

ACT 303

S.B. NO. 2003

A Bill for an Act Relating to Family Child Care.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. It is the intent of the legislature that family child care homes be situated in normal residential surroundings so as to provide children with a home environment conducive to healthy and safe development. It is the public policy of the State to encourage child care facilities that emulate a healthy home environment.

The legislature declares this policy to be of statewide concern for the purpose of excluding family child care homes from municipal zoning regulations with regard to classifying the operation of family child care homes as other than a residential use or occupancy and to prohibit restrictions on the use of residential property as family child care homes.

SECTION 2. Chapter 46, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§46- Family child care homes; permitted use in residential areas. (a)

For the purposes of zoning, family child care homes shall be considered a residential use of property and shall be a permitted use in all residentially designated zones, including but not limited to zones for single-family dwellings. No conditional use permit, variance, or special exception shall be required for residences used as family child care homes.

(b) For the purposes of this section, “family child care home” means a private home where six or fewer children are cared for.”

SECTION 3. Chapter 501, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§501- Family child care homes; permitted use in residential areas.

(a) Family child care homes shall be considered a residential use. Notwithstanding any other law to the contrary, every recorded restriction or prohibition entered into whether by way of covenant, condition upon use or occupancy, or upon transfer of title to residential real property, which directly or indirectly restricts or prohibits family child care homes on residential real property is void.

(b) This provision shall not apply to:

- (1) Housing for older persons as defined by 42 United States Code section 3607(b)(2);
- (2) Limited-equity housing cooperatives created pursuant to chapter 421H;
- (3) Cooperative housing corporations created pursuant to chapter 421I;
- (4) Condominium property regimes created pursuant to chapter 514A; or
- (5) Townhouse projects that consist of a series of three or more individual dwelling units having architectural unity and a common wall between each adjacent unit and in which the owners of the units are members of an association which is responsible for common areas available for use by the members of the association.

(c) For the purposes of this section, “family child care home” means a private home where six or fewer children are cared for.”

SECTION 4. Chapter 502, Hawaii Revised Statutes, is amended by adding a new section to be appropriately designated and to read as follows:

“§502- Family child care homes; permitted uses in residential areas.

(a) Family child care homes shall be considered a residential use. Notwithstanding any other law to the contrary, every recorded restriction or prohibition entered into whether by way of covenant, condition upon use or occupancy, or upon transfer of title to residential real property, which directly or indirectly restricts or prohibits family child care homes on residential real property is void.

(b) This provision shall not apply to:

- (1) Housing for older persons as defined by 42 United States Code section 3607(b)(2);
- (2) Limited-equity housing cooperatives created pursuant to chapter 421H;
- (3) Cooperative housing corporations created pursuant to chapter 421I;
- (4) Condominium property regimes created pursuant to chapter 514A; or
- (5) Townhouse projects that consist of a series of three or more individual dwelling units having architectural unity and a common wall between each adjacent unit and in which the owners of the units are members of an association which is responsible for common areas available for use by the members of the association.

(c) For the purposes of this section, “family child care home” means a private home where six or fewer children are cared for.”

SECTION 5. The department of the attorney general, in conjunction with the department of human services, the commission on persons with disabilities, the insurance commission, and the real estate commission, shall submit a report to the legislature not later than twenty days prior to the convening of the 1997 Regular Session. The report shall review and discuss issues of tort liability, the Americans with Disabilities Act, and any constitutional concerns as they may relate to limited-equity housing cooperatives, cooperative housing corporations, condominium property regimes, and townhouse projects as defined in this Act. The department of the attorney general shall also make recommendations as to whether such issues may or may not be resolved, and whether sections 3 and 4 of this Act should be amended to remove the exemptions applicable to limited-equity housing cooperatives, cooperative housing corporations, condominium property regimes, and townhouse projects as defined in this Act with the reasons therefor.

SECTION 6. New statutory material is underscored.¹

SECTION 7. This Act shall take effect upon approval.

(Approved July 3, 1996.)

Note

1. Edited pursuant to HRS §23G-16.5.