

Honolulu, Hawaii

March 24, 2006

RE: S.B. No. 3279  
S.D. 2  
H.D. 1

Honorable Calvin K.Y. Say  
Speaker, House of Representatives  
Twenty-Third State Legislature  
Regular Session of 2006  
State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which was referred S.B. No. 3279, S.D. 2, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO MEDICAL LIABILITY,"

begs leave to report as follows:

The purpose of this bill is to reduce the cost of medical malpractice insurance in Hawaii by, among other things:

- (1) Capping at \$500,000, noneconomic damage awards in medical tort actions against obstetricians, obstetrician-gynecologists, and trauma care providers;
- (2) Establishing a sliding scale of permissible attorney contingency fees in which the contingency fee percentage decreases as the recovery amount increases;
- (3) Eliminating joint and several liability for economic damages;
- (4) Allowing joint and several liability for noneconomic damages where a healthcare provider's degree of negligence is 25 percent or more; and
- (5) Amending the definition of "healthcare provider" to include a wide range of health care professionals.



The Department of Commerce and Consumer Affairs, University of Hawaii John A. Burns School of Medicine, American Academy of Pediatrics, Hawaii Chapter, Hawaii Association of Health Plans, Hawaii Health Systems Corporation, Hawaii Medical Association, Hawaii Independent Physicians Association, Healthcare Association of Hawaii, Castle Medical Center, Medical Insurance Exchange of California, the Senator from the 2<sup>nd</sup> Legislative District of Washington, and numerous concerned individuals supported this bill. The Consumer Lawyers of Hawaii and a concerned individual opposed this bill.

Your Committee finds that Hawaii is having difficulty attracting and retaining physicians, particularly those with specialty practices subject to high malpractice insurance premiums. This problem is reaching crisis proportions, is being felt most acutely by patients on the Neighbor Islands, and is making it increasingly likely that they will not receive the timely, appropriate medical care that they need.

There was testimony that premiums have increased the most for specialists like obstetrician-gynecologists. Your Committee notes that the bill's cap on noneconomic damages applies only to actions against obstetricians, obstetrician-gynecologists, and trauma care providers.

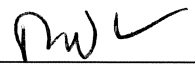
Your Committee also recognizes that there is some controversy about how effective this bill will be. The Insurance Commissioner testified that the noneconomic damage cap will make medical malpractice recoveries more predictable for insurers, will improve Hawaii's business climate, and has shown success in other states that have adopted a cap. Those opposed to this bill, however, have submitted a study that concludes that measures similar to this one have not worked in California.

Your Committee also recognizes that while noneconomic damages are limited to \$500,000, the bill allows the plaintiff full recovery of all economic damages suffered, and that as the plaintiff's injuries increase in severity, the bill's "sliding scale" for attorney fees directs an increasingly greater amount of any recovery to the plaintiff.

As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of S.B. No. 3279, S.D. 2, H.D. 1, and recommends that it be referred to the Committee on Judiciary.



Respectfully submitted on  
behalf of the members of the  
Committee on Consumer  
Protection & Commerce,



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ROBERT N. HERKES, Chair



