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## A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. One of the greatest obstacles facing Hawaii's  
2 drive toward excellence in the new millennium is our burdensome  
3 and regressive tax system. The legislature finds that many  
4 residents of Hawaii face great difficulty affording the high  
5 cost of medical services and products. Part of the reason for  
6 the high cost of medical services and products in Hawaii is  
7 attributable to the general excise tax, which is passed on to  
8 the consumer or intermediary.

9           We all need medical services and products to survive and  
10 thrive. The disenfranchised - the elderly, the disabled, the  
11 sick, the poor, and our children - need medical services and  
12 products even more. Yet most live on fixed incomes, making the  
13 tax bite and final cost even more insidious.

14           The cost of basic human needs should not be a roadblock in  
15 our collective drive towards excellence. As a community, we  
16 cannot afford the impact of our regressive general excise tax  
17 system. The purpose of this bill is to remove medical services  
18 and products from the purview of the general excise tax.



1 SECTION 2. Section 237-23, Hawaii Revised Statutes, is  
2 amended to read as follows:

3 "§237-23 Exemptions, persons exempt, applications for  
4 exemption. (a) This chapter shall not apply to the following  
5 persons:

6 (1) Public service companies (as that term is defined in  
7 section 239-2), with respect to the gross income,  
8 either actual gross income or gross income estimated  
9 and adjusted, which is included in the measure of the  
10 tax imposed by chapter 239;

11 (2) Public utilities owned and operated by the State or  
12 any county or other political subdivision thereof;

13 (3) Fraternal benefit societies, orders, or associations,  
14 operating under the lodge system, or for the exclusive  
15 benefit of the members of the fraternity itself,  
16 operating under the lodge system, and providing for  
17 the payment of death, sick, accident, prepaid legal  
18 services, or other benefits to the members of such  
19 societies, orders, or associations, and to their  
20 dependents;

21 (4) Corporations, associations, trusts, or societies  
22 organized and operated exclusively for religious,



1 charitable, scientific, or educational purposes, as  
2 well as that of operating senior citizens housing  
3 facilities qualifying for a loan under the laws of the  
4 United States as authorized by section 202 of the  
5 Housing Act of 1959, as amended, as well as that of  
6 operating a prepaid legal services plan, as well as  
7 that of operating or managing a homeless facility, or  
8 any other program for the homeless authorized under  
9 chapter 201G, part IV;

10 (5) Business leagues, chambers of commerce, boards of  
11 trade, civic leagues, agricultural and horticultural  
12 organizations, and organizations operated exclusively  
13 for the benefit of the community and for the promotion  
14 of social welfare which shall include the operation of  
15 a prepaid legal service plan, and from which no profit  
16 inures to the benefit of any private stockholder or  
17 individual;

18 (6) Hospitals, infirmaries, [~~and sanitarium,~~] skilled  
19 nursing facilities, intermediate care facilities,  
20 adult residential care homes, adult foster homes,  
21 adult day care facilities, assisted living facilities,  
22 and sanitarium;



1           (7) Cooperative associations incorporated under chapter  
2           421 or Code section 521 cooperatives which fully meet  
3           the requirements of section 421-23, except Code  
4           section 521 cooperatives need not be organized in  
5           Hawaii; provided that:

6           (A) The exemption shall apply only to the gross  
7           income derived from activities which are pursuant  
8           to purposes and powers authorized by chapter 421,  
9           except those provisions pertaining to or  
10          requiring corporate organization in Hawaii do not  
11          apply to Code section 521 cooperatives;

12          (B) The exemption shall not relieve any person who  
13          receives any proceeds of sale from the  
14          association of the duty of returning and paying  
15          the tax on the total gross proceeds of the sales  
16          on account of which the payment was made, in the  
17          same amount and at the same rate as would apply  
18          thereto had the sales been made directly by the  
19          person, and all such persons shall be so taxable;  
20          and

21          (C) As used in this paragraph, "section 521  
22          cooperatives" mean associations which qualify as



1 a cooperative under section 521 (with respect to  
2 exemption of farmers' cooperatives from tax) of  
3 the Internal Revenue Code of 1986, as amended;

4 (8) Persons affected with Hansen's disease and kokuas,  
5 with respect to business within the county of Kalawao;

6 (9) Corporations, companies, associations, or trusts  
7 organized for the establishment and conduct of  
8 cemeteries no part of the net earnings of which inures  
9 to the financial benefit of any private stockholder or  
10 individual (provided that the exemption shall apply  
11 only to the activities of such persons in the conduct  
12 of cemeteries and not to any activity the primary  
13 purpose of which is to produce income, even though the  
14 income is to be used for or in the furtherance of the  
15 exempt activities of such persons); and

16 (10) Nonprofit shippers associations operating under part  
17 296 of the Civil Aeronautics Board Economic  
18 Regulations.

19 (b) The exemptions enumerated in subsection (a)(3) to  
20 ~~[-6-]~~ (5) shall apply only:

21 (1) To those persons who shall have registered with the  
22 department of taxation by filing a written application



1 for registration in such form as the department shall  
2 prescribe, shall have paid the registration fee of  
3 \$20, and shall have had the exemption allowed by the  
4 department or by a court or tribunal of competent  
5 jurisdiction upon appeal from any assessment resulting  
6 from disallowance of the exemption by the department;

7 (2) To activities from which no profit inures to the  
8 benefit of any private stockholder or individual,  
9 except for death or other benefits to the members of  
10 fraternal societies; and

11 (3) To the fraternal, religious, charitable, scientific,  
12 educational, communal, or social welfare activities of  
13 such persons [~~or to the activities of such hospitals,~~  
14 ~~infirmaries, and sanitarium as such~~], and not to any  
15 activity the primary purpose of which is to produce  
16 income even though the income is to be used for or in  
17 furtherance of the exempt activities of such persons.

18 (c) To obtain allowance of an exemption:

19 (1) A person under subsection (a) (3) to [~~(6)~~] (5), who has  
20 received or applied for recognition of tax exempt  
21 status under section 501(c) (3), (4), (6), or (8) of  
22 the Internal Revenue Code of 1986, as amended, or who



1 is a subordinate person of a person who has received a  
2 group exemption letter under section 501(c)(3), (4),  
3 (6), or (8) of the Internal Revenue Code of 1986, as  
4 amended, shall register with the department by filing  
5 a statement attaching a copy of the exemption or  
6 application for recognition of exempt status and any  
7 particular facts that the department may require; and

8 (2) All other persons under subsection (a)(3) to ~~[(4)]~~ (5)  
9 shall file an application for exemption in the form of  
10 an affidavit or affidavits setting forth in general  
11 all facts affecting the right to the exemption and  
12 such particular facts as the department may require,  
13 to which shall be attached such records, papers, and  
14 other information as the department may prescribe.

15 (d) For all persons, the statement registering the person  
16 with the department or application for exemption shall be filed  
17 on or before March 31 of the first year of registration or  
18 within three months after the commencement of business. In the  
19 event of allowance of the exemption, no further statement or  
20 application therefor need be filed unless there is a material  
21 change in the facts. In the event of disallowance of the  
22 exemption, a license may be obtained upon payment of the

1 required fee as provided by section 237-9, less the \$20 already  
2 paid under this section, which shall be credited thereon. In  
3 the event the registrant has a license under this chapter, no  
4 further fee shall be required for registration under this  
5 section.

6 (e) The department for good cause may extend the time for  
7 registration or the time for filing an application for  
8 exemption."

9 SECTION 3. Section 237-24.3, Hawaii Revised Statutes, is  
10 amended to read as follows:

11 "**§237-24.3 Additional amounts not taxable.** In addition to  
12 the amounts not taxable under section 237-24, this chapter shall  
13 not apply to:

14 (1) Amounts received from the loading, transportation, and  
15 unloading of agricultural commodities shipped for a  
16 producer or produce dealer on one island of this State  
17 to a person, firm, or organization on another island  
18 of this State. The terms "agricultural commodity",  
19 "producer", and "produce dealer" shall be defined in  
20 the same manner as they are defined in section 147-1;  
21 provided that agricultural commodities need not have  
22 been produced in the State;





- 1           (2) Amounts received from sales of:
  - 2               (A) Intoxicating liquor as the term "liquor" is
  - 3               defined in chapter 244D;
  - 4               (B) Cigarettes and tobacco products as defined in
  - 5               chapter 245; and
  - 6               (C) Agricultural, meat, or fish products;
  - 7               to any person or common carrier in interstate or
  - 8               foreign commerce, or both, whether ocean-going or air,
  - 9               for consumption out-of-state on the shipper's vessels
  - 10              or airplanes;
- 11          (3) Amounts received by the manager or board of directors
- 12              of:
  - 13               (A) An association of apartment owners of a
  - 14               condominium property regime established in
  - 15               accordance with chapter 514A; or
  - 16               (B) A nonprofit homeowners or community association
  - 17               incorporated in accordance with chapter 415B or
  - 18               any predecessor thereto and existing pursuant to
  - 19               covenants running with the land,
  - 20               in reimbursement of sums paid for common expenses;
- 21          (4) Amounts received or accrued from:

- 1 (A) The loading or unloading of cargo from ships,  
2 barges, vessels, or aircraft, whether or not the  
3 ships, barges, vessels, or aircraft travel  
4 between the State and other states or countries  
5 or between the islands of the State;
- 6 (B) Tugboat services including pilotage fees  
7 performed within the State, and the towage of  
8 ships, barges, or vessels in and out of state  
9 harbors, or from one pier to another; and
- 10 (C) The transportation of pilots or governmental  
11 officials to ships, barges, or vessels offshore;  
12 rigging gear; checking freight and similar  
13 services; standby charges; and use of moorings  
14 and running mooring lines;
- 15 (5) Amounts received by an employee benefit plan by way of  
16 contributions, dividends, interest, and other income;  
17 and amounts received by a nonprofit organization or  
18 office, as payments for costs and expenses incurred  
19 for the administration of an employee benefit plan;  
20 provided that this exemption shall not apply to any  
21 gross rental income or gross rental proceeds received  
22 after June 30, 1994, as income from investments in



1 real property in this State; and provided further that  
2 gross rental income or gross rental proceeds from  
3 investments in real property received by an employee  
4 benefit plan after June 30, 1994, under written  
5 contracts executed prior to July 1, 1994, shall not be  
6 taxed until the contracts are renegotiated, renewed,  
7 or extended, or until after December 31, 1998,  
8 whichever is earlier. For the purposes of this  
9 paragraph, "employee benefit plan" means any plan as  
10 defined in section 1002(3) of title 29 of the United  
11 States Code, as amended;

12 (6) Amounts received for purchases made with United States  
13 Department of Agriculture food coupons under the  
14 federal food stamp program, and amounts received for  
15 purchases made with United States Department of  
16 Agriculture food vouchers under the Special  
17 Supplemental Foods Program for Women, Infants and  
18 Children;

19 (7) Amounts received by a hospital, infirmary, medical  
20 clinic, health care facility, pharmacy, or a  
21 practitioner licensed to administer the drug to an  
22 individual for selling prescription drugs or



1           prosthetic devices to an individual; [~~provided that~~  
2           ~~this paragraph shall not apply to~~] and any amounts  
3           received for services provided in selling prescription  
4           and non-prescription drugs or prosthetic devices. As  
5           used in this paragraph:

6           (A) "Prescription drugs" are those drugs defined  
7           under section 328-1 and dispensed by filling or  
8           refilling a written or oral prescription by a  
9           practitioner licensed under law to administer the  
10          drug and sold by a licensed pharmacist under  
11          section 328-16 or practitioners licensed to  
12          administer drugs; and

13          (B) "Prosthetic device" means any artificial device  
14          or appliance, instrument, apparatus, or  
15          contrivance, including their components, parts,  
16          accessories, and replacements thereof, used to  
17          replace a missing or surgically removed part of  
18          the human body, which is prescribed by a licensed  
19          practitioner of medicine, osteopathy, or podiatry  
20          and which is sold by the practitioner or which is  
21          dispensed and sold by a dealer of prosthetic  
22          devices; provided that "prosthetic device" shall



1 not mean any auditory, ophthalmic, dental, or  
2 ocular device or appliance, instrument,  
3 apparatus, or contrivance;

4 (8) Taxes on transient accommodations imposed by chapter  
5 237D and passed on and collected by operators holding  
6 certificates of registration under that chapter;

7 (9) Amounts received as dues by an unincorporated  
8 merchants association from its membership for  
9 advertising media, promotional, and advertising costs  
10 for the promotion of the association for the benefit  
11 of its members as a whole and not for the benefit of  
12 an individual member or group of members less than the  
13 entire membership;

14 (10) Amounts received by a labor organization for real  
15 property leased to:

16 (A) A labor organization; or

17 (B) A trust fund established by a labor organization  
18 for the benefit of its members, families, and  
19 dependents for medical or hospital care, pensions  
20 on retirement or death of employees,  
21 apprenticeship and training, and other membership  
22 service programs.



1 As used in this paragraph, "labor organization" means  
2 a labor organization exempt from federal income tax  
3 under section 501(c)(5) of the Internal Revenue Code,  
4 as amended;

5 (11) Amounts received from foreign diplomats and consular  
6 officials who are holding cards issued or authorized  
7 by the United States Department of State granting them  
8 an exemption from state taxes; and

9 (12) Amounts received as rent for the rental or leasing of  
10 aircraft or aircraft engines used by the lessees or  
11 renters for interstate air transportation of  
12 passengers and goods. For purposes of this paragraph,  
13 payments made pursuant to a lease shall be considered  
14 rent regardless of whether the lease is an operating  
15 lease or a financing lease. The definition of  
16 "interstate air transportation" is the same as in 49  
17 U.S.C. 40102.

18 (13) Amounts received from the rent, lease, or sale of  
19 medical equipment. As used in this paragraph:

20 (A) "Medical equipment" includes any device,  
21 instrument, appliance, apparatus or contrivance,  
22 including their components, parts, accessories, and



1           replacements thereof, either electronic, mechanical,  
 2           or otherwise that is intended for the use in the  
 3           diagnosis, cure, mitigation, treatment, or prevention  
 4           of disease or the protection of wellness of body; and

5       (14) Amounts received from the provision of health care or  
 6       long-term care services. As used in this paragraph:

7       (A) "Health care services" means services involved in  
 8       the diagnosis, cure, mitigation, treatment, or  
 9       prevention of disease or the promotion of wellness of  
 10       body when provided by licensed doctor, licensed  
 11       dentist, and entities licensed by the state to provide  
 12       services described herein.

13       (B) "Long-term care services" means one or more  
 14       necessary or medically necessary diagnostic,  
 15       preventive, therapeutic, rehabilitative, maintenance,  
 16       or personal care services provided in a setting other  
 17       than an acute care unit of a hospital."

18       SECTION 4. Statutory material to be repealed is bracketed  
 19 and stricken. New statutory material is underscored.

20       SECTION 5. This Act shall take effect upon its approval.

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 22

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**Report Title:**

General Excise Tax; Medical Services and Products

**Description:**

Exempts medical care services, long-term care services, and non-prescription drugs from general excise tax liability.

