

ACT 208

H.B. NO. 776

A Bill for an Act Relating to Child Care.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The regulation of child care facilities has been the subject of much controversy. Instances of abuse of children by providers and employees

of child care has resulted in public and legislative reaction to impose strict regulation on child care facilities.

The legislature has no doubt of the need for regulation of child care facilities to protect against child abuse and other detrimental consequences from inadequate care. The legislature also recognizes, however, that child care is a necessary service in Hawaii, the supply of which does not meet the demand, because of the increase in two-earner families. Overly strict regulation of child care facilities lessens the availability of the service, and has the effect of increasing unregulated providers who are not subject to state supervision. Both effects are not in the public interest.

The legislative auditor has conducted a study of the regulation of child care facilities in Hawaii and, among other things, recommended less strict and more appropriate, regulation of family child care homes, which provide care to not more than five children. The legislature finds that the recommendation of the legislative auditor has merit.

The purpose of this Act is to require the mandatory registration, not licensure of family child care homes, by the department of social services and housing. Although some may perceive no difference between mandatory licensure and mandatory registration, the legislature intends that mandatory registration means regulation less restrictive than mandatory licensure and this Act fulfills and expresses such an intent.

SECTION 2. Chapter 346, Hawaii Revised Statutes, is amended by adding a new part to be appropriately designated and to read as follows:

“PART . CHILD CARE FACILITIES

A. GENERAL

§346- Definitions. For the purposes of this part:

“Care” refers to those situations where a person or organization has agreed to assume and has been entrusted with the responsibility for the child’s supervision, development, safety, and protection apart from the parent or guardian.

“Child care facility” means a place maintained by any individual, organization, or agency for the purpose of providing care for three or more children with or without charging a fee during any part of a twenty-four hour day. It includes a family child care home, group child care home, and group child care center.

“Criminal history record check” means an examination of an individual’s criminal history record through fingerprint analysis or name inquiry into state and national criminal history record files.

“Family child care home” means a private home at which care is provided for three to five children.

“Group child care center” means a facility, other than a private home, at which care is provided.

“Group child care home” means a facility, which may be an extended or modified private home, at which care is provided for six to twelve children.

“Provider” means the person who is issued the license or certificate of registration, as the case may be, by the department to provide care in a child care facility.

§346- Exclusions. Nothing in this part shall be construed to include:

- (1) An individual person caring for a related child;

- (2) A neighbor or friend caring for no more than two children, if the person provides care for less than three hours a day but not more than two times a week;
- (3) A kindergarten, school, or program licensed by another department;
- (4) A program which provides exclusively for a specialized training or skill of eligible pupils in public and private schools through age seventeen, including but not limited to programs providing such activities as athletic sports, foreign language, the Hawaiian language, dance, drama, music, or martial arts;
- (5) A multi-service organization or community association duly incorporated under the laws of the State which operates for the purpose of promoting recreation, health, safety, or social group functions for eligible pupils in public and private schools through age seventeen.

§346- Records of deficiencies and complaints; release to public. For every child care facility, the department shall maintain records for the current and previous two years of: results of its inspections; notifications to providers of deficiencies; corrective action taken; complaints of violations of rules adopted under this part; results of its investigations; resolution of complaints; and suspensions, revocations, reinstatements, restorations, and reissuances of licenses, temporary permits, and registrations issued under this part. Notwithstanding any other law to the contrary, such records shall be available for inspection in the manner set forth in section 92-51; provided that with respect to records of family child care homes and group child care homes, sensitive personal information or information provided to the department with the understanding that it would not be publicly divulged shall be deleted or obliterated prior to making the records available to the public. Nothing in this section shall authorize the department to release the names of or any other identifying information on complainants. The department may withhold information on a complaint for which an investigation is being conducted for not more than ten working days following the date of filing of the complaint; provided that if an investigation relates to an alleged criminal offense, no information shall be released until the investigation has been completed and the director has determined that no legal proceeding will be jeopardized by its release.

§346- Criminal history record checks. (a) The department shall develop standards to assure the reputable and responsible character of an applicant to operate a child care facility, prospective employees of the applicant, and new employees of the provider after registration or licensure, which shall include, but not be limited to, criminal history record checks.

(b) An applicant to operate a child care facility shall submit to the department statements signed under penalty of perjury by the applicant and prospective employees of the applicant indicating whether the applicant or any of the prospective employees has ever been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less and providing consent to the department to conduct a check and to obtain criminal history record information for verification. The applicant and prospective employee of the applicant shall also be fingerprinted.

A provider shall submit to the department a statement signed under penalty of perjury by any employee hired after the initial licensure or registration indicating whether the employee has ever been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less and providing

consent to the department to conduct a check and obtain criminal history record information for verification. The employee shall also be fingerprinted.

(c) The department shall obtain criminal history record information through the Hawaii criminal justice data center on the applicant and any prospective employee of the applicant, including any new employee after the applicant is issued a registration or license under this part. The Hawaii criminal justice data center may assess the applicant, prospective employee, or new employee a reasonable fee for each criminal history record check conducted. The information obtained shall be used exclusively for the stated purpose for which it was obtained and shall be subject to applicable federal laws and regulations.

(d) The department may deny an application for a license or registration to operate a child care facility if the applicant or any prospective employee has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less and if the department finds that the criminal history record of that applicant or prospective employee may pose a risk to the health, safety, or well-being of children.

The department may request the provider to terminate the employment of a new employee or may suspend the license or registration of the provider who employs a new employee if the employee has been convicted of a crime other than a minor traffic violation involving a fine of \$50 or less and if the department finds that the criminal history record of the new employee may pose a risk to the health, safety, or well-being of children.

§346- Rules. Rules adopted pursuant to this part shall be adopted in accordance with chapter 91.

§346- Penalty. Any person violating any provision of this chapter or any rule made pursuant thereto shall be fined not more than \$500.

B. GROUP CHILD CARE HOME AND GROUP CHILD CARE CENTER LICENSURE.

§346- License for group child care home, group child care center required. No person shall operate, maintain, or conduct a group child care home or group child care center unless licensed to do so by the department of social services and housing under this subpart.

§346- Rules; minimum standards. The department of social services and housing, after consultation with the department of health, the department of education, and the fire chiefs of the respective counties, shall make, prescribe, and publish such rules as are deemed necessary to protect the best interests of minor children who are provided care in a group child care home or group child care center and to carry out the purposes of this subpart.

§346- Licenses and temporary permits. If satisfied that the applicant meets the minimum standards established pursuant to section 346- and subject to the criminal history record checks of section 346- , the department of social services and housing shall grant the applicant a license for the operation of a group child care home or group child care center, as the case may be. The license shall be valid for one year unless sooner revoked. Where the activities of the applicant fall within the licensing requirements of the department of education and this subpart, a license shall be required from both the department of education and the department of social services and housing.

A temporary permit may be issued for a period of six months at the department of social services and housing's discretion to any applicant who is temporarily unable to conform to all of the minimum standards. Renewal of the temporary permit shall be left to the department of social services and housing's

discretion; provided that the combined period of the initial and subsequently renewed permits shall not exceed twelve months. Licenses and permits shall be conspicuously posted on the licensed premises.

§346- Suspension and revocation of licenses and permits; reissuance. Any license or temporary permit issued under this subpart may be suspended or revoked by the department of social services and housing after due notice and hearing, the provisions for which shall be made in the rules. However, upon a determination by the department that conditions exist which constitute an imminent danger to the health, welfare, or safety of the children cared for, a license or temporary permit may be immediately suspended pending a hearing by the department as herein provided. The department, in its discretion, may reissue a license or temporary permit which has been suspended or revoked upon satisfying itself that minimum standards have been or will be met.

§346- Visitation and inspection of group child care home, group child care facility. The department of social services and housing shall visit and inspect each group child care home and group child care center as frequently as it deems necessary for the proper operation, sanitation, and safety of the home or center, as the case may be. The visits and inspections shall be made at least once annually. Every group child care home and group child care center licensed under this subpart shall be open to visitation and inspection by representatives of the department of social services and housing, the department of education, and the department of health, and by designated representatives of the respective county fire departments at all times.

§346- Records. Every group child care home and group child care center shall keep such records and shall file with the department of social services and housing such reports as required by rules adopted by the department. All records and all information obtained concerning children or their parents or relatives shall be kept confidential by the provider and by members of any department herein named.

C. FAMILY CHILD CARE HOME REGISTRATION.

§346- Registration for family child care home required. No person shall operate or maintain a family child care home unless registered to do so by the department of social services and housing under this subpart.

§346- Rules for registration. (a) The department shall adopt rules establishing minimum requirements to ensure the health and safety of children provided care in a family child care home. The rules may specify, but shall not be limited to, minimum requirements concerning:

- (1) The number of children which may be cared for at one time and the ratio of adult to children;
 - (2) The health of the provider and children;
 - (3) Fire and sanitation standards;
 - (4) The supervision and allowable types of discipline of children; and
 - (5) Protection of children who are provided care from abuse.
- (b) It is the intent of the legislature that the:
- (1) Minimum requirements established under this section be less strict than the minimum standards established under section 346- for group child care homes and group child care centers;
 - (2) Minimum requirements be as simple and clear as possible;
 - (3) Minimum requirements be germane to the provision of care to children in a private home as opposed to a nonresidential facility or institution, require as little recordkeeping by the provider as possible, and require information and reports if deemed necessary,

from the provider which the department intends to scrutinize carefully and not cursorily; and

- (4) Department establish minimum requirements, the compliance with which can be assessed easily and objectively by officers and employees of the department, providers, and parents and legal guardians of children.

§346- Procedure for registration. A person desiring to have the person's home registered as a family child care home shall make application to the department. Upon receipt of the application, the department shall conduct a study of the applicant's qualifications, home, and proposed operation. The department shall issue a certificate of registration to the applicant which authorizes the applicant to operate a family child care home if the department is satisfied that the premises and proposed operation will be in compliance with the minimum requirements established under section 346- and subject to the criminal history record checks under section 346- .

The provider shall operate and maintain the premises of the family child care home in accordance with the minimum requirements established under section 346- so long as registered.

§346- Informing parent and legal guardian of children and general public.

(a) The department shall maintain a registry of registered family child care homes and make the information in the registry available to the general public upon request. The department may also provide for the publication and dissemination of the registry through the news media or other means.

(b) The provider of child care in a family child care home shall give to each parent or legal guardian of a child a copy of the provider's certificate of registration upon request.

§346- Visitation and inspection of family child care home; revocation of registration. (a) The department shall visit and inspect the premises and operation of a family child care home to determine compliance with the minimum requirements established under section 346- :

- (1) At least once in each calendar year; and
- (2) Upon receipt of a complaint that the premises or operation of the home is in violation of the minimum requirements established under section 346- .

(b) If the visitation and inspection reveal that the premises or operation of the home is in violation of a minimum requirement, the department shall immediately suspend or revoke the registration. Upon suspension or revocation, the home shall no longer be a registered family child care home and the department shall notify the parents or legal guardian of each child who is provided care in the home of the revocation.

A person whose registration has been suspended or revoked may appeal the suspension or revocation in accordance with chapter 91, but the appeal shall not stay the suspension or revocation. If an appeal is made under chapter 91, the appeal of the suspension or revocation, and not the suspension or revocation itself, shall be deemed the contested case.

The department shall suspend the registration if the violation of the minimum requirement is the first violation of the provider and the violation does not warrant a revocation of the registration. The department shall revoke the registration if the provider has violated any minimum requirement or requirements to such an extent or of a nature that the provider is unfit to be trusted with the care of children or operation of a family child care home or if the provider has had the provider's registration suspended at least once previously.

(c) The department may reinstate a suspended registration or restore a revoked registration if it deems that the person is willing and able to comply with the rules adopted under section 346- . A suspended registration may be reinstated upon the department's satisfaction that the violation has been or will be corrected. A revoked registration shall be restored only after new application is made and reviewed under this subpart.

§346- Family child care system. The department shall authorize the establishment and operation of a family child care system under which a sponsoring agency contracts family child care homes to provide care and assumes administrative tasks for the homes and providers; provided that the department shall register each of the family child care homes individually in accordance with this subpart and establish no rule or requirement which jeopardizes the status of the providers of care in family child care homes as independent contractors of the sponsoring agency. The department may establish rules defining the administrative tasks which may be performed and minimum requirements, including provision of training to providers which must be complied with by the sponsoring agency, but shall not require the sponsoring agency to register or obtain a license or registration as a child care facility unless the sponsoring agency provides care to children on the sponsoring agency's premises.

§346- Program of incentive for registration. Subject to the limits of legislative appropriations, the department may establish a program to encourage the registration of persons who provide care in private homes in violation of section 346- . The program may include:

- (1) Training of providers of care;
- (2) Assistance to applicants in obtaining registration and complying with the minimum requirements;
- (3) Counseling in providing quality care;
- (4) Referrals of parents to providers;
- (5) Assistance in obtaining benefits under or participation in federal and state child care programs; and
- (6) Assistance in complying with business and tax regulations and requirements."

SECTION 3. Section 350-1.1, Hawaii Revised Statutes, is amended by amending subsection (a) to read as follows:

"(a) The following persons who, in the performance of their professional or official duties, know or have reason to believe that a child has been abused or neglected or is threatened with abuse or neglect shall promptly report the matter orally to the department of social services and housing or to the police department:

- (1) Any licensed or registered professional of the healing arts and any health-related occupation who examines, attends, treats, or provides other professional or specialized services to a minor, including but not limited to physicians, psychologists, dentists, nurses, pharmacists, and other health-related professionals;
- (2) Employees or officers of any public or private school;
- (3) Employees or officers of any public or private agency or institution providing social, medical, hospital, or mental health services, including financial assistance;
- (4) Employees or officers of any law enforcement agency, including but not limited to the courts, police departments, correctional institutions, and parole or probation offices;

- (5) [Employees] Providers of care, employees, or officers of any licensed [day care center,] or registered child care facility, foster home,¹ [group child care center,] or similar institution;
- (6) Medical examiners or coroners.”

SECTION 4. Sections 346-18 to 346-25, Hawaii Revised Statutes, are repealed.

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

SECTION 6. This Act shall take effect on July 1, 1985.

(Approved June 3, 1985.)

Notes

- 1. Formerly read “foster care home”.
- 2. Edited pursuant to HRS §23G-16.5.