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# A BILL FOR AN ACT

RELATING TO ALCOHOL AND SUBSTANCE ABUSE.

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

1           SECTION 1. This Act shall be known as the "Providing  
2 Intervention for Substance Abuse Act".

3           Medical personnel, particularly in the emergency room,  
4 regularly encounter patients who have sustained injuries, loss,  
5 or trauma that results from use of alcohol or illicit  
6 substances. This initial point of contact in a medical setting  
7 is a recognized window of opportunity where patients are most  
8 vulnerable and open to intervention and dialogue that addresses  
9 their underlying alcohol or substance abuse issues. It is at  
10 this "teachable moment" that individuals can benefit from  
11 assessment, education, counseling, or, if necessary, a referral  
12 to treatment.

13           The "Screening, Briefing, Intervention, Referral, and  
14 Treatment" (SBIRT) program capitalizes on this "teachable  
15 moment" and is recognized as a best practices initiative by the  
16 Substance Abuse and Mental Health Services Administration  
17 (SAMHSA), an agency of the U.S. Department of Health and Human  
18 Services. The SBIRT program has been successfully implemented



1 and is ongoing in several other states and continues to serve as  
2 a best practices and model program. This initiative recognizes  
3 that significant steps can be taken, within a medical setting,  
4 to address the problems of addiction. The SBIRT program makes  
5 the most of an individual's "teachable moment" by offering  
6 screening for alcohol or substance abuse, brief intervention,  
7 education, and, if necessary, referrals to appropriate care or  
8 treatment.

9 Current state law allows insurers to exclude coverage for  
10 injuries sustained by insured persons as a result of  
11 intoxication from alcohol or narcotics. This statutory  
12 exclusion was created under the original model Uniform Accident  
13 and Sickness Policy Provision law (UPPL), which was approved in  
14 1947 by the National Association of Insurance Commissioners  
15 (NAIC), the organization of insurance regulators from the fifty  
16 states, the District of Columbia, and four U.S. territories. At  
17 the time of origin, the UPPL model laws mirrored accepted  
18 attitudes toward alcohol and drug use. In 1955, Hawaii adopted  
19 the UPPL model language.

20 Significantly, in 2001, the NAIC voted unanimously to  
21 repeal the provision of the UPPL relating to alcohol and  
22 narcotics. In its place, the NAIC adopted a revised model law



1 that prohibits health insurers from denying coverage on the  
2 basis of intoxication from alcohol or narcotics. The National  
3 Conference of Insurance Legislators, American Medical  
4 Association, American Bar Association, Mothers Against Drunk  
5 Driving, and Emergency Nurses Association have publicly  
6 supported this initiative. While many other states have adopted  
7 legislation that prohibits medical health insurers from denying  
8 coverage on the basis of intoxication from alcohol or narcotics,  
9 Hawaii law has remained unchanged, and continues to mirror the  
10 original UPPL language.

11 Accordingly, under current Hawaii law, health care  
12 professionals and substance abuse screeners may be hesitant to  
13 link alcohol or substance abuse to an injury, for fear of non-  
14 reimbursement of services rendered. To successfully implement  
15 the SBIRT program in Hawaii, current law must be changed to  
16 remove barriers that impede these screeners from comprehensively  
17 assessing a patient's underlying alcohol or substance abuse  
18 issues. It is noted that this problem currently impedes the use  
19 of existing federal monies appropriated through the state  
20 department of transportation for a similar screening pilot  
21 program.

22 The purpose of this Act is to:



- 1 (1) Require health insurers to provide coverage for
- 2 injuries sustained by insured persons as a result of
- 3 intoxication from alcohol or narcotics; and
- 4 (2) Appropriate funds to establish the SBIRT program in
- 5 the State of Hawaii.

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

9 **"§431:10A-A Coverage for injuries sustained while**  
 10 **intoxicated or under the influence of narcotics.** Any law to the  
 11 contrary notwithstanding, all individual and group accident and  
 12 health or sickness insurance policies issued in this state,  
 13 other than an accident-only, specific disease, hospital  
 14 indemnity, medicare supplement, long-term care, or other limited  
 15 benefit health insurance policy, shall provide coverage for the  
 16 insured's injury sustained as a consequence of the insured being  
 17 intoxicated or under the influence of any narcotic."

18 SECTION 3. Chapter 432, article 1, Hawaii Revised  
 19 Statutes, is amended by adding a new section to part VI to be  
 20 appropriately designated and to read as follows:

21 **"§432:1- Coverage for injuries sustained while**  
 22 **intoxicated or under the influence of narcotics.** Any law to the

1 contrary notwithstanding, all individual and group health care  
2 contracted under this chapter shall provide under section  
3 431:10A-A, coverage for the insured's injury sustained as a  
4 consequence of the insured being intoxicated or under the  
5 influence of any narcotic."

6 SECTION 4. Section 431:10A-106, Hawaii revised Statutes,  
7 is amended to read as follows:

8 "**§431:10A-106 Optional provisions.** Except as provided in  
9 section 431:10A-107, no policy of accident and health or  
10 sickness insurance delivered or issued for delivery to any  
11 person in this State shall contain the provisions set forth  
12 below unless the provisions are in the words in which they  
13 appear below; provided that the insurer may substitute  
14 corresponding provisions of different wording approved by the  
15 commissioner that are in each instance not less favorable in any  
16 respect to the insured or the beneficiary. Such provisions are  
17 optional provisions. Any such provision contained in the policy  
18 shall be preceded individually by the specified caption or, at  
19 the option of the insurer, by such appropriate individual or  
20 group captions or subcaptions as the commissioner may approve.  
21 The provisions are as follows:



1 (1) "Change of Occupation: If the insured is injured or  
2 contracts sickness after having changed occupations to  
3 one classified by the insurer as more hazardous than  
4 that stated in this policy or while doing for  
5 compensation anything pertaining to an occupation so  
6 classified, the insurer will pay only such portion of  
7 the indemnities provided in this policy as the premium  
8 paid would have purchased at the rates and within the  
9 limits fixed by the insurer for the more hazardous  
10 occupation. If the insured's occupation changes to one  
11 classified by the insurer as less hazardous than that  
12 stated in this policy, the insurer, upon receipt of  
13 proof of such change of occupation, will reduce the  
14 premium rate accordingly, and will return the excess  
15 pro rata unearned premium from the date of change of  
16 occupation or from the policy anniversary date  
17 immediately preceding receipt of such proof, whichever  
18 is the more recent. In applying this provision, the  
19 classification of occupational risk and the premium  
20 shall be such as have been last filed by the insurer  
21 prior to the occurrence of the loss for which the  
22 insurer is liable or prior to date of proof of change



1 in occupation with the state official having  
2 supervision of insurance in the state where the insured  
3 resided at the time this policy was issued; but if such  
4 filing was not required, then the classification of  
5 occupational risk and the premium rates shall be those  
6 last made effective by the insurer in such state prior  
7 to the occurrence of the loss or prior to the date of  
8 proof of change in occupation."

9 (2) "Misstatement of Age: If the age of the insured has  
10 been misstated, all amounts payable under this policy  
11 shall be such as the premium paid would have purchased  
12 at the correct age."

13 (3) Other insurance in this insurer shall be in one of the  
14 following forms:

15 (A) "Other Insurance in This Insurer: If an accident  
16 and health or sickness policy or policies  
17 previously issued by the insurer to the insured  
18 be in force concurrently herewith, making the  
19 aggregate indemnity for (insert type of coverage  
20 or coverages) in excess of \$ (insert maximum  
21 limit of indemnity or indemnities) the excess  
22 insurance shall be void and all premiums paid for



1           such excess shall be returned to the insured or  
2           to the insured's estate."; or

3           (B) "Other Insurance in This Insurer: Insurance  
4           effective at any one time on the insured under a  
5           like policy or policies in this insurer is  
6           limited to the one such policy elected by the  
7           insured, the insured's beneficiary, or the  
8           insured's estate, as the case may be, and the  
9           insurer will return all premiums paid for all  
10          other such policies."

11          (4) Insurance with other insurers. Either or both of the  
12          following forms shall be used:

13          (A) (i) "Insurance with Other Insurers: If there be  
14          other valid coverage, not with this insurer,  
15          providing benefits for the same loss on a  
16          provision of service basis or on an expense  
17          incurred basis and of which this insurer has  
18          not been given written notice prior to the  
19          occurrence or commencement of loss, the only  
20          liability under any expense incurred  
21          coverage of this policy shall be for such  
22          proportion of the loss as the amount which





1 would otherwise have been payable hereunder  
2 plus the total of the like amounts under all  
3 such other valid coverages for the same loss  
4 of which this insurer had notice bears to  
5 the total like amounts under all valid  
6 coverages for such loss, and for the return  
7 of such portion of the premiums paid as  
8 shall exceed the pro rata portion for the  
9 amount so determined. For the purpose of  
10 applying this provision when other coverage  
11 is on a provision of service basis, the like  
12 amount of such other coverage shall be taken  
13 as the amount which the services rendered  
14 would have cost in the absence of such  
15 coverage."

16 (ii) "Insurance with Other Insurers: If there be  
17 other valid coverage, not with this insurer,  
18 providing benefits for the same loss on  
19 other than an expense incurred basis and of  
20 which this insurer has not been given  
21 written notice prior to the occurrence or  
22 commencement of loss, the only liability for



1 such benefits under this policy shall be for  
2 such proportion of the indemnities otherwise  
3 provided hereunder for such loss as the like  
4 indemnities of which the insurer had notice  
5 (including the indemnities under this  
6 policy) bear to the total amount of all the  
7 indemnities for such loss, and for the  
8 return of such portion of the premium paid  
9 as shall exceed the pro rata portion for the  
10 indemnities thus determined."

11 (B) If the provision set forth in subparagraph (A) (i)  
12 is included in a policy that also contains the  
13 provision set forth in subparagraph (A) (ii),  
14 there shall be added to the caption of the  
15 subparagraph (A) (i) provision the phrase,  
16 "expense incurred benefits".

17 (C) The insurer may, at its option, include in the  
18 provision set forth in subparagraph (A) (i) a  
19 definition of other valid coverage, approved as  
20 to form by the commissioner, which definition  
21 shall be limited in subject matter to coverage  
22 provided by organizations subject to regulation

1 by insurance law or by insurance authorities of  
2 this State or any other state or territory of the  
3 United States or any province of Canada, and by  
4 hospital or medical service organizations, and to  
5 any other coverage the inclusion of which may be  
6 approved by the commissioner. In the absence of  
7 such definition the term shall not include group  
8 insurance, automobile medical payment insurance,  
9 or coverage provided by hospital or medical  
10 service organizations, union welfare plans, or  
11 employer or employee benefit organizations. For  
12 the purpose of applying the provision set forth  
13 in subparagraph (A)(i) with respect to any  
14 insured, any amount of benefit provided for such  
15 insured pursuant to any compulsory benefit  
16 statute (including any workers' compensation or  
17 employers' liability statute), whether provided  
18 by a governmental agency or otherwise, shall in  
19 all cases be deemed to be other valid coverage of  
20 which the insurer has had notice. In applying  
21 the provision set forth in subparagraph (A)(i),



1 no third party liability coverage shall be  
2 included as other valid coverage.

3 (D) If the provision set forth in subparagraph  
4 (A)(ii) is included in a policy that also  
5 contains the provision set forth in subparagraph  
6 (A)(i), there shall be added to the caption of  
7 the subparagraph (A)(ii) provision the phrase,  
8 "other benefits".

9 (E) The insurer may, at its option, include in the  
10 provision set forth in subparagraph (A)(ii) a  
11 definition of other valid coverage, approved as  
12 to form by the commissioner, which definition  
13 shall be limited in subject matter to coverage  
14 provided by organizations subject to regulation  
15 by insurance law or by insurance authorities of  
16 this State or any other state or territory of the  
17 United States or any province of Canada, and to  
18 any other coverage the inclusion of which may be  
19 approved by the commissioner. In the absence of  
20 such definition the term shall not include group  
21 insurance, or benefits provided by union welfare  
22 plans or employer or employee benefit



1 organizations. For the purpose of applying the  
2 provision set forth in subparagraph (A)(ii) with  
3 respect to any insured, any amount of benefit  
4 provided for such insured pursuant to any  
5 compulsory benefit statute (including any  
6 workers' compensation or employers' liability  
7 statute), whether provided by a governmental  
8 agency or otherwise, shall in all cases be deemed  
9 to be other valid coverage of which the insurer  
10 has had notice. In applying the provision set  
11 forth in subparagraph (A)(ii), no third party  
12 liability coverage shall be included as other  
13 valid coverage.

14 (5) (A) "Relation of Earnings to Insurance: If the total  
15 monthly amount of loss of time benefits promised  
16 for the same loss under all valid loss of time  
17 coverage upon the insured, whether payable on a  
18 weekly or monthly basis, shall exceed the monthly  
19 earnings of the insured at the time disability  
20 commenced or the insured's average monthly  
21 earnings for the period of two years immediately  
22 preceding a disability for which claim is made,



1           whichever is the greater, the insurer will be  
2           liable only for such proportionate amount of such  
3           benefits under this policy as the amount of such  
4           monthly earnings or such average monthly earnings  
5           of the insured bears to the total amount of  
6           monthly benefits for the same loss under all such  
7           coverage upon the insured at the time such  
8           disability commences and for the return of such  
9           part of the premiums paid during such two years  
10          as shall exceed the pro rata amount of the  
11          premiums for the benefits actually paid  
12          hereunder; but this shall not operate to reduce  
13          the total monthly amount of benefits payable  
14          under all such coverage upon the insured below  
15          the sum of \$200 or the sum of the monthly  
16          benefits specified in such coverages, whichever  
17          is the lesser, nor shall it operate to reduce  
18          benefits other than those payable for loss of  
19          time."

20          (B) The policy provision in subparagraph (A) may be  
21          inserted only in a policy which the insured has  
22          the right to continue in force, subject to its



1 terms by the timely payment of premiums until at  
2 least age fifty or, in the case of a policy  
3 issued after age forty-four, for at least five  
4 years from its date of issue.

5 (C) The insurer may, at its option, include in the  
6 provision set forth in subparagraph (A) a  
7 definition of valid loss of time coverage  
8 approved as to form by the commissioner, which  
9 definition shall be limited in subject matter to  
10 coverage provided by governmental agencies or by  
11 organizations subject to regulation by insurance  
12 law or by insurance authorities of this State or  
13 any state, district, or territory of the United  
14 States or any province of Canada, or to any other  
15 coverage the inclusion of which may be approved  
16 by the commissioner or any combination of such  
17 coverages. In the absence of such definition  
18 such terms shall not include any coverage  
19 provided for such insured pursuant to any  
20 compulsory benefit statute (including any  
21 workers' compensation or employers' liability  
22 statute), or benefits provided by union welfare



1 plans or by employer or employee benefit  
2 organizations.

3 (6) "Unpaid Premium: Upon the payment of a claim under  
4 this policy, any premium then due and unpaid or  
5 covered by any note or written order may be deducted  
6 therefrom."

7 (7) "Cancellation: The insurer may cancel this policy at  
8 any time by written notice delivered to the insured,  
9 or mailed to the insured's last address as shown by  
10 the records of the insurer, stating when, not less  
11 than five days thereafter, such cancellation shall be  
12 effective; and after the policy has been continued  
13 beyond its original term the insured may cancel this  
14 policy at any time by written notice delivered or  
15 mailed to the insurer, effective upon receipt or on  
16 such later date as may be specified in such notice.  
17 In the event of cancellation, the insurer will return  
18 promptly the unearned portion of any premium paid. If  
19 the insured cancels, the earned premium shall be  
20 computed by the use of the short-rate table last filed  
21 with the state official having supervision of  
22 insurance in the state where the insured resided when





1 the policy was issued. If the insurer cancels, the  
2 earned premium shall be computed pro rata.  
3 Cancellation shall be without prejudice to any claim  
4 originating prior to the effective date of  
5 cancellation."

6 (8) "Conformity with State Statutes: Any provision of this  
7 policy which, on its effective date, is in conflict  
8 with the statutes of the state in which the insured  
9 resides on such date is hereby amended to conform to  
10 the minimum requirements of such statutes."

11 (9) "Illegal Occupation: The insurer shall not be liable  
12 for any loss to which a contributing cause was the  
13 insured's commission of or attempt to commit a felony  
14 or to which a contributing cause was the insured's  
15 being engaged in an illegal occupation."

16 ~~[(10) "Intoxicants and Narcotics: The insurer shall not be  
17 liable for any loss sustained or contracted in  
18 consequence of the insured's being intoxicated or  
19 under the influence of any narcotic unless  
20 administered on the advice of a physician."]~~

21 SECTION 5. Section 432D-23, Hawaii Revised Statutes, is  
22 amended to read as follows:



1           **"§432D-23 Required provisions and benefits.**

2   Notwithstanding any provision of law to the contrary, each  
3   policy, contract, plan, or agreement issued in the State after  
4   January 1, 1995, by health maintenance organizations pursuant to  
5   this chapter, shall include benefits provided in sections  
6   431:10-212, 431:10A-115, 431:10A-115.5, 431:10A-116, 431:10A-  
7   116.5, 431:10A-116.6, 431:10A-119, 431:10A-120, [~~and~~] 431:10A-  
8   121, and 431:10A-A, and chapter 431M."

9           SECTION 6. There is appropriated out of the general  
10   revenues of the State of Hawaii the sum of \$1,883,987 or so much  
11   thereof as may be necessary for fiscal year 2006-2007 to  
12   implement and establish a pilot program for screening, brief  
13   intervention, referral, and substance abuse treatment at  
14   hospital emergency rooms; provided that:

15           (1) \$82,458 shall be used to fund one temporary position  
16           in the alcohol and drug abuse division of the  
17           department of health, equipment, and other operating  
18           expenses for the division to administer and coordinate  
19           the pilot program; and

20           (2) \$1,801,529 shall be used for implementation of  
21           screening, brief intervention, and referral and  
22           substance abuse treatment services.



1           The sum appropriated shall be expended by the University of  
2 Hawaii John A. Burns school of medicine for the purposes of this  
3 Act.

4           SECTION 7. In codifying the new section added by section 2  
5 of this Act, the revisor of statutes shall substitute an  
6 appropriate section number for the letter used in designating  
7 the new section in this Act.

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

10          SECTION 9. This Act shall take effect on July 1, 2006.



SB 2364

SD2

HD2

**Report Title:**

Substance Abuse; Injury Treatment

**Description:**

Requires health insurers to provide coverage for injuries resulting from the insured's intoxication or being under the influence of a narcotic. Repeals optional, exclusionary insurance provision for these injuries. Appropriates funds to establish the Screening, Briefing, Intervention, Referral, and Treatment program. (SB2364 HD2)

