

JAN 25 2006

S.B. NO. 2377

A BILL FOR AN ACT

RELATING TO LONG-TERM CARE TAX CREDITS.

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

1 SECTION 1. The future of long-term care for Hawaii's
2 senior and adult disabled population is one of the most critical
3 health issues facing Hawaii in the twenty-first century.
4 Persons sixty years of age and older presently account for
5 almost one-fifth of the adult population in the State. By 2020,
6 they will constitute more than one-fourth of Hawaii's adult
7 population.

8 The rapid growth of the elderly and disabled populations
9 will result in extraordinary demands on the delivery of long-
10 term care services. While the majority of persons receiving
11 long-term care are older adults, entire families are affected by
12 the psychological, financial, and social costs of long-term care
13 provided to those who are limited in the activities of daily
14 living.

15 To resolve the impending long-term care crisis, the
16 department of health, at the direction of the governor,
17 established a long-term care task force. The task force is
18 comprised of individuals from various state agencies, including

1 the department of health, department of taxation, and the
2 department of commerce and consumer affairs, and from the long-
3 term care insurance industry and healthcare sector.

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

11 This Act also makes conforming amendments to sections
12 431:10H-302 and 431:10H-304 of the Long-Term Care Insurance Act,
13 article 10H of chapter 431, Hawaii Revised Statutes. Section
14 431:10H-302 of the Long-Term Care Insurance Act is amended to
15 clarify that long-term care insurance policies sold are not
16 required to conform to the long-term care tax credit. However,
17 if the long-term care insurance policy does not provide coverage
18 in accordance with the long-term care tax credit, the policy
19 will not qualify for this state tax incentive.

20 The disclosure provisions in section 431:10H-304 of the
21 Long-Term Care Insurance Act are amended to require that
22 insurance companies include on the first page of long-term care

1 insurance policies one of two specific, enumerated statements
2 regarding whether the policy is intended to qualify for this
3 state tax incentive under the long-term care tax credit.

4 The long-term care task force also developed the employer
5 long-term care tax credit contained in this Act. The purpose of
6 this tax credit is to encourage employers to purchase qualified
7 long-term care insurance contracts for their employees and to
8 ensure that qualified long-term care insurance contracts cover
9 both home and community-based care in addition to coverage for
10 long-term care in intermediate care facilities and skilled
11 nursing facilities.

12 Employer provided long-term care insurance policies can
13 substantially reduce insurance costs and can provide access to
14 many more people because of relaxed underwriting.

15 The purpose of this Act is to provide individual and
16 employer long-term care tax credits for long-term care premium
17 costs.

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

21 "§235- Long-term care tax credit. (a) Each resident
22 individual taxpayer, who files an individual income tax return

1 for a taxable year and who is not claimed or is not otherwise
2 eligible to be claimed as a dependent by another taxpayer for
3 Hawaii state individual income tax purposes, may claim a long-
4 term care credit for premium payments made during the taxable
5 year for the purchase of a qualified long-term care insurance
6 contract against the resident taxpayer's net individual income
7 tax liability for the taxable year for which the individual's
8 income tax return is being filed, except that a resident
9 individual who has no income or no income taxable under this
10 chapter and who is not claimed or is not otherwise eligible to
11 be claimed as a dependent by a taxpayer for Hawaii state
12 individual income tax purposes may claim this credit.

13 (b) The tax credit shall be as follows:

14 (1) For a resident husband and wife filing a joint return,
15 an 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 the
19 taxable year based upon the husband's and wife's
20 total adjusted gross income as follows:

21 Under \$80,000 50.0 per cent

22 \$80,000 and under \$100,000 30.0 per cent

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1	<u>\$100,000 and under \$125,000</u>	<u>15.0 per cent</u>
2	<u>\$125,000 and up to \$150,000</u>	<u>5.0 per cent</u>
3	<u>over \$150,000</u>	<u>0 per</u>
4	<u>cent,</u>	

5 provided that a husband and wife filing separate tax returns for
6 a taxable year, for which a joint return could have been filed
7 by them, shall claim only the tax credit to which they would
8 have been entitled under this section had a joint return been
9 filed.

10 (2) The tax credit for all other individual resident
11 taxpayers filing a return shall be an amount equal to
12 the lesser of:

13 (A) \$500; or

14 (B) The percentage of the total cost of long-term
15 care insurance premium payments made during the
16 taxable year based upon the taxpayer's total
17 adjusted gross income as follows:

18	<u>Under \$40,000</u>	<u>50.0 per cent</u>
19	<u>\$40,000 and under \$50,000</u>	<u>30.0 per cent</u>
20	<u>\$50,000 and under \$62,500</u>	<u>15.0 per cent</u>
21	<u>\$62,500 and up to \$75,000</u>	<u>5.0 per cent</u>

1 over \$75,000 0 per
2 cent.

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

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

14 (d) As used in this section:
15 "Activities of daily living" means eating, toileting,
16 transferring, bathing, dressing, and continence.

17 "Chronically ill individual" means any individual who has
18 been certified by a licensed healthcare practitioner as meeting
19 one of the following conditions:

- 20 (1) Being unable to perform at least two activities of
21 daily living without substantial assistance from

1 another individual for a period of at least ninety
2 days due to a loss of functional capacity;

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

5 (3) Requiring substantial supervision to protect that
6 individual from threats to health and safety due to a
7 severe cognitive impairment for the preceding twelve-
8 month period.

9 "Licensed health care practitioner" means any licensed
10 physician, any registered professional nurse, licensed social
11 worker, or any other professional as may be provided by rules
12 adopted by the director of taxation.

13 "Maintenance or personal care services" means any care the
14 primary purpose of which is the provision of needed assistance
15 with any of the disabilities that render a person to be a
16 chronically ill individual, including the protection from
17 threats to health and safety due to a severe cognitive
18 impairment.

19 "Qualified long-term care insurance contract" means a
20 contract that:

21 (1) Provides insurance coverage solely for qualified
22 long-term care services;

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- 1 (2) Does not pay or reimburse expenses incurred for
2 services or items to the extent that those expenses
3 are reimbursable under title XVIII of the Social
4 Security Act or would be so reimbursable but for the
5 application of a deductible or coinsurance amount,
6 unless:
- 7 (A) The expenses are reimbursable by medicaid as
8 secondary payor; or
- 9 (B) The contract makes qualified per diem or other
10 periodic payments without regard to expenses, as
11 defined below.
- 12 (3) Is guaranteed renewable;
- 13 (4) Provides that refunds, other than refunds on the death
14 of the insured or complete surrender or cancellation
15 of the contract, and dividends under the contract
16 shall be used only to reduce future premiums or
17 increase future benefits; and
- 18 (5) Does not provide for a cash surrender value or any
19 other money that may be paid, assigned, borrowed, or
20 pledged as collateral for a loan.
- 21 "Qualified long-term care services" means necessary
22 diagnostic, preventive, therapeutic, curing, treating,

1 mitigating, rehabilitative services, and maintenance or personal
2 care services, which are:

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

4 (2) Provided pursuant to a plan of care prescribed by a
5 licensed healthcare practitioner.

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

12 (f) For the purpose of this credit, the "net income tax
13 liability" means net income tax liability reduced by all other
14 credits allowed under this chapter. If the tax credits claimed
15 by a resident taxpayer exceed the amount of income tax payment
16 due from the resident taxpayer, the excess of credits over
17 payments due shall be refunded to the resident taxpayer;
18 provided that tax credits properly claimed by a resident
19 individual who has no income tax liability shall be paid to the
20 resident individual; and provided further that no refunds or
21 payment on account of the tax credit allowed by this section
22 shall be made for amounts less than \$1.

1 (g) All claims, including any amended claims, for tax
2 credits under this section shall be filed on or before the end
3 of the twelfth month following the close of the taxable year for
4 which the credit may be claimed. Failure to comply with the
5 foregoing provision shall constitute a waiver of the right to
6 claim the credit.

7 (h) The director of taxation shall prepare any forms that
8 may be necessary to claim a tax credit under this section. The
9 director may also require the taxpayer to furnish information to
10 ascertain the validity of the claims for a tax credit made under
11 this section and may adopt rules necessary to effectuate the
12 purposes of this section pursuant to chapter 91."

13 SECTION 3. Chapter 235, Hawaii Revised Statutes, is
14 amended by adding a new section to be appropriately designated
15 and to read as follows:

16 "§235- Employer's tax credit for long-term care premiums
17 paid for employees. (a) Subject to the limitations of this
18 section, an employer subject to taxation under this chapter may
19 claim a non-refundable tax credit for premium payments made by
20 the employer during the taxable year to purchase a qualified
21 long-term care insurance contract for its employees. The
22 maximum tax credit per employee for whom qualified long-term

1 care insurance is purchased shall be in the amount of the lesser
2 of fifty dollars or fifty per cent of the qualified long-term
3 care premiums paid annually for each employee.

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

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

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

21 (e) The director of taxation shall prepare any forms that
22 may be necessary to claim a credit under this section. The

1 director may also require the taxpayer to furnish information to
2 ascertain the validity of the claims for deductions made under
3 this section and may adopt rules necessary to effectuate the
4 purposes of this section pursuant to chapter 91.

5 (f) As used in this section:

6 "Activities of daily living" means eating, toileting,
7 transferring, bathing, dressing, and continence.

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

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

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

18 (3) Requiring substantial supervision to protect that
19 individual from threats to health and safety due to a
20 severe cognitive impairment for the preceding twelve-
21 month period.

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

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

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

14 "Qualified long-term care insurance contract" means a
15 contract that:

- 16 (1) Provides insurance coverage solely for qualified
17 long-term care services;
- 18 (2) Does not pay or reimburse expenses incurred for
19 services or items to the extent that those expenses
20 are reimbursable under title XVIII of the Social
21 Security Act or would be so reimbursable but for the

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1 application of a deductible or coinsurance amount,

2 unless:

3 (A) The expenses are reimbursable by medicaid as
4 secondary payor; or

5 (B) The contract makes qualified per diem or other
6 periodic payments without regard to expenses, as
7 defined below.

8 (3) Is guaranteed renewable;

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

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

17 (6) Provides coverage for home- and community-based care
18 services that meets or exceeds fifty per cent of the
19 coverage for treatment in an intermediate care
20 facility and skilled nursing facility.

21 "Qualified long-term care services" means necessary
22 diagnostic, preventive, therapeutic, curing, treating,

1 mitigating, and rehabilitative services, and maintenance or
2 personal care services, which are:

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

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

9 "§241- Employer's tax credit for long-term care premiums
10 paid for employees. The employer's tax credit for long-term
11 care premiums paid for employees provided under chapter 235
12 shall be operative for this chapter for taxable years beginning
13 after December 31, 2005."

14 SECTION 5. Chapter 431, Hawaii Revised Statutes, is amended
15 by adding to article 7 a new section to be appropriately
16 designated and to read as follows:

17 "§431:7- Employer's tax credit for long-term care
18 premiums paid for employees. The employer's tax credit for
19 long-term care premiums paid for employees provided under
20 chapter 235 shall be operative for this chapter for taxable
21 years beginning after December 31, 2005."

1 SECTION 6. Section 431:10H-302, Hawaii Revised Statutes,
2 is amended to read as follows:

3 "[+]§431:10H-302[+] **Individual long-term care insurance**
4 **policy coverages.** (a) Every individual long-term care
5 insurance policy sold after June 30, 2000, shall provide
6 coverage for one or more of the types of care enumerated under
7 section 431:10H-301(c).

8 (b) An individual long-term care insurance policy sold
9 after June 30, 2000, shall not be required to conform to
10 Subtitle C of the Health Insurance Portability and
11 Accountability Act of 1996, P.L. 104-191, as amended, and to
12 Section 7702B of the Internal Revenue Code of 1986, as amended;
13 provided that if it does not conform, then it shall not qualify
14 for federal or state income tax benefits.

15 (c) An individual long-term care insurance policy sold
16 after December 31, 2005, shall not be required to conform to
17 section 235- ; provided that, if it does not conform, then it
18 shall not qualify for any state income tax credit."

19 SECTION 7. Section 431:10H-304, Hawaii Revised Statutes,
20 is amended to read as follows:

21 "[+]§431:10H-304[+] **Disclosure of qualification for tax**
22 **benefits.** (a) Every policy that is intended to be a qualified

1 long-term care insurance contract as provided in the federal
2 Health Insurance Portability and Accountability Act of 1996,
3 P.L. 104-191, as amended, shall be identified as such by
4 prominently displaying and printing on page one of the policy
5 form and the outline of coverage and in the application the
6 following words: "This contract for long-term care insurance is
7 intended to be a federally qualified long-term care insurance
8 contract and may qualify you for federal and state tax
9 benefits."

10 (b) Every policy that is not intended to be a qualified
11 long-term care insurance contract as provided in the federal
12 Health Insurance Portability and Accountability Act of 1996,
13 P.L. 104-191, as amended, shall be identified as such by
14 prominently displaying and printing on page one of the policy
15 form and the outline of coverage and in the application the
16 following words: "This contract for long-term care insurance is
17 not intended to be a federally qualified long-term care
18 insurance contract and is not intended to qualify you for
19 federal and state tax benefits."


20 (c) Every policy that is intended to be a qualified
21 long-term care insurance contract as provided in section 235-
22 shall be identified as such by prominently displaying and

1 printing on page one of the policy form, on the outline of
 2 coverage, and in the application the following words: "This
 3 contract for long-term care insurance is intended to be a
 4 qualified long-term care insurance contract under section 235-
 5 , Hawaii Revised Statutes, and may qualify you for state
 6 income tax credits."

7 (d) Every policy that is not intended to be a qualified
 8 long-term care insurance contract under section 235- shall be
 9 identified as such by prominently displaying and printing on
 10 page one of the policy form, on the outline of coverage, and in
 11 the application the following words: "This contract for
 12 long-term care insurance is not intended to be a qualified
 13 long-term care insurance contract under section 235- , Hawaii
 14 Revised Statutes, and is not intended to qualify you for state
 15 income tax credits.""

16 SECTION 8. Statutory material to be repealed is bracketed
 17 and stricken. New statutory material is underscored.

18 SECTION 9. This Act shall take effect upon its approval
 19 and shall apply to taxable years beginning after December 31,
 20 2005.

21 INTRODUCED BY: 

22 BY REQUEST

JUSTIFICATION SHEET

DEPARTMENT: Taxation

TITLE: A BILL FOR AN ACT RELATING TO LONG-TERM CARE TAX CREDITS.

PURPOSE: To provide a refundable and non-refundable net income tax credit to encourage the purchase of long-term care insurance.

MEANS: Add new sections to chapters 235, 241, and 431, Hawaii Revised Statutes (HRS), and amend sections 431:10H-302 and 431:10H-304, HRS.

JUSTIFICATION: The future of long-term care for Hawaii's senior and adult disabled population is one of the most critical health issues facing Hawaii in the twenty-first century. Persons sixty years of age and older presently account for almost one-fifth of the adult population in the State. By 2020, they will constitute more than one-fourth of Hawaii's adult population.

The rapid growth of the elderly and disabled populations will result in extraordinary demands on the delivery of long-term care services. While the majority of persons receiving long-term care are older adults, entire families are affected by the psychological, financial, and social costs of long-term care provided to those who are limited in the activities of daily living.

To resolve the impending long-term care crisis, the Department of Health, at the direction of the Governor, established a Long-Term Care Task Force. The Task Force developed this proposed individual and employer's long-term care tax credit.

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For tax year 2006 and beyond, the amount of the tax credit for married taxpayers filing a joint return is as follows:

<u>Adjusted Gross Income</u>	<u>Credit is the lesser of \$1,000 or:</u>
Under \$80,000	50% of premium
\$80,000-below \$100,000	30% of premium
\$100,000-below \$125,000	15% of premium
\$125,000-below \$150,000	5% of premium
\$150,000 or above	no credit

For tax year 2006 and beyond, the amount of the tax credit for individual taxpayers (and married taxpayers filing separately) is as follows:

<u>Adjusted Gross Income</u>	<u>Credit is the lesser of \$500 or:</u>
Under \$40,000	50% of premium
\$40,000-below \$50,000	30% of premium
\$50,000-below \$62,500	15% of premium
\$62,500-below \$75,000	5% of premium
\$75,000 or above	no credit

Subject to the cap on the total amount of the credit, the taxpayer may claim the tax credit for long-term care insurance that the taxpayer purchases for the taxpayer, a spouse, a son or daughter, a stepson or stepdaughter, a father or mother, a stepfather or stepmother, or a dependent (as defined in tax law) living in the taxpayer's home.

The amount of the employer's tax credit is the lesser of \$50 or fifty percent of the qualified long term care premiums paid annually for each employee.

Impact on the public: By offering additional State tax incentives in the form of credits, individuals will be encouraged to purchase long-term care insurance.

Impact on the department and other agencies:
The Department of Taxation will need to update tax forms and instructions to accommodate the new credit.

GENERAL FUND: Annual revenue loss would be \$6.9 million (\$5.0 million for the individual credit and \$1.9 million for the employer's credit) annually for fiscal year 2007 and thereafter.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: None.

OTHER AFFECTED AGENCIES: Department of Health; Executive Office on Aging; Department of Commerce and Consumer Affairs.

EFFECTIVE DATE: Upon approval, to apply to taxable years beginning after December 31, 2005.