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# A BILL FOR AN ACT

RELATING TO HEALTH INSURANCE.

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

1 SECTION 1. Section 431:2-201.5, Hawaii Revised Statutes,  
2 is amended by amending subsection (c) to read as follows:

3 "(c) All group health issuers shall offer all small group  
4 health plans to all small employers whose employees live, work,  
5 or reside in the group health issuer's service areas; provided  
6 that the commissioner may exempt a group health issuer if the  
7 commissioner determines that the group health issuer does not  
8 have the capacity to deliver services adequately to enrollees of  
9 additional groups given its obligation to existing employer  
10 groups[-]; and provided further that the commissioner shall  
11 exempt from this section group health plans offered to small  
12 employers that employ only one employee, if the group health  
13 insurer offers the groups at least one small group health plan  
14 that meets the requirements of chapter 393."

15 SECTION 2. Section 431:13-103, Hawaii Revised Statutes, is  
16 amended by amending subsection (a) to read as follows:



1           "(a) The following are defined as unfair methods of  
2 competition and unfair or deceptive acts or practices in the  
3 business of insurance:

4           (1) Misrepresentations and false advertising of insurance  
5 policies. Making, issuing, circulating, or causing to  
6 be made, issued, or circulated, any estimate,  
7 illustration, circular, statement, sales presentation,  
8 omission, or comparison which:

- 9           (A) Misrepresents the benefits, advantages,  
10 conditions, or terms of any insurance policy;
- 11           (B) Misrepresents the dividends or share of the  
12 surplus to be received on any insurance policy;
- 13           (C) Makes any false or misleading statement as to the  
14 dividends or share of surplus previously paid on  
15 any insurance policy;
- 16           (D) Is misleading or is a misrepresentation as to the  
17 financial condition of any insurer, or as to the  
18 legal reserve system upon which any life insurer  
19 operates;
- 20           (E) Uses any name or title of any insurance policy or  
21 class of insurance policies misrepresenting the  
22 true nature thereof;



- 1 (F) Is a misrepresentation for the purpose of
- 2 inducing or tending to induce the lapse,
- 3 forfeiture, exchange, conversion, or surrender of
- 4 any insurance policy;
- 5 (G) Is a misrepresentation for the purpose of
- 6 effecting a pledge or assignment of or effecting
- 7 a loan against any insurance policy;
- 8 (H) Misrepresents any insurance policy as being
- 9 shares of stock;
- 10 (I) Publishes or advertises the assets of any insurer
- 11 without publishing or advertising with equal
- 12 conspicuousness the liabilities of the insurer,
- 13 both as shown by its last annual statement; or
- 14 (J) Publishes or advertises the capital of any
- 15 insurer without stating specifically the amount
- 16 of paid-in and subscribed capital;
- 17 (2) False information and advertising generally. Making,
- 18 publishing, disseminating, circulating, or placing
- 19 before the public, or causing, directly or indirectly,
- 20 to be made, published, disseminated, circulated, or
- 21 placed before the public, in a newspaper, magazine, or
- 22 other publication, or in the form of a notice,



1 circular, pamphlet, letter, or poster, or over any  
2 radio or television station, or in any other way, an  
3 advertisement, announcement, or statement containing  
4 any assertion, representation, or statement with  
5 respect to the business of insurance or with respect  
6 to any person in the conduct of the person's insurance  
7 business, which is untrue, deceptive, or misleading;

8 (3) Defamation. Making, publishing, disseminating, or  
9 circulating, directly or indirectly, or aiding,  
10 abetting, or encouraging the making, publishing,  
11 disseminating, or circulating of any oral or written  
12 statement or any pamphlet, circular, article, or  
13 literature which is false, or maliciously critical of  
14 or derogatory to the financial condition of an  
15 insurer, and which is calculated to injure any person  
16 engaged in the business of insurance;

17 (4) Boycott, coercion, and intimidation.

18 (A) Entering into any agreement to commit, or by any  
19 action committing, any act of boycott, coercion,  
20 or intimidation resulting in or tending to result  
21 in unreasonable restraint of, or monopoly in, the  
22 business of insurance; or



1 (B) Entering into any agreement on the condition,  
2 agreement, or understanding that a policy will  
3 not be issued or renewed unless the prospective  
4 insured contracts for another class or an  
5 additional policy of the same class of insurance  
6 with the same insurer; provided that this  
7 subparagraph shall not apply to any accident and  
8 sickness insurer with less than ten per cent  
9 share of the accident and sickness insurance  
10 market;

11 (5) False financial statements.

12 (A) Knowingly filing with any supervisory or other  
13 public official, or knowingly making, publishing,  
14 disseminating, circulating, or delivering to any  
15 person, or placing before the public, or  
16 knowingly causing, directly or indirectly, to be  
17 made, published, disseminated, circulated,  
18 delivered to any person, or placed before the  
19 public, any false statement of a material fact as  
20 to the financial condition of an insurer; or  
21 (B) Knowingly making any false entry of a material  
22 fact in any book, report, or statement of any



1 insurer with intent to deceive any agent or  
2 examiner lawfully appointed to examine into its  
3 condition or into any of its affairs, or any  
4 public official to whom the insurer is required  
5 by law to report, or who has authority by law to  
6 examine into its condition or into any of its  
7 affairs, or, with like intent, knowingly omitting  
8 to make a true entry of any material fact  
9 pertaining to the business of the insurer in any  
10 book, report, or statement of the insurer;

11 (6) Stock operations and advisory board contracts.

12 Issuing or delivering or permitting agents, officers,  
13 or employees to issue or deliver, agency company stock  
14 or other capital stock, or benefit certificates or  
15 shares in any common-law corporation, or securities or  
16 any special or advisory board contracts or other  
17 contracts of any kind promising returns and profits as  
18 an inducement to insurance;

19 (7) Unfair discrimination.

20 (A) Making or permitting any unfair discrimination  
21 between individuals of the same class and equal  
22 expectation of life in the rates charged for any



1 contract of life insurance or of life annuity or  
2 in the dividends or other benefits payable  
3 thereon, or in any other of the terms and  
4 conditions of the contract;

5 (B) Making or permitting any unfair discrimination in  
6 favor of particular individuals or persons, or  
7 between insureds or subjects of insurance having  
8 substantially like insuring, risk, and exposure  
9 factors, or expense elements, in the terms or  
10 conditions of any insurance contract, or in the  
11 rate or amount of premium charge therefor, or in  
12 the benefits payable or in any other rights or  
13 privilege accruing thereunder;

14 (C) Making or permitting any unfair discrimination  
15 between individuals or risks of the same class  
16 and of essentially the same hazards by refusing  
17 to issue, refusing to renew, canceling, or  
18 limiting the amount of insurance coverage on a  
19 property or casualty risk because of the  
20 geographic location of the risk, unless:



- 1           (i) The refusal, cancellation, or limitation is
- 2           for a business purpose which is not a mere
- 3           pretext for unfair discrimination; or
- 4           (ii) The refusal, cancellation, or limitation is
- 5           required by law or regulatory mandate;
- 6           (D) Making or permitting any unfair discrimination
- 7           between individuals or risks of the same class
- 8           and of essentially the same hazards by refusing
- 9           to issue, refusing to renew, canceling, or
- 10          limiting the amount of insurance coverage on a
- 11          residential property risk, or the personal
- 12          property contained therein, because of the age of
- 13          the residential property, unless:
- 14          (i) The refusal, cancellation, or limitation is
- 15          for a business purpose which is not a mere
- 16          pretext for unfair discrimination; or
- 17          (ii) The refusal, cancellation, or limitation is
- 18          required by law or regulatory mandate;
- 19          (E) Refusing to insure, refusing to continue to
- 20          insure, or limiting the amount of coverage
- 21          available to an individual because of the sex or
- 22          marital status of the individual; however,





1 nothing in this subsection shall prohibit an  
2 insurer from taking marital status into account  
3 for the purpose of defining persons eligible for  
4 dependent benefits;

5 (F) Terminating or modifying coverage, or refusing to  
6 issue or renew any property or casualty policy or  
7 contract of insurance solely because the  
8 applicant or insured or any employee of either is  
9 mentally or physically impaired; provided that  
10 this subparagraph shall not apply to accident and  
11 health or sickness insurance sold by a casualty  
12 insurer; provided further that this subparagraph  
13 shall not be interpreted to modify any other  
14 provision of law relating to the termination,  
15 modification, issuance, or renewal of any  
16 insurance policy or contract;

17 (G) Refusing to insure, refusing to continue to  
18 insure, or limiting the amount of coverage  
19 available to an individual based solely upon the  
20 individual's having taken a human  
21 immunodeficiency virus (HIV) test prior to  
22 applying for insurance; or



1 (H) Refusing to insure, refusing to continue to  
2 insure, or limiting the amount of coverage  
3 available to an individual because the individual  
4 refuses to consent to the release of information  
5 which is confidential as provided in section  
6 325-101; provided that nothing in this  
7 subparagraph shall prohibit an insurer from  
8 obtaining and using the results of a test  
9 satisfying the requirements of the commissioner,  
10 which was taken with the consent of an applicant  
11 for insurance; provided further that any  
12 applicant for insurance who is tested for HIV  
13 infection shall be afforded the opportunity to  
14 obtain the test results, within a reasonable time  
15 after being tested, and that the confidentiality  
16 of the test results shall be maintained as  
17 provided by section 325-101;

18 (8) Rebates. Except as otherwise expressly provided by  
19 law:

20 (A) Knowingly permitting or offering to make or  
21 making any contract of insurance, or agreement as  
22 to the contract other than as plainly expressed



1 in the contract, or paying or allowing, or giving  
2 or offering to pay, allow, or give, directly or  
3 indirectly, as inducement to the insurance, any  
4 rebate of premiums payable on the contract, or  
5 any special favor or advantage in the dividends  
6 or other benefits, or any valuable consideration  
7 or inducement not specified in the contract; or  
8 (B) Giving, selling, or purchasing, or offering to  
9 give, sell, or purchase as inducement to the  
10 insurance or in connection therewith, any stocks,  
11 bonds, or other securities of any insurance  
12 company or other corporation, association, or  
13 partnership, or any dividends or profits accrued  
14 thereon, or anything of value not specified in  
15 the contract;

16 (9) Nothing in paragraph (7) or (8) shall be construed as  
17 including within the definition of discrimination or  
18 rebates any of the following practices:

19 (A) In the case of any contract of life insurance or  
20 life annuity, paying bonuses to policyholders or  
21 otherwise abating their premiums in whole or in  
22 part out of surplus accumulated from



1 nonparticipating insurance; provided that any  
2 bonus or abatement of premiums shall be fair and  
3 equitable to policyholders and in the best  
4 interests of the insurer and its policyholders;  
5 (B) In the case of life insurance policies issued on  
6 the industrial debit plan, making allowance to  
7 policyholders who have continuously for a  
8 specified period made premium payments directly  
9 to an office of the insurer in an amount which  
10 fairly represents the saving in collection  
11 expense;  
12 (C) Readjustment of the rate of premium for a group  
13 insurance policy based on the loss or expense  
14 experience thereunder, at the end of the first or  
15 any subsequent policy year of insurance  
16 thereunder, which may be made retroactive only  
17 for the policy year; and  
18 (D) In the case of any contract of insurance, the  
19 distribution of savings, earnings, or surplus  
20 equitably among a class of policyholders, all in  
21 accordance with this article;



- 1           (10) Refusing to provide or limiting coverage available to  
2           an individual because the individual may have a third-  
3           party claim for recovery of damages; provided that:
- 4           (A) Where damages are recovered by judgment or  
5           settlement of a third-party claim, reimbursement  
6           of past benefits paid shall be allowed pursuant  
7           to section 663-10;
- 8           (B) This paragraph shall not apply to entities  
9           licensed under chapter 386 or 431:10C; and
- 10          (C) For entities licensed under chapter 432 or 432D:
- 11           (i) It shall not be a violation of this section  
12           to refuse to provide or limit coverage  
13           available to an individual because the  
14           entity determines that the individual  
15           reasonably appears to have coverage  
16           available under chapter 386 or 431:10C; and
- 17           (ii) Payment of claims to an individual who may  
18           have a third-party claim for recovery of  
19           damages may be conditioned upon the  
20           individual first signing and submitting to  
21           the entity documents to secure the lien and  
22           reimbursement rights of the entity and



1 providing information reasonably related to  
2 the entity's investigation of its liability  
3 for coverage.

4 Any individual who knows or reasonably should  
5 know that the individual may have a third-party  
6 claim for recovery of damages and who fails to  
7 provide timely notice of the potential claim to  
8 the entity, shall be deemed to have waived the  
9 prohibition of this paragraph against refusal or  
10 limitation of coverage. "Third-party claim" for  
11 purposes of this paragraph means any tort claim  
12 for monetary recovery or damages that the  
13 individual has against any person, entity, or  
14 insurer, other than the entity licensed under  
15 chapter 432 or 432D;

- 16 (11) Unfair claim settlement practices. Committing or  
17 performing with such frequency as to indicate a  
18 general business practice any of the following:
- 19 (A) Misrepresenting pertinent facts or insurance  
20 policy provisions relating to coverages at issue;
  - 21 (B) With respect to claims arising under its  
22 policies, failing to respond with reasonable



1                   promptness, in no case more than fifteen working  
2                   days, to communications received from:  
3                   (i) The insurer's policyholder;  
4                   (ii) Any other persons, including the  
5                   commissioner; or  
6                   (iii) The insurer of a person involved in an  
7                   incident in which the insurer's policyholder  
8                   is also involved.

9                   The response shall be more than an acknowledgment  
10                  that such person's communication has been  
11                  received, and shall adequately address the  
12                  concerns stated in the communication;

13                (C) Failing to adopt and implement reasonable  
14                  standards for the prompt investigation of claims  
15                  arising under insurance policies;

16                (D) Refusing to pay claims without conducting a  
17                  reasonable investigation based upon all available  
18                  information;

19                (E) Failing to affirm or deny coverage of claims  
20                  within a reasonable time after proof of loss  
21                  statements have been completed;



- 1 (F) Failing to offer payment within thirty calendar  
2 days of affirmation of liability, if the amount  
3 of the claim has been determined and is not in  
4 dispute;
- 5 (G) Failing to provide the insured, or when  
6 applicable the insured's beneficiary, with a  
7 reasonable written explanation for any delay, on  
8 every claim remaining unresolved for thirty  
9 calendar days from the date it was reported;
- 10 (H) Not attempting in good faith to effectuate  
11 prompt, fair, and equitable settlements of claims  
12 in which liability has become reasonably clear;
- 13 (I) Compelling insureds to institute litigation to  
14 recover amounts due under an insurance policy by  
15 offering substantially less than the amounts  
16 ultimately recovered in actions brought by the  
17 insureds;
- 18 (J) Attempting to settle a claim for less than the  
19 amount to which a reasonable person would have  
20 believed the person was entitled by reference to  
21 written or printed advertising material  
22 accompanying or made part of an application;





- 1           (K) Attempting to settle claims on the basis of an
- 2           application which was altered without notice,
- 3           knowledge, or consent of the insured;
- 4           (L) Making claims payments to insureds or
- 5           beneficiaries not accompanied by a statement
- 6           setting forth the coverage under which the
- 7           payments are being made;
- 8           (M) Making known to insureds or claimants a policy of
- 9           appealing from arbitration awards in favor of
- 10          insureds or claimants for the purpose of
- 11          compelling them to accept settlements or
- 12          compromises less than the amount awarded in
- 13          arbitration;
- 14          (N) Delaying the investigation or payment of claims
- 15          by requiring an insured, claimant, or the
- 16          physician of either to submit a preliminary claim
- 17          report and then requiring the subsequent
- 18          submission of formal proof of loss forms, both of
- 19          which submissions contain substantially the same
- 20          information;
- 21          (O) Failing to promptly settle claims, where
- 22          liability has become reasonably clear, under one



1           portion of the insurance policy coverage to  
2           influence settlements under other portions of the  
3           insurance policy coverage;

4           (P) Failing to promptly provide a reasonable  
5           explanation of the basis in the insurance policy  
6           in relation to the facts or applicable law for  
7           denial of a claim or for the offer of a  
8           compromise settlement; and

9           (Q) Indicating to the insured on any payment draft,  
10          check, or in any accompanying letter that the  
11          payment is "final" or is "a release" of any claim  
12          if additional benefits relating to the claim are  
13          probable under coverages afforded by the policy;  
14          unless the policy limit has been paid or there is  
15          a bona fide dispute over either the coverage or  
16          the amount payable under the policy;

17          (12) Failure to maintain complaint handling procedures.  
18          Failure of any insurer to maintain a complete record  
19          of all the complaints which it has received since the  
20          date of its last examination under section 431:2-302.  
21          This record shall indicate the total number of  
22          complaints, their classification by line of insurance,



1 the nature of each complaint, the disposition of these  
2 complaints, and the time it took to process each  
3 complaint. For purposes of this section, "complaint"  
4 means any written communication primarily expressing a  
5 grievance; and

6 (13) Misrepresentation in insurance applications. Making  
7 false or fraudulent statements or representations on  
8 or relative to an application for an insurance policy,  
9 for the purpose of obtaining a fee, commission, money,  
10 or other benefit from any insurer, producer, or  
11 individual."

12 SECTION 3. Statutory material to be repealed is bracketed  
13 and stricken. New statutory material is underscored.

14 SECTION 4. This Act shall take effect on July 1, 2050.



**Report Title:**

Health Insurance; Small Insurers

**Description:**

Enables small insurers that occupy less than ten per cent of the health insurance market to provide the broadest healthcare coverage at the lowest possible rates by permitting different types of insurance to be combined into a single unified policy; encourages broader coverage of sole proprietors and other employer groups with only one employee. (SD1)

