



GOV. MSG. NO. 927

EXECUTIVE CHAMBERS

HONOLULU

July 9, 2008

LINDA LINGLE  
GOVERNOR

The Honorable Colleen Hanabusa, President  
and Members of the Senate  
Twenty-Fourth State Legislature  
State Capitol, Room 409  
Honolulu, Hawaii 96813

Dear Madam President and Members of the Senate:

Re: Senate Bill No. 69 SD2 HD3 CD1

On July 8, 2008, Senate Bill No. 69, entitled "A Bill for an Act Relating to Health Care" became law without my signature, pursuant to Section 16 of Article III of the State Constitution.

The purpose of this bill is to temporarily expand eligibility for the Hawaii Children's Health Care program to assist children who are uninsured as a result of their parent or guardian being employed by a Hawaii employer who filed for bankruptcy or ceased doing business in Hawaii between February 29, 2008 and September 30, 2008.

The intent of this bill has merit. This past spring, thousands of Hawaii workers lost their jobs due to business closures or bankruptcies. While some workers and their families are on the road to recovery, others remain unemployed and have lost or are in danger of losing their health insurance. This bill would make sure that the children of those workers have health insurance through the end of this year.

I am concerned that the Legislature passed this bill without knowing the number of children who might be eligible. Without this data, we cannot predict whether existing funds will be adequate to cover the children who apply. Given the Council on Revenues' economic projections for 2008, we must carefully consider the future implications of any program expansions such as this.

Also, it is unclear why the exemption was restricted to a six month period and limited to children of those employed in a business that ceased to exist in Hawaii. The expanded eligibility under this measure does not cover children whose parent or guardian was terminated as a result of downsizing or reorganization, or even passed away. We believe this may subject this measure to an equal protection challenge under the Fourteenth Amendment of the United States Constitution, and article I, section 5 of the Hawaii Constitution.

This bill covers children of workers displaced from their jobs due to the employer ceasing to do business in Hawaii between certain dates. They would be accorded preferential treatment over a second class of children who, for other reasons, become uninsured or have been uninsured for up to six months. Specifically, children whose insured parent or guardian worked for a company that ceased doing business in Hawaii between February 29 and September 30, 2008 would be immediately eligible for the Hawaii children's health care program. Children who abruptly become uninsured for other reasons during that time period must remain uninsured for six months before becoming eligible for the program.

Therefore, it can be argued that there is no rational basis for distinguishing between the two classes of children identified above when they are, essentially, in the same situation, i.e., they lost or are at risk of losing their health insurance coverage because their parent or guardian abruptly loses his or her prepaid health care insurance. It is also questionable whether there is a rational basis for distinguishing a third class of children, i.e., those whose parents did not abruptly lose their prepaid health care insurance, but simply did not have insurance because, for instance, the parents were self-employed, or employed in part-time jobs and never purchased insurance. These children also must be uninsured for six months before qualifying for the Hawaii children's health care program.

Although it is true that many other arguably equally deserving children will be left out, it could be argued that because the bill is designed to deal with a specific crisis situation triggered by recent bankruptcies or business shutdowns, the exemptions are rationally tied to the specific triggering events. Even though none of these reasons or rationales may have been specifically offered in the bill, courts could look to any rational reason to justify the classification, even though they are not specifically expressed in the bill or its history, and rule that the bill met the constitutional equal protection criteria.

For the foregoing reasons, I allowed Senate Bill No. 69 to become law as Act 239, effective July 8, 2008, without my signature.

Sincerely,



LINDA LINGLE

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## A BILL FOR AN ACT

RELATING TO HEALTH CARE.

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

1           SECTION 1. The purpose of this Act is to make health  
2 insurance available until December 31, 2008, for the children of  
3 those employees who were employed by a Hawaii corporation which,  
4 between February 29, 2008 and September 30, 2008, filed for  
5 bankruptcy and ceased doing business in Hawaii or ceased doing  
6 business in Hawaii. This Act does so by expanding eligibility  
7 for the Hawaii children's health care program.

8           SECTION 2. Act 236, Session Laws of Hawaii 2007, is  
9 amended by amending section 3 to read as follows:

10           "SECTION 3. (a) There is established the Hawaii  
11 children's health care program as a temporary three-year pilot  
12 program to provide health care coverage to uninsured children  
13 who live in Hawaii. The department of human services shall  
14 provide health care coverage through a public-private  
15 partnership, established as a contract to provide health and  
16 human services pursuant to chapter 103F, Hawaii Revised  
17 Statutes, between the department and one or more managed care



1 plans operating in the state under chapter 432, Hawaii Revised  
2 Statutes, that offers accident and health or sickness insurance  
3 plans.

4 (b) It is not the intent of the legislature to discourage  
5 employers from offering to pay, or from paying for, dependent  
6 coverage for their employees, nor that this Act supplant  
7 employer-sponsored dependent coverage plans.

8 (c) To qualify, a child shall:

- 9 (1) Be at least thirty-one days to less than nineteen  
10 years old;
- 11 (2) Be living in Hawaii;
- 12 (3) Have been uninsured continually for at least six  
13 months; provided that infants thirty-one days to six  
14 months of age shall have been uninsured continually  
15 since birth; and
- 16 (4) Have been ineligible during the six months the child  
17 was uninsured for any other state or federal health  
18 care coverage and be currently ineligible for any  
19 other state or federal health care coverage; provided  
20 that:
- 21 (A) All children enrolled in a managed care plan's  
22 children's plan as of the effective date of this



1 Act shall be eligible for enrollment into the  
2 Hawaii children's health care program without  
3 being subject to the requirement of being  
4 uninsured for the precedent six months in  
5 subsection (c)(3);

6 (B) Children who are at least thirty-one days but  
7 less than nineteen years old who become  
8 ineligible for a med-QUEST division health care  
9 coverage program due to an increase in family  
10 income may enroll in the program upon  
11 disenrollment from a med-QUEST division health  
12 care coverage program; and

13 (C) Uninsured newborn children who are one day, but  
14 not more than thirty days of age who were  
15 enrolled in the Hawaii infant health care program  
16 shall be eligible for enrollment in the Hawaii  
17 children's health care program without being  
18 subject to the requirement of being uninsured for  
19 the precedent six months in subsection (c)(3).

20 (d) In lieu of paragraphs (c)(3) and (4), a child may also  
21 qualify if the child is uninsured due to the loss of the  
22 parent's or guardian's health insurance; provided that the



1 child's parent or guardian was employed by a Hawaii employer  
2 that was covered by and in compliance with chapter 393, Hawaii  
3 Revised Statutes, and that, between February 29, 2008 and  
4 September 30, 2008, filed for bankruptcy and ceased doing  
5 business in Hawaii or ceased doing business in Hawaii. The  
6 eligibility requirements of subsections (c)(1) and (2) shall  
7 still apply. Furthermore, coverage received based upon meeting  
8 the eligibility requirements of this subsection shall continue  
9 only until the earlier of the following:

10 (1) The former employee parent or guardian of the covered  
11 child becomes employed and covered by a prepaid health  
12 care plan; or

13 (2) December 31, 2008.

14 ~~(d)~~ (e) The department of human services and the managed  
15 care plans shall share equally in the cost of the premium for  
16 each child enrolled in the program subject to the appropriation  
17 of general funds for the program.

18 ~~(e)~~ (f) The department of human services shall pay the  
19 State's share of the premiums under the program on a quarterly  
20 basis.

21 ~~(f)~~ (g) The managed care plans participating in the  
22 pilot program shall be responsible for determining the



1 eligibility of program applicants and of enrolling applicants in  
2 the pilot program.

3 ~~(g)~~ (h) The managed care plans participating in the  
4 program shall provide a quarterly report to the department of  
5 human services and the legislature on the number of children  
6 enrolled in the program.

7 ~~(h)~~ (i) The department shall ensure that other private  
8 organizations have the opportunity to partner with the State to  
9 offer coverage to uninsured children under the program; provided  
10 that plan benefits to be provided shall be equal to or better  
11 than those offered through the program established by the State  
12 and managed care plans under subsection (a).

13 ~~(i)~~ (j) The department of human services and any  
14 participating managed care plan shall report to the legislature  
15 no later than twenty days prior to the start of the 2008 and  
16 2009 regular sessions on:

- 17 (1) Any problems experienced with the program involving  
18 crowding out eligible participants;
- 19 (2) Instances of people canceling their previous coverage  
20 to receive this free coverage;
- 21 (3) The amount of funding used and for what purposes;



- 1 (4) Any other problems encountered in the administration
- 2 of the program; and
- 3 (5) Any proposed legislation."

4 SECTION 3. Statutory material to be repealed is bracketed  
5 and stricken. New statutory material is underscored.

6 SECTION 4. This Act shall take effect upon its approval;  
7 provided that the provision of this Act that amend section 3 of  
8 Act 236, Session Laws of Hawaii 2007, shall be repealed on  
9 December 31, 2008; provided further that the underlying  
10 provisions of section 3 of Act 236, Session Laws of Hawaii 2007,  
11 shall be reenacted in the form in which it read on the day  
12 before the effective date of this Act.

APPROVED this                      day of                      , 2008

GOVERNOR OF THE STATE OF HAWAII

