

STAND. COM. REP. NO. 970 -06

Honolulu, Hawaii

March 16, 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 Health, to which was referred S.B. No. 3279, S.D. 2, entitled:

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

begs leave to report as follows:

The purpose of this bill is to allow physicians who are subject to a medical malpractice lawsuit to make a benevolent gesture of sympathy without fear of it being used as evidence of fault in the lawsuit.

Kaiser Permanente, Healthcare Association of Hawaii, and Hawaii Pacific Health supported this bill. The Department of Commerce and Consumer Affairs, Consumer Lawyers of Hawaii, Hawaii Association of Health Plans, and Hawaii Medical Association provided comments.

Your Committee recognizes that Hawaii's medical physicians face many difficult situations in their career, especially when things go wrong in the performance of their duties and a physician may face a career-altering lawsuit. This atmosphere of fear causes many physicians to avoid our State's most critically deficient specialty practices such as obstetrics, gynecology, and trauma care. It has become increasingly difficult to attract qualified medical physicians to Hawaii, especially to our rural, medically underserved areas.

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Creative solutions to attract physicians to practice where shortages occur have been used in some states such as New Jersey where a three-year pilot program has been implemented that offers medical malpractice premium assistance to help defray the cost of practicing medicine because the threat of litigation is high. Hawaii should institute such measures, as well as using the Trauma Care Fund, currently being considered in House Bill No. 3142, as a source of funding to provide such assistance to physicians and attract medical specialty practitioners to our state.

Your Committee finds that further study on the impact of similar legislation in other states would be of great value in determining such a measure's effectiveness in easing the burden on our medical physicians and making Hawaii a more attractive place to practice medicine.

Your Committee has amended this bill by replacing its contents and inserting provisions that aid in finding solutions to Hawaii's shortage of specialty-practice physicians in medically underserved areas. As amended, this bill reforms the healthcare liability system for resolving healthcare liability claims and for compensating injured patients by:

- (1) Capping to \$500,000, non-economic damages in medical tort actions against obstetricians, obstetrician gynecologists, and trauma care providers;
- (2) Preventing attorneys representing someone in a medical tort action from collecting contingency fees in excess of:
 - (A) Forty percent of the first \$50,000 recovered;
 - (B) Thirty-three and one-third percent of the next \$50,000 recovered;
 - (C) Twenty-five percent of the next \$500,000 recovered; and
 - (D) Fifteen percent of any amount recovered which exceeds \$600,000;
- (3) Providing for the assessment of a percentage of negligence or other fault of all parties in a medical tort action;



- (4) Stipulating a proportionate payment of economic and noneconomic damages based on the percentage of negligence assessed;
- (5) Expanding the definition of a "health care" or "healthcare" provider to include a wide range of health care professionals;
- (6) Amending the definition of "medical tort";
- (7) Requiring the Insurance Commissioner to report to the Legislature annually on the effectiveness of this measure; and
- (8) Including a sunset-date of June 30, 2012.

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

Respectfully submitted on
behalf of the members of the
Committee on Health,



DENNIS A. ARAKAKI, Chair



