

---

---

# A BILL FOR AN ACT

RELATING TO LONG-TERM CARE.

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

1       SECTION 1. The legislature finds that the future of  
2 long-term care for Hawaii's senior and adult disabled  
3 population is one of the most critical health issues facing  
4 Hawaii in the twenty-first century. The rapid growth of the  
5 elderly and disabled populations will result in  
6 extraordinary demands on the delivery of long-term care  
7 services. While the majority of persons receiving long-term  
8 care are older adults, entire families are affected by the  
9 psychological, financial, and social costs of providing  
10 long-term care. To accommodate the demands of caregiving  
11 that grow as dependency increases, caregivers reduce work  
12 hours, adjust or abandon career and personal goals, and  
13 retire earlier than intended, lowering their own pension and  
14 retirement benefit levels. Caregivers are apt to be in  
15 poorer health than members of the general population and  
16 often need care in their advanced years. Caregivers must be  
17 assisted by creating a network of support services,  
18 including respite care and other support to alleviate the



1 daunting responsibility of providing daily care for those  
2 who require it.

3       When nursing home care is necessary, Hawaii's families  
4 are burdened with annual nursing home charges that often  
5 exceed their ability to pay. In the case of elderly  
6 families, these charges are sometimes twice their average  
7 annual disposable income, threatening those who are  
8 otherwise self-sufficient. Thus, it is not surprising that  
9 approximately eighty per cent of all nursing home residents  
10 are dependent on medicaid, an entitlement program for  
11 persons with limited income and assets.

12       Persons sixty years of age and older presently account  
13 for almost one-fifth of the adult population in the state.  
14 By 2020, they will constitute more than one-fourth of  
15 Hawaii's adult population. Nearly one-third of this segment  
16 alone is expected to have functional disabilities. Although  
17 families have expressed a preference for home- and  
18 community-based care, these services and nursing home beds  
19 are currently below requisite levels. The average annual  
20 cost for nursing home care has been estimated to eventually  
21 reach in excess of \$200,000 per person.



1           However, nursing home care is only one component of the  
2 array of long-term care services that has been developed.  
3 Due to cost factors, it is likely that home- and community-  
4 based services will become more predominant. These services  
5 are provided in and outside the home and are appropriate for  
6 those who do not need to be institutionalized. In fact, an  
7 important function of home- and community-based services is  
8 to prevent institutionalization. Home- and community-based  
9 services consist of a number of different modalities, some  
10 or all of which may be used by the individual. These  
11 services include adult day health services, case management  
12 services, environmental modifications, homemaker services,  
13 personal care services, personal emergency response systems,  
14 respite care services, skilled nursing services,  
15 transportation services, and similar services. While home-  
16 and community-based services can provide care that is less  
17 costly than institutional care, it is still expensive.

18           To resolve the impending long-term care crisis, the  
19 department of health, at the direction of the governor,  
20 established a long-term care task force. The task force  
21 included of individuals from various state agencies,  
22 including the department of health, department of taxation,



1 department of commerce and consumer affairs, long-term care  
2 insurance industry, and health care sector.

3       The long-term care task force developed the individual  
4 tax credit contained in this Act with the objective of  
5 assisting lower income taxpayers in purchasing long-term  
6 care insurance by providing a tax credit for a substantial  
7 portion of the average long-term care premiums and to  
8 provide an incentive for taxpayers with moderate incomes to  
9 purchase long-term care insurance.

10       The long-term care task force also developed the  
11 employer long-term care tax credit contained in this Act.  
12 The purpose of this tax credit is to encourage employers to  
13 purchase qualified long-term care insurance contracts for  
14 their employees and to ensure that qualified long-term care  
15 insurance contracts cover both home- and community-based  
16 care in addition to coverage for long-term care in  
17 intermediate care facilities and skilled nursing facilities.

18       The purpose of this Act is to provide individual and  
19 employer long-term care tax credits for long-term care  
20 premium costs.



1 SECTION 2. Chapter 235, Hawaii Revised Statutes, is  
2 amended by adding two new sections to be appropriately  
3 designated and to read as follows:

4 "§235- Long-term care tax credit. (a) Each  
5 individual taxpayer who currently has or had in any previous  
6 year Hawaii-sourced compensation and/or wages, and who files  
7 an individual income tax return for a taxable year and who  
8 is not claimed or is not otherwise eligible to be claimed as  
9 a dependent by another taxpayer for Hawaii state individual  
10 income tax purposes, may claim a long-term care tax credit  
11 for premium payments made during the taxable year for the  
12 purchase of a qualified long-term care insurance contract  
13 against the taxpayer's net individual income tax liability  
14 for the taxable year for which the individual's income tax  
15 return is being filed; provided that a resident individual  
16 who has no income or no income taxable under this chapter  
17 and who is not claimed or is not otherwise eligible to be  
18 claimed as a dependent by a taxpayer for Hawaii state  
19 individual income tax purposes may claim this credit.

20 (b) For taxable years beginning after December 31,  
21 2006, the tax credit shall be as follows:



1        (1) For a husband and wife filing a joint return, an  
2        amount equal to the lesser of:

3        (A) \$500 in aggregate; or

4        (B) The percentage of the total cost of long-term  
5        care insurance premium payments made during  
6        the taxable year based upon the husband's and  
7        wife's total federal adjusted gross income as  
8        follows:

9	<u>Under \$80,000</u>	<u>25.0 per cent</u>
10	<u>at least \$80,000 and under \$100,000</u>	<u>15.0 per cent</u>
11	<u>at least \$100,000 and under \$125,000</u>	<u>7.5 per cent</u>
12	<u>at least \$125,000 and up to \$150,000</u>	<u>2.5 per cent</u>
13	<u>over \$150,000</u>	<u>0 per cent;</u>

14        provided that a husband and wife filing separate  
15        tax returns for a taxable year for which a joint  
16        return could have been filed by them shall claim  
17        only the tax credit to which they would have been  
18        entitled under this section had a joint return  
19        been filed; and

20        (2) The tax credit for all other individual taxpayers  
21        filing a return shall be an amount equal to the  
22        lesser of:

1           (A) \$250; or

2           (B) The percentage of the total cost of long-term  
 3           care insurance premium payments made during  
 4           the taxable year based upon the taxpayer's  
 5           total federal adjusted gross income as  
 6           follows:

7	<u>Under \$40,000</u>	<u>25.0 per cent</u>
8	<u>at least \$40,000 and under \$50,000</u>	<u>15.0 per cent</u>
9	<u>at least \$50,000 and under \$62,500</u>	<u>7.5 per cent</u>
10	<u>at least \$62,500 and up to \$75,000</u>	<u>2.5 per cent</u>
11	<u>over \$75,000</u>	<u>0 per cent.</u>

12           (c) For taxable years beginning after December 31,  
 13           2007, the tax credit shall be as follows:

14           (1) For a husband and wife filing a joint return, an  
 15           amount equal to the lesser of:

16           (A) \$1,000 in aggregate; or

17           (B) The percentage of the total cost of long-term  
 18           care insurance premium payments made during  
 19           the taxable year based upon the husband's and  
 20           wife's total federal adjusted gross income as  
 21           follows:







1	<u>Under \$40,000</u>	<u>50.0 per cent</u>
2	<u>at least \$40,000 and under \$50,000</u>	<u>30.0 per cent</u>
3	<u>at least \$50,000 and under \$62,500</u>	<u>15.0 per cent</u>
4	<u>at least \$62,500 and up to \$75,000</u>	<u>5.0 per cent</u>
5	<u>over \$75,000</u>	<u>0 per cent.</u>

6 (d) The credit applies to premium payments made during  
7 the taxable year for a qualified long-term care insurance  
8 contract that covers:

9 (1) The taxpayer;

10 (2) The taxpayer's dependent as defined in Section 152  
11 of the Internal Revenue Code of 1986, as amended;

12 (3) The taxpayer's spouse;

13 (4) A son or daughter of the taxpayer;

14 (5) A stepson or stepdaughter of the taxpayer;

15 (6) The father or mother of the taxpayer; or

16 (7) A stepfather or stepmother of the taxpayer.

17 (e) If a taxpayer claims any other tax credit or  
18 deduction under Title 14, including a deduction under  
19 Section 162 or 213 of the Internal Revenue Code, to which  
20 Hawaii law conforms, for premiums paid for a long-term care  
21 insurance policy, no tax credit shall be claimed under this  
22 section for the same premium payments.



1       (f) For the purposes of this tax credit, "net income  
2 tax liability" means net income tax liability reduced by all  
3 other tax credits allowed under this chapter. If the tax  
4 credits claimed by a taxpayer exceed the amount of income  
5 tax payment due from the taxpayer, the excess of credits  
6 over payments due shall be refunded to the taxpayer;  
7 provided that tax credits properly claimed by a resident  
8 individual who has no income tax liability shall be paid to  
9 the individual; and provided further that no refunds or  
10 payment on account of the tax credit allowed by this section  
11 shall be made for amounts less than \$1.

12       (g) All claims, including any amended claims, for tax  
13 credits under this section shall be filed on or before the  
14 end of the twelfth month following the close of the taxable  
15 year for which the credit may be claimed. Failure to comply  
16 with this provision shall constitute a waiver of the right  
17 to claim the credit.

18       (h) The director of taxation shall prepare any forms  
19 that may be necessary to claim a tax credit under this  
20 section. The director may also require the taxpayer to  
21 furnish information to determine the validity of the claims  
22 for a tax credit made under this section and may adopt rules



1 necessary to effectuate the purposes of this section  
2 pursuant to chapter 91.

3 (i) For the purposes of this section:

4 "Activities of daily living" means eating, toileting,  
5 transferring, bathing, dressing, and continence.

6 "Chronically ill individual" means any individual who  
7 has been certified by a licensed health care practitioner  
8 within the preceding twelve-month period as meeting one of  
9 the following conditions:

10 (1) Being unable to perform at least two activities of  
11 daily living without substantial assistance from  
12 another individual for a period of at least ninety  
13 days due to a loss of functional capacity;

14 (2) Having a level of disability similar to the  
15 disability set forth in the preceding paragraph;  
16 or

17 (3) Requiring substantial supervision to protect the  
18 individual from threats to health and safety due  
19 to a severe cognitive impairment.

20 "Licensed health care practitioner" means any licensed  
21 physician, registered nurse, licensed social worker, or



1 other professional as may be provided by rules adopted by  
2 the director of taxation.

3 "Maintenance or personal care services" means any care  
4 primarily used to provide assistance with any disability  
5 that contributes to an individual's chronic illness,  
6 including the protection from threats to health and safety  
7 due to a severe cognitive impairment.

8 "Qualified long-term care insurance contract" means a  
9 contract that:

- 10 (1) Provides insurance coverage solely for qualified  
11 long-term care services;
- 12 (2) Does not pay or reimburse expenses incurred for  
13 services or items to the extent that the expenses  
14 are reimbursable under Title XVIII of the Social  
15 Security Act or would be so reimbursable but for  
16 the application of a deductible or coinsurance  
17 amount, unless:
- 18 (A) The expenses are reimbursable by medicaid as  
19 secondary payor; or
- 20 (B) The contract makes qualified per diem or  
21 other periodic payments without regard to  
22 expenses, as defined in this section;



- 1        (3) Is guaranteed renewable;
- 2        (4) Provides that refunds, other than refunds on the  
3        death of the insured or complete surrender or  
4        cancellation of the contract, and dividends under  
5        the contract shall be used only to reduce future  
6        premiums or increase future benefits; and
- 7        (5) Does not provide for a cash surrender value or any  
8        other money that may be paid, assigned, borrowed,  
9        or pledged as collateral for a loan.

10        "Qualified long-term care services" means necessary  
11        diagnostic, preventive, therapeutic, curing, treating,  
12        mitigating, and rehabilitative services, and maintenance or  
13        personal care services, that are:

- 14        (1) Required by a chronically ill individual; and
- 15        (2) Provided pursuant to a plan of care prescribed by  
16        a licensed health care practitioner.

17        **§235-        Employer's tax credit for long-term care**  
18        **premiums paid for employees.**    (a) Subject to the  
19        limitations of this section, an employer subject to taxation  
20        under this chapter may claim a non-refundable tax credit for  
21        premium payments made by the employer during the taxable  
22        year to purchase a qualified long-term care insurance



1 contract for its employees; provided that the maximum credit  
2 claimed against the employer's gross income tax liability  
3 for a taxable year shall be as follows:

4     (1) For taxable years beginning after December 31,  
5     2006, the employer may claim a tax credit for each  
6     employee for whom the employer purchases qualified  
7     long-term care insurance. The maximum tax credit  
8     per employee for whom qualified long-term care  
9     insurance is purchased shall be in the amount of  
10    the lesser of \$25 or fifty per cent of the  
11    qualified long-term care premiums paid annually  
12    for each employee; and

13    (2) For taxable years beginning after December 31,  
14    2007, the employer may claim a tax credit for each  
15    employee for whom the employer purchases qualified  
16    long-term care insurance. The maximum tax credit  
17    per employee for whom qualified long-term care  
18    insurance is purchased shall be in the amount of  
19    the lesser of \$50 or fifty per cent of the  
20    qualified long-term care premiums paid annually  
21    for each employee.



1        (b) The credit allowed under this section shall be  
2 claimed against the net income tax liability for the taxable  
3 year. If the tax credit under this section exceeds the  
4 taxpayer's income tax liability, the excess of the credit  
5 may be carried forward until exhausted.

6        (c) If a taxpayer claims any other tax credit or  
7 deduction under Title 14, including a deduction under  
8 Section 162 or 213 of the Internal Revenue Code, to which  
9 state law conforms, for premiums paid on a long-term care  
10 insurance policy, no credit shall be claimed under this  
11 section for the same premium payments.

12        (d) All claims, including any amended claims, for tax  
13 credits under this section shall be filed on or before the  
14 end of the twelfth month following the close of the taxable  
15 year for which the credit may be claimed. Failure to comply  
16 with this provision shall constitute a waiver of the right  
17 to claim the credit.

18        (e) The director of taxation shall prepare any forms  
19 that may be necessary to claim a credit under this section.  
20 The director may also require the taxpayer to furnish  
21 information to determine the validity of the claims for  
22 deductions made under this section and may adopt rules



1 necessary to effectuate the purposes of this section  
2 pursuant to chapter 91.

3 (f) For the purposes of this section:

4 "Activities of daily living" means eating, toileting,  
5 transferring, bathing, dressing, and continence.

6 "Chronically ill individual" means any individual who  
7 has been certified by a licensed health care practitioner  
8 within the preceding twelve-month period as meeting one of  
9 the following conditions:

10 (1) Being unable to perform at least two activities of  
11 daily living without substantial assistance from  
12 another individual for a period of at least ninety  
13 days due to a loss of functional capacity;

14 (2) Having a level of disability similar to the  
15 disability set forth in the preceding paragraph;

16 or

17 (3) Requiring substantial supervision to protect the  
18 individual from threats to health and safety due  
19 to a severe cognitive impairment.

20 "Home- and community-based care" means care provided  
21 under qualified long-term care services that meet or exceed  
22 the requirements set forth in section 431:10H-219.





1       "Licensed health care practitioner" means any licensed  
2 physician, registered nurse, licensed social worker, or  
3 other professional as may be provided by rules adopted by  
4 the director of taxation.

5       "Maintenance or personal care services" means any care  
6 the primary purpose of which is the provision of needed  
7 assistance with any of the disabilities that render a person  
8 chronically ill, including the protection from threats to  
9 health and safety due to a severe cognitive impairment.

10       "Qualified long-term care insurance contract" means a  
11 contract that:

- 12       (1) Provides insurance coverage solely for qualified  
13 long-term care services;
- 14       (2) Does not pay or reimburse expenses incurred for  
15 services or items to the extent that the expenses  
16 are reimbursable under Title XVIII of the Social  
17 Security Act or would be reimbursable but for the  
18 application of a deductible or coinsurance amount,  
19 unless:
- 20       (A) The expenses are reimbursable by medicaid as  
21 secondary payor; or



1           (B) The contract makes qualified per diem or  
2           other periodic payments without regard to  
3           expenses, as defined below;

4           (3) Is guaranteed renewable;

5           (4) Provides that refunds, other than refunds on the  
6           death of the insured or complete surrender or  
7           cancellation of the contract, and dividends under  
8           the contract shall be used only to reduce future  
9           premiums or increase future benefits;

10          (5) Does not provide for a cash surrender value or any  
11          other money that may be paid, assigned, borrowed,  
12          or pledged as collateral for a loan; and

13          (6) Provides coverage for home- and community-based  
14          care services that meets or exceeds fifty per cent  
15          of the coverage for treatment in an intermediate  
16          care facility and skilled nursing facility.

17          "Qualified long-term care services" means necessary  
18          diagnostic, preventive, therapeutic, curing, treating,  
19          mitigating, and rehabilitative services, and maintenance or  
20          personal care services, which are:

21          (1) Required by a chronically ill individual; and



1        (2) Provided pursuant to a plan of care prescribed by  
2        a licensed health care practitioner."

3        SECTION 3. Chapter 241, Hawaii Revised Statutes, is  
4        amended by adding a new section to be appropriately  
5        designated and to read as follows:

6        "§241-        Employer's tax credit for long-term care  
7        premiums paid for employees. The employer's tax credit for  
8        long-term care premiums paid for employees provided under  
9        chapter 235 shall be operative for this chapter for taxable  
10       years beginning after December 31, 2006."

11       SECTION 4. Chapter 431, Hawaii Revised Statutes, is  
12       amended by adding a new section to article 7 to be  
13       appropriately designated and to read as follows:

14       "§431:7-       Employer's tax credit for long-term care  
15       premiums paid for employees. The employer's tax credit for  
16       long-term care premiums paid for employees provided under  
17       chapter 235 shall be operative for this chapter for taxable  
18       years beginning after December 31, 2006."

19       SECTION 5. The department of taxation, in cooperation  
20       with the department of commerce and consumer affairs, shall  
21       submit a report to the legislature no later than twenty days  
22       prior to the convening of the 2010 regular session, and



1 again no later than twenty days prior to the convening of  
2 the 2011 regular session, on the number of taxpayers  
3 claiming the tax credits established by this Act, and the  
4 total cost of the tax credits to the State during the  
5 previous year.

6 SECTION 6. New statutory material is underscored.

7 SECTION 7. This Act shall take effect on July 1, 2020, and  
8 shall apply to taxable years beginning after December 31, 2006,  
9 and shall be repealed on December 31, 2011.



HB 3129  
HD1

**Report Title:**

Long-term Care; Tax Credit

**Description:**

Provides a tax credit to individual taxpayers and employers for premiums paid for long-term care insurance contracts and requires the department of taxation in cooperation with the department of commerce and consumer affairs to submit a report back to the legislature annually regarding the status of this Act's provisions. Sunsets December 31, 2011. (HB3129 HD1)

