
HOUSE 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
5

6 WHEREAS, under these Department of Human Services
7 contracts, the social care providers are the recipients of
8 social service payments; and
9

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
18

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
27 Disability Insurance (TDI), and Prepaid Health Insurance
28 (PPHI)"; and



1
2 WHEREAS, the Legislature intended the "domestic" exemption
3 to be included in the Hawaii Employment Security Law, chapter
4 383, Hawaii Revised Statutes; and

5
6 WHEREAS, the State of Hawaii does not wish to, and it was
7 the intent of the Legislature not to, increase the social
8 service payments to these social care providers, including
9 corporations and private agencies, by requiring the providers to
10 make contributions to state unemployment insurance benefits,
11 state workers' compensation, state temporary disability
12 insurance, and prepaid health care insurance on behalf of
13 individuals who perform attendant care and day care services
14 authorized under the Social Security Act, as amended, in the
15 employ of these providers; and

16
17 WHEREAS, the Legislature wishes to clarify its intent that,
18 these social care providers, including corporations and private
19 agencies, as recipients of social service payments under their
20 contracts with the Department of Human Services, and the
21 individuals who perform attendant care and day care services
22 authorized under the Social Security Act, as amended, in the
23 employ of these providers, are exempt under the Hawaii
24 Employment Security Law, Workers' Compensation Law, the
25 Temporary Disability Law, and the Prepaid Health Care Law; and

26
27 WHEREAS, the Legislature finds that it is in the public
28 interest, benefit, and welfare to have a friendly regulatory
29 environment for business, including consistent employment
30 benefit laws, and that it is contrary to the public interest,
31 benefit, and welfare to have inconsistent laws that exclude the
32 "domestic" exemption in the Hawaii Workers' Compensation Law,
33 Temporary Disability Law, and Prepaid Health Care Law; and

34
35 WHEREAS, the Legislature has been informed that the
36 Department of Labor and Industrial Relations and other state
37 agencies are currently taking action to enforce provisions of
38 chapters 383, 386, 392, and 393, Hawaii Revised Statutes,
39 regarding insurance, withholdings, payments, and all similar
40 requirements, on the persons, including corporations and private
41 agencies, contracting with Department of Human Services to
42 provide attendant care and day care services authorized under
43 the Social Security Act, as amended, as those laws relate to
44 individuals who perform attendant care and day care services



1 authorized under the Social Security Act in the employ of these
2 persons; and
3

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

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

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

32 BE IT FURTHER RESOLVED that the Legislature clarifies and
33 declares its intention that all social care providers, including
34 corporations and private agencies, who contract with the
35 Department of Human Services to perform attendant care and day
36 care services authorized under the Social Security Act, as
37 amended, as recipients of social service payments, be covered by
38 a "domestic" exemption that should have been included in the
39 Hawaii Employment Security Law and all individuals who perform
40 attendant care and day care services authorized under the Social
41 Security Act, as amended, in the employ of care providers, be
42 exempt from the definition of "employment" under chapter 383,
43 Hawaii Revised Statutes; and
44



1 BE IT FURTHER RESOLVED that the Attorney General, as the
2 State's legal representative and chief legal officer, is
3 requested to provide a definitive legal opinion forthwith,
4 regarding whether sections 386-1, 392-3, and 393-5, Hawaii
5 Revised Statutes, exclude from the definitions of "employment"
6 those individuals who perform attendant care and day care
7 services authorized under the Social Security Act, as amended,
8 in the employ of persons, including corporations and private
9 agencies, who contract with the Department of Human Services to
10 provide care services and who are the recipients of social
11 service payments; and
12

13 BE IT FURTHER RESOLVED that the Attorney General, as the
14 State's legal representative and chief legal officer, is
15 requested to provide the Legislature with a definitive legal
16 opinion forthwith, regarding whether chapter 383, Hawaii Revised
17 Statutes, excludes from its definition of "employment" those
18 individuals who perform attendant care and day care services
19 authorized under the Social Security Act, as amended, in the
20 employ of persons, including corporations and private agencies,
21 who contract with the Department of Human Services to provide
22 these services and who are the recipients of social service
23 payments; and
24

25 BE IT FURTHER RESOLVED that if the Attorney General opines
26 that these individuals are not already excluded from the
27 definition of "employment" in chapters 383, 386, 392, and 393,
28 Hawaii Revised Statutes, the Attorney General is requested to
29 provide the Legislature with proposed legislation that will
30 retroactively and prospectively exclude from the definition of
31 "employment" in chapters 383, 386, 392, and 393, Hawaii Revised
32 Statutes, those individuals who perform attendant care and day
33 care services authorized under the Social Security Act, as
34 amended, in the employ of persons, including corporations and
35 private agencies, who contract with the Department of Human
36 Services to provide these care services; and
37

38 BE IT FURTHER RESOLVED that to provide the Legislature with
39 an opportunity to act upon the Attorney General's
40 recommendations or proposed legislation, or both, and to ensure
41 that social care providers continue to operate and use their
42 resources to provide services to elderly and disabled adults in
43 Hawaii, the Legislature requests that the Attorney General,
44 Department of Labor and Industrial Relations, Department of



1 Taxation, and other state agencies and private entities suspend,
2 until June 30, 2007, all application and enforcement of the
3 relevant provisions of chapters 383, 386, 392, and 393, Hawaii
4 Revised Statutes, regarding insurance, withholdings, payments,
5 and all similar requirements on persons, including corporations
6 and private agencies, who contract with the Department of Human
7 Services to provide attendant care and day care services
8 authorized under the Social Security Act, as amended, as these
9 laws relate to individuals who perform attendant care and day
10 care services authorized under the Social Security Act, as
11 amended, in the employ of these persons; and
12

13 BE IT FURTHER RESOLVED that the Director of Human Services,
14 upon receipt of the Attorney General's opinions requested under
15 this Resolution, is requested to notify all affected persons,
16 including corporations and private agencies, who contract with
17 the Department of Human Services to provide attendant care and
18 day care services authorized under the Social Security Act, as
19 amended; and
20

21 BE IT FURTHER RESOLVED that the Attorney General is
22 requested to submit the opinions requested under this Resolution
23 to the Legislature and to the Director of Human Services as soon
24 as possible; and
25

26 BE IT FURTHER RESOLVED that the Attorney General is
27 requested to submit to the Legislature, not later than twenty
28 days prior to the convening of the 2007 Regular Session, any
29 proposed legislation to effectuate the exemption of persons,
30 including corporations and private agencies, who contract with
31 the Department of Human Services to provide attendant care and
32 day care services authorized under the Social Security Act, as
33 amended, from chapter 383, Hawaii Revised Statutes, and any
34 other laws identified in this Resolution as may be necessary;
35 and
36

37 BE IT FURTHER RESOLVED that certified copies of this
38 Resolution be transmitted to the Governor, the Director of Human
39 Services, the Director of Taxation, the Director of Labor and
40 Industrial Relations, and the Hawaii Employers Mutual Insurance
41 Company.

