
SENATE 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
27 Disability Insurance (TDI), and Prepaid Health Insurance
28 (PPHI)"; and
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1 WHEREAS, the Legislature intended the "domestic" exemption
2 to be included in the Hawaii Employment Security Law, chapter
3 383, Hawaii Revised Statutes; and

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

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

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

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



1 authorized under the Social Security Act in the employ of these
2 persons; and
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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
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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,
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16 BE IT RESOLVED by the Senate of the Twenty-third
17 Legislature of the State of Hawaii, Regular Session of 2006,
18 that this body clarifies and declares its intention to treat all
19 social care providers, including corporations and private
20 agencies, who contract with the Department of Human Services to
21 perform attendant care and day care services authorized by the
22 Department of Human Services under the Social Security Act, as
23 amended, as recipients of social service payments described in
24 the "domestic" exemptions under the relevant sections of the
25 Hawaii Workers' Compensation Law, Temporary Disability Law, and
26 Prepaid Health Care Law, and that all individuals who perform
27 attendant care and day care services authorized under the Social
28 Security Act, as amended, in the employ of care providers, are
29 exempt from the coverage of these state laws; and
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31 BE IT FURTHER RESOLVED that the Legislature clarifies and
32 declares its intention that all social care providers, including
33 corporations and private agencies, who contract with the
34 Department of Human Services to perform attendant care and day
35 care services authorized under the Social Security Act, as
36 amended, as recipients of social service payments, be covered by
37 a "domestic" exemption that should have been included in the
38 Hawaii Employment Security Law and all individuals who perform
39 attendant care and day care services authorized under the Social
40 Security Act, as amended, in the employ of care providers, be
41 exempt from the definition of "employment" under chapter 383,
42 Hawaii Revised Statutes; and
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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
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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
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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
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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

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 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

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 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

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 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

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 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.

