

Honolulu, Hawaii

APR - 6 2006

RE: H.B. No. 237  
H.D. 3  
S.D. 1

Honorable Robert Bunda  
President of the Senate  
Twenty-Third State Legislature  
Regular Session of 2006  
State of Hawaii

Sir:

Your Committee on Judiciary and Hawaiian Affairs, to which was referred H.B. No. 237, H.D. 3, entitled:

"A BILL FOR AN ACT RELATING TO TORTS,"

begs leave to report as follows:

The purpose of this measure is to establish a temporary commission on medical tort reform.

Your Committee circulated a proposed senate draft that would amend the section dealing with the abolition of joint and several liability for governmental entities, and clarify that the liability of governmental entities is limited to only the share of damages attributable to them.

Your Committee received testimony in support of the proposed draft from the Attorney General, the Department of Transportation, the Mayor of the County of Hawaii, the Office of the Corporation Counsel for the County of Hawaii, the Department of the Corporation Counsel for the City and County of Honolulu, the Mayor of Maui County, the Department of the Corporation Counsel for the County of Maui, three members of the County Council for the County of Maui, the County Attorney of the County of Kauai, and the Hawaii Medical Association. Hawaiian Electric Company and Consumer Lawyers of Hawaii submitted testimony in opposition to this measure.



Your Committee finds that the Hawaii Supreme Court's decision in *Taomae v. Lingle*, 108 Hawaii 245 (2005), invalidated a constitutional amendment because the title of the bill was insufficient and because the bill failed to receive three readings in each house of the legislature. Although the language of the court's decision is limited to bills proposing a constitutional amendment, Article III, Section 15 of the Hawaii State Constitution makes it clear that the three reading requirement applies to all bills, providing that "[n]o bill shall become law unless it shall pass three readings in each house on separate days." Therefore, this bill should not pass out of the legislature unless the bill receives three readings by the House of Representatives in conformance with Article III, Section 15 of the Hawaii State Constitution.

Your Committee has amended the proposed measure to:

- (1) Insert language as suggested by the Consumer Lawyers of Hawaii to provide that the abolition of joint and several liability under this section shall not apply to cases in which the subject matter of the claim against the State is covered by a primary insurance policy entered into by the State or any of its agencies; and
- (2) Insert a defective date of July 1, 2050 to allow for further discussion.

As affirmed by the record of votes of the members of your Committee on Judiciary and Hawaiian Affairs that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 237, H.D. 3, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 237, H.D. 3, S.D. 1, and be placed on the calendar for Third Reading.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary and  
Hawaiian Affairs,

  
COLLEEN HANABUSA, Chair



