



TESTIMONY OF THE STATE ATTORNEY GENERAL TWENTY-FOURTH LEGISLATURE, 2008

ON THE FOLLOWING MEASURE:

H.B. NO. 3399, RELATING TO CHAPTER 346, HAWAII REVISED STATUTES.

BEFORE THE:

HOUSE COMMITTEE ON HUMAN SERVICES AND HOUSING

DATE: Tuesday, February 12, 2008 **TIME:** 8:40 AM

LOCATION: State Capitol, Room 329
Deliver to: State Capitol, Room 326, 3 copies

TESTIFIER(S): Mark J. Bennett, Attorney General
or James W. Walther, Deputy Attorney General

Chair Shimabukuro and Members of the Committee:

The Attorney General has concerns with this bill as written, because it would create a conflict within the child care licensing laws, and would make enforcement of the laws more difficult.

Chapter 346, Hawaii Revised Statutes, part VIII, establishes requirements for licensing or registering child care providers to protect the health and safety of children in their care. Section 346-152, Hawaii Revised Statutes, excludes or exempts certain persons and groups from the licensing and registration requirements, including "a person caring for two or fewer children unrelated to the caregiver by blood, marriage, or adoption." This bill would amend section 346-152 to allow that "two persons living in the same household may each provide care for two or fewer children unrelated to the caregiver," without being licensed or registered to do so.

Section 346-171, Hawaii Revised Statutes, requires that "[n]o person shall operate or maintain a family child care home unless registered to do so by the department of human services under this subpart." Section 346-151, Hawaii Revised Statutes, defines "family child care home" as "a private residence, including a home, apartment, unit, or townhouse, as those terms are defined in section 502C-1, at which care is provided for three to no more than six children who are unrelated to the caregiver by blood, marriage, or

adoption, at any given time." Because of this definition, a private residence in which care is provided for three or more children must be registered to do so, regardless of the number of adults living in the home.

The amendment made by this bill would create an exemption that conflicts with the definition of "family child care home." The resulting lack of clarity would lead to uncertainty and make enforcement difficult. Additional amendments may be made to the definition of "family child care home" that would conform the definition with the exemption being created, and allow for the situation contemplated by this bill.

LINDA LINGLE
GOVERNOR



LILLIAN B. KOLLER, ESQ.
DIRECTOR
HENRY OLIVA
DEPUTY DIRECTOR

STATE OF HAWAII
DEPARTMENT OF HUMAN SERVICES
P. O. Box 339
Honolulu, Hawaii 96809-0339

February 12, 2008

MEMORANDUM

TO: The Honorable Maile S.L. Shimabukuro, Chair
House Committee on Human Services & Housing

FROM: Lillian B. Koller, Director

SUBJECT: **H.B. 3399 - RELATING TO CHAPTER 346, HAWAII REVISED
STATUTES**

Hearing: Tuesday, February 12, 2008; 8:40 a.m.
Conference Room 329, State Capitol

PURPOSE: The bill clarifies exemptions to Part VII of Chapter 346, Hawaii Revised Statutes, relating to child care.

DEPARTMENT'S POSITION: The Department of Human Services (DHS) supports the intent of this bill to clarify the Hawaii Revised Statutes §346-152(a)(11) that exempts "a person caring for two or fewer children unrelated to the caregiver by blood, marriage, or adoption" and provides the following comments.

When child care licensing staff investigate allegations of illegal child care being conducted in a home setting, they conduct unannounced home visits to determine the number of children being cared for, and who is the caregiver providing the child care. Situations become complicated when licensing staff find one caregiver in the home caring for more than two children at the time of the visit, and that one caregiver states that another household member is actually the caregiver for some of the children. That

other caregiver may be physically unavailable (i.e., out of the home on an errand, etc.) at the time of the visit, which then creates an illegal child care situation for the caregiver who is physically present and alone supervising the children. The Department in these situations, has no choice but to cite the caregiver who is physically present for exceeding the two-child limit.

Thank you for the opportunity to provide comments on this bill.