

ACT 242

S.B. NO. 513

A Bill for an Act Relating to Family Child Care.

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

PART I

SECTION 1. The Hawaii Revised Statutes is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER  
FAMILY CHILD CARE HOMES**

§ -1 **Definitions.** Unless it is plainly evident from the context that a different meaning is intended, as used herein:

“Apartment” means a part of the property of a condominium project intended for any type of use or uses, and with an exit to a public street or highway or to a common element or elements leading to a public street or highway, and may include such appurtenances as garage and other parking space, storage room, balcony, terrace, and patio.

“Association” means:

- (1) All of the apartment owners acting as a group in accordance with the bylaws and declaration; and
- (2) A nonprofit, incorporated, or unincorporated organization upon which responsibilities are imposed and to which authority is granted in a declaration that governs a planned community,

and includes any other governing body of a residential community with common elements and common interests.

“Common elements” or “common area” means:

- (1) The same as defined in section 514A-3; and

- (2) Real property within a planned community that is owned or leased by the association or is otherwise available for the use of its members or designated as common area in or pursuant to the declaration.

“Condominium” means the ownership of single apartments, with common elements, located on property within a condominium property regime.

“Declaration” means:

- (1) The instrument by which property is submitted to chapter 514A, as provided in that chapter, and such declaration as from time to time amended; and
- (2) Any recorded instrument, however denominated, that imposes on an association maintenance or operational responsibilities for the common area and creates the authority in the association to impose on units, or on the owners or occupants of the units, any mandatory payment of money as a regular annual assessment or otherwise in connection with the provisions, maintenance, or services for the benefit of some or all of the units, the owners, or occupants of the units or the common areas, including any amendment or supplement to the instrument.

“Family child care home” means a private residence, including an apartment, unit, or townhouse, where care may be provided for three to no more than six children, who are unrelated to the caregiver by blood, marriage, or adoption at any given time.

“Planned community” has the same meaning as set forth in section 421J-2.

“Townhouse” means a series of individual apartments or units having architectural unity and common elements, with each apartment or unit extending from ground to roof or from the first or second floor to roof, and where apartments or units may share a common wall or be free-standing structures, including townhouse projects that are created pursuant to chapters 514A and 421J, as well as projects that are not created pursuant to those chapters but are governed by an association; provided that “townhouse” shall not include any apartments or units located in a building of more than three stories.

“Unit” means a physical portion of a planned community designated for separate ownership or occupancy.

**§ -2 Family child care homes; authorization.** (a) No association of a townhouse project shall prohibit the operation of a family child care home; provided that the family child care home:

- (1) Is operated by the owner-occupant of the townhouse in which the family child care home is located;
- (2) Is operated in a ground floor unit with a ground floor entry; and
- (3) Complies with subsections (b) and (c).

An association of a townhouse project may impose on a family child care home conditions and limitations as set forth in subsection (e).

(b) Every family child care home located in a townhouse project shall give the association written notice of intent to commence operation as a family child care home no later than ninety days prior to commencing operation. Family child care homes that fail to give such written notice shall not commence operation. Any family child care home existing on the effective date of this Act shall notify the association within sixty days of the effective date of this Act. If a family child care home commences or continues operation without providing such notice within the prescribed time limit required under this section:

- (1) The association shall be absolved of any and all liability for the operation of the family child care home; and

- (2) The family child care home shall indemnify, save, and hold the association harmless from and against all claims and actions and all costs and expenses arising from the operation of the family child care home.

(c) A family child care home located in a townhouse project shall comply with the Equal Opportunity for Individuals With Disabilities Act (Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq., as amended); provided that any improvements or remodeling made to the particular apartment or unit out of which the family child care home operates, or to the corresponding common elements, to comply with the Americans With Disabilities Act as it applies to the family child care home, shall be made and paid for by the operator of the family child care home. If the Americans with Disabilities Act requires that establishment of a family child care home requires modifications or improvements to the common elements, the operator of the family child care home shall obtain approval of the modifications or improvements from the association before undertaking any construction.

(d) An association may authorize the use of an apartment or unit as a family child care home by obtaining the approval of a majority of the owners of the condominium project or planned community, where majority is defined in the association bylaws or other association documents, or by any other method specified in the association bylaws or other association documents. The family child care home authorized shall be subject to any conditions and limitations approved by the majority of the owners of the condominium project or planned community, or approved by any other method specified in the association bylaws or other association documents.

(e) An association may:

- (1) Impose conditions on the establishment or operation of a family child care home that are necessary for association immunity from liability under section 663- , including:
  - (A) Requiring the family child care home to comply with the Americans With Disabilities Act;
  - (B) Limiting the number of apartments or units used as a family child care home to no less than one per cent, and no more than three per cent, of the total number of apartments or units in any townhouse project;
  - (C) Limiting family care homes that may be established to those operated by an owner-occupant; and
  - (D) Restricting family care homes to the fourth or lower floor; and
- (2) Require the operator of the family child care home, as a condition precedent to the establishment of the family child care home, to:
  - (A) Indemnify, hold harmless, and defend the association against all claims, including costs and attorneys' fees, whether brought by judicial or administrative action, relating to the operation of a family child care home as well as to common elements that are traversed by persons going to and from the family child care home;
  - (B) Reimburse the association for the amount of any increase in the association's liability insurance premiums attributable by the insurer to the operation of the family child care home;
  - (C) Require the parent, guardian, and caretaker of the child being cared for in the family child care home to sign a waiver of claims for liability against the association; and
  - (D) Obtain liability insurance to cover the family child care home and the common elements that meets the approval of the association and that names the association as an additional named insured,

for liability claims arising solely from the operation of the child care business; provided that:

- (i) Policy limits shall be determined in accordance with the declaration; and
- (ii) The liability policy of the family child care home shall be the sole remedy for any injury occurring to the child subject to the care of the family child care home, and the parent, guardian, or caretaker of a child subject to the care of the family child care home.

In the event that coverage for the family child care home is excluded from the association policy and an alternative source of liability coverage for the same risk or risks is unavailable, the association may prohibit the establishment of the family child care home.

(f) Associations shall be immune from liability for the operation of the family child care home as provided under section 663- .”

SECTION 2. Chapter 663, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

**“§663- Liability for operation of a family child care home.** (a) Where a family child care home is authorized and established in compliance with this section, the association shall not be liable for any claims or causes of action for any injury to a child that is subject to the care of the family child care home, or to any of the child’s relatives, guardians, or caretakers, that occur within the family child care home or on the common elements of the condominium project, planned community, or townhouse project in which the family child care home is located.

(b) This section shall not apply to an association that:

- (1) Allows the operation of a family child care home that is:
  - (A) Not operated by an owner-occupant;
  - (B) Above the fourth floor; or
  - (C) Not established in compliance with the Equal Opportunity for Individuals With Disabilities Act, (Americans With Disabilities Act of 1990, 42 U.S.C. 12101, et seq., as amended);

or

- (2) Allows more than three per cent of the total number of apartments subject to the association to be used as a family child care home.

(c) As used in this section:

- “Apartment” has the same meaning as set forth in section -1;
- “Association” has the same meaning as set forth in section -1;
- “Common elements” has the same meaning as set forth in section -1;
- “Condominium” has the same meaning as set forth in section -1;
- “Family child care home” has the same meaning as set forth in

section -1;

and “Planned community” has the same meaning as set forth in section -1;

“Townhouse” has the same meaning as set forth in section -1.”

SECTION 3. Section 46-15.35, Hawaii Revised Statutes, is amended by amending subsection (b) to read as follows:

“(b) For the purposes of this section, “family child care home” means a private [home where six or fewer children are cared for.] residence, including an apartment, unit, or townhouse, as those terms are defined in section -1, at which

Care may be provided for three to no more than six children who are unrelated to the caregiver by blood, marriage, or adoption at any given time."

SECTION 4. Section 346-151, Hawaii Revised Statutes, is amended by amending the definition of "family child care home" to read as follows:

"“Family child care home” means a private [home] residence, including a home, apartment, unit, or townhouse, as those terms are defined in section -1, at which care may be provided for three to no more than six children[,] who are unrelated to the caregiver by blood, marriage, or adoption, at any given time.”

SECTION 5. Section 501-231, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) This provision shall not apply to:

- (1) Housing for older persons as defined by 42 United States Code section 3607(b)(2);
- (2) Limited-equity housing cooperatives created pursuant to chapter 421H;  
or
- (3) Cooperative housing corporations created pursuant to chapter 421I;
- (4) Condominium property regimes created pursuant to Chapter 514A; or
- (5) Townhouse projects that consist of a series of three or more individual dwelling units having architectural unity and a common wall between each adjacent unit and in which the owners of the units are members of an association which is responsible for common areas available for use by the members of the association].

(c) For the purposes of this section “family child care home” means a private [home where six or fewer children are cared for.] residence, including an apartment, unit, or townhouse, as those terms are defined in section -1, at which care may be provided for three to no more than six children who are unrelated to the caregiver by blood, marriage, or adoption at any given time.”

SECTION 6. Section 502-111, Hawaii Revised Statutes, is amended by amending subsections (b) and (c) to read as follows:

“(b) This provision shall not apply to:

- (1) Housing for older persons as defined by 42 United States Code section 3607(b)(2);
- (2) Limited-equity housing cooperatives created pursuant to chapter 421H;  
or
- (3) Cooperative housing corporations created pursuant to chapter 421I;
- (4) Condominium property regimes created pursuant to chapter 514A; or
- (5) Townhouse projects that consist of a series of three or more individual dwelling units having architectural unity and a common wall between each adjacent unit and in which the owners of the units are members of an association which is responsible for common areas available for use by the members of the association].

(c) For the purposes of the section, “family child care home” means a private [home where six or fewer children are cared for.] residence, including an apartment, unit, or townhouse, as defined in section -1, at which care may be provided for three to no more than six children who are unrelated to the caregiver by blood, marriage, or adoption at any given time.”

SECTION 7. Statutory material to be repealed is bracketed. New statutory material is underscored.<sup>1</sup>

SECTION 8. This Act shall take effect upon its approval; provided that:

- (1) Sections 1 and 2 shall apply to child care businesses, family child care homes, condominium projects, planned communities, and townhouses that are in existence as of the effective date of this Act; and
- (2) This Act shall be repealed on June 30, 2001; provided that sections 46-15.35, 346-151, 501-231 and 502-111, Hawaii Revised Statutes, shall be reenacted in the same form in which they existed on the day before the approval of this Act.

(Approved July 2, 1999.)

**Note**

1. Edited pursuant to HRS §23G-16.5.