

Honolulu, Hawaii

MAR 2 - 2006

RE: S.B. No. 2558  
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 S.B. No. 2558 entitled:

"A BILL FOR AN ACT RELATING TO THE HAWAII RULES OF EVIDENCE,"

begs leave to report as follows:

The purpose of this measure is to amend the Hawaii rules of evidence to make inadmissible evidence of written or oral apologies and benevolent gestures for purposes of proving fault.

This measure also ensures that a statement of fault shall continue to be admissible.

Testimony in support of this measure was submitted by the Department of the Attorney General and Kaiser Permanente. Testimony in opposition to this measure was submitted by the Consumer Lawyers of Hawaii. The Hawaii Supreme Court Standing Committee on the Rules of Evidence had no objection.

Your Committee finds that making an apology or expression of sympathy to an individual who has been harmed or wronged is a natural human reaction to a bad situation. However, your Committee further finds that, in this litigious day and age, many are unable to freely express these feelings for fear that their expressions of sympathy or empathy will be construed to constitute admissions of guilt or liability. Your Committee believes that individuals should be encouraged to openly share civil and humane feelings with each other and not be discouraged from or punished for reaching out to others after difficult or tragic events. Your



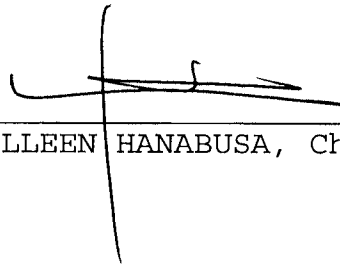
Committee is mindful of the concerns regarding the term apology, as its use may imply an acknowledgement of fault and has addressed the issue accordingly.

Your Committee has amended this measure by:

- (1) Deleting the language that establishes the new rule that makes apologies and benevolent gestures inadmissible;
- (2) Inserting new language that:
  - (A) Makes expressions of sympathy, commiseration, or condolence regarding the consequences of an event to which the declarant participated inadmissible to prove liability; and
  - (B) Allows an apology or other statement acknowledging fault to be admissible.

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 S.B. No. 2558, as amended herein, and recommends that it pass Second Reading in the form attached hereto as S.B. No. 2558, 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,

  
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COLLEEN HANABUSA, Chair



