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# HOUSE CONCURRENT RESOLUTION

REQUESTING THE LEGISLATIVE REFERENCE BUREAU TO CONDUCT A STUDY  
ON THE PHYSICIAN WORKFORCE SHORTAGE IN HAWAII BY ANALYZING  
THE PARKER IMMUNITY DOCTRINE AND THE FEASIBILITY OF  
ENACTING STATUTORY AUTHORITY FOR COLLECTIVE NEGOTIATION  
BETWEEN PHYSICIANS AND HEALTH CARE INSURERS IN THE STATE.

1           WHEREAS, the healthcare system in Hawaii is in crisis  
2 because of the severe shortage of physicians in the State; and  
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4           WHEREAS, according to the recent Hawaii Physician Workforce  
5 Assessment Project study conducted in 2020 by the Area Health  
6 Education Center of Hawaii at the University of Hawaii, the gap  
7 between supply and demand for doctors in Hawaii has grown by  
8 sixty-five percent since 2010; and  
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10           WHEREAS, the biannual Hawaii Physician Workforce Assessment  
11 Project study also reported a current shortage of eight hundred  
12 twenty physicians statewide, with the neighbor islands hardest  
13 affected; and  
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15           WHEREAS, there is a physician shortfall of sixteen percent  
16 on Oahu, compared with a forty-four percent shortfall for the  
17 island of Hawaii, thirty-six percent for Maui County, and  
18 thirty-two percent for the island of Kauai; and  
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20           WHEREAS, the physician shortage is due to the State's  
21 increasing inability to recruit and retain physicians, which  
22 poses a serious problem for Hawaii residents as the shortage  
23 prevents timely and appropriate access to life-saving  
24 healthcare; and  
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26           WHEREAS, a primary barrier to recruiting and retaining  
27 physicians is the fact that physician compensation in Hawaii is  
28 relatively low and not competitive nationally, as evidenced by



1 Hawaii's inability to attract qualified out-of-state physicians  
2 or retain graduates from the John A. Burns School of Medicine  
3 located in Honolulu, Hawaii; and  
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5 WHEREAS, a major factor in the relatively low compensation  
6 for Hawaii's physicians is the State's highly concentrated  
7 health insurance market; and  
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9 WHEREAS, an examination of the Hawaii insurance market by  
10 the American Medical Association entitled *Competition in Health*  
11 *Insurance: A Comprehensive Study of U.S. Markets* (2019) reveals  
12 a highly concentrated total insurance market, with a single  
13 insurer controlling sixty-seven percent of the total market and  
14 its second-largest insurer controlling twenty-one percent; and  
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16 WHEREAS, the American Medical Association ranked Hawaii the  
17 third least competitive health insurance market in the nation,  
18 behind only Alabama and Louisiana; and  
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20 WHEREAS, highly concentrated health insurance markets are  
21 said to cause disparate, imbalanced, and monopsonistic market  
22 power between insurers and independent physicians providing  
23 health care services; and  
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25 WHEREAS, in addition to market concentration, the  
26 relatively weak bargaining power of physicians compared to  
27 health insurers is also a result of federal antitrust law, which  
28 generally bars physicians from collectively negotiating their  
29 contracts with insurers and contributes to the monopsonistic  
30 market favoring insurers; and  
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32 WHEREAS, independent physicians contend that monopsony  
33 power enables health plans to approach contract negotiations  
34 with a "take-it-or-leave-it" attitude that puts physicians in  
35 the untenable position of accepting inappropriate and adhesive  
36 contract terms; and  
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38 WHEREAS, in *Parker v. Brown*, 317 U.S. 341 (1943), the  
39 United States Supreme Court created an exemption to the federal  
40 antitrust laws referred to as the State Action Doctrine or the  
41 Parker Immunity Doctrine, and authorized state actions that  
42 could foreseeably cause anti-competitive effects when taken



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1 pursuant to a clearly expressed and legislatively adopted state  
2 policy; and

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4 WHEREAS, in 2009, the Alaska Legislature found that  
5 permitting physicians to engage in collective negotiation of  
6 contracts with health benefit plans to be appropriate and  
7 necessary to benefit competition in the healthcare market, and  
8 adopted a statute consistent with the Parker Immunity Doctrine  
9 to authorize collective negotiations between competing  
10 physicians and health benefit plans; and

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12 WHEREAS, it is appropriate and necessary for the State to  
13 consider authorizing physicians to collectively negotiate their  
14 contracts with health benefit plans to address the physician  
15 shortage crisis in Hawaii; now, therefore,

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17 BE IT RESOLVED by the House of Representatives of the  
18 Thirtieth Legislature of the State of Hawaii, Regular Session of  
19 2020, the Senate concurring, that the Legislative Reference  
20 Bureau is requested to conduct a study on the physician  
21 workforce shortage in Hawaii by analyzing the Parker Immunity  
22 Doctrine, including its current legal status and the extent of  
23 any statutory or policy implementation by other states, and the  
24 feasibility of enacting statutory authority for collective  
25 negotiation between physicians and health care insurers in the  
26 State; and

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28 BE IT FURTHER RESOLVED that the Legislative Reference  
29 Bureau is requested to submit a report of its findings and  
30 recommendations, including any proposed legislation, to the  
31 Legislature no later than twenty days prior to the convening of  
32 the Regular Session of 2021; and

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34 BE IT FURTHER RESOLVED that certified copies of this  
35 Concurrent Resolution be transmitted to the President of the  
36 Senate, Speaker of the House of Representatives, and Director of  
37 the Legislative Reference Bureau.

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OFFERED BY: 

MAR 06 2020

