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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 facilitate the  
2 establishment of health savings accounts in the State and  
3 require employers to make contributions to health savings  
4 accounts, which receive favorable tax treatment in that the  
5 contributions may be accumulated over the years, or distributed  
6 on a tax-free basis, to pay or reimburse qualifying medical  
7 expenses.

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

11           "§431:10A- Health savings account program; limitations;  
12 definitions. (a) Each group accident and health or sickness  
13 insurance policy issued or renewed in this State after July 1,  
14 2016, may include an option for a health savings account  
15 program.

16           (b) An employer subject to chapter 393 may offer a health  
17 savings account program to employees in addition to the group



1 accident and health or sickness insurance policy provided by an  
2 insurer. An employer offering a health savings account program  
3 shall be subject to the following limitations. The employer  
4 shall:

5 (1) Provide the program to employees only as an  
6 alternative option to a group accident and health or  
7 sickness insurance policy, in which both the program  
8 and the group accident and health or sickness  
9 insurance policy provide aggregate benefits that are  
10 determined pursuant to chapter 393 to be equivalent  
11 and meet the qualifications in either section 393-7(a)  
12 or (b);

13 (2) Make an annual employer contribution to the health  
14 savings account of an employee enrolled in the  
15 program, and upon enrollment of a new employee that  
16 enrolls in the program;

17 (3) Make an employer contribution of an amount equal to or  
18 greater than eighty per cent of the annual deductible  
19 of a high deductible health plan for self-only  
20 coverage or equal to or greater than eighty per cent  
21 of the annual deductible of a high deductible health



- 1       plan for family coverage, as applicable, with the  
2       total annual employer contribution not to exceed the  
3       maximum contribution amount pursuant to section 223 of  
4       the Internal Revenue Code of 1986;
- 5       (4) Contribute the annual amount to the employee's health  
6       savings account prior to the first day the employee is  
7       covered by the program;
- 8       (5) Increase the contribution amount to an employee's  
9       health savings account if an employee's status changes  
10      from self-only coverage to family coverage during the  
11      employee's enrollment in the program;
- 12      (6) Cooperate with the insurer regarding proof of  
13      compliance with the limitations for offering a health  
14      savings account program to employees;
- 15      (7) Provide the declaration of understanding from the  
16      insurer with the program application;
- 17      (8) Provide the certification obtained from the insurer  
18      regarding the employer's compliance with the  
19      limitations of the program to the insurer; and
- 20      (9) Immediately remove any employee and dependents, if  
21      any, from the program and place the employee and



1 dependents, if any, in the group accident and health  
2 or sickness insurance policy if the employer knows the  
3 program is not in compliance with this section, by  
4 notifying the insurer immediately.

5 (c) Every insurer that offers, sells, or renews a group  
6 accident and health or sickness insurance policy with an option  
7 for a health savings account program shall:

8 (1) Include the employer limitations in this section in  
9 any policy, contract, certificate, or agreement,  
10 regardless of form;

11 (2) Encourage informed decisions by providing employers a  
12 one-page, double-sided declaration of understanding,  
13 to be included with any program application that  
14 explains in plain and simple language certain terms of  
15 the program, including covered services, applicable  
16 deductibles, claims processing, and the effective use  
17 of the program for favorable tax treatment;

18 (3) Retain the employer's certification as to compliance  
19 with the limitations of the program for five years;  
20 and



1       (4) Submit to the insurance commissioner, no later than  
2       June 30 of each calendar year, a statewide basis  
3       report in such form and detail as the insurance  
4       commissioner shall prescribe, on the preceding  
5       calendar year stating the participation rate, the  
6       total dollars contributed by employers, the total  
7       dollars contributed by employees, and the disbursement  
8       of the deposits as a percentage of the deposits in the  
9       health savings accounts.

10       (d) Unused funds in a health savings account shall become  
11 the property of the health savings account holder at the end of  
12 a taxable year.

13       (e) Notwithstanding any provision of law to the contrary,  
14 the rights of an employee or dependent, if any, to hold or to  
15 receive moneys paid into or out of a health savings account, and  
16 the assets and income of a health savings account:

17       (1) Shall be exempt from creditor process;

18       (2) Shall not be liable to attachment, garnishment, or  
19       other process; and

20       (3) Shall not be seized, taken, appropriated, or applied  
21       by any legal or equitable process or operation of law



1           to pay any debt or liability of the employee or  
2           beneficiary of the account.

3           (f) If this section or any provision of this section  
4 conflicts at any time with any federal law, then the federal law  
5 shall prevail and this section or the relevant provisions of  
6 this section shall become ineffective and invalid. The  
7 ineffectiveness or invalidity of this section or any of its  
8 provisions shall not affect any other provisions or applications  
9 of this section, which shall be given effect without the invalid  
10 provision or application, and to this end, the provisions of  
11 this section are severable.

12           (g) As used in this section, unless the context clearly  
13 requires otherwise:

14           "Family coverage" shall have the same meaning as defined in  
15 section 223 of the Internal Revenue Code of 1986.

16           "Health savings account" means a health savings account  
17 authorized under section 223 of the Internal Revenue Code of  
18 1986.

19           "Health savings account program" or "program" means a high  
20 deductible health plan with a health savings account that has  
21 been approved pursuant to chapter 393 to be offered, sold, or



1 renewed with an employer-sponsored plan to an employer subject  
2 to chapter 393.

3 "High deductible health plan" shall have the same meaning  
4 as defined in section 223 of the Internal Revenue Code of 1986.

5 "Self-only coverage" means coverage only for the employee  
6 and not for dependents."

7 SECTION 3. Chapter 432, Hawaii Revised Statutes, is  
8 amended by adding a new section to article 1 to be appropriately  
9 designated and to read as follows:

10 "§432:1- Health savings account program; limitations;  
11 definitions. (a) Each group hospital and medical service plan  
12 contract issued or renewed in this State after July 1, 2016, may  
13 include an option for a health savings account program.

14 (b) An employer subject to chapter 393 may offer a health  
15 savings account program to employees in addition to the group  
16 hospital and medical service plan contract provided by a mutual  
17 benefit society. An employer offering a health savings account  
18 program shall be subject to the following limitations. The  
19 employer shall:

20 (1) Provide the program to employees only as an  
21 alternative option to a group hospital and medical



1 service plan contract, in which both the program and  
2 the group hospital and medical service plan contract  
3 provide aggregate benefits that are determined  
4 pursuant to chapter 393 to be equivalent and meet the  
5 qualifications in either section 393-7(a) or (b);

6 (2) Make an annual employer contribution to the health  
7 savings account of an employee enrolled in the  
8 program, and upon enrollment of a new employee that  
9 enrolls in the program;

10 (3) Make an employer contribution of an amount equal to or  
11 greater than eighty per cent of the annual deductible  
12 of a high deductible health plan for self-only  
13 coverage or equal to or greater than eighty per cent  
14 of the annual deductible of a high deductible health  
15 plan for family coverage, as applicable, with the  
16 total annual employer contribution not to exceed the  
17 maximum contribution amount pursuant to section 223 of  
18 the Internal Revenue Code of 1986;

19 (4) Contribute the annual amount to the employee's health  
20 savings account prior to the first day the employee is  
21 covered by the program;





- 1        (5) Increase the contribution amount to an employee's  
2        health savings account if an employee's status changes  
3        from self-only coverage to family coverage during the  
4        employee's enrollment in the program;
- 5        (6) Cooperate with the mutual benefit society regarding  
6        proof of compliance with the limitations for offering  
7        a health savings account program to employees;
- 8        (7) Provide the one-page, double-sided declaration of  
9        understanding from the mutual benefit society with the  
10       program application;
- 11       (8) Provide the certification obtained from the mutual  
12       benefit society as to the employer's compliance with  
13       the limitations of the program to the mutual benefit  
14       society; and
- 15       (9) Immediately remove any employee and dependents, if  
16       any, from the program and place the employee and  
17       dependents, if any, in the group hospital and medical  
18       service plan contract if the employer knows the  
19       program is not in compliance with this section, by  
20       notifying the mutual benefit society immediately.



1        (c) Every mutual benefit society that offers, sells, or  
2 renews a group hospital and medical service plan contract with  
3 an option for a health savings account program shall:

4        (1) Include the employer limitations in this section in  
5 any policy, contract, certificate, or agreement,  
6 regardless of form;

7        (2) Encourage informed decisions by providing employers a  
8 one-page, double-sided declaration of understanding,  
9 to be included with any program application that  
10 explains in plain and simple language certain terms of  
11 the program, including covered services, applicable  
12 deductibles, claims processing, and the effective use  
13 of the program for favorable tax treatment;

14        (3) Retain the employer's certification as to compliance  
15 with the limitations of the program for five years;  
16 and

17        (4) Submit to the insurance commissioner, no later than  
18 June 30 of each calendar year, a statewide basis  
19 report in such form and detail as the insurance  
20 commissioner shall prescribe, on the preceding  
21 calendar year stating the participation rate, the



1           total dollars contributed by employers, the total  
2           dollars contributed by employees and the disbursement  
3           of the deposits as a percentage of the deposits in the  
4           health savings accounts.

5           (d) Unused funds in a health savings account shall become  
6           the property of the health savings account holder at the end of  
7           a taxable year.

8           (e) Notwithstanding any provision of law to the contrary,  
9           the rights of an employee or dependent, if any, to hold or to  
10           receive moneys paid into or out of a health savings account, and  
11           the assets and income of a health savings account:

12           (1) Shall be exempt from creditor process;

13           (2) Shall not be liable to attachment, garnishment, or  
14           other process; and

15           (3) Shall not be seized, taken, appropriated, or applied  
16           by any legal or equitable process or operation of law  
17           to pay any debt or liability of the employee or  
18           beneficiary of the account.

19           (f) If this section or any provision of this section  
20           conflicts at any time with any federal law, then the federal law  
21           shall prevail and this section or the relevant provisions of



1 this section shall become ineffective and invalid. The  
2 ineffectiveness or invalidity of this section or any of its  
3 provisions shall not affect any other provisions or applications  
4 of this section, which shall be given effect without the invalid  
5 provision or application, and to this end, the provisions of  
6 this section are severable.

7 (g) As used in this section, unless the context clearly  
8 requires otherwise:

9 "Family coverage" shall have the same meaning as defined in  
10 section 223 of the Internal Revenue Code of 1986.

11 "Health savings account" means a health savings account  
12 authorized under section 223 of the Internal Revenue Code of  
13 1986.

14 "Health savings account program" or "program" means a high  
15 deductible health plan with a health savings account that has  
16 been approved pursuant to chapter 393 to be offered, sold, or  
17 renewed with an employer-sponsored plan to an employer subject  
18 to chapter 393.

19 "High deductible health plan" shall have the same meaning  
20 as defined in section 223 of the Internal Revenue Code of 1986.



1        "Self-only coverage" means coverage only for the employee  
2 and not for dependents."

3        SECTION 4. Section 432D-23, Hawaii Revised Statutes, is  
4 amended to read as follows:

5        **"§432D-23 Required provisions and benefits.**

6 Notwithstanding any provision of law to the contrary, each  
7 policy, contract, plan, or agreement issued in the State after  
8 January 1, 1995, by health maintenance organizations pursuant to  
9 this chapter, shall include benefits provided in sections  
10 431:10-212, 431:10A-115, 431:10A-115.5, 431:10A-116, 431:10A-  
11 116.2, 431:10A-116.5, 431:10A-116.6, 431:10A-119, 431:10A-120,  
12 431:10A-121, 431:10A-122, 431:10A-125, 431:10A-126, 431:10A-132,  
13 431:10A-133, [~~and~~] 431:10A-140, and 431:10A- if a health  
14 savings account is provided, and chapter 431M."

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

17        SECTION 6. Notwithstanding section 432D-23, Hawaii Revised  
18 Statutes, the health savings account program to be provided by a  
19 health maintenance organization under section 4 of this Act  
20 shall apply to all group policies, contracts, plans, or



1 agreements issued or renewed in this State by a health  
2 maintenance organization after July 1, 2016.

3 SECTION 7. This Act shall take effect on July 1, 2070.



**Report Title:**

Health Savings Account Program; Insurance

**Description:**

Authorizes the establishment of health savings accounts in conjunction with group accident and health or sickness insurance policies, group hospital and medical service plan contracts, and health maintenance organization plans in the State. (HB2539 HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

