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# A BILL FOR AN ACT

RELATING TO INSURANCE.

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

1           SECTION 1. The purpose of this Act is to allow mutual  
2 benefit societies, in limited circumstances, to combine certain  
3 types of benefits with health insurance policies without  
4 violating the prohibition on making the issuance or renewal of  
5 one class of insurance contingent upon the purchase of another  
6 class of insurance or an additional policy of the same class.

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

9           "(a) The following are defined as unfair methods of  
10 competition and unfair or deceptive acts or practices in the  
11 business of insurance:

12           (1) Misrepresentations and false advertising of insurance  
13 policies. Making, issuing, circulating, or causing to  
14 be made, issued, or circulated, any estimate,  
15 illustration, circular, statement, sales presentation,  
16 omission, or comparison which:



- 1 (A) Misrepresents the benefits, advantages,  
2 conditions, or terms of any insurance policy;
- 3 (B) Misrepresents the dividends or share of the  
4 surplus to be received on any insurance policy;
- 5 (C) Makes any false or misleading statement as to the  
6 dividends or share of surplus previously paid on  
7 any insurance policy;
- 8 (D) Is misleading or is a misrepresentation as to the  
9 financial condition of any insurer, or as to the  
10 legal reserve system upon which any life insurer  
11 operates;
- 12 (E) Uses any name or title of any insurance policy or  
13 class of insurance policies misrepresenting the  
14 true nature thereof;
- 15 (F) Is a misrepresentation for the purpose of  
16 inducing or tending to induce the lapse,  
17 forfeiture, exchange, conversion, or surrender of  
18 any insurance policy;
- 19 (G) Is a misrepresentation for the purpose of  
20 effecting a pledge or assignment of or effecting  
21 a loan against any insurance policy;



- 1 (H) Misrepresents any insurance policy as being  
2 shares of stock;
- 3 (I) Publishes or advertises the assets of any insurer  
4 without publishing or advertising with equal  
5 conspicuousness the liabilities of the insurer,  
6 both as shown by its last annual statement; or
- 7 (J) Publishes or advertises the capital of any  
8 insurer without stating specifically the amount  
9 of paid-in and subscribed capital;
- 10 (2) False information and advertising generally. Making,  
11 publishing, disseminating, circulating, or placing  
12 before the public, or causing, directly or indirectly,  
13 to be made, published, disseminated, circulated, or  
14 placed before the public, in a newspaper, magazine, or  
15 other publication, or in the form of a notice,  
16 circular, pamphlet, letter, or poster, or over any  
17 radio or television station, or in any other way, an  
18 advertisement, announcement, or statement containing  
19 any assertion, representation, or statement with  
20 respect to the business of insurance or with respect  
21 to any person in the conduct of the person's insurance  
22 business, which is untrue, deceptive, or misleading;



1 (3) Defamation. Making, publishing, disseminating, or  
2 circulating, directly or indirectly, or aiding,  
3 abetting, or encouraging the making, publishing,  
4 disseminating, or circulating of any oral or written  
5 statement or any pamphlet, circular, article, or  
6 literature which is false, or maliciously critical of  
7 or derogatory to the financial condition of an  
8 insurer, and which is calculated to injure any person  
9 engaged in the business of insurance;

10 (4) Boycott, coercion, and intimidation.

11 (A) Entering into any agreement to commit, or by any  
12 action committing, any act of boycott, coercion,  
13 or intimidation resulting in or tending to result  
14 in unreasonable restraint of, or monopoly in, the  
15 business of insurance; or

16 (B) Entering into any agreement on the condition,  
17 agreement, or understanding that a policy will  
18 not be issued or renewed unless the prospective  
19 insured contracts for another class or an  
20 additional policy of the same class of insurance  
21 with the same insurer; provided that this  
22 subparagraph shall not apply to any insurer



1 subject to chapter 432, offering to an individual  
2 or sole proprietor, contracts for dental and  
3 vision insurance as a condition, agreement, or  
4 understanding to a new health insurance policy or  
5 renewal of a health insurance policy;

6 (5) False financial statements.

7 (A) Knowingly filing with any supervisory or other  
8 public official, or knowingly making, publishing,  
9 disseminating, circulating, or delivering to any  
10 person, or placing before the public, or  
11 knowingly causing, directly or indirectly, to be  
12 made, published, disseminated, circulated,  
13 delivered to any person, or placed before the  
14 public, any false statement of a material fact as  
15 to the financial condition of an insurer; or

16 (B) Knowingly making any false entry of a material  
17 fact in any book, report, or statement of any  
18 insurer with intent to deceive any agent or  
19 examiner lawfully appointed to examine into its  
20 condition or into any of its affairs, or any  
21 public official to whom the insurer is required  
22 by law to report, or who has authority by law to



1           examine into its condition or into any of its  
2           affairs, or, with like intent, knowingly omitting  
3           to make a true entry of any material fact  
4           pertaining to the business of the insurer in any  
5           book, report, or statement of the insurer;

6           (6) Stock operations and advisory board contracts.  
7           Issuing or delivering or permitting agents, officers,  
8           or employees to issue or deliver, agency company stock  
9           or other capital stock, or benefit certificates or  
10          shares in any common-law corporation, or securities or  
11          any special or advisory board contracts or other  
12          contracts of any kind promising returns and profits as  
13          an inducement to insurance;

14          (7) Unfair discrimination.  
15          (A) Making or permitting any unfair discrimination  
16          between individuals of the same class and equal  
17          expectation of life in the rates charged for any  
18          policy of life insurance or annuity contract or  
19          in the dividends or other benefits payable  
20          thereon, or in any other of the terms and  
21          conditions of the contract;



- 1 (B) Making or permitting any unfair discrimination in  
2 favor of particular individuals or persons, or  
3 between insureds or subjects of insurance having  
4 substantially like insuring, risk, and exposure  
5 factors, or expense elements, in the terms or  
6 conditions of any insurance contract, or in the  
7 rate or amount of premium charge therefor, or in  
8 the benefits payable or in any other rights or  
9 privilege accruing thereunder;
- 10 (C) Making or permitting any unfair discrimination  
11 between individuals or risks of the same class  
12 and of essentially the same hazards by refusing  
13 to issue, refusing to renew, canceling, or  
14 limiting the amount of insurance coverage on a  
15 property or casualty risk because of the  
16 geographic location of the risk, unless:
- 17 (i) The refusal, cancellation, or limitation is  
18 for a business purpose which is not a mere  
19 pretext for unfair discrimination; or
- 20 (ii) The refusal, cancellation, or limitation is  
21 required by law or regulatory mandate;



- 1           (D) Making or permitting any unfair discrimination
- 2           between individuals or risks of the same class
- 3           and of essentially the same hazards by refusing
- 4           to issue, refusing to renew, canceling, or
- 5           limiting the amount of insurance coverage on a
- 6           residential property risk, or the personal
- 7           property contained therein, because of the age of
- 8           the residential property, unless:
- 9           (i) The refusal, cancellation, or limitation is
- 10           for a business purpose which is not a mere
- 11           pretext for unfair discrimination; or
- 12           (ii) The refusal, cancellation, or limitation is
- 13           required by law or regulatory mandate;
- 14           (E) Refusing to insure, refusing to continue to
- 15           insure, or limiting the amount of coverage
- 16           available to an individual because of the sex or
- 17           marital status of the individual; however,
- 18           nothing in this subsection shall prohibit an
- 19           insurer from taking marital status into account
- 20           for the purpose of defining persons eligible for
- 21           dependent benefits;





- 1 (F) Terminating or modifying coverage, or refusing to  
2 issue or renew any property or casualty policy or  
3 contract of insurance solely because the  
4 applicant or insured or any employee of either is  
5 mentally or physically impaired; provided that  
6 this subparagraph shall not apply to accident and  
7 health or sickness insurance sold by a casualty  
8 insurer; provided further that this subparagraph  
9 shall not be interpreted to modify any other  
10 provision of law relating to the termination,  
11 modification, issuance, or renewal of any  
12 insurance policy or contract;
- 13 (G) Refusing to insure, refusing to continue to  
14 insure, or limiting the amount of coverage  
15 available to an individual based solely upon the  
16 individual's having taken a human  
17 immunodeficiency virus (HIV) test prior to  
18 applying for insurance; or
- 19 (H) Refusing to insure, refusing to continue to  
20 insure, or limiting the amount of coverage  
21 available to an individual because the individual  
22 refuses to consent to the release of information



1           which is confidential as provided in section  
2           325-101; provided that nothing in this  
3           subparagraph shall prohibit an insurer from  
4           obtaining and using the results of a test  
5           satisfying the requirements of the commissioner,  
6           which was taken with the consent of an applicant  
7           for insurance; provided further that any  
8           applicant for insurance who is tested for HIV  
9           infection shall be afforded the opportunity to  
10          obtain the test results, within a reasonable time  
11          after being tested, and that the confidentiality  
12          of the test results shall be maintained as  
13          provided by section 325-101;

14          (8) Rebates. Except as otherwise expressly provided by  
15          law:

16          (A) Knowingly permitting or offering to make or  
17          making any contract of insurance, or agreement as  
18          to the contract other than as plainly expressed  
19          in the contract, or paying or allowing, or giving  
20          or offering to pay, allow, or give, directly or  
21          indirectly, as inducement to the insurance, any  
22          rebate of premiums payable on the contract, or



1 any special favor or advantage in the dividends  
2 or other benefits, or any valuable consideration  
3 or inducement not specified in the contract; or

4 (B) Giving, selling, or purchasing, or offering to  
5 give, sell, or purchase as inducement to the  
6 insurance or in connection therewith, any stocks,  
7 bonds, or other securities of any insurance  
8 company or other corporation, association, or  
9 partnership, or any dividends or profits accrued  
10 thereon, or anything of value not specified in  
11 the contract;

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

15 (A) In the case of any life insurance policy or  
16 annuity contract, paying bonuses to policyholders  
17 or otherwise abating their premiums in whole or  
18 in part out of surplus accumulated from  
19 nonparticipating insurance; provided that any  
20 bonus or abatement of premiums shall be fair and  
21 equitable to policyholders and in the best  
22 interests of the insurer and its policyholders;



1 (B) In the case of life insurance policies issued on  
2 the industrial debit plan, making allowance to  
3 policyholders who have continuously for a  
4 specified period made premium payments directly  
5 to an office of the insurer in an amount which  
6 fairly represents the saving in collection  
7 expense;

8 (C) Readjustment of the rate of premium for a group  
9 insurance policy based on the loss or expense  
10 experience thereunder, at the end of the first or  
11 any subsequent policy year of insurance  
12 thereunder, which may be made retroactive only  
13 for the policy year; and

14 (D) In the case of any contract of insurance, the  
15 distribution of savings, earnings, or surplus  
16 equitably among a class of policyholders, all in  
17 accordance with this article;

18 (10) Refusing to provide or limiting coverage available to  
19 an individual because the individual may have a third-  
20 party claim for recovery of damages; provided that:

21 (A) Where damages are recovered by judgment or  
22 settlement of a third-party claim, reimbursement



1 of past benefits paid shall be allowed pursuant  
2 to section 663-10;

3 (B) This paragraph shall not apply to entities  
4 licensed under chapter 386 or 431:10C; and

5 (C) For entities licensed under chapter 432 or 432D:

6 (i) It shall not be a violation of this section  
7 to refuse to provide or limit coverage  
8 available to an individual because the  
9 entity determines that the individual  
10 reasonably appears to have coverage  
11 available under chapter 386 or 431:10C; and

12 (ii) Payment of claims to an individual who may  
13 have a third-party claim for recovery of  
14 damages may be conditioned upon the  
15 individual first signing and submitting to  
16 the entity documents to secure the lien and  
17 reimbursement rights of the entity and  
18 providing information reasonably related to  
19 the entity's investigation of its liability  
20 for coverage.

21 Any individual who knows or reasonably should  
22 know that the individual may have a third-party



1 claim for recovery of damages and who fails to  
2 provide timely notice of the potential claim to  
3 the entity, shall be deemed to have waived the  
4 prohibition of this paragraph against refusal or  
5 limitation of coverage. "Third-party claim" for  
6 purposes of this paragraph means any tort claim  
7 for monetary recovery or damages that the  
8 individual has against any person, entity, or  
9 insurer, other than the entity licensed under  
10 chapter 432 or 432D;

- 11 (11) Unfair claim settlement practices. Committing or  
12 performing with such frequency as to indicate a  
13 general business practice any of the following:
- 14 (A) Misrepresenting pertinent facts or insurance  
15 policy provisions relating to coverages at issue;
  - 16 (B) With respect to claims arising under its  
17 policies, failing to respond with reasonable  
18 promptness, in no case more than fifteen working  
19 days, to communications received from:
    - 20 (i) The insurer's policyholder;
    - 21 (ii) Any other persons, including the  
22 commissioner; or



1 (iii) The insurer of a person involved in an  
2 incident in which the insurer's policyholder  
3 is also involved.

4 The response shall be more than an acknowledgment  
5 that such person's communication has been  
6 received, and shall adequately address the  
7 concerns stated in the communication;

8 (C) Failing to adopt and implement reasonable  
9 standards for the prompt investigation of claims  
10 arising under insurance policies;

11 (D) Refusing to pay claims without conducting a  
12 reasonable investigation based upon all available  
13 information;

14 (E) Failing to affirm or deny coverage of claims  
15 within a reasonable time after proof of loss  
16 statements have been completed;

17 (F) Failing to offer payment within thirty calendar  
18 days of affirmation of liability, if the amount  
19 of the claim has been determined and is not in  
20 dispute;

21 (G) Failing to provide the insured, or when  
22 applicable the insured's beneficiary, with a



- 1 reasonable written explanation for any delay, on
- 2 every claim remaining unresolved for thirty
- 3 calendar days from the date it was reported;
- 4 (H) Not attempting in good faith to effectuate
- 5 prompt, fair, and equitable settlements of claims
- 6 in which liability has become reasonably clear;
- 7 (I) Compelling insureds to institute litigation to
- 8 recover amounts due under an insurance policy by
- 9 offering substantially less than the amounts
- 10 ultimately recovered in actions brought by the
- 11 insureds;
- 12 (J) Attempting to settle a claim for less than the
- 13 amount to which a reasonable person would have
- 14 believed the person was entitled by reference to
- 15 written or printed advertising material
- 16 accompanying or made part of an application;
- 17 (K) Attempting to settle claims on the basis of an
- 18 application which was altered without notice,
- 19 knowledge, or consent of the insured;
- 20 (L) Making claims payments to insureds or
- 21 beneficiaries not accompanied by a statement





- 1            setting forth the coverage under which the  
2            payments are being made;
- 3            (M) Making known to insureds or claimants a policy of  
4            appealing from arbitration awards in favor of  
5            insureds or claimants for the purpose of  
6            compelling them to accept settlements or  
7            compromises less than the amount awarded in  
8            arbitration;
- 9            (N) Delaying the investigation or payment of claims  
10           by requiring an insured, claimant, or the  
11           physician of either to submit a preliminary claim  
12           report and then requiring the subsequent  
13           submission of formal proof of loss forms, both of  
14           which submissions contain substantially the same  
15           information;
- 16           (O) Failing to promptly settle claims, where  
17           liability has become reasonably clear, under one  
18           portion of the insurance policy coverage to  
19           influence settlements under other portions of the  
20           insurance policy coverage;
- 21           (P) Failing to promptly provide a reasonable  
22           explanation of the basis in the insurance policy



1 in relation to the facts or applicable law for  
2 denial of a claim or for the offer of a  
3 compromise settlement; and  
4 (Q) Indicating to the insured on any payment draft,  
5 check, or in any accompanying letter that the  
6 payment is "final" or is "a release" of any claim  
7 if additional benefits relating to the claim are  
8 probable under coverages afforded by the policy;  
9 unless the policy limit has been paid or there is  
10 a bona fide dispute over either the coverage or  
11 the amount payable under the policy;  
12 (12) Failure to maintain complaint handling procedures.  
13 Failure of any insurer to maintain a complete record  
14 of all the complaints which it has received since the  
15 date of its last examination under section 431:2-302.  
16 This record shall indicate the total number of  
17 complaints, their classification by line of insurance,  
18 the nature of each complaint, the disposition of these  
19 complaints, and the time it took to process each  
20 complaint. For purposes of this section, "complaint"  
21 means any written communication primarily expressing a  
22 grievance;



1 (13) Misrepresentation in insurance applications. Making  
2 false or fraudulent statements or representations on  
3 or relative to an application for an insurance policy,  
4 for the purpose of obtaining a fee, commission, money,  
5 or other benefit from any insurer, producer, or  
6 individual; and

7 (14) Failure to obtain information. Failure of any  
8 insurance producer, or an insurer where no producer is  
9 involved, to comply with section 431:10D-623(a), (b),  
10 or (c) by making reasonable efforts to obtain  
11 information about a consumer before making a  
12 recommendation to the consumer to purchase or exchange  
13 an annuity."

14 SECTION 3. New statutory material is underscored.

15 SECTION 4. This Act shall take effect on January 1, 2050.



**Report Title:**

Insurance; Unfair Practices; Exception for Mutual Benefit Societies

**Description:**

Allows mutual benefit societies to bundle dental and vision insurance with health insurance policies offered to individuals and sole proprietors. (SB2314 HD1)

