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## A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. The legislature finds that the federal Patient  
2 Protection and Affordable Care Act of 2010 enabled Hawaii to  
3 establish its own state-based health insurance exchange.  
4 Codified under chapter 435H, Hawaii Revised Statutes, Hawaii's  
5 health insurance exchange, also known as the Hawaii health  
6 connector, is funded through a fee on premiums of health  
7 insurance companies that sell policies through the health  
8 connector. The legislature further finds that this method of  
9 funding is inadequate for the long-term sustainability of the  
10 Hawaii health connector.

11           The legislature additionally finds that a tax dedicated to  
12 the funding of the Hawaii health connector should be levied on  
13 all commercial health insurance premiums in the State. The  
14 Hawaii health connector serves a wide public interest by making  
15 health insurance in Hawaii available through a vehicle that  
16 increases marketplace competition and lowers prices. This  
17 public interest therefore justifies a broad-based funding of the  
18 Hawaii health connector.





1 10A of chapter 431, or chapter 432 or 432D, offering a qualified  
2 plan under chapter 435H.

3 "Qualified dental plan" means a dental benefit plan as  
4 described in section 1311(d)(2)(B)(ii) of the Federal Act.

5 "Qualified plan" means a health benefit plan offered by an  
6 insurer that meets the criteria for certification described in  
7 section 1311(c) of the Federal Act.

8 § -2 **Imposition and rate.** (a) There is levied and  
9 shall be collected each month a Hawaii health insurance exchange  
10 tax of two-thirds of one per cent for the period beginning  
11 July 1, 2014, and thereafter, on the gross premiums derived from  
12 the sale of qualified dental plans and qualified plans by  
13 insurers. Gross premiums shall not include premium returned.

14 (b) Every insurer shall pay to the director the tax  
15 imposed by subsection (a) in such a form as the director  
16 prescribes.

17 (c) The director shall deposit the taxes received into a  
18 Hawaii health insurance exchange fund.

19 (d) The director shall appropriate monthly the accumulated  
20 taxes deposited into the fund to the Hawaii health insurance  
21 exchange established under chapter 435H.



1 (e) The director shall not allocate more than \$15,000,000  
2 to the Hawaii health insurance exchange in any calendar year.

3 § -3 Exemptions. This chapter shall not apply to:

4 (1) Medicare supplement policies, as defined in section  
5 431:10A-301;

6 (2) Enrollees in medicaid adult or children's health  
7 insurance programs, as determined by the department of  
8 human services under section 435H-7; and

9 (3) The Hawaii employer-union health benefits trust fund.

10 § -4 Payments. (a) On or before the twentieth day of  
11 each calendar month, every insurer liable under this chapter  
12 during the preceding calendar month shall file a sworn  
13 reconciliation with the director in such form as the director  
14 shall prescribe together with a remittance for the amount of the  
15 tax in the form required by section -2.

16 (b) All remittances of taxes imposed under this chapter  
17 shall be made by cash, bank drafts, cashier's check, money  
18 order, or by any acceptable means by the director to the office  
19 of the taxation district to which the reconciliation was  
20 transmitted.

21 § -5 Reconciliation; form requirement. (a) On or  
22 before the twentieth day of the fourth month following the close



1 of the taxable year, every insurer that became liable for the  
2 payment of taxes under this chapter during the preceding taxable  
3 year shall file a reconciliation on a form as prescribed by the  
4 director indicating the amount of gross premium that was subject  
5 to such tax imposed under this chapter.

6 (b) On or before the twentieth day of the fourth month  
7 following the close of the taxable year, every insurer that has  
8 become liable for the payment of taxes under this chapter during  
9 the preceding taxable year shall file a reconciliation  
10 indicating whether the appropriate amount of taxes had been  
11 paid.

12 § -6 Assessment of tax upon failure to make  
13 reconciliation; limitation period; exceptions; extension by  
14 agreement. (a) If any insurer fails to make a reconciliation  
15 as required by this chapter, the director shall make an estimate  
16 of the tax liability of the insurer from any information the  
17 director obtains, and according to the estimate so made, assess  
18 the taxes, interest, and penalty due to the State from the  
19 insurer, give notice of the assessment to the insurer, and make  
20 demand upon the insurer for payment. The assessment shall be  
21 presumed to be correct until and unless, upon an appeal duly  
22 taken as provided in section -8, the contrary shall be



1 clearly proved by the insurer assessed, and the burden of proof  
2 upon the appeal shall be upon the insurer assessed to disprove  
3 the correctness of assessment.

4 (b) After a reconciliation is filed under this chapter,  
5 the director shall cause the reconciliation to be examined, and  
6 may make such further audits or investigation as the director  
7 considers necessary. If the director determines that there is a  
8 deficiency with respect to the payment of any tax due under this  
9 chapter, the director shall assess the taxes and interest due to  
10 the State, give notice of the assessment to the insurer liable,  
11 and make demand upon the insurer for payment.

12 (c) Except as otherwise provided by this section, the  
13 amount of taxes imposed by this chapter shall be assessed or  
14 levied within three years after the annual reconciliation was  
15 filed, or within three years of the due date prescribed for the  
16 filing of the reconciliation, whichever is later, and no  
17 proceeding in court without assessment for the collection of any  
18 of the taxes shall be begun after the expiration of the period.  
19 Where the assessment of the tax imposed by this chapter has been  
20 made within the applicable period of limitation, the tax may be  
21 collected by levy or by a proceeding in court under chapter 231;



1 provided that the levy is made or the proceeding was begun  
2 within fifteen years after the assessment of the tax.

3 (d) In the case of a false or fraudulent reconciliation  
4 with intent to evade tax, or of a failure to file the annual  
5 reconciliation, the tax may be assessed or levied at any time;  
6 provided that the burden of proof with respect to the issues of  
7 falsity or fraud and intent to evade tax shall be upon the  
8 State.

9 (e) Where, before the expiration of the period prescribed  
10 in subsection (c), both the department of taxation and the  
11 insurer have consented in writing to the assessment or levy of  
12 the tax after the date fixed by subsection (c), the tax may be  
13 assessed or levied at any time prior to the expiration of the  
14 period agreed upon. The period so agreed upon may be extended  
15 by subsequent agreements in writing made before the expiration  
16 of the period previously agreed upon.

17 § -7 **Overpayment; refunds.** Upon application by an  
18 insurer, if the director determines that any tax, interest, or  
19 penalty has been paid more than once, or has been erroneously or  
20 illegally collected or computed, the tax, interest, or penalty  
21 shall be credited by the director on any taxes then due from the  
22 insurer under this chapter. The director shall refund the



1 balance to the insurer or the insurer's successors,  
2 administrators, executors, or assigns in accordance with section  
3 231-23. No credit or refund shall be allowed for any tax  
4 imposed by this chapter, unless a claim for such credit or  
5 refund is filed as follows:

6 (1) If an annual reconciliation is timely filed, or is  
7 filed within three years after the date prescribed for  
8 filing the annual reconciliation, then the credit or  
9 refund shall be claimed within three years after the  
10 date the annual reconciliation was filed or the date  
11 prescribed for filing the annual reconciliation,  
12 whichever is later.

13 (2) If an annual reconciliation is not filed, or is filed  
14 more than three years after the date prescribed for  
15 filing the annual reconciliation, a claim for credit  
16 or refund shall be filed within:

17 (A) Three years after the payment of the tax; or

18 (B) Three years after the date prescribed for the  
19 filing of the annual reconciliation,  
20 whichever is later.





1 Paragraphs (1) and (2) are mutually exclusive. The preceding  
2 limitation shall not apply to a credit or refund pursuant to an  
3 appeal, provided for in section 237D-11.

4 As to all tax payments for which a refund or credit is not  
5 authorized by this section including, without prejudice to the  
6 generality of the foregoing, cases of unconstitutionality, the  
7 remedies provided by appeal or by section 40-35 are exclusive.

8 § -8 **Appeals.** Any insurer aggrieved by any assessment  
9 of the tax for any month or any year may appeal from the  
10 assessment in the manner and within the time and in all other  
11 respects as provided in the case of income tax appeals by  
12 section 235-114.

13 § -9 **Records to be kept; examination.** Every insurer  
14 shall keep in the English language within the State, and  
15 preserve for a period of three years, suitable records of gross  
16 premium relating to the business taxed under this chapter, and  
17 such other books, records of account, and invoices as may be  
18 required by the department, and all such books, records, and  
19 invoices shall be open for examination at any time by the  
20 department or the Multistate Tax Commission pursuant to chapter  
21 255, or the authorized representative thereof.



1           §   -10 Disclosure of reconciliations unlawful;  
2 destruction of reconciliations. (a) All reconciliations and  
3 reconciliation information required to be filed under this  
4 chapter, and the report of any investigation of the  
5 reconciliation or of the subject matter of the reconciliation,  
6 shall be confidential. It shall be unlawful for any person or  
7 any officer or employee of the State to intentionally make known  
8 information imparted by any reconciliation or reconciliation  
9 information filed pursuant to this chapter, or any report of any  
10 investigation of the reconciliation or of the subject matter of  
11 the reconciliation, or to wilfully permit any reconciliation,  
12 reconciliation information, reconciliation or report so made, or  
13 any copy thereof, to be seen or examined by any person; provided  
14 that for tax purposes only the insurer, the insurer's authorized  
15 agent, or persons with a material interest in the  
16 reconciliation, reconciliation information, or report may  
17 examine them. Unless otherwise provided by law, persons with a  
18 material interest in the reconciliation, reconciliation  
19 information, or report shall include:

- 20           (1) Trustees;
- 21           (2) Partners;

- 1           (3) Persons named in a board resolution or a one per cent
- 2           shareholder in case of a corporate reconciliation;
- 3           (4) The person authorized to act for an insurer in
- 4           dissolution;
- 5           (5) The shareholder of an S corporation;
- 6           (6) The trustee in bankruptcy or receiver, and the
- 7           attorney-in-fact of any person in paragraphs (1) to
- 8           (5);
- 9           (7) Persons duly authorized by the State in connection
- 10          with their official duties;
- 11          (8) Any duly accredited tax official of the United States,
- 12          of any state or territory, or of any county of this
- 13          State;
- 14          (9) The Multistate Tax Commission or its authorized
- 15          representative; and
- 16          (10) Members of a limited liability company.

17 Any violation of this subsection shall be a misdemeanor.

18 Nothing in this subsection shall prohibit the publication of

19 statistics so classified as to prevent the identification of

20 particular reports or reconciliations and the items of the

21 reports or reconciliations.



1           (b) The department may destroy reconciliations upon the  
2 expiration of three years after the end of the calendar or  
3 fiscal year in which the taxes so returned accrued.

4           §   -11   **Collection by suit.** The department may collect  
5 taxes due and unpaid under this chapter, together with all  
6 accrued penalties, by action in assumpsit or other appropriate  
7 proceedings in the circuit court of the judicial circuit in  
8 which the taxes arose.

9           §   -12   **Application of tax.** The tax imposed by this  
10 chapter shall be in addition to any other taxes imposed by any  
11 other laws of the State, except as otherwise specifically  
12 provided in this chapter; provided that if it be held by any  
13 court of competent jurisdiction that the tax imposed by this  
14 chapter may not legally be imposed in addition to any other tax  
15 or taxes imposed by any other law or laws, then this chapter  
16 shall be deemed not to apply, but the other laws shall be given  
17 full effect with respect to such property and use.

18           §   -13   **Administration and enforcement; rules.** (a) The  
19 director of taxation shall administer and enforce this chapter.  
20 In respect of:

21           (1) The examinations of books and records and of insurers;



1           (2) Procedure and powers upon failure or refusal by an  
2           insurer to make a reconciliation or proper  
3           reconciliation; and

4           (3) The general administration of this chapter;  
5 the director of taxation shall have all rights and powers  
6 conferred by this chapter with respect to taxes thereby or  
7 thereunder imposed; and, without restriction upon these rights  
8 and powers, sections 237-8 and 237-36 to 237-41 are made  
9 applicable to and with respect to the taxes, taxpayers, tax  
10 officers, and other persons, and the matters and things affected  
11 or covered by this chapter, insofar as not inconsistent with  
12 this chapter, in the same manner, as nearly as may be, as in  
13 similar cases covered by chapter 237.

14           (b) The director may adopt, amend, or repeal rules under  
15 chapter 91 to carry out this chapter."

16           SECTION 3. Section 432:1-403, Hawaii Revised Statutes, is  
17 amended to read as follows:

18           "**§432:1-403 Nonprofit medical, hospital indemnity**  
19 **associations; tax exemption.** Every association or society  
20 organized and operating under this article solely as a nonprofit  
21 medical indemnity or hospital service association or society or  
22 both shall be, from the time of such organization, exempt from



1 every state, county and municipal tax, except the unemployment  
2 compensation tax[-] and Hawaii health insurance exchange tax.  
3 Nothing in this section shall be deemed to exempt the  
4 association or society from liability to withhold the taxes  
5 payable by its employees and to pay the same to the proper  
6 collection officers, and to keep such records, and make such  
7 returns and reports, as may be required in the case of other  
8 corporations, associations or societies similarly exempted from  
9 such taxes."

10 SECTION 4. Section 435H-3, Hawaii Revised Statutes, is  
11 amended to read as follows:

12 "[+]§435H-3[+] **Funding.** The connector may receive  
13 contributions, grants, endowments, fees, or gifts in cash or  
14 otherwise from public and private sources including  
15 corporations, businesses, foundations, governments, individuals,  
16 and other sources subject to rules adopted by the board. The  
17 State may appropriate moneys to the connector. As required by  
18 section 1311(d)(5)(A) of the Federal Act, the connector shall be  
19 self-sustaining by January 1, 2015, and may charge assessments  
20 or user fees to participating health and dental carriers, or may  
21 otherwise generate funding to support its operations. Moneys  
22 received by or under the supervision of the connector [~~shall~~



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1 ~~not~~ may be placed into the state treasury and the State ~~[shall~~  
 2 ~~not~~ may administer any moneys of the connector ~~[not]~~; provided  
 3 that the State shall not be responsible for the financial  
 4 operations or solvency of the connector."

5 SECTION 5. Statutory material to be repealed is bracketed  
 6 and stricken. New statutory material is underscored.

7 SECTION 6. This Act shall take effect on July 1, 2014.

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INTRODUCED BY:

  
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Sen. Dan Claitor

Rep. A. Belmont

~~\_\_\_\_\_~~

JAN 23 2014



# H.B. NO. 2588

**Report Title:**

Taxation; Hawaii Health Insurance Exchange; Hawaii Health Connector

**Description:**

Ensures the long-term sustainability of the Hawaii health connector by levying a tax of two-thirds of one per cent on the gross health insurance premiums derived from the sale of qualified dental plans and qualified plans by insurers in the State, with certain exemptions.

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