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# A BILL FOR AN ACT

RELATING TO HEALTH.

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

PART I

SECTION 1. The legislature finds that Hawaii families have busy schedules and face tough choices when shopping for and preparing healthy food, thus making dining out an appealing and sometimes necessary option.

A 2013 study of the most profitable fast food restaurant chains in the United States found that only three per cent of the assessed meal combinations met the expert nutrition standards for children's meals. Sugar-sweetened beverages alone make up to nine per cent of the calories children consume daily, and medical evidence suggests sugar-sweetened beverages are linked to obesity.

According to the United States Department of Health and Human Services and the Centers for Disease Control and Prevention, obesity-related health conditions include type 2 diabetes, heart disease, stroke, high blood pressure, high



1 cholesterol, certain cancers, asthma, low self-esteem, and  
2 depression.

3 Obesity-related health conditions have serious economic  
4 costs. According to a 2013 report, the State spends an  
5 estimated \$470,000,000 annually on obesity-related medical  
6 costs.

7 The purpose of this part is to promote healthy meal options  
8 for children and their families and build a healthier community  
9 by limiting sugar-sweetened beverages offered with children's  
10 meals by restaurants.

11 SECTION 2. Chapter 321, Hawaii Revised Statutes, is  
12 amended by adding a new part to be appropriately designated and  
13 to read as follows:

14 "PART . DEFAULT BEVERAGES OFFERED WITH CHILDREN'S MEALS

15 §321- Definitions. As used in this part, unless the  
16 context clearly requires otherwise:

17 "Children's meal" means a combination of food and a  
18 beverage, sold together at a single price, primarily intended  
19 for consumption by children.

20 "Default beverage" means a beverage automatically included  
21 or offered as part of a children's meal, absent a specific



1 request for an alternate beverage by the purchaser of the  
2 children's meal.

3 "Restaurant" means a food establishment that serves food to  
4 customers for consumption on or off the premises, including  
5 fast-food and full-service dining establishments. "Restaurant"  
6 includes but is not limited to drive-through or walk-up  
7 counters, coffee shops, cafes, pizza parlors, and dine-in  
8 establishments.

9 §321- Default beverages in children's meals. (a) A  
10 restaurant that sells a children's meal that includes a beverage  
11 shall make the default beverage offered with the children's meal  
12 one of the following:

- 13 (1) Water, sparkling water, or flavored water, with no  
14 added natural or artificial sweeteners;  
15 (2) Milk or non-dairy milk alternatives; or  
16 (3) A serving of six ounces or less of one hundred per  
17 cent fruit juice or fruit juice combined with water or  
18 carbonated water, with no added sweeteners.

19 (b) Nothing in this section shall prohibit a restaurant's  
20 ability to sell, or a customer's ability to purchase, a  
21 substitute or alternative beverage instead of the default



1 beverage offered with a children's meal, if requested by the  
2 purchaser of the children's meal.

3 (c) All restaurants shall complete an initial self-  
4 certification certifying whether they offer children's meals  
5 and, if so, certifying that they comply with this section.  
6 Restaurants that sell children's meals shall complete an annual  
7 self-certification, certifying that they comply with this  
8 section.

9 §321- Construction; conflict. (a) This part shall be  
10 liberally construed to accomplish the purposes of this part.

11 (b) The provisions of this part shall be valid and  
12 enforced, notwithstanding any contrary provision of any state  
13 law or county ordinance."

14 PART II

15 SECTION 3. The legislature has always recognized the need  
16 for home care agencies that provide home care services to  
17 vulnerable adults. These home care services allow:

18 (1) The growing elderly population to age in their homes  
19 by providing assistance with daily living activities  
20 and providing other in-home care; and



1           (2) Non-elderly individuals with illnesses, injuries, or  
2           disabilities to receive care in the privacy of their  
3           own homes.

4           Studies show that vulnerable adults who receive care in  
5           residential settings have greater quality of life while  
6           incurring significantly lower costs than vulnerable adults who  
7           receive care at hospitals or care facilities. Furthermore, the  
8           vulnerable adults who utilize home care agencies have greater  
9           control over the types and frequency of services they receive.

10          In recognizing the importance of the services home care  
11          agencies provide, the legislature passed Senate Bill No. 415,  
12          S.D. 2, H.D. 1, C.D. 1, which was enacted as Act 21, Special  
13          Session Laws of Hawaii 2009 (Act 21). Under Act 21, the  
14          department of health is required to implement a program, through  
15          its rulemaking authority, to license and oversee home care  
16          agencies. The licensure of home care agencies, as stated in Act  
17          21, is necessary "to ensure [to] the public that minimum  
18          standards are being met" because "a home care worker is often  
19          the only other person in the home of a client, who may be  
20          mentally or physically disabled."



1       To require the legislature to review the progress of the  
2   department of health in implementing the licensing program and  
3   the program's efficacy, Act 21 was set to repeal on June 30,  
4   2014. Recognizing that the department of health "collaborated  
5   with home care agencies, consumer advocates, and other  
6   stakeholders to draft the administrative rules needed to  
7   implement licensing," the legislature extended the repeal to  
8   June 30, 2019, in Act 125, Session Laws of 2014. However, the  
9   department of health has yet to and is unlikely to adopt these  
10   necessary rules to implement home care agency licensing by June  
11   30, 2019.

12       As a result of the department of health's failure to comply  
13   with the mandates of Acts 21 and 125, home care agencies in  
14   Hawaii continue to operate without governmental oversight and  
15   are waiting indefinitely to legitimize their operations.

16       The legislature finds that it is in the interest of both  
17   consumers and providers of home care services to be licensed.  
18   The legislature further finds that there is an immediate need to  
19   license home care agencies.

20       The purpose of this part is to establish a home care agency  
21   licensing program.



SECTION 4. Chapter 321, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

"§321- Home care agencies; licensing. (a) No person shall operate a home care agency unless the home care agency is licensed pursuant to this section.

(b) The department of health shall develop and implement the home care agency licensing program that includes the following:

(1) Detailed application procedure;

(2) Requirements and qualifications for applying for licensure as a home care agency;

(3) Procedure for inspection of the operations of home care agencies; and

(4) Applicable fees.

(c) All home care agencies in the State shall apply for a license to provide care to consumers. The following information shall be included in the application:

(1) The name of the business and its contact information, such as an email address or a telephone number;

(2) The name and street address of the registered agent;



1       (3) A description of the home care services provided;

2       (4) A list of the agency's personnel and their criminal  
3       history record checks pursuant to section 846-2.7, sex  
4       offender registry checks, child abuse record checks,  
5       and adult abuse perpetrator checks that the agency  
6       completed prior to hiring them; and

7       (5) A written job description and the qualifications and  
8       experience of each of the personnel performing the  
9       activity.

10       (d) A service provider agency under contract for services  
11       with the city and county of Honolulu elderly affairs division  
12       shall be exempt from the licensing requirement of this section.

13       (e) The director may inspect the operations of any  
14       applicant and shall, upon determining that the applicant meets  
15       the standards as determined by the department of health, issue a  
16       license to the applicant as a home care agency. The department  
17       of health shall approve or disapprove an application within  
18       business days of receiving a completed application.

19       (f) Upon the receipt of a written complaint that a person  
20       is operating a home care agency without a license or in  
21       violation of this section, the director shall conduct an





investigation of the complaint, and after notice and an opportunity for a hearing, may suspend or revoke the license for failure to meet the requirements of this chapter or the conditions under which the license was issued. Any person affected by the decision of the director to revoke or suspend a license may appeal the decision as provided by law.

(g) For purposes of this section:

"Home care agency" means a public or proprietary agency, a private, nonprofit organization, or a subdivision of an agency or organization, engaged in providing home care services in a residence.

"Home care services" include but are not limited to:

- (1) Personal care, including assistance with dressing, feeding, and personal hygiene to facilitate self-care;
- (2) Homemaker assistance, including housekeeping, shopping, and meal planning and preparation; and
- (3) Respite care and assistance and support provided to the family.

"License" means an approval issued by the department to operate a home care agency."



SECTION 5. Section 321-14.8, Hawaii Revised Statutes, is repealed.

~~["§321-14.8] Home care agencies, licensing. (a) Beginning July 1, 2010, each home care agency shall be licensed by the department of health to ensure the health, safety, and welfare of clients.~~

~~(b) The department of health shall adopt rules in accordance with chapter 91 to:~~

~~(1) Protect the health, safety, and civil rights of clients of home care agencies; and~~

~~(2) Provide for the licensure of home care agencies.~~

~~(c) A service provider agency under contract for services with the city and county of Honolulu elderly affairs division shall be exempt from the licensing requirement of this section.~~

~~(d) For purposes of this section:~~

~~"Home care agency" means a public or proprietary agency, a private, nonprofit organization, or a subdivision of an agency or organization, engaged in providing home care services to clients in the client's residence. The term "home care agency" does not apply to an individual, including an individual who is~~



1 ~~incorporated as a business, or is an unpaid or stipended~~  
2 ~~volunteer.~~

3 ~~"Home care services" include but are not limited to:~~  
4 ~~(1) Personal care, including assistance with dressing,~~  
5 ~~feeding, and personal hygiene to facilitate self care,~~  
6 ~~(2) Homemaker assistance, including housekeeping,~~  
7 ~~shopping, and meal planning and preparation; and~~  
8 ~~(3) Respite care and assistance and support provided to~~  
9 ~~the family."]~~

10 SECTION 6. Act 21, Special Session Laws of Hawaii 2009,  
11 section 8, as amended by Act 125, Session Laws of Hawaii 2014,  
12 section 2, is amended to read as follows:

13 "SECTION 8. This Act shall take effect on July 1, 2009[,  
14 and shall be repealed on June 30, 2019; provided that sections  
15 321-11 and 321-11.5(b), Hawaii Revised Statutes, and the  
16 definition of "healthcare facility" in section 321-15.2, Hawaii  
17 Revised Statutes, shall be reenacted in the form in which they  
18 read on June 30, 2009]."

19 SECTION 7. (a) The department of health, without regard  
20 to the notice and public hearing requirements of chapter 91,  
21 Hawaii Revised Statutes, shall adopt interim rules to effectuate



1 section 4 of this Act; provided that, until such interim rules  
2 are adopted, the director of health shall issue temporary  
3 licenses to a home care agency applicant simultaneously with the  
4 home care agency's filing of an application for a home care  
5 agency license and the temporary license shall be in force until  
6 the director either approves or disapproves the application in  
7 accordance with the interim rules.

8 (b) The director may inspect the operations of any  
9 applicant and may conduct periodic and unannounced inspections  
10 of home care agencies temporarily licensed pursuant to this  
11 section. The director may revoke and order an immediate  
12 discontinuance of a home care agency's temporary license upon a  
13 determination that the operation of the home care agency may  
14 imperil a client or that any of the personnel of the agency  
15 fails the criminal history record check. The home care agency  
16 whose temporary license is revoked may appeal the decision of  
17 the director as provided in section 321-14.8, Hawaii Revised  
18 Statutes.

19 (c) The interim rules adopted pursuant to this Act shall  
20 remain in effect until June 30, 2020, or until rules are



1 adopted, in accordance with chapter 91, Hawaii Revised Statutes,  
2 to replace the interim rules.

3 SECTION 8. The director of health shall submit a report of  
4 the progress for developing the home care agency licensing  
5 program, number of temporary and approved licenses issued, and  
6 any other information the department deems relevant to the  
7 legislature no later than twenty days prior to the convening of  
8 the regular sessions of 2019, 2020, and 2021.

9 PART III

10 SECTION 9. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 10. This Act shall take effect on July 1, 2050.



**Report Title:**

Health; Default Beverages; Children's Meals; Home Care Agency  
Licensing Program

**Description:**

PART I: Clarifies restaurants that sell children's meals that include a beverage for a single price shall make the default beverage a healthy beverage. PART II: Establishes a home care agency licensing program in the Department of Health. Authorizes the Department of Health to adopt interim rules to effectuate the licensing program. Requires the Department of Health to issue temporary licenses for home care agencies until the Department approves or disapproves the application in accordance with their interim rules. Requires the Department of Health to report to the Legislature on the progress of the licensing program. (SB2056 HD2)

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

