

SB2306

Measure Title: RELATING TO INSURANCE.

Report Title: Keiki Caucus; Homeowners Insurance; Child Care Providers

Description: Prohibits property insurers from refusing to issue, refusing to renew, or canceling a homeowners insurance policy based in whole upon an insured's or prospective insured's obtaining or maintaining liability insurance coverage as a condition of licensure, temporary permission, or registration with DHS to operate a child care facility.

Companion: [HB2159](#)

Package: Keiki Caucus

Current Referral: CPH/HMS

Introducer(s): K. RHOADS, GREEN, HARIMOTO, KEITH-AGARAN, KIM

DAVID Y. IGE
GOVERNOR



PANKAJ BHANOT
DIRECTOR

CATHY BETTS
DEPUTY DIRECTOR

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

February 1, 2018

TO: The Honorable Senator Rosalyn H. Baker, Chair
Senate Committee on Commerce, Consumer Protection, and Health

TO: The Honorable Senator Josh Green, Chair
Senate Committee on Human Services

FROM: Pankaj Bhanot, Director

SUBJECT: **SB 2306 – RELATING TO INSURANCE**

Hearing: Monday, February 5, 2018, 3:10 p.m.
Conference Room 016, State Capitol

DEPARTMENT'S POSITION: The Department of Human Services (DHS) appreciates the intent of the bill as the measure would allow child care providers to maintain their homeowners' insurance coverage, and be able to obtain liability insurance coverage in compliance with Act 161, Session Laws of Hawaii (SLH) 2017. DHS defers to the Department of Commerce and Consumer Affairs, Insurance Division, for its issues or concerns.

PURPOSE: The purpose of the bill is to prohibit property insurers from refusing to issue, refusing to renew, or canceling a homeowner's insurance policy based in whole upon an insured's or prospective insured's obtaining or maintaining liability insurance coverage as a condition of licensure, temporary permission, or registration with DHS to operate a child care facility.

The primary focus of the DHS child care licensing program is on the health and safety of all children in child care. The intent of Act 161, SLH 2017, was to strengthen minimum standards of child care to improve health and safety of children by requiring child care

providers to obtain and maintain liability insurance coverage. Prior to Act 161, SLH 2017, the department was prohibited from requiring regulated child care providers to obtain and maintain liability insurance coverage. Act 161, SLH 2017, has adversely impacted home-based child care providers. The administration proposed SB 2787 to amend certain provisions of Act 161, SLH 2017, and to change its effective dates until insurance coverage issues could be further examined.

DHS submitted its report to the twenty-ninth Hawaii State Legislature 2018 in accordance with section 3 of Act 161, SLH 2017. As part of its due diligence, DHS also conducted outreach efforts through its contractor to conduct surveys and convene in-person meetings statewide. Child care providers also contacted members of the legislature, the department's child care licensing offices, and the Child Care Program Office to ask questions and express their concerns regarding the provisions of Act 161, SLH 2017.

Feedback from child care providers indicated that current insurers may not renew existing homeowner policies if child care is being provided on the premises. Child care providers also indicated that home-based child care providers were considering no longer being registered with the department due to the new insurance requirement. As of the end of December 2017, Hawaii has about 350 independent home-based child care providers which is a 12% decrease of the number of homes that were regulated at the end of December 2016.

DHS supports and urges the legislature, insurance companies, child care providers, and parents to discuss how to support regulated child care providers ability to maintain necessary homeowners' coverages and obtain liability insurance so providers can continue providing needed child care. DHS is concerned with the statewide decrease in numbers of home-based regulated child care providers who provide safe, affordable and accessible child care. Safe and regulated child care is a valuable service to Hawaii's working families and their children. DHS defers to the Department of Commerce and Consumer Affairs Insurance Commission for other issues or concerns

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

**SENATE COMMITTEE ON
COMMERCE, CONSUMER PROTECTION, AND HEALTH
and
SENATE COMMITTEE ON
HUMAN SERVICES**

February 5, 2018

Senate Bill 2306 Relating to Insurance

Chair Baker, Chair Green, and members of the Committee on Commerce, Consumer Protection, and Health, and the Committee on Human Services, I am Rick Tsujimura, representing State Farm Mutual Automobile Insurance Company (State Farm).

We are in opposition to Senate Bill 2306.

Hawaii Revised Statutes (hereinafter “HRS”) section 346-151 defines a “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 may be provided for three to no more than six children who are unrelated to the caregiver by blood, marriage, or adoption, at any given time.” HRS section 346-157 states that:

“Liability insurance coverage; requirement. (a) For the purpose of this section, “liability insurance coverage” means a general casualty insurance policy issued to a provider insuring against legal liability for injury resulting from negligence to a child during the time the child is under the care of the child care provider.

(b) The department shall require all providers to obtain and maintain liability insurance coverage in an amount determined by the department as a condition of licensure, temporary permission, or registration to operate a child care facility.

(c) The department, as a condition of continued licensure, temporary permission, or registration, shall require all providers to disclose in writing to each parent or guardian:

(1) Applying to have a child cared for at the provider's facility, summary information including the insurer's name and contact information, coverage amounts, and effective dates for the provider's liability insurance coverage at the time of application; or

(2) Within seven working days of any change, cancellation, or termination of liability insurance coverage, that the coverage has been changed, canceled, or terminated while the parent's or guardian's child is cared for at the provider's facility.

(d) The department may suspend or revoke a license, temporary permit, or certificate of registration of a provider in accordance with section 346-164 or 346-175, if:

(1) The provider or any employee of the provider knowingly makes a false statement to any person concerning the provider's liability insurance coverage; or

(2) The provider does not comply with the insurance coverage and disclosure requirements of this section and rules adopted by the department pursuant to this section.

(e) Proof of liability insurance coverage as required by this section shall be verified by the department on an annual basis.”

The bill provides that:

“ §431:10E- **Child care facilities; liability insurance coverage.** No insurer shall refuse to issue, refuse to renew, or cancel a homeowners insurance policy based in whole upon an insured's or prospective insured's obtaining or maintaining liability insurance coverage under section 346-157 as a condition of licensure, temporary permission, or registration with the department of human services to operate a child care facility.”

We have serious concerns about the proposed language.

HRS 346-151 recognizes the essential differences between the types of child care facilities:

"Child care facility" means a place maintained by any individual, organization, or agency for the purpose of providing care for children with or without charging a fee at any time. It includes a family child care home, group child care home, and group child care center.

"Family child care home" means a private residence, including a home, apartment, unit, or townhouse, as those terms are defined in section 502C-1, at which care may be provided for **three to no more than six children** who are unrelated to the caregiver by blood, marriage, or adoption, at any given time.

"Group child care center" means a facility, other than a private home, at which care is provided.

"Group child care home" means a facility, which may be an extended or modified private home, at which care is provided for **seven to twelve children**. (Emphasis added.)

Unfortunately, this bill lops them all together as “Child Care Facilities” even though the definition clearly acknowledges they are fundamentally different, and certainly from an insurance perspective, are completely different risks.

State Farm currently provides a rider to homeowners who run a child care facility and have a homeowners policy with us. However, State Farm has certain underwriting rules to assess the risk of such operations by our insureds. Our rating manual has rates for 1-3 children, and an additional charge for each child up to a maximum of 6 children. Our Underwriting rules dictate that we will not write for more than 6 children. This bill is specifically written to apply to “Child care facilities,” which are not limited to 6 children. We would not renew policies which are for facilities which care for more than 6 children.

We do not believe that a homeowners policy which spreads risks amongst homeowners who do not engage in such businesses should bear the risk of those who do, unless the insurer determines the risk can be covered by an additional premium based on underwriting principles, such as outlined above. Under this bill the liability insurer for the care home would be able to cancel their policies due to failure to meet their underwriting standards but as the underlying homeowners insurer, we could not. That does not seem fair to the homeowners insurer, nor to the other homeowner policy holders we have.

Secondly, the operation of a business in a home, should be properly underwritten and if the homeowner among other issues, does not have facilities for adequate drop off/pick up of children or has a dangerous physical condition, or has failed to meet underwriting standards required of other homeowners seeking coverage, the insurer should not be forced to maintain insurance just because they are the underlying insurer of a homeowner engaged in a care facility.

If the situation were that of a home with multiple safety violations but not a care facility, we would be able to non-renew. But a care facility with identical problems could not be non-renewed under the provisions of this bill.

We believe this is bad policy, and ask that you hold the bill. Thank you for the opportunity to present this testimony.

TESTIMONY OF MARIE WEITE

COMMITTEE ON COMMERCE, CONSUMER PROTECTION, AND HEALTH
Senator Rosalyn Baker, Chair
Senator Jill Tokuda, Vice Chair

COMMITTEE ON HUMAN SERVICES
Senator Josh Green, Chair
Senator Stanley Chang, Vice Chair

Monday, February 5, 2018
3:10 p.m.

SB 2306

Chair Baker, Vice Chair Tokuda, and members of the Committee on Commerce, Consumer Protection, and Health, and Chair Green, Vice Chair Chang, and members of the Committee on Human Services, my name is Marie Weite, Assistant Vice President of Claims of First Insurance Company of Hawaii and the Law & Regulations Chair of Hawaii Insurers Council. The Hawaii Insurers Council is a non-profit trade association of property and casualty insurance companies licensed to do business in Hawaii. Member companies underwrite approximately forty percent of all property and casualty insurance premiums in the state.

Hawaii Insurers Council **opposes** this bill.

This bill regulates an insurer's underwriting ability for homeowner's insurance. Forcing an insurer to accept and/or retain any type of risk will likely result in a market reaction in either higher premiums or a restricted market. This would then adversely affect all those who purchase homeowner's insurance with higher premiums and/or lack of availability of coverage.

The proper insurance coverage for DHS child care providers is a commercial general liability policy purchased by each DHS child care provider, by an association they form or by the State to cover all DHS child care providers.

For these reasons, we ask that this bill be held.

Thank you for the opportunity to testify.



Supporting Hawaii's Child Care Needs

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NACCRRRA

NAFCC

Aloha United Way

Kauai United Way

Hawaii Island United Way

BBB of Hawaii, Accredited Charity

To: Senator Rosalyn Baker, Chair
Senator Jill Tokuda, Vice Chair
Committee on Commerce, Consumer Protection, and Health

Senator Josh Green, Chair
Senator Stanley Chang, Vice Chair
Committee on Human Services

From: Aaron Kibota, Executive Director
PATCH (People Attentive to Children)

Re: **SB2306—Relating to Insurance**
Hawaii State Capitol, Room, Conference Room 016, 3:10pm

PATCH strongly supports SB2306 - Relating to Insurance. In an effort to prevent tragedies such as serious injuries or death to our youngest keiki, the "Wiley Kaikou Muir Act" was enacted last year. The act requires all child care providers subject to regulation by the Department of Human Services to obtain and maintain liability insurance as a condition of licensure. The act aimed to increase oversight of child care facilities while giving families peace of mind.

PATCH's mission is to support and improve the quality and availability of care for the young people of Hawaii. As such, we understand the importance of having liability insurance, for both families and child care providers. When the "Wiley Kaikou Muir Act" was signed, PATCH reached out to numerous local and national insurance companies and discovered family childcare providers have few options.

One provider explained that she contacted her homeowner's insurance company to inquire about covering her childcare business and was told they would not renew her homeowner's insurance. She sent a statement and pictures indicating that only the downstairs area was being used for childcare, a copy of her \$2 million childcare insurance policy, DHS license, as well as other supporting documentation. The insurance company still refused to renew her policy. She called six other insurance carriers and there was only one that would even consider providing coverage.

PATCH staff met with several local insurance companies and asked if they would allow a provider to have professional liability insurance to cover the childcare business while still maintaining homeowner's insurance with that same company. Every representative said no. If a provider had liability insurance, even if it was just to cover the childcare business and did not overlap with home coverage, it would be considered "dual coverage" and the homeowner's insurance would not renew their policy.

This bill would prevent homeowner's insurance companies from cancelling or refusing to renew a homeowner's insurance policy based on a provider obtaining or maintaining liability insurance coverage for their childcare business. PATCH views this as the best-case scenario. The providers home would still be covered, they would be able to obtain professional liability insurance that would best cover their childcare business, and parents have peace of mind knowing the provider has an insurance policy that meets their needs. Most importantly though, it would prevent childcare providers from being forced to close their businesses or lose their licenses, which would negatively impact the availability of childcare throughout the state, an extremely difficult obstacle parents with young keiki have to face.

Thank you for the opportunity to submit testimony and we urge the committees to pass SB2306.

Sincerely,

Aaron Kibota
Executive Director



February 5, 2018

To: Senator Rosalyn Baker, Chair
Senator Jill Tokuda, Vice Chair
Senate Committee on Commerce, Consumer Protection and Health

Senator Josh Green, Chair
Senator Stanley Chang, Vice Chair
Senate Committee on Human Services

From: Mandy Finlay, Director of Public Policy
Hawaii Children's Action Network

Re: SB2306 – Relating to Insurance, SUPPORT
Hawaii State Capitol, Conference Room 16 – February 5, 2018 – 3:10 PM

On behalf of Hawaii Children's Action Network (HCAN), we are writing in strong support of S.B. 2306, which would prohibit property insurers from refusing to issue, refusing to renew, or cancelling a homeowners insurance policy based upon the insured's or prospective insured's obtaining or maintaining liability insurance as a condition of licensure, temporary permission, or registration with the Hawaii State Department of Human Services to operate a child care facility.

Hawaii suffers from an extreme shortage of early childcare seats, particularly in rural areas. This deficit results in both increased costs and strain on families with young children, often requiring creative solutions to ensure children are cared for while parents work. Many families turn to Family Child Care Homes (FCCs) to care for their children. In Hawaii, there are a total of 353 FCCs with spots for 2,118 children.

These child care spots are now in jeopardy because property insurers are denying, refusing to renew, or outright cancelling the homeowners insurance policies of FCC providers because the homeowner obtained liability insurance in compliance with Act 161, which passed in 2017. Hawaii's families need more solutions to our child care shortage, and this measure would ensure that FCCs are not effectively shut down for simply complying with state law.

For these reasons, HCAN respectfully requests your committees to pass this bill.

HCAN is committed to building a unified voice advocating for Hawaii's children by improving their safety, health, and education.

SB-2306

Submitted on: 2/4/2018 8:50:02 PM

Testimony for CPH on 2/5/2018 3:10:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Jolleen		Support	No

Comments:

Aloha and thank you for the opportunity to give my testimony. I am a Hawaii licensed family child care provider as well as a home owner. I support this bill because I believe insurance companies are discriminating against us because of our choice to care for children in our home. We are required to carry separate liability insurance to cover any matters that arise from the child care. To lose our home owners insurance as well as the inability to get an umbrella policy is another insurance ploy to pick and choose. If they don't want to cover people at a risk then they shouldn't be in the insurance business. I love what I do and I do my best to offer good quality care that's affordable. And every year the cost to stay in business as a child care provider seems to be getting harder. Please help us, rumor has it that my insurance company is going to drop us at renewal this year. Thank you! Jolleen Abreu, Kauai

SB-2306

Submitted on: 2/1/2018 2:08:15 PM

Testimony for CPH on 2/5/2018 3:10:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Noreen Dougherty		Support	No

Comments:

Senator Rosalyn Baker, Chair

Senator Jill Tokuda, Vice Chair

Committee on Commerce, Consumer Protection, and Health

Senator Josh Green, Chair

Senator Stanley Chang, Vice Chair

Committee on Human Services

From: Noreen Dougherty

P.O. Box 685 Kapaa, Hawaii 96746

Re: SB2306—Relating to Insurance

Hawaii State Capitol, Room 016, Hearing Date: February 5, 2018

I am writing to support SB2306 relating to insurance. This bill would prevent companies from cancelling or refusing to renew a homeowner's insurance policy based on a provider obtaining or maintaining liability insurance coverage for our childcare business.

Although I am not a homeowner, I have been a Family Child Care provider for over 20 years in the same home, which I intend to purchase. I have carried million dollar coverage on the children in my care the entire time.

The thought of cancelling a homeowner's insurance policy based on a provider obtaining, or maintaining, liability insurance coverage for an FCC is unreasonable and unjustly singling out this extremely important and necessary profession. There are massage therapists, other health practitioners, mechanics, attorneys, and many more members of our community that have a business operating out of their homes.

Ironically, the childcare profession is one that is strictly regulated and inspected. I'm baffled that these services that are being provided to working families and the keiki of Hawaii, are unjustly being targeted.

I strongly support SB2306.

Thank you for the opportunity to provide testimony in support of this bill.

Noreen Dougherty

SB-2306

Submitted on: 2/2/2018 12:08:56 PM

Testimony for CPH on 2/5/2018 3:10:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
katerina mateo		Support	No

Comments:

I find it mind boggling that insurance companies feel at liberty to cancel or not insure/re-insure a client's, or potential client's homeowner policy, due to their (client) having to obtain a liability insurance which is necessary to retain or obtain a childcare licence. If a homeowner earns a living as a childcare provider, she/he needs BOTH. It is bad and unfair business practice and it does not benefit anyone. I whole heartedly support this bill.

SB-2306

Submitted on: 2/3/2018 7:12:17 AM

Testimony for CPH on 2/5/2018 3:10:00 PM

Submitted By	Organization	Testifier Position	Present at Hearing
Leslie Estep		Support	No

Comments:

Aloha, I have been a preschool teacher for 42 years. I have also been in the administrative side of childcare, and taught Early Childhood Education classes in Community Colleges (Pasadena & Hilo) for over 15 years. In 2006, I decided to provide Family Childcare in my home. I called my homeowners insurance first to see if I was covered. They gave me several referrals for Liability Insurance for this typr of business. I have had Liability insurance since I opened my daycare in August of 2006. (I have been with this my homeowner's insurance company for over 45 years.) In 2017, they informed me that they would not renew my homeowners policy because I was caring for more than 3 children. (I let them know in 2006 how many children I was hoping to care for, 6.) I had to contact 6 insurance providers before I could find one to cover my homeowners & childcare business.