), 431:10D-E(a), and 431:10D-E(e). No signature or other acknowledgment of receipt of this illustration shall be required.

(d) If an adverse change in nonguaranteed elements that could affect the policy has been made by the insurer since the last annual report, the annual report shall contain a notice of that fact and the nature of the change shall be prominently displayed.

**§431:10D-I Annual certifications.** (a) The board of directors of each insurer shall appoint one or more illustration actuaries.

(b) The illustration actuary shall certify that the disciplined current scale used in illustrations is in conformity with the Actuarial Standard of Practice for Compliance with the National Association of Insurance Commissioners Model Regulation on Life Insurance Illustrations promulgated by the Actuarial Standards Board, and that the illustrated scales used in insurer-authorized illustrations meet the requirements of this part.

(c) The illustration actuary shall:

- (1) Be a member in good standing of the American Academy of Actuaries;
- (2) Be familiar with the standard of practice regarding life insurance policy illustrations;
- (3) Not have been found by the commissioner, following appropriate notice and hearing, to have:

- (A) Violated any provision of, or any obligation imposed by, the insurance law or other law in the course of acting as an illustration actuary;
  - (B) Been found guilty of fraudulent or dishonest practices;
  - (C) Demonstrated incompetence, lack of cooperation, or untrustworthiness to act as an illustration actuary; or
  - (D) Resigned or been removed as an illustration actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of a failure to adhere to generally acceptable actuarial standards;
- (4) Not fail to notify the commissioner of any action taken by a commissioner of another state similar to that under paragraph (3);
- (5) Disclose in the annual certification whether, since the last certification, a currently payable scale applicable for business issued within the previous five years and within the scope of the certification has been reduced for reasons other than changes in the experience factors underlying the disciplined current scale. If nonguaranteed elements illustrated for new policies are not consistent with those illustrated for similar in-force policies, this must be disclosed in the annual certification. If nonguaranteed elements illustrated for both new and in-force policies are not consistent with the nonguaranteed elements actually being paid, charged, or credited to the same or similar forms, this must be disclosed in the annual certification; and
- (6) Disclose in the annual certification the method used to allocate overhead expenses for all illustrations:
- (A) Fully allocated expenses;
  - (B) Marginal expenses; or
  - (C) A generally recognized expense table based on fully allocated expenses representing a significant portion of insurance companies and approved by the commissioner.
- (d) The illustration actuary shall file a certification with the board and with the commissioner:
- (1) Annually for all policy forms for which illustrations are used; and
  - (2) Before a new policy form is illustrated.
- (e) If an error in a previous certification is discovered, the illustration actuary shall immediately notify the board of directors of the insurer and the commissioner.
- (f) If an illustration actuary is unable to certify the scale for any policy form illustration the insurer intends to use, the actuary shall immediately notify the board of directors of the insurer and the commissioner of the inability to certify.
- (g) A responsible officer of the insurer, other than the illustration actuary, shall certify annually:
- (1) That the illustration formats meet the requirements of this part and that the scales used in insurer-authorized illustrations are those scales certified by the illustration actuary; and
  - (2) That the company has provided its agents with information about the expense allocation method used by the company in its illustrations and disclosed as required in subsection (c)(6).
- (h) The annual certifications shall be provided to the commissioner each year by a date determined by the insurer.
- (i) If an insurer changes the illustration actuary responsible for all or a portion of the company's policy forms, the insurer shall notify the commissioner of that fact promptly and disclose the reason for the change.

**§431:10D-J Penalties.** In addition to any other penalties provided by the laws of this State, an insurer or producer that violates a requirement of this part shall be guilty of unfair trade practice in violation of article 13 of this chapter.

**§431:10D-K Authority to adopt rules.** The commissioner may adopt rules under chapter 91 implementing this part.

**§431:10D-L<sup>1</sup> Notice and disclosure; written form required.** All consumer notices and disclosures required in this part shall be provided in written form and transmitted through non-electronic means.”

SECTION 3. Chapter 431, Hawaii Revised Statutes, is amended by adding a new part to article 10D to be appropriately designated and to read as follows:

**“PART . REPLACEMENT OF  
LIFE INSURANCE POLICIES AND ANNUITIES**

**§431:10D-A Purpose and Scope.** (a) The purpose of this part is to:

- (1) Regulate the activities of insurers and producers with respect to the replacement of existing life insurance and annuities; and
  - (2) Protect the interests of life insurance and annuity purchasers by establishing minimum standards of conduct to be observed in replacement or financed purchase transactions that will:
    - (A) Assure that purchasers receive information with which a decision can be made in the purchasers’ best interests;
    - (B) Reduce the opportunity for misrepresentation and incomplete disclosure; and
    - (C) Establish penalties for failure to comply with requirements of this part.
- (b) Unless otherwise specifically included, this part shall not apply to transactions involving:
- (1) Credit life insurance;
  - (2) Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals when initiated by an individual member of the group assisting with the selection of investment options offered by a single annuity provider in connection with enrolling the individuals. Group life insurance or group annuity certificates marketed through direct response solicitation shall be subject to section 431:10D-G;
  - (3) Group life insurance used to fund prearranged funeral contracts;
  - (4) An application to the existing insurer that issued the existing policy or contract when a contractual change or a conversion privilege is being exercised; or, when the existing policy or contract is being replaced by the same insurer pursuant to a program filed with and approved by the commissioner;
  - (5) Proposed life insurance that is to replace life insurance under a binding or conditional receipt issued by the same company;
  - (6) Policies or contracts used to fund:
    - (A) An employee pension or welfare benefit plan that is covered by the Employee Retirement and Income Security Act (ERISA);

- (B) A plan described by sections 401(a), 401(k) or 403(b) of the Internal Revenue Code of 1986, as amended, where the plan, for purposes of ERISA, is established or maintained by an employer;
- (C) A governmental or church plan defined in section 414 of the Internal Revenue Code of 1986, as amended, a governmental or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization under section 457 of the Internal Revenue Code of 1986, as amended; or
- (D) A nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;

provided that, notwithstanding the exemptions listed in subparagraphs (A) to (D), this part shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pre-tax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more annuity providers or policy providers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this subsection, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee assisting with the selection of investment options offered by a single annuity provider in connection with enrolling that individual employee;

- (7) Where new coverage is provided under a life insurance policy or contract and the cost is borne wholly by the insured's employer or by an association of which the insured is a member;
- (8) Existing life insurance that is a non-convertible term life insurance policy that will expire in five years or less and cannot be renewed;
- (9) Immediate annuities that are purchased with proceeds from an existing contract; provided that immediate annuities purchased with proceeds from an existing policy are not exempted from the requirements of this part; and
- (10) Structured settlements.

(c) Registered contracts shall be exempt from the requirements of sections 431:10D-E(a)(2) and 431:10D-F(2) with respect to the provision of illustrations or policy summaries; however, premium or contract contribution amounts and identification of the appropriate prospectus or offering circular shall be required instead.

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

“Direct-response solicitation” means a solicitation through a sponsoring or endorsing entity or individually solely through mails, telephone, the Internet, or other mass communication media.

“Existing insurer” means the insurance company whose policy or contract is or will be changed or affected in a manner described within the definition of replacement.

“Existing policy or contract” means an individual life insurance policy (policy) or annuity contract (contract) in force, including a policy under a binding or conditional receipt or a policy or contract that is within an unconditional refund period.

“Financed purchase” means the purchase of a new policy involving the actual or intended use of funds obtained by the withdrawal or surrender of, or by borrowing from values of an existing policy to pay all or part of any premium due on the new policy. For purposes of a regulatory review of an individual transaction

only, if a withdrawal, surrender, or borrowing involving the policy values of an existing policy is used to pay premiums on a new policy owned by the same policyholder and issued by the same company within four months before or thirteen months after the effective date of the new policy, it shall be deemed prima facie evidence of the policyholder's intent to finance the purchase of the new policy with existing policy values. This prima facie standard is not intended to increase or decrease the monitoring obligations contained in section 431:10D-D(1)(E).

"Illustration" means a presentation or depiction that includes non-guaranteed elements of a policy of life insurance over a period of years as defined in part of this article.

"Policy summary" for the purposes of this part:

- (1) For policies or contracts other than universal life policies, means a written statement regarding a policy or contract which shall contain to the extent applicable, but need not be limited to, the following information: current death benefit, annual contract premium, current cash surrender value, current dividend, application of current dividend, and amount of outstanding loan.
- (2) For universal life policies, means a written statement that shall contain at least the following information: the beginning and end date of the current report period; the policy value at the end of the previous report period and at the end of the current report period; the total amounts that have been credited or debited to the policy value during the current report period, identifying each by type (e.g., interest, mortality, expense, and riders); the current death benefit at the end of the current report period on each life covered by the policy; the net cash surrender value of the policy as of the end of the current report period; and the amount of outstanding loans, if any, as of the end of the current report period.

"Producer" means general agent, subagent, agent, solicitor, insurance broker or brokers or any other person, firm, association, or corporation licensed pursuant to article 9.

"Replacing insurer" means the insurance company that issues or proposes to issue a new policy or contract that replaces an existing policy or contract or is a financed purchase.

"Registered contract" means a variable annuity contract or variable life insurance policy subject to the prospectus delivery requirements of the Securities Act of 1933.

"Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that by reason of the transaction, an existing policy or contract has been or is to be:

- (1) Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer, or otherwise terminated;
- (2) Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
- (3) Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
- (4) Reissued with any reduction in cash value; or
- (5) Used in a financed purchase.

"Sales material" means a sales illustration and any other written, printed, or electronically presented information created, completed, or provided by the com-

pany or producer and used in the presentation to the policy or contract owner related to the policy or contract purchased.

**§431:10D-C Duties of producers.** (a) A producer who initiates an application shall submit to the insurer, with or as part of the application, a statement signed by both the applicant and the producer as to whether the applicant has existing policies or contracts. If the answer is “no,” the producer’s duties with respect to replacement are complete.

(b) If the applicant answered “yes” to the question regarding existing coverage referred to in subsection (a), the producer shall present and read to the applicant, not later than at the time of taking the application, a notice in a form approved by the commissioner. However, no approval shall be required when amendments to the notice are limited to the omission of references not applicable to the product being sold or replaced. The notice shall be signed by both the applicant and the producer attesting that the notice has been read aloud by the producer or that the applicant did not wish the notice to be read aloud (in which case the producer need not have read the notice aloud) and the notice was left with the applicant.

(c) The notice shall list all life insurance policies or annuities proposed to be replaced, properly identified by name of insurer, the insured or annuitant, and policy or contract number if available. The notice shall include a statement as to whether a policy or contract will be replaced or whether a policy will be used as a source of financing for the new policy or contract. If a policy or contract number has not been issued by the existing insurer, alternative identification, such as an application or receipt number, shall be listed.

(d) In connection with a replacement transaction the producer shall leave with the applicant at the time an application for a new policy or contract is completed the original or a copy of all sales material. With respect to electronically presented sales material, it shall be provided to the policy or contract owner in printed form no later than at the time of policy or contract delivery.

(e) Except as provided in section 431:10D-D(6), in connection with a replacement transaction the producer shall submit to the insurer to which an application for a policy or contract is presented, a copy of each document required by this section, a statement identifying any preprinted or electronically presented company approved sales materials used, and copies of any individualized sales materials, including any illustrations related to the specific contract or policy purchased.

**§431:10D-D Duties of insurers that use producers.** Each insurer shall:

- (1) Maintain a system of supervision and control to insure compliance with the requirements of this part that shall include at least the following:
  - (A) Inform its producers of the requirements of this part and incorporate the requirements of this part into all relevant producer training manuals prepared by the insurer;
  - (B) Provide to each producer a written statement of the company’s position with respect to the acceptability of replacements providing guidance to its producer as to the appropriateness of these transactions;
  - (C) A system to review the appropriateness of each replacement transaction that the producer does not indicate is in accord with paragraph (2);
  - (D) Procedures to confirm that the requirements of this part have been met; and
  - (E) Procedures to detect transactions that are replacements of existing policies or contracts by the existing insurer, but that have not been reported as such by the applicant or producer.

Compliance with this section may include but shall not be limited to systematic customer surveys, interviews, confirmation letters, or programs of internal monitoring.

- (2) Have the capacity to monitor each producer's life insurance policy and annuity contract for replacements for the insurer, and shall produce, upon request, and make such records available to the commissioner. The capacity to monitor shall include the ability to produce records for each producer's:
  - (A) Life replacements, including financed purchases, as a percentage of the producer's total annual sales for life insurance;
  - (B) Number of lapses of policies by the producer as a percentage of the producer's total annual sales for life insurance;
  - (C) Annuity contract replacements as a percentage of the producer's total annual contract sales;
  - (D) Number of transactions that are unreported replacements of existing policies or contracts by the existing insurer detected by the company's monitoring system as required by paragraph (1)(E); and
  - (E) Replacements, indexed by replacing producer and existing insurer.
- (3) Require with or as a part of each application for life insurance or an annuity a signed statement by both the applicant and the producer as to whether the applicant has existing policies or contracts;
- (4) Require with each application for life insurance or an annuity that indicates an existing policy or contract a completed notice as required by section 431:10D-C(b) regarding replacements;
- (5) When the applicant has existing policies or contracts, each insurer shall be able to produce copies of any sales material as required by section 431:10D-C(e), the basic illustration and any supplemental illustrations related to the specific policy or contract that is purchased, and the producer's and applicant's signed statements with respect to financing and replacement for at least five years after the termination or expiration of the proposed policy or contract;
- (6) Ascertain that the sales material and illustrations required by section 431:10D-C(e) meet the requirements of this part and are complete and accurate for the proposed policy or contract;
- (7) If an application does not meet the requirements of this part, notify the producer and applicant and fulfill the outstanding requirements; and
- (8) Maintain records in paper, photograph, microprocess, mechanical, or electronic media, or by any process that accurately reproduces the actual paper document.

**§431:10D-E Duties of replacing insurers that use producers.** (a) Where a replacement is involved in the transaction, the replacing insurer shall:

- (1) Verify that the required forms are received and are in compliance with this part;
- (2) Notify any other existing insurer that may be affected by the proposed replacement within five business days of receipt of a completed application indicating replacement or when the replacement is identified if not indicated on the application, and mail a copy of the available illustration or policy summary for the proposed policy or available disclosure document for the proposed contract within five business days of a request from an existing insurer;

- (3) Be able to produce copies of the notification regarding replacement required in section 431:10D-C(b), indexed by producer, for at least five years or until the next regular examination by the insurance department of a company's state of domicile, whichever is later; and
- (4) Provide to the policy or contract owner notice of the right to return the policy or contract within thirty days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it, including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under the policy or contract; provided that such notice may be included in forms approved by the commissioner pursuant to this part.

(b) In transactions where the replacing insurer and the existing insurer are the same or subsidiaries or affiliates under common ownership or control allow credit for the period of time that has elapsed under the replaced policy's or contract's incontestability and suicide period up to the face amount of the existing policy or contract. With regard to financed purchases the credit may be limited to the amount the face amount of the existing policy is reduced by the use of existing policy values to fund the new policy or contract.

(c) If an insurer prohibits the use of sales material other than that approved by the company, as an alternative to the requirements made of an insurer pursuant to section 431:10D-D, the insurer may:

- (1) Require with each application a statement signed by the producer that:
  - (A) Represents that the producer used only company-approved sales material; and
  - (B) States that copies of all sales material were left with the applicant in accordance with section 431:10D-C(d); and
- (2) Within ten days of the issuance of the policy or contract:
  - (A) Notify the applicant by sending a letter or by verbal communication with the applicant by a person whose duties are separate from the marketing area of the insurer, that the producer has represented that copies of all sales material have been left with the applicant in accordance with section 431:10D-C(d);
  - (B) Provide the applicant with a toll free number to contact company personnel involved in the compliance function if such is not the case; and
  - (C) Stress the importance of retaining copies of the sales material for future reference; and
- (3) Be able to produce a copy of the letter or other verification in the policy file for at least five years after the termination or expiration of the policy or contract.

**§431:10D-F Duties of the existing insurer.** Where a replacement is involved in the transaction, the existing insurer shall:

- (1) Retain and be able to produce all replacement notifications received, indexed by replacing insurer, for at least five years or until the conclusion of the next regular examination conducted by the insurance commissioner of its state of domicile, whichever is later;
- (2) Send a letter to the policy or contract owner of the right to receive information regarding the existing policy or contract values including, if available, an in force illustration or policy summary if an in force illustration cannot be produced within five business days of receipt of a



notice that an existing policy or contract is being replaced. The information shall be provided within five business days of receipt of the request from the policy or contract owner; and

- (3) Upon receipt of a request to borrow, surrender, or withdraw any policy values, send a notice, advising the policy owner that the release of policy values may affect the guaranteed elements, non-guaranteed elements, face amount, or surrender value of the policy from which the values are released. The notice shall be sent separate from the check if the check is sent to anyone other than the policy owner. In the case of consecutive automatic premium loans, the insurer is only required to send the notice at the time of the first loan.

**§431:10D-G Duties of insurers with respect to direct response solicitations.** (a) In the case of an application that is initiated as a result of a direct response solicitation, the insurer shall require, with or as part of each completed application for a policy or contract, a statement asking whether the applicant, by applying for the proposed policy or contract, intends to replace, discontinue, or change an existing policy or contract. If the applicant indicates a replacement or change is not intended or if the applicant fails to respond to the statement, the insurer shall send the applicant, with the policy or contract, a notice in a form approved by the commissioner, which shall state the following:

**“NOTICE REGARDING REPLACEMENT  
REPLACING YOUR LIFE INSURANCE POLICY OR ANNUITY**

“Are you thinking about buying a new life insurance policy or annuity and discontinuing or changing an existing one? If you are, your decision could be a good one or a mistake. You will not know for sure unless you make a careful comparison of your existing benefits and the proposed policy or contract’s benefits.

“Make sure you understand the facts. You should ask the company or agent that sold you your existing policy or contract to give you information about it.

“Hear both sides before you decide. This way you can be sure you are making a decision that is in your best interest.”

(b) If the insurer has proposed the replacement or if the applicant indicates a replacement is intended and the insurer continues with the replacement, the insurer shall:

- (1) Provide to applicants or prospective applicants with the policy or contract a notice, in a form similar to that required by section 431:10D-C(b). In these instances the insurer may delete the references to the producer, including the producer’s signature, without having to obtain approval of the form from the commissioner. The insurer’s obligation to obtain the applicant’s signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the notice referred to in this paragraph. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed postage prepaid envelope with instructions for the return of the signed notice referred to in this section; and
- (2) Comply with the requirements of section 431:10D-E(a)(2), if the applicant furnishes the names of the existing insurers, and the requirements of sections 431:10D-E(a)(3), 431:10D-E(a)(4), and 431:10D-E(b).

**§431:10D-H Violations and penalties.** (a) Any failure to comply with this part shall be considered a violation of article 13 of this chapter. Examples of violations include:

- (1) Any deceptive or misleading information set forth in sales material;
- (2) Failing to ask the applicant in completing the application the pertinent questions regarding the possibility of financing or replacement;
- (3) The intentional incorrect recording of an answer;
- (4) Advising an applicant to respond negatively to any question regarding replacement in order to prevent notice to the existing insurer; or
- (5) Advising a policy or contract owner to write directly to the company in such a way as to attempt to obscure the identity of the replacing producer or company.

(b) Policy and contract owners have the right to replace existing life insurance policies or annuity contracts after indicating in or as a part of applications for new coverage that replacement is not their intention; however, patterns of such action by policy or contract owners of the same producer shall be deemed prima facie evidence of the producer's knowledge that replacement was intended in connection with the identified transactions, and these patterns of action shall be deemed prima facie evidence of the producer's intent to violate this part.

(c) Where it is determined that the requirements of this part have not been met the replacing insurer shall provide to the policy owner an in force illustration if available or policy summary for the replacement policy or available disclosure document for the replacement contract and the appropriate notice regarding replacements required under this part.

(d) Violations of this part shall subject the violators to penalties that may include the revocation or suspension of a producer's or company's license, monetary fines and the forfeiture of any commissions or compensation paid to a producer as a result of the transaction in connection with which the violations occurred. In addition, where the commissioner has determined that the violations were material to the sale, the insurer may be required to make restitution, restore policy or contract values, and pay appropriate interest on the amount refunded in cash.

**§431:10D-I Authority to adopt rules.** The commissioner may adopt rules under chapter 91 implementing this part.

**§431:10D-J<sup>1</sup> Notice and disclosure; written form required.** All consumer notices and disclosures required in this part shall be provided in written form and transmitted through non-electronic means."

SECTION 4. In codifying the new sections of the new parts added to article 10D of chapter 431, Hawaii Revised Statutes, by section 2 and section 3 of this Act, the revisor of statutes shall substitute appropriate section numbers for the letters in the designations of those new sections in this Act. All references to specific citations refer to those citations in the same section of this Act, except that the revisor of statutes shall substitute the appropriate part number assigned to Section 2 of this Act for the blank in Section 3 at section 431:10D-B in the definition of the term "illustration".

SECTION 5. This Act shall take effect on July 1, 2001.

(Approved June 19, 2000.)

**Note**

1. Act 282 requires the deletion of this section.