

ACT 225

H.B. NO. 118

A Bill for an Act Relating to Family Child Care.

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

SECTION 1. The legislature finds that there are currently approximately ninety thousand children four years of age or younger in Hawaii. National and local data suggest that a minimum of fifty-eight thousand young children are being cared for by someone other than a parent. On Oahu alone, there are currently only fourteen thousand preschool spaces available and a maximum of one thousand six hundred forty-four licensed family child care spaces in two hundred seventy-four licensed family child care homes. Hawaii must expand the availability of quality family child care providers who offer a necessary and valuable service to our families. However, if unnecessary requirements prevent the expansion of regulated family child care homes, more and more parents will be forced to choose providers that are not regulated, or monitored, and thereby lack assurances of a nurturing environment with basic health and safety compliance.

Child care centers that serve over twenty children are not required to have more than a \$1,000,000 insurance policy. This should also be sufficient for family child care providers who, by law, can only serve six children. Family child care provides a vital service to our communities and to our families with very young children.

SECTION 2. Section 502C-2, Hawaii Revised Statutes, is amended by amending subsections (b), (c), (d), and (e) to read as follows:

“(b) Every family child care home located in a townhouse project shall give the association written notice of intent to commence operation as a family child care home no later than ninety days prior to commencing operation. Family child care homes that fail to give such written notice shall not commence operation. Any family child care home existing on July 2, [~~1999~~] 2001, shall notify the association within sixty days of July 2, [~~1999~~] 2001, if the home has not previously done so.

The notification does not need to be notarized. If a family child care home commences or continues operation without providing [such] notice within the prescribed time limit required under this section:

- (1) The association shall be absolved of any and all liability for the operation of the family child care home; and
- (2) The family child care home shall indemnify, save, and hold the association harmless from and against all claims and actions and all costs and expenses arising from the operation of the family child care home.

(c) A family child care home located in a townhouse project shall comply with the Equal Opportunity for Individuals with Disabilities Act (Americans with Disabilities Act of 1990, 42 U.S.C. 12101, et seq., as amended)[; provided that any improvements or remodeling made to the particular apartment or unit out of which the family child care home operates, or to the corresponding common elements, to comply with the Americans with Disabilities Act as it applies to the family child care home, shall be made and paid for by the operator of the family child care home. If the Americans with Disabilities Act requires that establishment of a family child care home requires modifications or improvements]. The family child care operator shall be responsible for all physical modifications to the premises, both within the unit and in the common areas, that are readily achievable, and that would allow for the full participation of a child or parent with a physical disability, unless other site arrangements were made and were equally effective. If modifications or improvements are required to the common elements, the operator of the family child care home shall obtain approval of the modifications or improvements from the association before undertaking any construction[-] and the operator of the family child care home shall pay for any such modification.

For the purposes of this subsection, “readily achievable” means easily accomplishable and able to be carried out without much difficulty or expense.

(d) An association may authorize the use of an apartment or unit as a family child care home by obtaining the approval of a majority of the owners of the condominium project or planned community, where majority is defined in the association bylaws or other association documents, or by any other method specified in the association bylaws or other association documents. The family child care home authorized shall be subject to [any conditions and limitations approved by the majority of the owners of the condominium project or planned community, or approved by any other method specified in the association bylaws or other association documents.] the declaration, by-laws, house rules, and any amendments pertaining to the condominium project or planned community; provided that any declaration, by-law, or house rule provision prohibiting or limiting the use of the apartment unit for family child care purposes shall be invalid.

- (e) An association may:
 - (1) Impose conditions on the establishment or operation of a family child care home that are necessary for association immunity from liability under section 663-1.53, including:
 - (A) Requiring the family child care home to comply with the Americans with Disabilities Act;
 - (B) Limiting the number of apartments or units used as a family child care home to no less than one per cent, and no more than three per cent, of the total number of apartments or units in any townhouse project;
 - (C) Limiting family [{}child{}] care homes that may be established to those operated by an owner-occupant; and
 - (D) Restricting family [{}child{}] care homes to the fourth or lower floor; and

- (2) Require the operator of the family child care home, as a condition precedent to the establishment of the family child care home, to:
- (A) Indemnify, hold harmless, and defend the association against all claims, including costs and attorneys' fees, whether brought by judicial or administrative action, relating to the operation of a family child care home as well as to common elements that are traversed by persons going to and from the family child care home;
 - (B) Reimburse the association for the amount of any increase in the association's liability insurance premiums attributable by the insurer to the operation of the family child care home;
 - (C) Require the parent, guardian, and caretaker of the child being cared for in the family child care home to sign a waiver of claims for liability against the association; provided that this waiver need not be notarized; and
 - (D) Obtain liability insurance to cover the family child care home and the common elements that meets the approval of the association and that names the association as an additional named insured, for liability claims arising solely from the operation of the child care business; provided that:
 - (i) [~~Policy limits shall be determined in accordance with the declaration;~~] The policy limit requirement shall not exceed \$1,000,000 in coverage per provider; and
 - (ii) The liability policy of the family child care home shall be the sole remedy for any injury occurring to the child subject to the care of the family child care home, and the parent, guardian, or caretaker of a child subject to the care of the family child care home.

In the event that coverage for the family child care home is excluded from the association policy and an alternative source of liability coverage for the same risk or risks is unavailable, the association may prohibit the establishment of the family child care home."

SECTION 3. Act 242, Session Laws of¹ 1999, is amended by amending section 8 to read as follows:

"SECTION 8. This Act shall take effect upon its approval; provided that:

- (1) Sections 1 and 2 shall apply to child care businesses, family child care homes, condominium projects, planned communities, and townhouses that are in existence as of the effective date of this Act; and
- (2) This Act shall be repealed on June 30, [~~2001;~~] 2005; provided that sections 46-15.35, 346-151, 501-231, and 502-111, Hawaii Revised Statutes, shall be reenacted in the same form in which they existed on the day before the approval of this Act."

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

SECTION 5. This Act shall take effect on June 29, 2001.

(Approved June 13, 2001.)

Note

1. So in original.