

# **TESTIMONY**

**SB 2107**



## TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FIFTH LEGISLATURE, 2010

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**ON THE FOLLOWING MEASURE:**

S.B. NO. 2107, RELATING TO THE HAWAII EMPLOYER-UNION HEALTH BENEFITS TRUST FUND.

**BEFORE THE:**

SENATE COMMITTEE ON LABOR

**DATE:** Thursday, January 28, 2010 **TIME:** 2:45 PM

**LOCATION:** State Capitol, Room 224

*Deliver to: Committee Clerk, Room 204, 1 copy*

**TESTIFIER(S):** Mark J. Bennett, Attorney General  
or Brian Aburano, Deputy Attorney General

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Chair Takamine and Members of the Committee:

The Department of the Attorney General has comments on the language currently used in this bill.

The bill seeks to change the definition of "dependent-beneficiary" in section 87A-1, Hawaii Revised Statutes (HRS), regarding unmarried children who are incapable of self-support because of a mental or physical incapacity which existed prior to their reaching the age of nineteen years, to unmarried children who due to a disability qualify for medicare benefits under 42 United States Code (U.S.C.) § 426(b).

The bill deletes the language "regardless of age" from the definition of which unmarried children may qualify as dependent-beneficiaries due to an incapacity or disability. See page 1, line 10. Long-standing administrative rules of the Hawaii Employer-Union Health Benefits Trust Fund (EUTF) provide that an employee-beneficiary's child ceases to be an eligible dependent-beneficiary upon reaching the age of nineteen (or twenty-four if a full-time student). See EUTF Rule 3.01(b). By taking out the "regardless of age" language, the bill might create an issue as to whether a disabled child ceases to be an eligible dependent-beneficiary upon

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reaching the age of nineteen (or twenty-four if a full-time student). To avoid this issue, page 1, lines 10-15 of the bill could be revised as follows: "(3) Unmarried child regardless of age [~~who is incapable of self support because of a mental or physical incapacity, which existed prior to the unmarried child's reaching the age of nineteen years.~~], who, due to a disability, qualifies for medicare benefits under 42 U.S.C. section 426(b)."

It should be noted that the bill also deletes the language that the unmarried child must have a mental or physical incapacity "which existed prior to the child reaching the age of nineteen years." See page 1, lines 11-13. Thus, the bill will provide "dependent-beneficiary" status for disabled individuals even if their disability starts after they have reached the age of nineteen. However, by referring to 42 U.S.C. § 426(b), the bill would require the "unmarried child" to show that he or she has been found qualified for medicare disability insurance benefits for 24 calendar months before he or she could be qualified as a "dependent-beneficiary" under the EUTF statute. 42 U.S.C. § 426(b) does not require that individuals qualified for medicare, due to a disability, be found to have been disabled prior to any particular age. Rather, it provides that an individual be under the age of 65 and for 24 calendar months have been entitled to: (i) disability insurance benefits under 42 U.S.C. § 423 or (ii) child's insurance benefits under 42 U.S.C. § 402(d) or (iii) widow's benefits under 42 U.S.C. § 402(e) or widower's insurance under 42 U.S.C § 402(f).

There may be some uncertainty as to how the limitations and qualifications under the federal statute will apply to specific individuals through the mere reference to the federal statute.

Thank you for the opportunity to provide these comments.