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## HOUSE RESOLUTION

URGING THE UNITED STATES TRADE REPRESENTATIVE TO PURSUE THE  
INSERTION OF AN INTERPRETIVE NOTE IN THE UNITED STATES-  
AUSTRALIA FREE TRADE AGREEMENT TO CLARIFY THAT MEDICAID AND  
PHARMACEUTICAL ASSISTANCE PROGRAMS UNDER THE MEDICARE  
MODERNIZATION ACT ARE NOT INCLUDED IN THE AGREEMENT.

1           WHEREAS, Hawaii continues to strive to ensure that  
2 healthcare is available to all residents of the State; and

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4           WHEREAS, managing healthcare costs is an essential  
5 component of the State's efforts to ensure continued access to a  
6 broad range of healthcare services; and

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8           WHEREAS, the Congressional Budget Office found that the  
9 growth in prescription drug costs has outpaced every other  
10 category of health expenditure; and

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12           WHEREAS, Hawaii has joined other states in the forefront in  
13 developing innovative solutions to combat the steep increase in  
14 prescription drug costs by taking steps to limit patent abuse,  
15 expand access to affordable prescription drugs, and implement  
16 cost containment strategies; and

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18           WHEREAS, recent state and federal court decisions have  
19 reaffirmed the ability of states to adopt policies designed to  
20 manage prescription drug costs; and

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22           WHEREAS, the language contained in the United States-  
23 Australia Free Trade Agreement, including Annex 2-C relating to  
24 pharmaceuticals, is ambiguous and could be interpreted by a  
25 dispute resolution panel to promote an overtly liberalized  
26 market that maximizes innovation in place of Hawaii's interests  
27 in promoting cost containment of prescription drugs; and  
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1           WHEREAS, the United States Trade Representative (Trade  
2 Representative) has assured states in writing that state  
3 programs are not covered by recent trade agreements signed by  
4 the United States; and

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6           WHEREAS, the written assurance is not a legally binding  
7 agreement in the case of a complaint filed by a United States  
8 trading partner regarding the state administration of healthcare  
9 programs; and

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11           WHEREAS, all trade agreements with the United States are  
12 open to an exchange of interpretive notes through which a party  
13 to the agreement can clarify the scope of a provision of the  
14 trade agreement or annex to the agreement; and

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16           WHEREAS, these interpretive notes have the force of  
17 international law; now, therefore,

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19           BE IT RESOLVED by the House of Representatives of the  
20 Twenty-third Legislature of the State of Hawaii, Regular Session  
21 of 2006, that this body urges the Trade Representative, in  
22 consultation with the states, to pursue the exchange of an  
23 interpretive note with Australia to clarify that the state and  
24 local administration of Medicaid programs and pharmaceutical  
25 assistance programs under the Medicare Modernization Act are not  
26 included in the definition of "federal healthcare program" under  
27 Annex 2-C of the United States-Australia Free Trade Agreement;  
28 and

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30           BE IT FURTHER RESOLVED that the Trade Representative is  
31 also urged to:

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33           (1) Engage in discussion with the Hawaii State House of  
34 Representatives and Department of Health officials to  
35 determine which healthcare programs are covered by the  
36 Annex 2-C definition of "federal healthcare program";  
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38           (2) Carve out and protect the state administration of  
39 healthcare programs, including the purchase of  
40 prescription drugs, in all current and future  
41 negotiations of trade agreements;



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- (3) Respond to states' requests for support in building local capacity to understand the implications of international trade agreements relating to health; and
- (4) Achieve a more coherent policy on all levels of government by consulting with states on the implications of state laws and lawmaking authority before committing to trade provisions that directly affect the state's authority;

and

BE IT FURTHER RESOLVED that certified copies of this Resolution be transmitted to the President of the United States, Speaker of the United States House of Representatives, President of the United States Senate, United States Trade Representative, members of Hawaii's Congressional delegation, and the Director of Health.

OFFERED BY:

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