

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

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TO: The Honorable Senator Russell E. Ruderman, Chair  
Senate Committee on Human Services

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

FROM: Pankaj Bhanot, Director

SUBJECT: **SB 2894 - RELATING TO CHILD CARE**

Hearing: Wednesday, February 5, 2020, 2:45 p.m.  
Conference Room 016, State Capitol

**DEPARTMENT'S POSITION:** The Department of Human Services is in strong support of this administrative bill. The bill further clarifies statutes to ensure the department can enforce regulations when individuals or organizations are operating child care without a license or registration from the department.

**PURPOSE:** This bill proposes to clarify the allowable relationships the caregiver must have to be considered related to a child in care; clarify 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; 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, Hawaii Revised Statutes (HRS), that provide child care for a child whose family receives a child care subsidy from the department; clarify that the burden of proof is upon the caregiver or facility to provide verification of meeting a declared exemption under section 346-152, HRS; clarify section

346-152.3 that the information that may be investigated by the department is to determine violations of Part VIII of Chapter 346, HRS, occurred or is occurring, that the department may file a petition for a search warrant with the district court, and that a search warrant may be issued to the department and the appropriate law enforcement agency to conduct an investigation; and shift and renumber the exemptions under section 346-152(a) to appear as they were prior to Act 276, Session Laws of Hawaii (SLH) 2019.

The proposed amendments will provide needed clarity to existing statutes to improve the department's enforcement of violations and to more effectively stop, deter, and prevent a person or organization from engaging in illegal child care operations.

The current exemptions under section 346-152(a), HRS, do not specify any restrictions to the degree of relationship for relatives or any restrictions for programs that provide exclusively for a specialized training or skill development. Under this bill, the department seeks to amend the statutory exemptions to clarify the statutes to ensure that caregivers and organizations operating child care are regulated by the department when required to ensure the health and safety of Hawaii's system of child care and to allow for enforcement by the department when child care is provided outside of the allowable exemptions.

The proposed amendments to section 346-152(c), HRS, clarifies that any exempt providers under section 346-152, HRS, are subject to minimum health and safety requirements or standards when they provide child care for a child whose family receives a child care subsidy from the department, since the child care subsidy is not paid to the child care provider and is in fact paid to the family eligible for subsidies.

The proposed amendments to section 346-152(d), HRS, clarifies the statute to allow for greater efficiency in enforcement by the department for any person or child care facility asserting an exemption under section 346-152, HRS; the proposed change shifts the burden of proof to the person or facility asserting the exemption to provide verification that the care being provided falls within an exemption.

The proposed amendments to section 346-152.3, HRS, clarifies that the investigation conducted by the department shall be for determining whether a violation of Part VIII of Chapter 346, HRS, has occurred or is occurring and that the department may file a petition for a search warrant with the district court. The district court may issue a search warrant to

the department and the appropriate law enforcement agency, which could include county police, the Department of the Attorney General, or even federal law enforcement, if necessary, to conduct an investigation.

Finally, the bill proposes a "housekeeping" amendment as Act 276 (SLH 2019) amended section 346-152(a), HRS, by adding a new exemption for classrooms administered by the Executive Office on Early Learning and inserting the new exemption as a new paragraph (4). This bill proposes to move the added language of Act 276 (SLH 2019) to become part of paragraph (3) and renumber the subsequent exemptions paragraphs to appear as they were previously. The department has issued letters to child care providers citing the statute for exemptions sought by the individual or organization, and there may be confusion as the exemption paragraphs that were previously referenced may no longer reference the correct section paragraph because of the amendment by Act 276, SLH 2019.

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