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## A BILL FOR AN ACT

RELATING TO CHILD CARE.

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

1           SECTION 1. Access to safe, affordable, and nurturing child  
2 care is a critical need for Hawaii's children and working  
3 parents. The purpose of this Act is to amend provisions of  
4 chapter 346, Hawaii Revised Statutes, to: (1) improve the safety  
5 of children in Hawaii's regulated and legally exempt child care  
6 settings by requiring criminal history checks of adult relatives  
7 who provide care for a child whose family receives a child care  
8 subsidy from the department of human services; (2) clarify that  
9 the department of human services may take both administrative  
10 and judicial action to enforce child care licensing provisions  
11 of chapter 346, Hawaii Revised Statutes, and increase penalties  
12 by making them apply on a daily basis; (3) explain when  
13 investigation information will be released to the public; and  
14 (4) clarify that when the child care licensing program receives  
15 a report of death or injury of a child in a child care setting,  
16 the program will share information it receives with, and  
17 cooperate with, child welfare services and law enforcement.

1 SECTION 2. Section 346-152.5, Hawaii Revised Statutes, is  
2 amended by amending subsection (a) to read as follows:

3 "(a) ~~[To be eligible]~~ In order to provide child care for a  
4 child whose family receives a child care subsidy from the  
5 department, persons exempt pursuant to section 346-152 shall be  
6 required to agree to:

7 (1) A criminal history record check, a sex offender  
8 registry check, a child abuse record check, and an  
9 adult abuse perpetrator check in the same manner as a  
10 prospective applicant or licensed provider in  
11 accordance with section 346-154; ~~[provided that the~~  
12 ~~criminal history record check shall be limited to a~~  
13 ~~criminal history record check conducted through files~~  
14 ~~maintained by the Hawaii criminal justice data center~~  
15 ~~for the following relatives of the child who requires~~  
16 ~~care: grandparents, great grandparents, aunts, uncles,~~  
17 ~~and siblings aged eighteen or older living in a~~  
18 ~~separate residence,]~~

19 (2) Completion of a pre-service or orientation training  
20 and ongoing training in health and safety topics;

21 (3) Any monitoring inspection visits by the department or  
22 its designee to determine compliance with minimum  
23 health and safety standards at the location where

H.B. NO. 1000

1 child care is being provided for a child whose family  
2 receives a child care subsidy from the department,  
3 including investigations by the department when the  
4 department has received a report of health and safety  
5 concerns. "

6 SECTION 3. Section 346-153, Hawaii Revised Statutes, is  
7 amended to read as follows:

8 "**§346-153 Records of deficiencies and complaints; release**  
9 **to public.** (a) For every child care facility, the department  
10 shall maintain records for the current and previous two years  
11 of: results of its inspections; notifications to providers of  
12 deficiencies; corrective action taken; complaints of violations  
13 of rules adopted under this part; results of its investigations;  
14 resolution of complaints; and suspensions, revocations,  
15 reinstatements, restorations, and reissuances of licenses,  
16 temporary permits, and registrations issued under this part.

17 (b) Notwithstanding any other law to the contrary, the  
18 records described in this section shall be available for  
19 inspection in the manner set forth in chapter 92F and may be  
20 posted by the department on a public website; provided that with  
21 respect to records of family child care homes and group child  
22 care homes, sensitive personal information, including home  
23 addresses, or information provided to the department with the

H.B. NO. 1000

1 understanding that it would not be publicly divulged shall be  
2 deleted or obliterated prior to making the records available to  
3 the public. Nothing in this section shall authorize the  
4 department to release to the public the names of or any other  
5 identifying information on complainants. Nothing in this  
6 section shall prohibit the department's child care licensing  
7 program from sharing information and cooperating with the  
8 department's child protective services and law enforcement on  
9 investigations.

10 (c) The department may withhold information [~~en a~~] about  
11 an investigation of a complaint [~~for which an investigation is~~  
12 ~~being conducted~~] of a violation for not more than ten working  
13 days [~~following the date of filing of the complaint,~~] after the  
14 date the investigation report is completed; provided that if an  
15 investigation relates to an alleged criminal offense, no  
16 information shall be released until the criminal investigation  
17 has been completed and the director has determined that no legal  
18 proceeding will be jeopardized by its release."

19 SECTION 4. Section 346-156, Hawaii Revised Statutes, is  
20 amended to read as follows:

21 "§346-156 Penalty[-]; remedies. (a) Any person, entity,  
22 agency, or organization violating any provision of this

H.B. NO. 1000

1 ~~[chapter]~~ part or any rule made pursuant thereto shall be ~~[fined~~  
2 ~~as follows:~~

3 ~~(1) Up]~~ subject to penalties including a fine of up to  
4 \$1,000 for [the first] each day of violation; [and

5 ~~(2) Up]~~ provided that the fine may be up to \$3,000 for  
6 ~~[the second violation and each succeeding violation.]~~ each day  
7 for a violation of section 346-161 or 346-171.

8 (b) The department may enforce this part in either  
9 administrative or judicial proceedings or both."

10 SECTION 5. Statutory material to be repealed is bracketed  
11 and stricken. New statutory material is underscored.

12 SECTION 6. This Act shall take effect upon its approval.

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INTRODUCED BY: \_\_\_\_\_



15

BY REQUEST

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JAN 22 2019

**Report Title:**

Improve Safety of Children in Care; Criminal History Checks; Records of Deficiencies and Complaints; Role and Response to Reports of Death or Injury in a Child Care Setting; Release of Information for Purposes of Investigation; Penalties, Administrative and Judicial Action

**Description:**

Requires criminal history checks of adult relatives who provide care for a child whose family receives a child care subsidy from the Department of Human Services, clarifies that the Department of Human Services may take both administrative and judicial action to enforce child care licensing provisions of chapter 346, Hawaii Revised Statutes, clarifies the role and response of the child care licensing program when it receives a report of death or injury of a child in a child care setting, and addresses the release of information pending an investigation.

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

# H.B. NO. 1000

## JUSTIFICATION SHEET

DEPARTMENT: Human Services

TITLE: A BILL FOR AN ACT RELATING TO CHILD CARE.

PURPOSE: To improve the safety of children in regulated child care settings, this act amends section 346-152.5(a), Hawaii Revised Statutes (HRS), to require adult relatives who provide care for a child whose family receives a child care subsidy from the department to complete a criminal history record check in the same manner as a prospective applicant or licensed provider in accordance with section 346-154, HRS. At least six other states do not exempt relatives from undergoing fingerprint-based criminal history record checks to ensure the health and safety of children in care.

Further, the bill amends section 346-153, HRS, to clarify: (1) when information regarding investigations may be withheld by the department, (2) that information about an investigation of a complaint may be withheld by the department for not more than ten working days from the date the investigation report is completed, and (3) that no information shall be released until the criminal investigation has been completed and the director has determined that no legal proceeding will be jeopardized by its release. Further, the bill allows the child care licensing program to share information and cooperate with investigations conducted by child protective services and law enforcement.

The measure also amends section 346-156, HRS, to clarify that the department may take both administrative and judicial action to enforce child care licensing provisions of chapter 346. It increases fines that may be imposed by making the amounts imposed daily, and sets a higher limit for violations of providing child care without a license or

# HB.NO. 1000

registration as required by sections 346-161 and 346-171, HRS. It also provides flexibility for the department to enforce administrative rules by using administrative orders.

MEANS: Amend sections 346-152.5(a), 346-153, and 346-156, HRS.

JUSTIFICATION: The proposed amendment of section 346-152.5(a), HRS, improves safety provisions of children in legally exempt child care settings, by requiring adult relatives of a child whose family receives a child care subsidy from the department to complete a criminal history record check in the same manner as a prospective applicant or licensed provider in accordance with section 346-154, HRS.

The Hawaii Criminal Justice Data Center requires fingerprint samples to release arrest record information to the department.

The amendments to section 346-153, HRS, clarify that the department may withhold information from the public about an investigation for not more than ten working days from the date the investigation report is completed and until it has been determined that related legal proceedings will not be compromised with the release of information. The department's child care licensing program will continue to share relevant information with child protective services and law enforcement agencies when the child care licensing program is investigating a complaint or report of injury to a child in a regulated child care setting.

The amendments to section 346-156, HRS, will provide more tools to the department to enforce violations faster and with increased penalties to more effectively stop, deter, and prevent a person from engaging in illegal child care. This bill will



**H.B. NO. 1000**

authorize the department to take administrative action against a person who violates part VIII of chapter 346, in addition to initiating civil actions in court. This bill changes the penalty structure so that a fine may be imposed for every day of a violation, and makes the fine higher for a person, entity, or organization who operates a child care facility without a license or registration in violation of section 346-161 or 346-171, HRS.

Impact on the public: The amendments to section 346-152.5(a), HRS, will impact all legally exempt relative child care providers caring for a child whose family receives a child care subsidy from the department as the amendments support the health and safety of children in legally exempt child care settings because the department, by requiring fingerprint samples, will be able to receive State and Federal Bureau of Investigation arrest record information from the Hawaii Criminal Justice Data Center.

The amendments to section 346-153, HRS, will impact all regulated child care providers as the amendments support the safety of children in regulated child care settings because the child care licensing program will continue to share relevant information with child protective services and law enforcement agencies when the child care licensing program is investigating a complaint or report of injury to a child in a regulated child care setting, while no information shall be released to the public until the criminal investigation has been completed and the director has determined that no legal proceeding will be jeopardized by its release.

The amendments to section 346-156, HRS, will impact all regulated child care providers and providers who are operating in violation of sections 346-161 or 346-171, HRS, as the amendments protect the public from those who

# H.B. NO. 1000

violate provisions of chapter 346, HRS, and the administrative rules that are promulgated pursuant to that chapter that are designed to protect the health, safety, and welfare of children and other members of the public.

Impact on the department and other agencies:  
The amendments to section 346-152.5(a), HRS, will increase the need for resources for the child care licensing program to collect fingerprints, obtain fingerprint-based criminal records, and to determine whether the relative is suitable to care for children whose families receive child care subsidy from the department.

For section 346-153, HRS, none.

The amendments to section 346-156, HRS, may increase the need for resources for the department's Administrative Appeals Office and the Department of the Attorney General to conduct administrative hearings and prosecute violations in court.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION: HMS

OTHER AFFECTED AGENCIES: For section 346-152.5(a), HRS, Hawaii Criminal Justice Data Center within the Department of the Attorney General.

For section 346-153, HRS, the Department of the Attorney General.

For section 346-156, HRS, the Department of the Attorney General.

EFFECTIVE DATE: Upon approval.