

JAN 23 2020

A BILL FOR AN ACT

RELATING TO CHILD CARE.

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

1 SECTION 1. The purpose of this Act is to amend provisions
2 of chapter 346, Hawaii Revised Statutes, to clarify: (1) the
3 exemptions from licensure or registration that are allowed and
4 minimize the number of child care facilities that are operating
5 in violation of the law; (2) that minimum health and safety
6 requirements or standards as required by federal law may be
7 imposed on any of the groups in section 346-152, Hawaii Revised
8 Statutes, that provide child care for a child whose family
9 receives a child care subsidy from the department; (3) that the
10 burden of proof is upon the caregiver or facility to provide the
11 department with verification of meeting a declared exemption
12 under section 346-152, Hawaii Revised Statutes; (4) the
13 information that may be investigated by the department to
14 determine violations of part VIII of chapter 346 occurred or is
15 occurring; (5) that the department may file a petition for a
16 search warrant with the district court; and (6) that a search
17 warrant may be issued to the department and the appropriate law
18 enforcement agency to conduct an investigation.

1 Lastly, Act 276, Session Laws of Hawaii 2019, amended
2 section 346-152(a) by inserting a new paragraph (4), which
3 resulted in renumbering paragraphs (4) through (12) so that
4 those paragraphs are now numbered (5) through (13). Years of
5 letters to organizations and individuals regarding the
6 exemptions are no longer aligned with the statute. This Act
7 inserts the language added by Act 276, Session Laws of Hawaii
8 2019, into paragraph (3) and renumbers the paragraphs so that
9 they appear as they were prior to Act 276, Session Laws of
10 Hawaii 2019.

11 SECTION 2. Section 346-152, Hawaii Revised Statutes, is
12 amended to read as follows:

13 "**§346-152 Exclusions; exemptions.** (a) Nothing in this
14 part shall be construed to include:

15 (1) A person caring for children who is related to [~~the~~
16 ~~caregiver~~] each child by blood, marriage, or adoption[+]

17 as:

18 (A) An aunt, uncle, grandparent, great-grandparent,
19 great-great grandparent, first cousin, niece,
20 nephew, grandniece, grandnephew, great aunt, or
21 great uncle;

22 (B) A stepfather, stepmother, stepbrother, or
23 stepsister; or

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- 1 (C) The spouse of a person named in subparagraph (A)
2 or (B), even though the marriage is terminated by
3 death, separation, or divorce;
- 4 (2) A person, group of persons, or facility caring for a
5 child less than six hours a week;
- 6 (3) A kindergarten, school, or child care program licensed
7 or certified by the department of education or the
8 United States Department of Defense and located on
9 federal property~~[+]~~, or a
10 ~~[(4) A]~~ classroom administered by the executive office on
11 early learning pursuant to section 302L-7;
- 12 ~~[(+5)]~~ (4) A program that provides exclusively for a
13 specialized training or skill development for
14 children~~[+]~~ who are eligible pupils in grades
15 kindergarten through twelve in public or private
16 schools, including but not limited to programs
17 providing activities such as athletic sports, foreign
18 language, the Hawaiian language, dance, drama, music,
19 or martial arts;
- 20 ~~[(+6)]~~ (5) A multiservice organization or community
21 association, duly incorporated under the laws of the
22 State, that operates for the purpose of promoting
23 recreation, health, safety, or social group functions

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1 for eligible pupils in public and private schools
2 through seventeen years of age;
3 ~~[(+7)]~~ (6) Programs for children four years of age and older
4 that operate for no more than two consecutive calendar
5 weeks in a three-month period;
6 ~~[(+8)]~~ (7) A provider agency operating or managing a
7 homeless facility or any other program for homeless
8 persons authorized under part XVII;
9 ~~[(+9)]~~ (8) After-school, weekend, and summer recess programs
10 conducted by the department of education pursuant to
11 section 302A-408;
12 ~~[(+10)]~~ (9) Child care programs conducted by counties
13 pursuant to section 302A-408; provide that each county
14 adopts rules for its programs;
15 ~~[(+11)]~~ (10) Any person who enters a home in a child caring
16 capacity and only cares for children who are of that
17 household;
18 ~~[(+12)]~~ (11) A person caring for two or fewer children
19 unrelated to the caregiver by blood, marriage, or
20 adoption~~[+]~~ as described in paragraph (1); and
21 ~~[(+13)]~~ (12) A child care program licensed by the Hawaii
22 council of private schools. A child care program
23 claiming an exemption under this paragraph shall

1 submit an application for the exemption on a form
2 provided by the department and shall provide to the
3 department evidence that the licensing standards of
4 the Hawaii council of private schools meet or exceed
5 the department's standards for a comparable program,
6 including a monitoring component. Upon application of
7 a child care program for the exemption under this
8 paragraph, the department shall have the discretion to
9 determine whether the licensing standards of the
10 Hawaii council of private schools meet or exceed the
11 department's standards.

12 (b) Staff members of programs taught solely in Hawaiian
13 that promote fluency in the Hawaiian language shall be exempt
14 from any rules requiring academic training or certification.

15 (c) Minimum health and safety requirements or standards as
16 required by federal law may be imposed on any of the groups
17 listed in this section that provide child care [~~services and are~~
18 ~~reimbursed with federal funds.~~] for a child whose family
19 receives a child care subsidy from the department.

20 (d) Any person or child care facility asserting an
21 exemption under this section shall cooperate with the department
22 in investigations relating to unlicensed or unregistered child
23 care[=], has the burden of proof, and shall provide verification

1 to the department that the person or child care facility falls
2 within an exemption."

3 SECTION 3. Section 346-152.3, Hawaii Revised Statutes, is
4 amended to read as follows:

5 "[~~†~~]**§346-152.3 Investigations.**[~~†~~] (a) Upon receiving a
6 report that a person or child care facility may be caring for
7 [~~more than two children unrelated to the caregiver by blood,~~
8 ~~marriage, or adoption, or providing care for a child for more~~
9 ~~than six hours per week, without a child care license issued by~~
10 ~~the department,~~] children in violation of this part, the
11 department may conduct an investigation for the [~~limited~~]
12 purpose of determining [~~the number of children in care who are~~
13 ~~unrelated to the caregiver by blood, marriage, or adoption, and~~
14 ~~the number of hours of care provided per week, in accordance~~
15 ~~with the following provisions:~~] whether a violation of this part
16 has occurred or is occurring.

17 [~~1~~] (b) The department may request access to the
18 location indicated in the report [~~or~~

19 ~~(2) The~~], and the department may file a [complaint]
20 petition for a search warrant with the district court in the
21 circuit where the location is indicated in the report [~~is; and~~
22 ~~the~~]. The district court, upon probable cause, may issue a
23 search warrant, directed to the department and the appropriate

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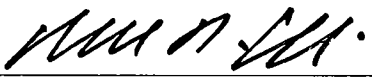
1 ~~[county police department,]~~ law enforcement agency, if
2 necessary, to conduct an investigation pursuant to this section
3 ~~[between the hours of sunrise and sunset]."~~

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

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

7

8

INTRODUCED BY: 

BY REQUEST

Report Title:

Child Care

Description:

Clarifies the allowable relationships the caregiver must have to be considered related to a child in care; clarifies that a program that provides exclusively for a specialized training or skill development shall be for children who are eligible pupils in grades kindergarten through twelve in public or private schools; clarifies that minimum health and safety requirements or standards as required by federal law may be imposed on any of the groups in section 346-152, Hawaii Revised Statutes, that provide child care for a child whose family receives a child care subsidy from the department; clarifies that the burden of proof is upon the caregiver or facility to provide verification of meeting a declared exemption under section 346-152, Hawaii Revised Statutes; clarifies that the information that may be investigated by the department to determine violations of part VIII of chapter 346, Hawaii Revised Statutes, occurred or is occurring; clarifies that the department may file a petition for a search warrant with the district court; clarifies that a search warrant may be issued to the department and the appropriate law enforcement agency to conduct an investigation; and renumbers the exemptions to appear as they were prior to Act 276, Session Laws of Hawaii 2019.

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

JUSTIFICATION SHEET

SB. NO. 2894

DEPARTMENT: Human Services

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

PURPOSE: To improve the safety of children in child care settings, this bill amends section 346-152, Hawaii Revised Statutes (HRS), to clarify: (1) the specific relatives and the programs that provide exclusively for specialized training or skill development for children who are eligible pupils in grades kindergarten through twelve in public or private schools that are exempt from registration with or licensure by the department of human services; (2) that minimum health and safety requirements or standards as required by federal law may be imposed on any of the groups in section 346-152, HRS, that provide child care for a child whose family receives a child care subsidy from the department; and (3) that the burden of proof is upon the caregiver or facility to provide the department with verification of meeting a declared exemption under section 346-152, HRS.

The bill further amends section 346-152(a), HRS, by incorporating wording inserted as paragraph (4) by Act 276, Session Laws of Hawaii (SLH) 2019, into paragraph (3) and by renumbering the paragraphs in section 346-152(a) to their numbers prior to amendments by Act 276, SLH 2019.

Further, the bill amends section 346-152.3, HRS, to clarify: (1) the information that may be investigated by the department to determine violations of part VIII of chapter 346, HRS, occurred or are occurring; (2) that the department may file a petition for a search warrant with the district court; and (3) that a search warrant may be issued to the department and the appropriate law enforcement agency to conduct an investigation.

MEANS: Amend sections 346-152 and 346-152.3, HRS.

JUSTIFICATION: The proposed amendment of section 346-152, HRS, improves safety of children by clarifying and specifying the relatives exempt from child care regulation as well as clarifying that programs that provide exclusively for a specialized training or skill development for children who are in grades kindergarten through twelve in public or private schools are exempt from regulation by the department.

Section 346-152(a) requires renumbering to maintain the accuracy of current exemption letters that refer to numbered exemptions prior to amendments of Act 276, SLH 2019. The insertion of a new paragraph (4) by Act 276, SLH 2019, resulted in the renumbering of previously numbered paragraphs (4) through (12) to (5) through (13). However, years of previously issued letters are no longer in alignment with the statute; administratively, this change requires the department to reissue letters to organizations and individuals that cite specific exemptions. Likewise, if an existing letter issued prior to Act 276, SLH 2019, is challenged in the future, the applicable law would not be clear to the public, and additional research by program staff and the staff of the attorney general's office would be required to identify the existing law at the time the letter was originally issued.

To this end, section 346-152(a)(3) is amended by incorporating the wording inserted as section 346-152(a)(4) by Act 276, SLH 2019, that exempts a classroom administered by the executive office on early learning pursuant to section 302L-7, and the subsequent paragraphs are renumbered to exist as they did prior to enactment of Act 276, SLH 2019.

The amendments to section 346-152(c), HRS, clarify that minimum health and safety requirements or standards as required by federal law may be imposed on any of the groups in section 346-152, HRS, that provide child care for a child whose family receives a child care subsidy from the department.

The amendments to section 346-152(d), HRS, clarify that the burden of proof is upon the caregiver or facility to provide the department with verification of meeting a declared exemption under section 346-152, HRS.

The amendments to section 346-152.3, HRS, clarify the information that may be investigated by the department to determine violations of part VIII of chapter 346, HRS, occurred or are occurring.

The amendments to section 346-152.3, HRS, will provide clarity needed to the existing laws for the department to enforce violations and to more effectively stop, deter, and prevent a person from engaging in illegal child care.

Impact on the public: The amendments to section 346-152(a), HRS, will impact all legally exempt child care providers caring for a child who is a relative not listed in the proposed amendments. Those child care providers may continue to provide care but would need to become registered with the department to care for more than two children or reduce the number of children in their care to two.

The amendments to section 346-152(d), HRS, will impact non-regulated child care providers as the amendments support the safety of children in care by placing the burden of proof upon the caregiver or facility to provide to the department the verification of meeting a declared exemption under section 346-152, HRS.

Impact on the department and other agencies:

The amendments to section 346-152(a), HRS, may increase the need for resources for the child care licensing program to regulate more child care providers who were previously exempt from registration or licensure who then choose to become regulated by the department.

The amendments to section 346-152(d), HRS, may increase the need for resources for the child care licensing program to pursue civil fines against child care providers found to be operating without a license or registration when the child care provider cannot provide verification of meeting a declared exemption under section 346-152, HRS.

The amendments to section 346-152.3, 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 302.

OTHER AFFECTED
AGENCIES:
For section 346-152.3, HRS, the Department of the Attorney General.

EFFECTIVE DATE: Upon approval.