

---

---

# A BILL FOR AN ACT

RELATING TO TAXATION.

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

1           SECTION 1. Chapter 235, Hawaii Revised Statutes, is  
2 amended by adding a new section to part VI to be appropriately  
3 designated and to read as follows:

4           "§235-        Cybersecurity and artificial intelligence  
5 business investment tax credit. (a) There shall be allowed to  
6 each taxpayer subject to the taxes imposed by this chapter a  
7 cybersecurity and artificial intelligence business investment  
8 tax credit that shall be deductible from the taxpayer's net  
9 income tax liability, if any, imposed by this chapter for the  
10 taxable year in which the investment was made and the following  
11 four years; provided that the credit is properly claimed. The  
12 tax credit shall be as follows:

13           (1) In the year the investment was made,        per cent of  
14           the investment made by the taxpayer in each qualified  
15           business, up to a maximum credit amount of \$700,000;

16           (2) In the first year following the year in which the  
17           investment was made,        cent of the investment made



1 by the taxpayer in each qualified business, up to a  
2 maximum credit amount of \$500,000;

3 (3) In the second year following the investment, per  
4 cent of the investment made by the taxpayer in each  
5 qualified business, up to a maximum credit amount of  
6 \$400,000;

7 (4) In the third year following the investment, per  
8 cent of the investment made by the taxpayer in each  
9 qualified business, up to a maximum credit amount of  
10 \$200,000; and

11 (5) In the fourth year following the investment, per  
12 cent of the investment made by the taxpayer in each  
13 qualified business, up to a maximum credit amount of  
14 \$200,000.

15 (b) The credit allowed under this section shall be claimed  
16 against the net income tax liability for the taxable year.

17 (c) If the tax credit under this section exceeds the  
18 taxpayer's income tax liability for any of the five years that  
19 the credit is taken, the excess of the tax credit over liability  
20 may be used as a credit against the taxpayer's income tax  
21 liability in subsequent years until exhausted. Every claim,



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

6 (d) If at the close of any taxable year in the five-year  
7 period in subsection (a):

8 (1) The business no longer qualifies as a qualified  
9 business;

10 (2) The business or an interest in the business has been  
11 sold by the taxpayer investing in the qualified  
12 business; or

13 (3) The taxpayer has withdrawn the taxpayer's investment  
14 wholly or partially from the qualified business;

15 the credit claimed under this section shall be recaptured. The  
16 recapture shall be equal to \_\_\_\_\_ per cent of the amount of the  
17 total tax credit claimed under this section in the preceding two  
18 taxable years. The amount of the credit recaptured shall apply  
19 only to the investment in the particular qualified business that  
20 meets the requirements of paragraph (1), (2), or (3). The  
21 recapture provisions of this subsection shall not apply to a tax



1 credit claimed for a qualified business that does not fall  
2 within the provisions of paragraph (1), (2), or (3). The amount  
3 of the recaptured tax credit determined under this subsection  
4 shall be added to the taxpayer's tax liability for the taxable  
5 year in which the recapture occurs under this subsection.

6 (e) Every taxpayer, before March 31 of each year in which  
7 an investment in a qualified business was made in the previous  
8 taxable year, shall submit a written, certified statement to the  
9 director of taxation identifying:

10 (1) Qualified investments, if any, expended in the  
11 previous taxable year; and

12 (2) The amount of tax credits claimed pursuant to this  
13 section, if any, in the previous taxable year.

14 (f) The department shall:

15 (1) Maintain records of the names and addresses of the  
16 taxpayers claiming the credits under this section and  
17 the total amount of the qualified investment costs  
18 upon which the tax credit is based;

19 (2) Verify the nature and amount of the qualifying  
20 investments;



1       (3) Total all qualifying and cumulative investments that  
2       the department certifies; and

3       (4) Certify the amount of the tax credit for each taxable  
4       year and cumulative amount of the tax credit.

5       Upon each determination made under this subsection, the  
6       department shall issue a certificate to the taxpayer verifying  
7       information submitted to the department, including qualifying  
8       investment amounts, the credit amount certified for each taxable  
9       year, and the cumulative amount of the tax credit during the  
10       credit period. The taxpayer shall file the certificate with the  
11       taxpayer's tax return with the department.

12       The director of taxation may assess and collect a fee to  
13       offset the costs of certifying tax credits claims under this  
14       section. All fees collected under this section shall be  
15       deposited into the tax administration special fund established  
16       under section 235-20.5.

17       (g) Common law principles, including the doctrine of  
18       economic substance and business purpose, shall apply to any  
19       investment. There exists a presumption that a transaction  
20       satisfies the doctrine of economic substance and business  
21       purpose to the extent that the special allocation of the



1 cybersecurity and artificial intelligence business tax credit  
2 has an investment tax credit allocation ratio of 1.5 or less of  
3 credit for every dollar invested.

4 Transactions for which an investment tax credit allocation  
5 ratio greater than 1.5 but not more than 2.0 of credit for every  
6 dollar invested and claimed may be reviewed by the department  
7 for applicable doctrine of economic substance and business  
8 purpose.

9 Businesses claiming a tax credit for transactions with  
10 investment tax credit allocation ratios greater than 2.0 of  
11 credit for every dollar invested shall substantiate economic  
12 merit and business purpose consistent with this section.

13 (h) As used in this section:

14 "Investment tax credit allocation ratio" means, with  
15 respect to a taxpayer that has made an investment in a qualified  
16 business, the ratio of:

17 (1) The amount of the credit under this section that is,  
18 or is to be, received by or allocated to the taxpayer  
19 over the life of the investment, as a result of the  
20 investment; to



1       (2) The amount of the investment in the qualified  
2           business.

3       "Net income tax liability" means net income tax liability  
4 reduced by all other credits allowed under this chapter.

5       "Qualified business" means a business, employing or owning  
6 capital or property, or maintaining an office, in this State;  
7 provided that:

8       (1) More than        per cent of its total business  
9           activities are the development of cybersecurity and  
10          artificial intelligence; provided further that the  
11          business conducts more than        per cent of these  
12          development activities in this State; or

13       (2) More than        per cent of its gross income is derived  
14          from the development of cybersecurity and artificial  
15          intelligence; provided further that this income is  
16          received from:

17          (A) Products sold from, manufactured in, or produced  
18             in this State; or

19          (B) Services performed in this State."



1 SECTION 2. Chapter 241, Hawaii Revised Statutes, is  
2 amended by adding a new section to be appropriately designated  
3 and to read as follows:

4 "§241- \_\_\_\_\_ Cybersecurity and artificial intelligence  
5 business investment tax credit. The cybersecurity and  
6 artificial intelligence business investment tax credit provided  
7 under section 235- \_\_\_\_\_ shall be operative for this chapter on the  
8 effective date of this Act."

9 SECTION 3. Chapter 431, article 7, part II, Hawaii Revised  
10 Statutes, is amended by adding a new section to be appropriately  
11 designated and to read as follows:

12 "§431:7- \_\_\_\_\_ Cybersecurity and artificial intelligence  
13 business investment tax credit. The cybersecurity and  
14 artificial intelligence business investment tax credit provided  
15 under section 235- \_\_\_\_\_ shall be operative for this chapter on the  
16 effective date of this Act."

17 SECTION 4. Section 235-20.5, Hawaii Revised Statutes, is  
18 amended by amending subsections (a) and (b) to read as follows:

19 "(a) There is established a tax administration special  
20 fund, into which shall be deposited:





- 1 (1) Fees collected under sections 235-20, 235-110.9, [~~and~~  
2 235-110.91 [~~+~~], and 235-\_\_\_\_\_ ;
- 3 (2) Revenues collected by the special enforcement section  
4 pursuant to section 231-85; provided that in each  
5 fiscal year, of the total revenues collected by the  
6 special enforcement section, all revenues in excess of  
7 \$2,000,000 shall be deposited into the general fund;  
8 and
- 9 (3) Fines assessed pursuant to section 237D-4.
- 10 (b) The moneys in the fund shall be used for the following  
11 purposes:
- 12 (1) Issuing comfort letters, letter rulings, written  
13 opinions, and other guidance to taxpayers;
- 14 (2) Issuing certificates under sections 235-110.9 [~~and~~],  
15 235-110.91 [~~+~~], and 235-\_\_\_\_\_ ;
- 16 (3) Administering the operations of the special  
17 enforcement section;
- 18 (4) Funding support staff positions in the special  
19 enforcement section; and
- 20 (5) Developing, implementing, and providing taxpayer  
21 education programs, including tax publications."



1 SECTION 5. Statutory material to be repealed is bracketed  
2 and stricken. New statutory material is underscored.

3 SECTION 6. This Act shall take effect on July 1, 2112;  
4 provided that:

5 (1) Sections 1, 2, and 3 of this Act shall apply to  
6 taxable years beginning after December 31, 2019, for  
7 investments made pursuant to section 235- , Hawaii  
8 Revised Statutes, on or after the effective date of  
9 this Act; and

10 (2) Section 4 of this Act shall apply to taxable years  
11 beginning after December 31, 2019.



**Report Title:**

Taxation; Technology; Cybersecurity; Artificial Intelligence

**Description:**

Establishes an income tax credit for investment in qualified businesses that develop cybersecurity and artificial intelligence. Takes effect on 7/1/2112. (HD1)

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

