

Honolulu, Hawaii
Feb 15, 2008

RE: H.B. No. 1992
H.D. 2

Honorable Calvin K.Y. Say
Speaker, House of Representatives
Twenty-Fourth State Legislature
Regular Session of 2008
State of Hawaii

Sir:

Your Committee on Consumer Protection & Commerce, to which
was referred H.B. No. 1992, H.D. 1, entitled:

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

begs leave to report as follows:

The purpose of this bill is to address rising medical
malpractice insurance costs by, among other things:

- (1) Limiting noneconomic damages in medical tort actions to \$250,000;
- (2) Allowing plaintiffs to petition the court for consideration of "catastrophic damages" for which up to \$3,000,000 in noneconomic damages may be awarded;
- (3) Defining "economic damages";
- (4) Allocating economic and noneconomic damages in medical tort actions in proportion to the healthcare provider's share of negligence or other fault; and
- (5) Providing that medical torts only include the rendering of professional services for which the healthcare provider is licensed and that are not restricted by the licensing agency or licensed hospital.



The Department of Commerce and Consumer Affairs, Department of the Attorney General, Hawaii Health Systems Corporation, Kaiser Permanente, Hawaii Association of Health Plans, Healthcare Association of Hawaii, Hawaii Medical Association, American College of Obstetricians and Gynecologists-Hawaii Section, and numerous concerned individuals testified in support of this bill. The Consumer Lawyers of Hawaii opposed this measure. Several concerned individuals submitted comments.

Your Committee has amended this bill by:

- (1) Limiting its application to:
 - (A) Counties with populations of less than 500,000; and
 - (B) Injuries and deaths occurring after this bill takes effect;
- (2) Capping noneconomic damages at:
 - (A) \$500,000 for "high-risk medical specialties", as designated by the Department of Health (DOH); and
 - (B) \$250,000 for all other medical specialties;
- (3) Removing dentists, optometrists, pharmacists, and psychologists from the definition of "health care provider" for purposes of the law on medical torts;
- (4) Requiring DOH to adopt rules by December 31, 2009, designating the medical specialties that are high-risk for purposes of the caps on noneconomic damages; and
- (5) Changing the effective date to January 1, 2010, with a sunset date of December 31, 2014.

Your Committee is aware of the likely difficulties of designating medical specialties as high-risk for purposes of this bill. As a starting point, it has been suggested to your Committee that certain specialties are widely regarded as involving higher risks, such as obstetrics, gynecology, surgery, orthopedics, and emergency room care. Practice areas with relatively lower risk may include primary care in areas such as family practice, general practice, internal medicine, pediatrics, and psychiatry.



As affirmed by the record of votes of the members of your Committee on Consumer Protection & Commerce that is attached to this report, your Committee is in accord with the intent and purpose of H.B. No. 1992, H.D. 1, as amended herein, and recommends that it be referred to the Committee on Judiciary in the form attached hereto as H.B. No. 1992, H.D. 2.

Respectfully submitted on
behalf of the members of the
Committee on Consumer
Protection & Commerce,



ROBERT N. HERKES, Chair



