
HOUSE CONCURRENT RESOLUTION

REQUESTING THE ATTORNEY GENERAL TO PROVIDE A DEFINITIVE LEGAL OPINION REGARDING WHETHER CHAPTERS 383, 386, 392, AND 393 HAWAII REVISED STATUTES, EACH EXCLUDE FROM THE DEFINITION OF "EMPLOYMENT" THOSE INDIVIDUALS WHO PERFORM ATTENDANT CARE AND DAY CARE SERVICES AUTHORIZED UNDER THE SOCIAL SECURITY ACT, AS AMENDED, IN THE EMPLOY OF PERSONS, INCLUDING CORPORATIONS AND PRIVATE AGENCIES, WHO CONTRACT WITH THE DEPARTMENT OF HUMAN SERVICES AND WHO ARE THE RECIPIENTS OF SOCIAL SERVICE PAYMENTS.

1 WHEREAS, the Department of Human Services contracts with
2 social care providers, including corporations and private
3 agencies, to perform attendant care and day care services
4 authorized under the Social Security Act, as amended; and
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6 WHEREAS, under these Department of Human Services
7 contracts, the social care providers are the recipients of
8 social service payments; and
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10 WHEREAS, sections 386-1, 392-3, and 393-5, Hawaii Revised
11 Statutes, exclude "domestic" services from the definition of
12 "employment" under each respective chapter for individuals who
13 perform attendant care and day care services authorized under
14 the Social Security Act, as amended, in the employ of persons,
15 including corporations and private agencies, that contract with
16 Department of Human Services to provide these services and who
17 are the recipients of social service payments; and
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19 WHEREAS, in enacting these "domestic" exemptions, the
20 Legislature of the State of Hawaii found in 1978 that: "if the
21 specific exemptions to the State's wage loss replacement and
22 employment insurance programs are not adopted, the attendant
23 care-chore services and in-home child care service payments must
24 be adjusted to include the recipient/employer's contribution to
25 the following programs: State Unemployment Insurance Benefits
26 (UIB), State Worker's Compensation (WC), State Temporary



1 Disability Insurance (TDI), and Prepaid Health Insurance
2 (PPHI)"; and
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4 WHEREAS, the Legislature intended the "domestic" exemption
5 to be included in the Hawaii Employment Security Law, chapter
6 383, Hawaii Revised Statutes; and
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8 WHEREAS, the State of Hawaii does not wish to, and it was
9 the intent of the Legislature not to, increase the social
10 service payments to these social care providers, including
11 corporations and private agencies, by requiring the providers to
12 make contributions to state unemployment insurance benefits,
13 state workers' compensation, state temporary disability
14 insurance, and prepaid health care insurance on behalf of
15 individuals who perform attendant care and day care services
16 authorized under the Social Security Act, as amended, in the
17 employ of these providers; and
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19 WHEREAS, the Legislature wishes to clarify its intent that,
20 these social care providers, including corporations and private
21 agencies, as recipients of social service payments under their
22 contracts with the Department of Human Services, and the
23 individuals who perform attendant care and day care services
24 authorized under the Social Security Act, as amended, in the
25 employ of these providers, are exempt under the Hawaii
26 Employment Security Law, Workers' Compensation Law, the
27 Temporary Disability Law, and the Prepaid Health Care Law; and
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29 WHEREAS, the Legislature finds that it is in the public
30 interest, benefit, and welfare to have a friendly regulatory
31 environment for business, including consistent employment
32 benefit laws, and that it is contrary to the public interest,
33 benefit, and welfare to have inconsistent laws that exclude the
34 "domestic" exemption in the Hawaii Workers' Compensation Law,
35 Temporary Disability Law, and Prepaid Health Care Law; and
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37 WHEREAS, the Legislature has been informed that the
38 Department of Labor and Industrial Relations and other state
39 agencies are currently taking action to enforce provisions of
40 chapters 383, 386, 392, and 393, Hawaii Revised Statutes,
41 regarding insurance, withholdings, payments, and all similar
42 requirements, on the persons, including corporations and private
43 agencies, contracting with Department of Human Services to
44 provide attendant care and day care services authorized under



1 the Social Security Act, as amended, as those laws relate to
2 individuals who perform attendant care and day care services
3 authorized under the Social Security Act in the employ of these
4 persons; and

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6 WHEREAS, the Legislature finds that these actions by the
7 Department of Labor and Industrial Relations and other state
8 agencies may jeopardize and seriously impair the ability of
9 social care providers to operate and use their resources to
10 provide services to elderly and disabled adults in Hawaii; and

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12 WHEREAS, the Legislature finds that it is in the public
13 interest, benefit, and welfare to ensure that social care
14 providers continue to operate and use their resources to provide
15 services to elderly and disabled adults in Hawaii; now,
16 therefore,

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18 BE IT RESOLVED by the House of Representatives of the
19 Twenty-third Legislature of the State of Hawaii, Regular Session
20 of 2006, the Senate concurring, that the Legislature clarifies
21 and declares its intention to treat all social care providers,
22 including corporations and private agencies, who contract with
23 the Department of Human Services to perform attendant care and
24 day care services authorized by the Department of Human Services
25 under the Social Security Act, as amended, as recipients of
26 social service payments described in the "domestic" exemptions
27 under the relevant sections of the Hawaii Workers' Compensation
28 Law, Temporary Disability Law, and Prepaid Health Care Law, and
29 that all individuals who perform attendant care and day care
30 services authorized under the Social Security Act, as amended,
31 in the employ of care providers, are exempt from the coverage of
32 these state laws; and

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34 BE IT FURTHER RESOLVED that the Legislature clarifies and
35 declares its intention that all social care providers, including
36 corporations and private agencies, who contract with the
37 Department of Human Services to perform attendant care and day
38 care services authorized under the Social Security Act, as
39 amended, as recipients of social service payments, be covered by
40 a "domestic" exemption that should have been included in the
41 Hawaii Employment Security Law and all individuals who perform
42 attendant care and day care services authorized under the Social
43 Security Act, as amended, in the employ of care providers, be



1 exempt from the definition of "employment" under chapter 383,
2 Hawaii Revised Statutes; and
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4 BE IT FURTHER RESOLVED that the Attorney General, as the
5 State's legal representative and chief legal officer, is
6 requested to provide a definitive legal opinion forthwith,
7 regarding whether sections 386-1, 392-3, and 393-5, Hawaii
8 Revised Statutes, exclude from the definitions of "employment"
9 those individuals who perform attendant care and day care
10 services authorized under the Social Security Act, as amended,
11 in the employ of persons, including corporations and private
12 agencies, who contract with the Department of Human Services to
13 provide care services and who are the recipients of social
14 service payments; and
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16 BE IT FURTHER RESOLVED that the Attorney General, as the
17 State's legal representative and chief legal officer, is
18 requested to provide the Legislature with a definitive legal
19 opinion forthwith, regarding whether chapter 383, Hawaii Revised
20 Statutes, excludes from its definition of "employment" those
21 individuals who perform attendant care and day care services
22 authorized under the Social Security Act, as amended, in the
23 employ of persons, including corporations and private agencies,
24 who contract with the Department of Human Services to provide
25 these services and who are the recipients of social service
26 payments; and
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28 BE IT FURTHER RESOLVED that if the Attorney General opines
29 that these individuals are not already excluded from the
30 definition of "employment" in chapters 383, 386, 392, and 393,
31 Hawaii Revised Statutes, the Attorney General is requested to
32 provide the Legislature with proposed legislation that will
33 retroactively and prospectively exclude from the definition of
34 "employment" in chapters 383, 386, 392, and 393, Hawaii Revised
35 Statutes, those individuals who perform attendant care and day
36 care services authorized under the Social Security Act, as
37 amended, in the employ of persons, including corporations and
38 private agencies, who contract with the Department of Human
39 Services to provide these care services; and
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41 BE IT FURTHER RESOLVED that to provide the Legislature with
42 an opportunity to act upon the Attorney General's
43 recommendations or proposed legislation, or both, and to ensure
44 that social care providers continue to operate and use their



1 resources to provide services to elderly and disabled adults in
2 Hawaii, the Legislature requests that the Attorney General,
3 Department of Labor and Industrial Relations, Department of
4 Taxation, and other state agencies and private entities suspend,
5 until June 30, 2007, all application and enforcement of the
6 relevant provisions of chapters 383, 386, 392, and 393, Hawaii
7 Revised Statutes, regarding insurance, withholdings, payments,
8 and all similar requirements on persons, including corporations
9 and private agencies, who contract with the Department of Human
10 Services to provide attendant care and day care services
11 authorized under the Social Security Act, as amended, as these
12 laws relate to individuals who perform attendant care and day
13 care services authorized under the Social Security Act, as
14 amended, in the employ of these persons; and
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16 BE IT FURTHER RESOLVED that the Director of Human Services,
17 upon receipt of the Attorney General's opinions requested under
18 this Concurrent Resolution, is requested to notify all affected
19 persons, including corporations and private agencies, who
20 contract with the Department of Human Services to provide
21 attendant care and day care services authorized under the Social
22 Security Act, as amended; and
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24 BE IT FURTHER RESOLVED that the Attorney General is
25 requested to submit the opinions requested under this Concurrent
26 Resolution to the Legislature and to the Director of Human
27 Services as soon as possible; and
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29 BE IT FURTHER RESOLVED that the Attorney General is
30 requested to submit to the Legislature, not later than twenty
31 days prior to the convening of the 2007 Regular Session, any
32 proposed legislation to effectuate the exemption of persons,
33 including corporations and private agencies, who contract with
34 the Department of Human Services to provide attendant care and
35 day care services authorized under the Social Security Act, as
36 amended, from chapter 383, Hawaii Revised Statutes, and any
37 other laws identified in this Concurrent Resolution as may be
38 necessary; and
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40 BE IT FURTHER RESOLVED that certified copies of this
41 Concurrent Resolution be transmitted to the Governor, the
42 Director of Human Services, the Director of Taxation, the
43 Director of Labor and Industrial Relations, and the Hawaii
44 Employers Mutual Insurance Company.

