<u>H</u>.B. NO.<u>1253</u>

A BILL FOR AN ACT

RELATING TO THE HAWAII RULES OF EVIDENCE.

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

SECTION 1. While it is only civil and humane to apologize 1 and offer sympathy or other expressions of understanding to 2 persons who have been harmed in some way, the reality of 3 lawsuits oftentimes prevents such expressions of apology or 4 sympathy from being made for fear that they will be used 5 subsequently as an admission of liability. Many people will 6 bring a claim or a lawsuit against another person or other 7 entity for the simple reason that there has been no apology or 8 expression of sympathy. Particularly in our State, The Aloha 9 State, it is regrettable that members of our statewide community 10 cannot reach out to others in a humane way without fear of 11 having such a communication used subsequently as an admission of 12 liability. This Act will allow such expressions without fear of 13 their being used against those who express such sentiment to 14 others. 15

SECTION 2. Section 626-1, Hawaii Revised Statutes, is amended by adding to article IV a new rule to be appropriately designated and to read as follows: <u>H</u>.B. NO. <u>1253</u>

1	"Rule Apologies. Evidence of written or oral
2	apologies issued by or on behalf of an individual, corporation,
3	or government entity, whether made before or during judicial or
4	administrative proceedings relating to the subject matter of the
5	apology, is not admissible to prove liability. Evidence of
6	benevolent gestures made in connection with such apologies is
7	likewise not admissible. This rule does not require the
8	exclusion of any evidence otherwise discoverable or admissible
9	merely because it is presented in conjunction with an apology.
10	This rule also does not require exclusion when the evidence is
11	offered for another purpose, such as disproving a contention of
12	bad faith."
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.
18	INTRODUCED BY. Calin &Y. Dry
19	INTRODUCED BY:
20	BY REQUEST
	JAN 2 2 2007

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H.B. NO. 1253

JUSTIFICATION SHEET

DEPARTMENT:

TITLE:

Attorney General

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

PURPOSE: The purpose of this bill is to allow individuals, corporations, and government entities to offer apologies or other expressions of sympathy without fear of such gestures being used against them to establish civil liability.

MEANS: Amend section 626-1, Hawaii Revised Statutes, by adding a new rule to article IV of the Hawaii Rules of Evidence.

JUSTIFICATION: Over the years, sympathy cards and oral apologies have increasingly been construed as admissions of fault and offered as evidence of negligence. This has resulted in an understandable reluctance to apologize or engage in other forms of benevolent action.

> Impact on the public: This bill will encourage members of the community to more freely engage in sympathetic and/or apologetic gestures in response to the misfortunes of others, because it will decrease the concern that such gestures will negatively impact ongoing or potential litigation. Another possible impact of this bill is a reduction in the number of lawsuits filed and court congestion. It seems probable that receipt of an apology will cause many putative plaintiffs to forego litigation.

Several other states have already enacted similar legislation, such as California, Texas, Massachusetts, Tennessee, and Washington. The high courts in Vermont and Georgia have also upheld protections for apologies, through judicial opinions.

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Impact on the department and other agencies: As suggested above, this bill may positively impact the Judiciary by reducing the number of lawsuits filed and the accompanying burden on the judicial system.

GENERAL FUND: None.

OTHER FUNDS: None.

PPBS PROGRAM DESIGNATION:

None.

OTHER AFFECTED AGENCIES:

Judiciary.

EFFECTIVE DATE:

Upon approval.