



**TESTIMONY OF  
THE DEPARTMENT OF THE ATTORNEY GENERAL  
TWENTY-SEVENTH LEGISLATURE, 2013**

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**ON THE FOLLOWING MEASURE:**

H.B. NO. 656, RELATING TO HEALTH CARE ADMINISTRATIVE UNIFORMITY.

**BEFORE THE:**

HOUSE COMMITTEE ON HEALTH

**DATE:** Friday, February 8, 2013

**TIME:** 8:00 a.m.

**LOCATION:** State Capitol, Room 329

**TESTIFIER(S):** David M. Louie, Attorney General, or  
Rodney I. Kimura, Deputy Attorney General

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Chair Belatti and Members of the Committee:

The Department of the Attorney General recommends that this bill be held because it will not provide immunity from antitrust scrutiny.

The bill expresses an exception to the application of the Hawaii antitrust law for the apparent purpose of conferring antitrust immunity on certain cooperation, collaborations, or agreements ("collaborations") relating to the development and adoption of uniform health care-related procedures.

Implicit in the bill is the notion that the contemplated collaborations will be in violation of the antitrust laws. Otherwise, there would not be a need for this bill.

The bill does not afford complete antitrust immunity because the collaborating entities will be subject to scrutiny under federal antitrust law.

Under the "state action" doctrine, anticompetitive conduct engaged in by private parties can be shielded from the antitrust laws if a rigorous two-pronged test is met. First, the private conduct must be undertaken pursuant to a clearly articulated and affirmatively expressed state policy. Second, the private conduct must be actively supervised by the State itself.

Assuming for the moment that the wording in the bill is sufficient to constitute a "clearly articulated and affirmatively expressed state policy," nothing in the bill provides for active supervision of the collaborating parties by the State.

Thus, the participants will be subject to both governmental and private scrutiny under the federal antitrust laws, and could be subject to prosecution or suit.

We therefore recommend that this bill be held.