

ACT 66

S.B. NO. 2894

A Bill for an Act Relating to Child Care.

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

SECTION 1. The purpose of this Act is to amend provisions of chapter 346, Hawaii Revised Statutes, to clarify: (1) the exemptions from licensure or registration that are authorized for the purpose of minimizing the number of child care facilities that are operating in violation of the law; (2) that minimum health and safety requirements or standards as required by federal law may be imposed on any of the persons listed in section 346-152, Hawaii Revised Statutes, that provide child care for a child whose family receives a child care subsidy from the department; (3) that the burden of proof is upon the caregiver or facility to provide the department with verification of meeting a declared exemption under section 346-152, Hawaii Revised Statutes; (4) the information that may be investigated by the department to determine violations of part VIII of chapter 346 occurred or is occurring; (5) that the department may file a petition for a search warrant with the district court; and (6) that a search warrant may be issued to the department and the appropriate law enforcement agency to conduct an investigation.

Lastly, Act 276, Session Laws of Hawaii 2019, amended section 346-152(a) by inserting a new paragraph (4), which resulted in renumbering paragraphs (4) through (12) so that those paragraphs are now numbered (5) through (13). Years of administrative correspondence to organizations and individuals containing the statutory citations to the exemptions are no longer aligned with the statute. This Act renumbers the paragraphs so that they appear as they were prior to Act 276, Session Laws of Hawaii 2019, to ease administration for the department.

SECTION 2. Section 346-152, Hawaii Revised Statutes, is amended to read as follows:

“§346-152 Exclusions; exemptions. (a) Nothing in this part shall be construed to include:

- (1) A person caring for children who is related to [the caregiver] each child by blood, marriage, or adoption[;] as:
 - (A) An aunt, uncle, grandparent, great-grandparent, great-great grandparent, first cousin, niece, nephew, grandniece, grand-nephew, great aunt, or great uncle;
 - (B) A stepfather, stepmother, stepbrother, or stepsister; or
 - (C) The spouse of a person named in subparagraph (A) or (B), even if the marriage is terminated by death, separation, or divorce;
- (2) A person, group of persons, or facility caring for a child less than six hours a week;
- (3) A kindergarten, school, or child care program licensed or certified by the department of education or the United States Department of Defense and located on federal property[;], or a
- ~~[(4)]~~ A] classroom administered by the executive office on early learning pursuant to section 302L-7;
- ~~[(5)]~~ (4) A program that provides exclusively for a specialized training or skill development for children[;] who are eligible pupils in grades kindergarten through twelve in public or private schools, including but not limited to programs providing activities [such as] includ-
ing athletic sports, foreign language, the Hawaiian language, dance, drama, music, or martial arts;
- ~~[(6)]~~ (5) A multiservice organization or community association, duly incorporated under the laws of the State, that operates for the purpose of promoting recreation, health, safety, or social group functions for eligible pupils in public and private schools through seventeen years of age;
- ~~[(7)]~~ (6) Programs for children four years of age and older that operate for no more than two consecutive calendar weeks in a three-month period;
- ~~[(8)]~~ (7) A provider agency operating or managing a homeless facility or any other program for homeless persons authorized under part XVII;
- ~~[(9)]~~ (8) After-school, weekend, and summer recess programs conducted by the department of education pursuant to section 302A-408;
- ~~[(10)]~~ (9) Child care programs conducted by counties pursuant to section 302A-408; provided that each county adopts rules for its programs;
- ~~[(11)]~~ (10) Any person who enters a home in a child caring capacity and only cares for children who are of that household;
- ~~[(12)]~~ (11) A person caring for two or fewer children unrelated to the caregiver by blood, marriage, or adoption[;] as described in paragraph (1); and
- ~~[(13)]~~ (12) A child care program licensed by the Hawaii council of private schools. A child care program claiming an exemption under this paragraph shall submit an application for the exemption on a form provided by the department and shall provide to the department evidence that the licensing standards of the Hawaii council of private schools meet or exceed the department's standards for a comparable program, including a monitoring component. Upon application of a child care program for the exemption under this paragraph, the

department shall have the discretion to determine whether the licensing standards of the Hawaii council of private schools meet or exceed the department's standards.

(b) Staff members of programs taught solely in Hawaiian that promote fluency in the Hawaiian language shall be exempt from any rules requiring academic training or certification.

(c) Minimum health and safety requirements or standards as required by federal law may be imposed on any of the groups listed in this section that provide child care ~~[services and are reimbursed with federal funds.]~~ for a child whose family receives a child care subsidy from the department.

(d) Any person or child care facility asserting an exemption under this section shall ~~[cooperate]~~:

- (1) Cooperate with the department in investigations relating to unlicensed or unregistered child care[-];
- (2) Have the burden of proving that the person or child care facility falls within an exemption pursuant to subsection (a); and
- (3) Provide verification to the department that the person or child care facility falls within an exemption pursuant to subsection (a)."

SECTION 3. Section 346-152.3, Hawaii Revised Statutes, is amended to read as follows:

"[§346-152.3 Investigations.] (a) Upon receiving a report that a person or child care facility may be caring for ~~[more than two children unrelated to the caregiver by blood, marriage, or adoption, or providing care for a child for more than six hours per week, without a child care license issued by the department,]~~ children in violation of this part, the department may conduct an investigation for the ~~[limited]~~ purpose of determining ~~[the number of children in care who are unrelated to the caregiver by blood, marriage, or adoption, and the number of hours of care provided per week, in accordance with the following provisions;]~~ whether a violation of this part has occurred or is occurring.

~~[(4)]~~ (b) The department may request access to the location indicated in the report~~[-or~~

~~(2) The department may]~~ and file a [complaint] petition for a search warrant with the district court in the circuit where the location is indicated in the report [is; and the]. The district court, upon probable cause, may issue a search warrant, directed to the department and the appropriate ~~[county police department,]~~ law enforcement agency, if necessary, to conduct an investigation pursuant to this section ~~[between the hours of sunrise and sunset]."~~

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved September 15, 2020.)