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## A BILL FOR AN ACT

RELATING TO DEPENDENT CARE FLEXIBLE SPENDING ACCOUNTS.

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

1           SECTION 1. The legislature finds that there are limited  
2 options for affordable child care before and after school and  
3 during school breaks. With a growing kupuna population,  
4 families are also caring for elderly dependents who require care  
5 and supervision during the day. Many family members are forced  
6 to use vacation or sick leave to take care of their children and  
7 elderly dependents during breaks and holidays. Managing child  
8 and dependent care schedules may result in less productivity and  
9 increased stress for employees and employers in the workplace.

10           The legislature also finds that the federal government has  
11 incorporated a Dependent Care Flexible Spending Account ("FSA")  
12 into the tax code to allow pre-tax dollars for qualified out-of-  
13 pocket dependent care expenses necessary for family members to  
14 continue to work. The Dependent Care FSA can cover services  
15 such as daycare, before- and after- school programs, and in-home  
16 care. According to the Pew Research Center, sixty-six per cent  
17 of households are dual income households and are often in higher



1 tax brackets. With Hawaii having one of the highest costs for  
2 child and dependent care in the nation, parents and caretakers  
3 may save money by using an FSA to help finance child and  
4 dependent care expenses because the FSA funds are not subject to  
5 payroll taxes. Currently, Hawaii has a Dependent Care FSA as  
6 part of the Island Flex Flexible Benefit Plan, however, this  
7 program is only for state employees.

8 The purpose of this Act is to establish a Dependent Care  
9 Flexible Spending Account to allow pre-tax dollars to be used  
10 for eligible dependent care expenses for all employees in the  
11 state who wish to participate.

12 SECTION 2. Chapter 235-1, Hawaii Revised Statutes, is  
13 amended by adding a new definition to be appropriately inserted  
14 and to read as follows:

15 ""Qualifying individual" means the same as in section 129  
16 of the Internal Revenue Code."

17 SECTION 3. Chapter 235, Hawaii Revised Statutes, is  
18 amended by adding a new section to be appropriately designated  
19 and to read as follows:

20 "§235- Dependent Care Flexible Spending Accounts. (a)  
21 There shall be allowed as a deduction from gross income the



1 amount, not to exceed \$5,000, during the taxable year paid into  
2 an account that qualifies as a dependent care flexible spending  
3 account pursuant to section 129 of the Internal Revenue Code of  
4 1988, as amended. The dependent care flexible spending account  
5 shall allow eligible employees to use pretax compensation to pay  
6 for expenses incurred for the care of qualifying individuals  
7 that enable the taxpayer to continue to work. A qualifying  
8 individual includes the taxpayer's dependent that is under  
9 thirteen years old or the taxpayer's dependent or spouse who is  
10 physically or mentally incapable of self-care.

11 In the case of a married couple filing separate returns,  
12 the sum of the deductions allowable to each of them for the  
13 taxable year shall not exceed \$2,500, or \$5,000 for a joint  
14 return, for amounts paid for eligible dependent care expenses.  
15 Eligible dependent care expenses include, but are not limited  
16 to, child care services, summer school programs, before and  
17 after school programs, and adult day care programs.

18 (b) For purposes of this section, the term "dependent care  
19 flexible spending account" means a trust created or organized in  
20 Hawaii for the exclusive benefit of a qualifying individual(s)  
21 pursuant to the following:



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1       (1) Contributions of more than \$5,000 for a joint return  
2 and \$2,500 for an individual return shall not be accepted for  
3 the taxable year, exclusive of interest paid or accrued;

4       (2) The trustee is a bank, a savings and loan association,  
5 a credit union, or a depository financial services loan company,  
6 chartered, licensed, or supervised under federal or state law,  
7 whose accounts are insured by the Federal Deposit Insurance  
8 Corporation, the National Credit Union Administration, or any  
9 agency of this State or any federal agency established for the  
10 purpose of insuring accounts in these financial institutions;

11       (3) The assets of the trust shall be invested only in full  
12 savings or time deposits. Funds held in the trust may be  
13 commingled for purposes of investment, but individual records  
14 shall be maintained by the trustee for each individual housing  
15 account holder that show all transactions in detail; and

16       (4) The trustee shall not distribute the funds in the  
17 account unless the trustee:

18               (A) Receives a completed reimbursement form along with  
19 a copy of the paid receipt for the expense.

20               (B) Verifies that the expense is an eligible  
21 dependent care expense made on behalf of a qualifying



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1       individual that allows the account owner to continue to  
2       work.

3       (c) Any contributions paid out of a dependent care FSA  
4       shall be included in the gross income of the taxpayer unless the  
5       amount is used exclusively to pay for eligible dependent care  
6       expenses for a qualifying individual which allow the taxpayer to  
7       work.

8       (d) Participation in the dependent care FSA must continue  
9       for the entire tax year as required by the Internal Revenue  
10       Service. Taxpayers may modify contributions if there is a valid  
11       status change including, but not limited to, marriage, divorce,  
12       and the birth of a child.

13       (e) The Internal Revenue Service prohibits the return of  
14       any unused funds remaining in the account at the end of the  
15       taxable year in which they were deposited. Unused funds shall  
16       escheat to the state.

17       (f) The trustee of a dependent care flexible spending  
18       account shall make reports regarding the account to the director  
19       with respect to contributions, distributions, and other matters  
20       as the director may require under the rules. The reports shall



1 be filed at a time and in a manner as may be required under the  
2 rules adopted under chapter 91.

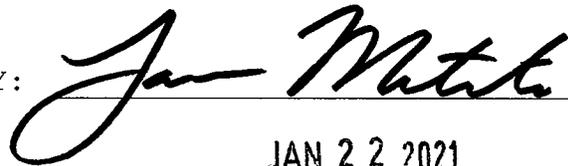
3 SECTION 4. New statutory material is underscored.

4 SECTION 5. This Act shall take effect on July 1, 2021;  
5 provided that section 2 shall apply to taxable years beginning  
6 after December 31, 2021.

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INTRODUCED BY:

  
JAN 22 2021



# H.B. NO. 436

**Report Title:**

Dependent Care Flexible Spending Accounts

**Description:**

Establishes Dependent Care Flexible Spending Accounts for all working taxpayers. Defines qualifying individuals and eligible expenses. Outlines the requirements and limitations of the accounts. Applies to taxable years beginning after 12/31/2021.

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

