

STAND. COM. REP. NO.

611

Honolulu, Hawaii

MAR 04 2011

RE: S.B. No. 41  
S.D. 1

Honorable Shan S. Tsutsui  
President of the Senate  
Twenty-Sixth State Legislature  
Regular Session of 2011  
State of Hawaii

Sir:

Your Committee on Judiciary and Labor, to which was referred S.B. No. 41 entitled:

"A BILL FOR AN ACT RELATING TO THE HAWAII PREPAID HEALTH CARE ACT,"

begs leave to report as follows:

The purpose and intent of this measure is to repeal the sunset provision of the Hawaii Prepaid Health Care Act and repeal Act 99, Session Laws of Hawaii 1994, which would repeal the sunset provision of the Hawaii Prepaid Health Care Act upon the enactment of certain federal law.

Your Committee received testimony in support of this measure from the Department of Labor and Industrial Relations; Hawaii Medical Service Association; International Longshore and Warehouse Union, Local 142; American Cancer Society; and one individual. Your Committee received comments on this measure from the Department of the Attorney General; Department of Commerce and Consumer Affairs; Hawaii Medical Association; The Chamber of Commerce of Hawaii; and Healthcare Association of Hawaii.

Your Committee finds that for over thirty years, Hawaii's Prepaid Health Care Act has made the State a national leader in providing health care to all of its residents. Your Committee also finds that at the time of the initial passage of the Prepaid Health Care Act and at certain other times federal legislation to reform the health care system on a national level has been projected to impact Hawaii's Prepaid Health Care Act. At the time

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of the Prepaid Health Care Act's original passage in 1974, the Legislature included a section that triggered the termination of the state law upon passage of greater federal protections. In 1994, in anticipation of the federal health care reforms of 1993 that never actually materialized, the Legislature passed Act 99, which repeals the termination provision of the Prepaid Health Care Act in order to preserve a higher benefit level for the people of Hawaii than that which was predicted to be included in the potential federal law.

Your Committee finds that the Prepaid Health Care Act provides superior benefits to the people of Hawaii than federal legislation would on its own. Your Committee further finds that the reported agenda of the One Hundred Twelfth Congress to dismantle federal health care reforms may jeopardize the Prepaid Health Care Act. Therefore, in order to safeguard the Prepaid Health Care Act more completely, your Committee finds it necessary to eliminate language allowing for the automatic repeal of Hawaii's Prepaid Health Care Act from the text of that Act and to eliminate potentially conflicting language regarding the effective date of the Prepaid Health Care Act's automatic repeal.

Your Committee finds that the federal Employee Retirement Income and Security Act (ERISA) has a preemption provision that provides that ERISA supersedes state laws as they relate to employee benefit plans. The ERISA provides for an exemption from preemption for Hawaii's Prepaid Health Care Act, but the exemption expressly does not cover any amendments to Hawaii's Prepaid Health Care Act made after September 2, 1974. Your Committee recognizes that the amendment to the Prepaid Health Care Act in this measure may be preempted by ERISA but that the preemption would only apply to the amendment, not to the Prepaid Health Care Act as it exists today.

Your Committee has amended this measure by;

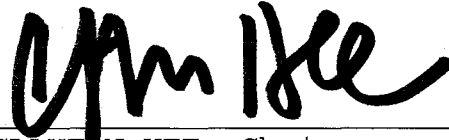
- (1) Inserting an effective date of July 1, 2050, to allow for further discussion; and
- (2) Making technical, nonsubstantive amendments for the purposes of clarity and consistency.

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



No. 41, as amended herein, and recommends that it pass Third Reading in the form attached hereto as S.B. No. 41, S.D. 1.

Respectfully submitted on  
behalf of the members of the  
Committee on Judiciary and  
Labor,



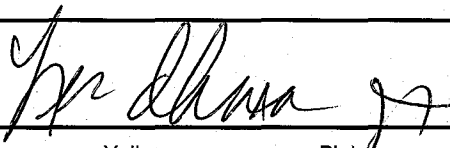
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CLAYTON HEE, Chair



The Senate  
 Twenty-Sixth Legislature  
 State of Hawai'i

**Record of Votes**  
**Committee on Judiciary and Labor**  
**JDL**

Bill / Resolution No.:* <b>SB 41</b>	Committee Referral: <b>HTH, JDL</b>	Date: <b>3-1-11</b>		
<input type="checkbox"/> The committee is reconsidering its previous decision on this measure. If so, then the previous decision was to: _____				
The Recommendation is: <input type="checkbox"/> Pass, unamended 2312 <input checked="" type="checkbox"/> Pass, with amendments 2311 <input type="checkbox"/> Hold 2310 <input type="checkbox"/> Recommit 2313				
Members	Aye	Aye (WR)	Nay	Excused
HEE, Clayton (C)	✓			
SHIMABUKURO, Maile (VC)				✓
GABBARD, Mike	✓			
IHARA, Jr., Les	✓			
SLOM, Sam				✓
<b>TOTAL</b>	<b>3</b>	<b>0</b>	<b>0</b>	<b>2</b>
Recommendation: <input checked="" type="checkbox"/> Adopted <input type="checkbox"/> Not Adopted				
Chair's or Designee's Signature: 				
<b>Distribution:</b> Original     Yellow     Pink     Goldenrod File with Committee Report     Clerk's Office     Drafting Agency     Committee File Copy				

\*Only one measure per Record of Votes