

---

---

## A BILL FOR AN ACT

RELATING TO FAMILY LEAVE.

**BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:**

SECTION 1. The legislature finds that long-term care services are critical to the well being of Hawaii's aging population. The vast majority of these services are furnished by unpaid family caregivers providing informal care to seniors aged sixty-five and older with a physical, sensory, cognitive or self-care disability. The need for family caregivers is expected to rise as our aging population rapidly increases.

The legislature further finds that the majority of family caregivers are women. Family caregivers bear the duty to care for their elderly family members while often balancing work and childcare responsibilities. They often take unpaid leave from work or reduce their work hours to carry out their duties. As a result, family caregivers face financial hardship which can impede the caregiver's ability to provide care.

The purpose of this Act is to amend the Family Leave Law, Chapter 398, Hawaii Revised Statutes, to provide additional support to women and family caregivers by expanding the law to apply to the provision of long-term care services to family



members with a physical, sensory, cognitive or self-care disability.

SECTION 2. Section 398-1, Hawaii Revised Statutes, is amended to read as follows:

**"PART I. GENERAL PROVISIONS**

**§398-1 Definitions.** As used in this chapter, unless the context clearly requires otherwise:

"Child" means an individual who is a biological, adopted, or foster son or daughter; a stepchild; or a legal ward of an employee.

"Department" means the department of labor and industrial relations.

"Director" means the director of labor and industrial relations.

"Employee" means a person who performs services for hire for not fewer than six consecutive months for the employer from whom benefits are sought under this chapter.

"Employer" means any individual or organization, including the State, any of its political subdivisions, any instrumentality of the State or its political subdivisions, any partnership, association, trust, estate, joint stock company, insurance company, or corporation, whether domestic or foreign,



or receiver or trustee in bankruptcy, or the legal representative of a deceased person, who employs one hundred or more employees for each working day during each of twenty or more calendar weeks in the current or preceding calendar year.

"Employment" or "employed" means service, including service in interstate commerce, performed for wages under any contract of hire, written or oral, express or implied, with an employer.

"Employment benefits" means all benefits (other than salary or wages) provided or made available to employees by an employer, and includes group life insurance, accident and health or sickness insurance, sick leave, annual leave, educational benefits, and pensions, regardless of whether the benefits are provided by a policy or practice of an employer or by an employee benefit plan as defined in section 3(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)).

"Family member" means a biological aunt or uncle, aunt-in-law, or uncle-in-law.

"Health care provider" means a physician as defined under section 386-1.

"Parent" means a biological, foster, or adoptive parent, a parent-in-law, a stepparent, a legal guardian, a grandparent, or a grandparent-in-law.



"Serious health condition" means a physical or mental condition, which includes a physical, sensory, cognitive or self-care disability, that warrants the participation of the employee to provide care during the period of treatment or supervision by a health care provider, and:

- (1) Involves inpatient care in a hospital, hospice, or residential health care facility; [~~or~~]
- (2) Requires continuing treatment or continuing supervision by a health care provider[~~or~~]; or
- (3) Involves the provision of informal long-term care services.

"Sick leave":

- (1) Means accrued increments of compensated leave provided by an employer to an employee for use by the employee for any of the following reasons:
  - (A) The employee is physically or mentally unable to perform the employee's duties due to illness, injury, or a medical condition of the employee;
  - (B) The absence is for the purpose of obtaining professional diagnosis or treatment for a medical condition of the employee; [~~or~~]



(C) The absence is for other medical reasons of the employee, such as pregnancy or obtaining a physical examination; [~~and~~] or

(D) The absence is for the purpose of providing care to a child, spouse or reciprocal beneficiary, parent, or family member with a physical, sensory, cognitive, or self-care disability; and

(2) Shall not include any insurance benefit, workers' compensation benefit, unemployment compensation due to illness or disability, or temporary disability insurance benefit."

SECTION 3. Section 398-6, Hawaii Revised Statutes, is amended to read as follows:

**"§398-6 Certification.** (a) An employer may require that a claim for family leave be supported by written certification.

(b) For the birth of a child, certification shall be issued by a health care provider or the family court. For the placement of a child for adoption with the employee, certification shall be issued by a recognized adoption agency, the attorney handling the adoption, or by the individual officially designated by the birth parent to select and approve the adoptive family.



(c) When leave is to care for a child, spouse[7] or reciprocal beneficiary, parent, or family member who has a serious health condition, certification shall be issued by the health care provider of the individual requiring care. Certification shall be considered sufficient if it provides information as required by the director."

SECTION 4. Statutory material to be repealed is bracketed and stricken. New statutory material is underscored.

SECTION 5. This Act shall take effect on July 1, 2013.

INTRODUCED BY:

James J. Fu  
Beth Lukens  
Gene Wood  
Paul McDermott  
Jim Paulson  
Richard Z. Fu  
Gynthia Thelen

JAN 18 2013



# H.B. NO. 305

**Report Title:**

Family Leave; Long-Term Care Services

**Description:**

Amends chapter 398, Hawaii Revised Statutes, to provide additional support to women and family caregivers by expanding the law to apply to the provision of long-term care services to family members with a physical, sensory, cognitive or self-care disability.

*The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.*

