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# 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 extraordinary  
6 demands on the delivery of long-term care services. While  
7 the majority of persons receiving long-term care are older  
8 adults, entire families are affected by the psychological,  
9 financial, and social costs of providing long-term care. To  
10 accommodate the demands of caregiving that grow as dependency  
11 increases, caregivers reduce work hours, adjust or abandon  
12 career and personal goals, and retire earlier than intended,  
13 lowering their own pension and retirement benefit levels.  
14 Caregivers are apt to be in poorer health than members of the  
15 general population and often need care in their advanced  
16 years. Caregivers must be assisted by creating a network of  
17 support services, including respite care and other support to



1 alleviate the daunting responsibility of providing daily care  
2 for those 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 otherwise  
8 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 persons  
11 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 community-  
18 based care, these services and nursing home beds are  
19 currently below requisite levels. The average annual cost  
20 for nursing home care has been estimated to eventually reach  
21 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 or  
10 all of which may be used by the individual. These services  
11 include adult day health services, case management services,  
12 environmental modifications, homemaker services, personal  
13 care services, personal emergency response systems, respite  
14 care services, skilled nursing services, transportation  
15 services, and similar services. While home- and community-  
16 based services can provide care that is less costly than  
17 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 care  
6 insurance by providing a tax credit for a substantial portion  
7 of the average long-term care premiums and to provide an  
8 incentive for taxpayers with moderate incomes to purchase  
9 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 care  
16 in addition to coverage for long-term care in intermediate  
17 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 is  
8 not claimed or is not otherwise eligible to be claimed as a  
9 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 and  
17 who is not claimed or is not otherwise eligible to be claimed  
18 as a dependent by a taxpayer for Hawaii state individual  
19 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 been  
 19        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:









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

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

- 7 (1) The taxpayer;
- 8 (2) The taxpayer's dependent as defined in Section 152  
9 of the Internal Revenue Code of 1986, as amended;
- 10 (3) The taxpayer's spouse;
- 11 (4) A son or daughter of the taxpayer;
- 12 (5) A stepson or stepdaughter of the taxpayer;
- 13 (6) The father or mother of the taxpayer; or
- 14 (7) A stepfather or stepmother of the taxpayer.

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

21 (f) For the purposes of this tax credit, "net income  
22 tax liability" means net income tax liability reduced by all

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

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

16 (h) The director of taxation shall prepare any forms  
17 that may be necessary to claim a tax credit under this  
18 section. The director may also require the taxpayer to  
19 furnish information to determine the validity of the claims  
20 for a tax credit made under this section and may adopt rules  
21 necessary to effectuate the purposes of this section pursuant  
22 to chapter 91.



1        (i) For the purposes of this section:

2        "Activities of daily living" means eating, toileting,  
3 transferring, bathing, dressing, and continence.

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

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

12        (2) Having a level of disability similar to the  
13 disability set forth in the preceding paragraph; or

14        (3) Requiring substantial supervision to protect the  
15 individual from threats to health and safety due to  
16 a severe cognitive impairment.

17        "Licensed health care practitioner" means any licensed  
18 physician, registered nurse, licensed social worker, or other  
19 professional as may be provided by rules adopted by the  
20 director of taxation.

21        "Maintenance or personal care services" means any care  
22 primarily used to provide assistance with any disability that



1 contributes to an individual's chronic illness, including the  
2 protection from threats to health and safety due to a severe  
3 cognitive impairment.

4 "Qualified long-term care insurance contract" means a  
5 contract that:

6 (1) Provides insurance coverage solely for qualified  
7 long-term care services;

8 (2) Does not pay or reimburse expenses incurred for  
9 services or items to the extent that the expenses  
10 are reimbursable under Title XVIII of the Social  
11 Security Act or would be so reimbursable but for  
12 the application of a deductible or coinsurance  
13 amount, unless:

14 (A) The expenses are reimbursable by medicaid as  
15 secondary payor; or

16 (B) The contract makes qualified per diem or other  
17 periodic payments without regard to expenses,  
18 as defined in this section;

19 (3) Is guaranteed renewable;

20 (4) Provides that refunds, other than refunds on the  
21 death of the insured or complete surrender or  
22 cancellation of the contract, and dividends under



1           the contract shall be used only to reduce future  
2           premiums or increase future benefits; and

3           (5) Does not provide for a cash surrender value or any  
4           other money that may be paid, assigned, borrowed,  
5           or pledged as collateral for a loan.

6           "Qualified long-term care services" means necessary  
7           diagnostic, preventive, therapeutic, curing, treating,  
8           mitigating, and rehabilitative services, and maintenance or  
9           personal care services, that are:

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

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

13           **§235-           Employer's tax credit for long-term care**  
14 **premiums paid for employees.** (a) Subject to the limitations  
15 of this section, an employer subject to taxation under this  
16 chapter may claim a non-refundable tax credit for premium  
17 payments made by the employer during the taxable year to  
18 purchase a qualified long-term care insurance contract for  
19 its employees; provided that the maximum credit claimed  
20 against the employer's gross income tax liability for a  
21 taxable year shall be as follows:



- 1       (1) For taxable years beginning after December 31,  
2       2006, the employer may claim a tax credit for each  
3       employee for whom the employer purchases qualified  
4       long-term care insurance. The maximum tax credit  
5       per employee for whom qualified long-term care  
6       insurance is purchased shall be in the amount of  
7       the lesser of \$25 or fifty per cent of the  
8       qualified long-term care premiums paid annually for  
9       each employee; and
- 10       (2) For taxable years beginning after December 31,  
11       2007, the employer may claim a tax credit for each  
12       employee for whom the employer purchases qualified  
13       long-term care insurance. The maximum tax credit  
14       per employee for whom qualified long-term care  
15       insurance is purchased shall be in the amount of  
16       the lesser of \$50 or fifty per cent of the  
17       qualified long-term care premiums paid annually for  
18       each employee.
- 19       (b) The credit allowed under this section shall be  
20       claimed against the net income tax liability for the taxable  
21       year. If the tax credit under this section exceeds the



1 taxpayer's income tax liability, the excess of the credit may  
2 be carried forward until exhausted.

3 (c) If a taxpayer claims any other tax credit or  
4 deduction under Title 14, including a deduction under Section  
5 162 or 213 of the Internal Revenue Code, to which state law  
6 conforms, for premiums paid on a long-term care insurance  
7 policy, no credit shall be claimed under this section for the  
8 same premium payments.

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

15 (e) The director of taxation shall prepare any forms  
16 that may be necessary to claim a credit under this section.  
17 The director may also require the taxpayer to furnish  
18 information to determine the validity of the claims for  
19 deductions made under this section and may adopt rules  
20 necessary to effectuate the purposes of this section pursuant  
21 to chapter 91.

22 (f) For the purposes of this section:



1       "Activities of daily living" means eating, toileting,  
2 transferring, bathing, dressing, and continence.

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

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

11       (2) Having a level of disability similar to the  
12 disability set forth in the preceding paragraph; or

13       (3) Requiring substantial supervision to protect the  
14 individual from threats to health and safety due to  
15 a severe cognitive impairment.

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

19       "Licensed health care practitioner" means any licensed  
20 physician, registered nurse, licensed social worker, or other  
21 professional as may be provided by rules adopted by the  
22 director of taxation.





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

6       "Qualified long-term care insurance contract" means a  
7 contract that:

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



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

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

9       (6) Provides coverage for home- and community-based  
10       care services that meets or exceeds fifty per cent  
11       of the coverage for treatment in an intermediate  
12       care facility and skilled nursing facility.

13       "Qualified long-term care services" means necessary  
14       diagnostic, preventive, therapeutic, curing, treating,  
15       mitigating, and rehabilitative services, and maintenance or  
16       personal care services, which are:

- 17       (1) Required by a chronically ill individual; and  
18       (2) Provided pursuant to a plan of care prescribed by a  
19       licensed health care practitioner."

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



1           **"§241-     Employer's tax credit for long-term care**  
2 **premiums paid for employees.** The employer's tax credit for  
3 long-term care premiums paid for employees provided under  
4 chapter 235 shall be operative for this chapter for taxable  
5 years beginning after December 31, 2006."

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

9           **"§431:7-     Employer's tax credit for long-term care**  
10 **premiums paid for employees.** The employer's tax credit for  
11 long-term care premiums paid for employees provided under  
12 chapter 235 shall be operative for this chapter for taxable  
13 years beginning after December 31, 2006."

14           SECTION 5. The department of taxation, in cooperation  
15 with the department of commerce and consumer affairs, shall  
16 submit a report to the legislature no later than twenty days  
17 prior to the convening of the 2010 regular session, and again  
18 no later than twenty days prior to the convening of the 2011  
19 regular session, on the number of taxpayers claiming the tax  
20 credits established by this Act, and the total cost of the  
21 tax credits to the State during the previous year.

22           SECTION 6. New statutory material is underscored.



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1 SECTION 7. This Act shall take effect upon its approval,  
 2 and shall apply to taxable years beginning after December 31,  
 3 2006, and shall be repealed on December 31, 2011.

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INTRODUCED BY:

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HB3129

**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.

