

STAND. COM. REP. NO.

1038

Honolulu, Hawaii

MAR 27 2009

RE: H.B. No. 1636
H.D. 1
S.D. 1

Honorable Colleen Hanabusa
President of the Senate
Twenty-Fifth State Legislature
Regular Session of 2009
State of Hawaii

Madam:

Your Committee on Health, to which was referred H.B.
No. 1636, H.D. 1, entitled:

"A BILL FOR AN ACT RELATING TO EMERGENCY MEDICAL PHYSICIANS,"

begs leave to report as follows:

The purpose of this measure is to provide immunity from any
civil liability to all physicians who render emergency medical
care in a hospital.

Your Committee received testimony in support of this measure
from the Department of Commerce and Consumer Affairs, the
Healthcare Association of Hawaii, the Queen's Medical Center,
Hawaii Emergency Physicians Associated, Inc., and the Hawaii
Medical Association. Testimony in opposition of this measure was
submitted by the Hawaii Association for Justice.

Written testimony presented to the Committee may be reviewed
on the Legislature's website.

Your Committee finds that proponents of this measure have
argued that providing immunity to physicians from any civil
liability will address Hawaii's shortage of emergency room
physicians. However, your Committee finds that, according to The
American College of Emergency Physicians report, *The National
Report Card on the State of Emergency Medicine 2009*, Hawaii ranks
number one in the nation in the number of board certified
emergency medical doctors. A national shortage of emergency

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on-call specialists exists. The Hawaii specific data does not support the contention that these specialists are leaving Hawaii to work in one of the few states that have implemented a version of tort reform.

Your Committee is concerned that on-call physicians who provide emergency medical care are consistently over-worked because of the shortage. However, the measure does not include a provision that would provide protection for patients who are cared for in this precarious situation.

Your Committee further finds that the measure is overly broad as written in that it allows for complete immunity from civil liability for negligent acts or omissions of any physician who provides emergency medical care to a person with a "serious bodily injury". "Serious bodily injury" could include the majority of patients admitted to a hospital; therefore, expanding immunity beyond that which addresses the specific issue of on-call emergency medical care shortages.

Your Committee finds that physicians in private practice who volunteer to serve on-call, with or without compensation, to assist hospital staff physicians provide critical medical services to the public. A more effective way of addressing the shortage of these physicians is to ensure that they are not penalized for their voluntary participation by finding it more difficult or expensive to obtain and maintain professional errors and omissions liability insurance coverage solely because they voluntarily participate on hospital on-call panels.

Accordingly, your Committee has amended this measure by replacing its contents with language that:

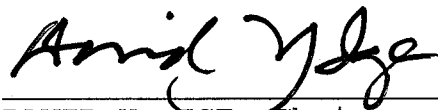
- (1) Prohibits the use of a physician's on-call status from being considered for any purpose, including the solicitation, application, underwriting, and issuance of insurance coverage, and the setting of premium rates, discounts, rebates, and the renewal or cancellation of insurance coverage; and
- (2) Changes the effective date to July 1, 2009.

As affirmed by the record of votes of the members of your Committee on Health that is attached to this report, your Committee is in accord with the intent and purpose of H.B.



No. 1636, H.D. 1, as amended herein, and recommends that it pass Second Reading in the form attached hereto as H.B. No. 1636, H.D. 1, S.D. 1, and be referred to the Committee on Judiciary and Government Operations.

Respectfully submitted on
behalf of the members of the
Committee on Health,



DAVID Y. ICE, Chair



