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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. The legislature finds that the Patient  
2 Protection and Affordable Care Act of 2010 (Affordable Care Act)  
3 includes an individual coverage requirement, commonly known as  
4 the individual mandate, that requires most people in the country  
5 to have health insurance and imposes tax penalties on those  
6 without an exemption who do not comply. The individual mandate  
7 is an important part of the overall health reforms established  
8 under the Affordable Care Act, which was designed to extend  
9 insurance to nearly all people, including those with medical  
10 conditions that require expensive care and who may have  
11 previously been denied coverage. However, to pay for care,  
12 insurance companies need to have a large enrollment pool of  
13 consumers, especially young people and healthy people who use  
14 fewer services, as these individuals broaden the risk pool and  
15 reduce premium costs for all insured persons. Thus, the  
16 individual mandate was adopted to guarantee this broad  
17 enrollment base and ensure that health insurance premiums remain



1 more affordable for everyone. The legislature notes that  
2 because the majority of the United States population receives  
3 health insurance coverage either through employer-sponsored  
4 health insurance or through public programs such as medicaid and  
5 medicare, the people most impacted by the mandate are those who  
6 purchase insurance through the individual market.

7 The legislature further finds that Congressional  
8 Republicans recently passed a sweeping tax bill that effectively  
9 repealed the individual mandate, by reducing the tax penalty in  
10 the existing law to \$0 or zero per cent of household income  
11 above a certain threshold. Insurance companies and  
12 Congressional Democrats have warned that premiums will increase  
13 and insurance markets will be weakened if the tax penalties for  
14 going without health insurance are eliminated. The  
15 Congressional Budget Office has estimated that repealing the  
16 mandate penalties would increase premiums by ten per cent and  
17 leave 4,000,000 more people uninsured in 2019 and 13,000,000  
18 more uninsured by 2027.

19 The legislature additionally finds that it is important to  
20 preserve Hawaii's insurance market and ensure that insurance  
21 premiums remain stable and affordable for Hawaii's consumers.



1 Establishing a state-level individual mandate, similar to the  
2 one adopted by Massachusetts in 2006, will help achieve these  
3 goals.

4 Accordingly, the purpose of this Act is to establish an  
5 individual mandate for certain qualified taxpayers to sign up  
6 for and maintain health insurance throughout the year, or pay a  
7 penalty on their individual income tax return.

8 SECTION 2. Chapter 235, Hawaii Revised Statutes, is  
9 amended by adding a new section to be appropriately designated  
10 and to read as follows:

11 "§235- Creditable coverage; qualified taxpayers. (a)  
12 For each month beginning after December 31, 2018, the following  
13 qualified taxpayers age eighteen and over shall obtain and  
14 maintain creditable coverage so long as it is deemed affordable  
15 by the insurance commissioner, pursuant to section 431:2- :

16 (1) Residents of the State; or

17 (2) Individuals who became residents of the State within  
18 sixty-three days, in the aggregate;

19 provided that residents who within sixty-three days have  
20 terminated any prior creditable coverage shall obtain and



1 maintain creditable coverage within sixty-three days of such  
2 termination.

3 (b) Every qualified taxpayer who files or is required to  
4 file an individual income tax return as a resident of the State  
5 shall indicate on the return, in a manner prescribed by the  
6 director of taxation, whether the qualified taxpayer:

7 (1) Had creditable coverage in force for each of the  
8 twelve months of the taxable year for which the return  
9 is filed as required under subsection (a), whether  
10 covered as an individual or as a named beneficiary of  
11 a policy covering multiple individuals; or

12 (2) Had a certificate issued by the insurance  
13 commissioner, pursuant to section 431:2- .

14 (c) If a qualified taxpayer fails to indicate on the  
15 income tax return whether the qualified taxpayer had the  
16 coverage required under subsection (a), or indicates on the  
17 income tax return that the qualified taxpayer did not have the  
18 coverage required under subsection (a) in force, then a penalty  
19 shall be assessed on the return. If the qualified taxpayer  
20 indicates that the qualified taxpayer had the coverage in force  
21 but the director of taxation determines, based on the



information available, that such requirement of subsection (a)  
was not met, then the director of taxation shall assess the  
penalty.

(d) If in any taxable year, in whole or in part, a  
qualified taxpayer does not comply with the requirement of  
subsection (a), the director of taxation shall retain any amount  
overpaid by the qualified taxpayer and apply it toward any  
penalty payment required by this subsection; provided that the  
amount retained shall not exceed . The penalty shall  
be assessed for each of the months the qualified taxpayer did  
not meet the requirement of subsection (a); provided that any  
lapse in coverage of sixty-three days or less shall not be  
counted in calculating the penalty; provided further that  
nothing in this subsection shall authorize the commissioner to  
retain any amount for purposes that otherwise would be paid to a  
claimant agency or agencies as debts recoverable under sections  
231-51 to 231-59.

(e) If the amount retained pursuant to subsection (d) is  
insufficient to meet the penalty assessed, the director of  
taxation shall notify the qualified taxpayer of the balance due  
on the penalty and related interest.



1       (f) The department of taxation shall have all enforcement  
2 and collection procedures available under this chapter to  
3 collect any penalties assessed under this section.

4       (g) A qualified taxpayer who disputes the determination of  
5 applicability or affordability, as enforced by the department,  
6 may seek a review of this determination through an appeals  
7 process established by the insurance commissioner pursuant to  
8 section 431:2- ; provided that no additional penalties shall  
9 be enforced against a qualified taxpayer seeking review until  
10 the review is complete and any subsequent appeals are exhausted.

11       (h) For purposes of this section, the following  
12 definitions shall apply:

13       "Creditable coverage" means coverage of a qualified  
14 taxpayer under any of the following health insurance plans or as  
15 a named beneficiary receiving coverage on another's health  
16 insurance plan with no lapse of coverage for more than sixty-  
17 three days:

18       (1) An individual or group health insurance plan that  
19 meets the requirements for mandatory health care  
20 benefits under section 393-7(a) or (b);



- 1        (2) An individual or group health insurance plan available  
2        from the State's health insurance marketplace;
- 3        (3) Part A or Part B of Title XVIII of the Social Security  
4        Act;
- 5        (4) Title XXI or XIX of the Social Security Act, other  
6        than coverage consisting solely of benefits under  
7        section 1928 or section 1903(v) of Title XIX of the  
8        Social Security Act;
- 9        (5) Title 10 United States Code chapter 55;
- 10       (6) A medical care program of the Indian Health Service or  
11       of a tribal organization authorized under section 102  
12       of the Indian Self-Determination and Education  
13       Assistance Act;
- 14       (7) A state health benefits risk pool;
- 15       (8) A health plan offered under title 5 United States Code  
16       chapter 89;
- 17       (9) A public health plan as defined in federal regulations  
18       authorized by the Public Health Service Act, section  
19       2701(c) (1) (I), as amended by Public Law 104-191;
- 20       (10) A health benefit plan under the Peace Corps Act, title  
21       22 United States Code section 2504(e); or



1        (11) Any other qualifying coverage required by the Health  
2        Insurance Portability and Accountability Act of 1996,  
3        as amended, or by regulations promulgated under that  
4        Act.

5        The term "creditable coverage" shall not include: a  
6        limited benefit health insurance plan, as that term is defined  
7        under section 431:10A-102.5; insurance arising out of a workers'  
8        compensation law or similar law; motor vehicle medical payment  
9        insurance; insurance under which benefits are payable with or  
10       without regard to fault and which is statutorily required to be  
11       contained in a liability insurance policy or equivalent self-  
12       insurance; or coverage supplemental to the coverage provided  
13       under title 10 United States Code chapter 55, if offered as a  
14       separate insurance policy.

15       "Health insurance marketplace" means a service that helps  
16       individuals and small businesses shop for and enroll in  
17       affordable health insurance, as established by the federal  
18       Patient Protection and Affordable Care Act of 2010, or any  
19       similar successor service available at the federal or state  
20       level.

21       "Qualified taxpayer" means an individual:





- 1        (1) Who files an individual income tax return for the  
2        taxable year;
- 3        (2) Who is not claimed or is not otherwise eligible to be  
4        claimed as a dependent by another taxpayer for federal  
5        or Hawaii state individual income tax purposes;
- 6        (3) Who has been physically present in the State for more  
7        than nine months during the taxable year;
- 8        (4) Whose household income for the taxable year does not  
9        exceed                    per cent of the federal poverty  
10       guideline for Hawaii, as most recently published by  
11       the United States Department of Health and Human  
12       Services for the taxpayer's family size; or
- 13       (5) Who, if married at the close of the taxable year,  
14       files a joint return for the taxable year; provided  
15       that this paragraph shall not apply to a married  
16       taxpayer who is unable to file a joint return because  
17       the taxpayer is a victim of domestic abuse or spousal  
18       abandonment and is living apart from the taxpayer's  
19       spouse at the time the taxpayer files the return."



SECTION 3. Chapter 431, Hawaii Revised Statutes, is amended by adding a new section to part II of article 2 to be appropriately designated and to read as follows:

"§431:2- Creditable coverage; powers of commissioner.

(a) The commissioner shall establish a process to determine which health plans shall be considered affordable, for purposes of complying with the creditable coverage requirements under section 235- .

(b) The list of health plans deemed to be creditable coverage shall be updated annually and posted on the insurance division's website.

(c) The commissioner shall have the following additional powers:

(1) Establish procedures for granting an annual certification upon request of a qualified taxpayer who has sought health insurance coverage through Hawaii's insurance marketplace, attesting that, for the purposes of enforcing section 235- , no health benefit plan that meets the definition of creditable coverage was deemed affordable by the commissioner for that qualified taxpayer. The commissioner shall



1 maintain a list of qualified taxpayers for whom such  
2 certificates have been granted; and

3 (2) Establish an appeals procedure for enforcement actions  
4 taken by the department of taxation under section  
5 235- , including standards to govern appeals based  
6 on the assertion that imposition of the penalty under  
7 section 235- would create extreme hardship.

8 (d) The insurance commissioner, in conjunction with the  
9 department of taxation, may adopt rules pursuant to chapter 91,  
10 for purposes of implementing this section and section 235- .

11 (e) For purposes of this section:

12 "Creditable coverage" shall have the same meaning as in  
13 section 235- .

14 "Health insurance marketplace" shall have the same meaning  
15 as in section 235- .

16 "Qualified taxpayer" shall have the same meaning as in  
17 section 235- ."

18 SECTION 4. New statutory material is underscored.

19 SECTION 5. This Act shall take effect on July 1, 2050;  
20 provided that this Act shall be repealed on December 31, 2023.



**Report Title:**

Health Insurance; Creditable Coverage; Individual Mandate;  
Qualified Taxpayers

**Description:**

Establishes an individual mandate for certain qualified taxpayers to sign up and maintain health insurance throughout the year, or pay a penalty on their individual income tax return. Sunsets on 12/31/2023. Effective 7/1/2050. (SD1)

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

