THE SENATE
TWENTY-THIRD LEGISLATURE, 2006
STATE OF HAWAII

JAN 25 2006

S.B. NO. 3243

A BILL FOR AN ACT

RELATING TO LONG-TERM CARE.

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

SECTION 1. The legislature finds that 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. 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 providing long-term care. To accommodate the demands of caregiving that grow as dependency increases, caregivers reduce work hours, adjust or abandon career and personal goals, and retire earlier than intended, lowering their own pension and retirement benefit levels. Caregivers are apt to be in poorer health than members of the general population and often need care in their advanced years. Caregivers must be assisted by creating a network of support services, including respite care and other support to alleviate the daunting responsibility of providing daily care for those who require it.

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

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. Nearly one-third of this segment alone is expected to have functional disabilities. Although families have expressed a preference for home- and community-based care, these services and nursing home beds are currently below requisite levels. The average annual cost for nursing home care has been estimated to eventually reach in excess of $200,000 per person.

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

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 included of individuals from various state agencies, including the department of health, department of taxation, department of commerce and consumer affairs, long-term care insurance industry, and health care sector.

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

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

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

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

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

<u>(b) For taxable years beginning after December 31, 2006, the tax credit shall be as follows:</u>

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

(A) $500 in aggregate; or

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

Under $80,000	25.0 per cent
at least $80,000 and under $100,000	15.0 per cent
at least $100,000 and under $125,000	7.5 per cent
at least $125,000 and up to $150,000	2.5 per cent
over $150,000	0 per cent;

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

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

(A) $250; or

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

Under $40,000	25.0 per cent
at least $40,000 and under $50,000	15.0 per cent
at least $50,000 and under $62,500	7.5 per cent
at least $62,500 and up to $75,000	2.5 per cent
over $75,000	0 per cent.

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

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

(A) $1,000 in aggregate; or

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

Under $80,000	50.0 per cent

at least $80,000 and under $100,000	30.0 per cent
at least $100,000 and under $125,000	15.0 per cent
at least $125,000 and up to $150,000	5.0 per cent
over $150,000	0 percent;

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

and

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

(A) $500; or

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

Under $40,000	50.0 per cent
at least $40,000 and under $50,000	30.0 per cent

at least $50,000 and under $62,500	15.0 per cent
at least $62,500 and up to $75,000	5.0 per cent
over $75,000	0 per cent.

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

(1) The taxpayer;

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

(3) The taxpayer's spouse;

(4) A son or daughter of the taxpayer;

(5) A stepson or stepdaughter of the taxpayer;

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

(7) A stepfather or stepmother of the taxpayer.

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

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

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

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

(i) For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

(3) Is guaranteed renewable;

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

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

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

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

(1) Required by a chronically ill individual; and

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

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

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

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

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

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

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

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

(f) For the purposes of this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) Is guaranteed renewable;

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

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

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

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

(1) Required by a chronically ill individual; and

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

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

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

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

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

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

SECTION 6. New statutory material is underscored.

S.B. NO. 3243

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

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Report Title:
Long-term Care; Tax Credit

Description:

SB. NO. 3243

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.

SB HMS 2006-1359