

JAN 22 2007

A BILL FOR AN ACT

RELATING TO THE HAWAII RULES OF EVIDENCE.

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

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

16 SECTION 2. Section 626-1, Hawaii Revised Statutes, is
17 amended by adding to article IV a new rule to be appropriately
18 designated and to read as follows:

JUSTIFICATION SHEET

DEPARTMENT: Attorney General

TITLE: 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.

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.