

JAN 25 2006

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# A BILL FOR AN ACT

RELATING TO MEDICAL LIABILITY.

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

1           SECTION 1. The legislature recognizes that when health  
2 care providers, such as physicians, take responsibility for  
3 medical errors and offer a genuine apology, trust builds and  
4 patients and family members have less inclination to sue. An  
5 apology also can lead to open discussion from which the hospital  
6 may obtain information that will help avoid similar errors in  
7 the future. A growing number of states have passed laws that  
8 protect an apology from being used against health care providers  
9 in court.

10           The purpose of this Act is to protect apologies from being  
11 used against health care providers in medical malpractice  
12 actions.

13           SECTION 2. Section 626-1, Hawaii Revised Statutes, is  
14 amended by adding to article IV a new rule to be appropriately  
15 designated and to read as follows:

16           "Rule           Apologies; medical care. (a) In any civil  
17 action that is brought against a health care provider, as  
18 defined in section 671-1, or in any arbitration proceeding that



1 relates to the civil action, any statement, affirmation,  
2 gesture, or conduct expressing apology, responsibility,  
3 liability, sympathy, commiseration, condolence, compassion, or a  
4 general sense of benevolence that:

5 (1) Was made by a health care provider to the patient, a  
6 relative of the patient, the patient's survivors, or a  
7 health care decision maker for the patient; and

8 (2) Relates to the discomfort, pain, suffering, injury, or  
9 death of the patient as the result of the  
10 unanticipated outcome of medical care

11 is inadmissible as evidence of an admission of liability or as  
12 evidence of an admission against interest."

13 SECTION 3. This Act does not affect the rights or duties  
14 that matured, penalties that were incurred, and proceedings that  
15 were begun, before its effective date.

16 SECTION 4. New statutory material is underscored.

17 SECTION 5. This Act shall take effect upon its approval.

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*Ron Moran* *Ron Moran*  
INTRODUCED BY: *Debra H Baker*  
*David J. ...* *...*  
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**Report Title:**

Evidence; Medical Liability; Apology

**Description:**

Makes an apology regarding a medical error inadmissible as evidence of an admission of liability or an admission against interest in medical malpractice claims.

