

---

# SENATE 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  
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



1 Disability Insurance (TDI), and Prepaid Health Insurance  
2 (PPHI)"; and  
3

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  
7

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  
18

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  
28

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  
36

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

5  
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

11  
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,

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

33  
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

3  
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

15  
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

27  
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

40  
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  
 15

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  
 23

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  
 28

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  
 39

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.

