



EXECUTIVE CHAMBERS

HONOLULU

LINDA LINGLE
GOVERNOR

July 9, 2008

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.

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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,

A handwritten signature in black ink, appearing to read "Linda Lingle", written in a cursive style.

LINDA LINGLE